

Lessons Learned - Lesson One Supplement: Get the Name Right on the Financing Statement

Jonathan Fleisher

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*Cassels developed this **Lessons Learned** series based on our experience with priority disputes between secured creditors and the realization that many secured parties make fundamental errors of law that cause them to lose priority in their collateral. Each lesson in the series will outline a basic mistake and the lesson to be learned...*

Wrong name and correct VIN? Out of luck in Manitoba, but not everywhere

Our first installment in the series “Lessons Learned” - and following supplement - cautioned secured parties of the risks associated with registering their security using an incorrect name for the debtor, even if the error was inadvertent and seemingly minor.

The case of *Bankruptcy of Rosa Argentina Gonzalez*, 2017 MBQB 178 further confirms this point, but also highlights a potential saving point in the PPSA for secured lenders in Ontario.

Facts

An auto leasing company (the Lender) financed the purchase of a motor vehicle by Rosa Argentina Gonzalez (the Debtor). The Lender registered a financing statement (the Financing Statement) in the Manitoba Personal Property Registry (PPR) in accordance with the Manitoba *Personal Property Security Act* (the PPSA). The Financing Statement identified the Debtor as “R Argentina Gonzalez” (the Debtor’s certificate of Canadian citizenship stated her name as “Rosa Argentina Gonzalez”), but correctly set out the vehicle’s serial number.

The Debtor made an assignment in bankruptcy. A search of the PPR using the Debtor’s full legal name did not disclose the Financing Statement, nor a “similar match,” however the Lender’s registration was disclosed when the motor vehicle was searched by serial number.

The Lender filed a proof of claim as a secured creditor with the bankruptcy trustee, which was disallowed on

the grounds that the Financing Statement contained a seriously misleading error, and therefore the Lender's security interest was not validly perfected.

Decision

The Court held that, despite the fact that the trustee had conducted a serial number search and was aware of the Lender's Financing Statement, the determination of whether an error in a financing statement is seriously misleading is objective. Section 43(8) of the Manitoba PPSA deems a registration to be invalid if there is a seriously misleading error in the debtor's name or serial number. Section 14(2) of the Manitoba PPSA regulations sets out the proper method for determining the debtor's name, which was Rosa Argentina Gonzalez, and which the Lender would have known if they had referenced the prescribed documentation. The Court held that if a search of a debtor's name in the PPR does not reveal a registration, the searcher is not required to additionally perform a search by serial number, as this would conflict with the wording of section 43(8) of the Manitoba PPSA. The Lender's security interest was unperfected and their claim was deemed to be unsecured.

This case highlights provincial differences between personal property security regimes across Canada. Amendments to the Ontario PPSA pursuant to the *Cutting Unnecessary Red Tape Act, 2017* (Bill 154) will add provisions which place paramountcy on a correctly inputted VIN. While in Manitoba and most other provinces, the PPSA is clear that a lender is out of luck if the financing statement contains an error in the debtor's name (regardless of whether the serial number is correct), in Ontario it is now clear that a security registration can be saved if the VIN is correct.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.