

RESEARCH ASSIGNMENT

Secured Transactions Law

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TABLE OF CONTENTS

A. Introduction	3
B. Written Advice to Unibank	4
i. Unibank's Interest	4
ii. Arno's Interest	6
iii. Woodworx's Interest	7
iv. Pat's Interest	10
C. Woodworx' Interest: A Comparison With the Ontario PPSA	15

Introduction.

With the introduction of a substantially different approach to personal property securities, the reforms have been criticised for their increased complexity. However, such criticism ‘tends to overlook the complexity of the laws it replaces.’¹ The following illustrates some of the key areas of the *Personal Property Securities Act 2009*,² how they fare against general security agreements commonly held by banks, and a brief comparison between retention of title agreements in Australia and Ontario.

¹ Anthony Duggan, ‘Romalpa Agreements Post-PPSA’ (2011) 33 *Sydney Law Review* 645, 648.

² (Cth) (*PPSA*).

B. Written Advice

As receiver under a charge of such a nature as that granted by Solidwork Pty Ltd ('Solidwork') to Unibank, there are a number of issues that you must be aware of in relation to how you and Unibank's interest fares in comparison to other security interests. This is particularly so in light of the *PPSA* and the migration of Unibank's interest to the PPS Register. Some have gone so far to suggest that these reforms were intended to combat what may be labelled 'situational monopoly'.³ However, as you will see below, Unibank remains in a strong position for their security interest to gain priority over such competing interests.

In turn, I will outline for you the relative interests of Unibank, Arno, Woodworx and Pat.

i. Unibank

Solidworks granted a 'fixed and floating charge over all present and after-acquired property' to Unibank. For the main part, the act dispenses with the common law distinction between security interests as fixed or floating.⁴ It considers the term 'floating charge' insufficient in illustrating an intention to postpone attachment to collateral.⁵ However, s 318 excludes transitional security agreements from the application of this part.⁶ Thus to be excluded, the agreement between Solidwork and Unibank must satisfy the provisions in s 307 and 308: that the security agreement was made prior to the the 30th of January 2012,⁷ and that the Act applies to the security interest.⁸ Clearly these two provisions are satisfied, rendering Unibank's interest a transitional security interest. Therefore the act has not changed the meaning of the contractual terms in this pre-PPSA security agreement, rendering the 'fixed and floating charge' language still applicable in defining the nature of Unibanks interest.

The security interest of Unibank was registered 'by way of migration from the ASIC Company Charges Register'. This results in the security agreement remaining

³ Above n 1, 645.

⁴ *PPSA* s 12(2).

⁵ *Ibid* s 19(4).

⁶ *Ibid* ss 307, 308, 310, 318.

⁷ *Ibid* s 307.

⁸ *Ibid* s 308(a), (b)(ii).

perfected after the end of the transitional period (30th of January, 2014), provided that the provisions governing migrated security interests are met, such as that the interest must be registered in a transitional register.⁹ On the facts, I would presume that these provisions are satisfied. The interest qualifies as a security interest, and the ASIC Company Charges Register is identified as a transitional register.¹⁰

It is important for you as receiver to understand how this status affects Unibank, primarily in regards to attachment and perfection, the importance of which will become increasingly evident as I outline the position of the other interested parties. Unlike general transitional security interests, the Registration Commencement Time¹¹ is the time in which migrated security interests became perfected. According to the PPSA, ‘a transitional security interest... is taken to have attached to the collateral immediately before the registration commencement time.’¹² This is regardless of fact, such as in your case, in after-acquired property or where the floating charge would crystallise at a later date. As is clear, this puts you in a particularly strong position vis-à-vis competing priority claims. Finally, the fact that Unibank's interest is migrated alters the methods in which the security interest may be enforced, specifically as the Chapter 4 enforcement powers do not apply.¹³ Regardless, Chapter 4 enforcement powers do not apply when a receiver is appointed¹⁴ and thus this provision is largely unimportant.

