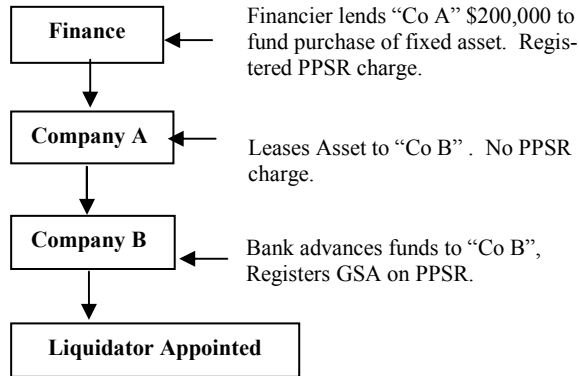


### Personal Property Securities Act (PPSA) Traps

#### Example One



**Question:** Who has priority to proceeds of leased asset - finance company or bank?

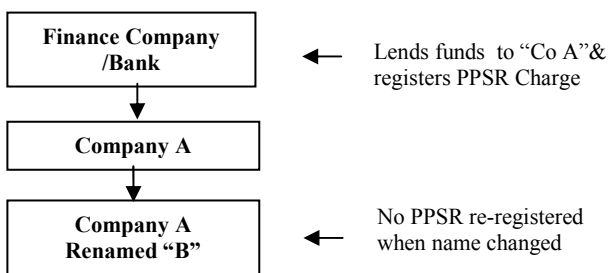
**Answer:** *There are conflicting legal opinions on who has priority. One opinion is that in general the bank will have final priority if the lease was in the ordinary course of Company A business and Company B had no knowledge that the lease amounted to breach of the finance company security agreement or;*

*The alternative opinion is that the financier (assuming it holds a perfected security interest at the date of transfer) retains its security interest in the collateral and the bank only has a security interest over whatever rights the lessee has (e.g. right to redeem and realise the equity)*

Each and every case needs to be considered on the individual facts that apply in a particular circumstance. In coming to any conclusion, it is necessary to consider Sections 42, 45, 53, 66, 88 of the PPSA.

A number of instances have come to our attention where the above situation has arisen and the finance company has accepted it lost its claim to proceeds from the asset sold when they have a correctly registered charge. This view is consistent with the first opinion set out above. Although the position is not clear, the best approach is for any lender to be particularly cautious if the borrower is in the business of leasing.

#### Example Two



**Question:** Does the change of name affect the original registration on the PPSR and alter priorities to funds realised?

**Answer:** *No unless the security holder has actual knowledge of the name change and failed to re-register the security interest within 15 days.*

### Definition of Accounts Receivable Relating to Schedule Seven of the Companies Act 1993

Commissioner of IRD v North Shore Taverns Limited (in Liquidation)

*Did the Judge Get it Right?*

Section 16(1) of the PPSA defines "account receivable" as "a monetary obligation that is not evidenced by chattel paper, an investment security, or by a negotiable instrument, whether or not that obligation has been earned by performance". "Chattel paper" is in turn defined as "1 or more writings that evidence both a monetary obligation and a security interest in, or lease of, specific goods or specific goods and accessions".

**Where a monetary obligation falls within the three named exceptions ("chattel paper", investment security" or negotiable instrument") that obligation will NOT be an account receivable for the purposes of the PPSA and therefore, for the purposes of the Receiverships Act. Each of those exceptions is further defined in the PPSA.**

A recent High court decision has ruled that "accounts receivable" under the PPSA is limited to what were traditionally known as book debts. The term does not extend to all monetary obligations, despite the use of those words in the definition. See: *Commissioner of Inland Revenue v Northshore Taverns Ltd (in liq)* HC Auckland CIV 2006-404-6804, 27 August 2008, a decision by an Associate Judge on a liquidators' directions application.

The author of a leading text on the PPSA (Gedye, et al. *Personal Property Securities in New Zealand* (2002)) comments that the term "account receivable" replaced the expression "book debt" because with the technological development and use of computers, the vast majority of records are now stored on computers rather than in books.

The Court considered the purpose of the PPSA and held in favour of the narrow interpretation. That is, "account receivables" is limited to "book debts". The Associate Judge was primarily swayed by the argument that the prior law allowed for payment of preferential claims from book debts only, and there was no evidence that the PPSA was intended to widen the scope of the assets subject to preferential claims, namely to all monetary obligations. He saw this as drastic change to insolvency law that had not been intended.

This publication is necessarily brief and general in nature, and you should seek specific professional advice before taking any action in relation to the matters dealt with. Rodewald Hart Brown Limited, its employees and agents do not accept any liability for actions taken in reliance on this publication."