For this security interest to be enforceable against others, it must satisfy s 20: the security interest must be attached to the collateral and the provisions governing enforceability must be complied with. There is nothing on the facts provided to indicate otherwise. As is the case for all security interests, the security agreement between Unibank and Solidwork is effective according to its terms.¹⁵

⁹ Ibid s 332.

¹⁰ Australian Financial Security Authority, ‘Registrar’s Practice Statement No 4’, Amendment Demand Process, 21 May 2012
<<http://www.ppsr.gov.au/AsktheRegistrar/PracticeStatements/Pages/RegistrarPracticeStatementNo4.aspx#no5>>.

¹¹ PPSA s 33.

¹² Ibid s 321.

¹³ Ibid s 314.

¹⁴ Ibid s 116.

¹⁵ Ibid s 18(1).

ii. Arno's Interest

First, it must be assessed if Arno has a security interest: is it 'an interest in personal property provided for by a transaction that, in substance, secures payment or performance of an obligation'?¹⁶ It is an interest in personal property; ADI accounts fall within the definition.¹⁷ The 'transaction' that created the interest may be said to be the contract for the renovations itself. Thus, whether or not Arno has a security interest hinges on if the payment secures 'performance of an obligation.'¹⁸ The court has previously found instances where contractual rights to property upon default constitute a security interest, such as *McCloy v Manukau Institute of Technology*.¹⁹ However, although Arno is entitled to the return of its deposit if Solidworks defaults on the contract, this is substantially different to 'step-in' rights. In security agreements such as these,²⁰ the agreement provides that the secured party is 'deemed to be in possession of the contract works.' This is clearly a proprietary interest, but is a right to a refund? Personal rights or action for repayment of debt are not interests *in* personal property, but rather a right to take action.²¹ As per the explanatory memorandum, 'a security interest is a proprietary interest'.²² I would suggest that in this instance Arno's interest lacks a sufficient nexus to property in order to be a proprietary interest. If this is the case, Arno would not have a security agreement in competition with Unibank's. Although the act is said to apply 'without regard to ... form'²³, the s 20 provisions regarding enforceability against third parties require that the intention to grant security must be 'evidenced in writing'. Given the contract was for renovations, it is unlikely to constitute a 'security agreement'.

Thus, to claim the proceeds of the account, Unibank's general security interest must cover the account. As discussed above, the security agreement satisfies the s 19 and s 20 provisions regarding enforceability, if the security interest has attached to the

¹⁶ Ibid s 12(1).

¹⁷ Ibid s 12(1).

¹⁸ Ibid s 12(1).

¹⁹ [2013] MZHC 936.

²⁰ *McCloy v Manukau Institute of Technology* [2013] MZHC 936.

²¹ PPSA s 12(6).

²² Explanatory Memorandum, *PPSA*, 149.

²³ PPSA s 12(1).

collateral.²⁴ As Solidworks quite clearly had a right in the ADI account, and value may include past consideration,²⁵ then attachment has likely occurred. Thus Unibank may easily enforce the general security interest by way of a charge-back.²⁶ Unibank has also perfected the interest by control²⁷ and registration, however this is not particularly significant as there are no competing security interests.

iii. Woodworx's Interest

It is first necessary to establish whether or not Woodworx had a security interest. The electric saw and lathe unit was supplied on 'retention of title terms'. Although listed as an example of a security interest within the PPSA,²⁸ it must satisfy the test within the act.²⁹ The unit clearly falls within the s 10 meaning of personal property.³⁰ However, the act explicitly states that it will not apply to fixtures.³¹ The PPSA definition of fixtures provides little assistance – 'goods... that are affixed to land,'³² and thus it is necessary to turn to the general law. Although prima facie any affixation beyond by the weight of the goods themselves results in the goods being considered a fixture, there are a number of mitigating circumstances for consideration.³³ Hence, merely by installing the unit, it could be considered a fixture. However, drawing analogy to *Re Cancer Care Institute of Australia Pty Ltd*,³⁴ where by granting a security interest in the unit to the supplier, it evidenced an intention for the equipment to remain as personal property. A number of other factors were also considered in the case – such as the ease of removal – however I would require more information regarding the method of installation of the unit to draw more substantiated conclusions. If it is considered personal property within the meaning of the act, it is also tangible property, and non-inventory.³⁵

²⁴ Ibid s 21(1)(b)(i).

²⁵ Ibid s 10 (definition of 'value').

²⁶ Ibid s 12(3A), (4).

²⁷ Ibid s 25 and 24.

²⁸ Ibid s 12(2)(d).

²⁹ Ibid s 12(1).

³⁰ Ibid (definition of 'personal property').

³¹ Ibid s 8 (1)(j).

³² Ibid s 10 (definition of 'fixture').

³³ E.g. *Commissioner of Stamps (WA) v Whiteman Limited* (1940) 64 CLR 407.

³⁴ [2013] NSWSC 37.

³⁵ PPSA s 10 (definition of 'tangible property', 'non-inventory').

In order to satisfy the PPSA definition of an in substance security agreement, the interest needs to ‘secure payment or performance of an obligation.’³⁶ This is clearly satisfied, as it is ‘without regard to.... the identity of the person who has title to property’.³⁷ Solidworks is deemed to have sufficient title to grant the security interest to Woodworx for the purposes of the act. S 12 also requires the security interest to be granted in a transaction, which is this case here within the supply agreement. Thus Woodworx has a security interest that may compete with the interest of Unibank. It is common for security agreements to stipulate that an appointment of a receiver, or going into voluntary liquidation, constitutes an event of default.³⁸ The PPSA will guide the competing interests if this is the case, with Woodworx’s security agreement effective according to its terms.³⁹

In order for this security interest to be enforceable against Unibank it must satisfy the s 20 provisions, discussed above. If these provisions are not satisfied, then Woodworx cannot enforce the security interest against Unibank (regardless of the priority it would have otherwise had).⁴⁰ The provisions regarding written security agreements must be complied with, as per s 20(2).⁴¹ The security agreement must be ‘evidenced in writing’, which must be either signed by Solidworks, or ‘adopted or accepted ... by an act... that reasonably appears to be done with the intention of adopting or accepting the writing.’⁴² The facts do not state if Solidworks has signed the supply agreement. However, it is likely that even if Solidworks has not signed the agreement, it would be caught by the latter provision, in that their accepting the unit and providing payment indicates their willingness to accept the terms. The security agreement must adequately describe the particular collateral,⁴³ which must be either ‘a description that identifies the item, or that identifies a class to which the item belongs’.⁴⁴ The facts suggest this would be satisfied.

³⁶ Ibid s 12.

³⁷ Ibid s 12(1).

³⁸ E.g. Herbert Smith Freehills, ‘PPSA model clauses: general security agreement’ (2013) 3.

³⁹ Ibid s 18(1).

⁴⁰ Ibid s 21(1).

⁴¹ Ibid.

⁴² Ibid s 20(2)(a).

⁴³ Ibid s 20(2)(b)(i).

⁴⁴ Ibid s 10 (definition of ‘description’).

Secondly, in order for the security agreement to be attached to the unit, the grantor must have rights in the collateral, and either value must be given or Solidworks must have done an act by which the security interest has arisen.⁴⁵ If this is not satisfied then there will be no priority dispute, as Woodworx's security interest is not enforceable against third parties. For the purposes of this section, Solidworks has rights by having possession of the unit.⁴⁶ Secondly, consideration must be 'sufficient to support a simple contract'.⁴⁷ Provision of the machinery satisfies this. Thus, it is likely that Woodworx's interest is attached to the collateral.

Woodworx must have perfected their security interest.⁴⁸ As Woodworx registered the financing statement, provided that it complied with the registration formalities, it has a perfected security interest. As is discussed above, the interest of Unibank has also been registered. Their security interest in the collateral has also attached, as value can also include past consideration,⁴⁹ such as the previous lending. However, date of attachment is irrelevant for determining the 'priority time' for Unibank.⁵⁰ Pursuant to s 55(5), the priority time for both Unibank and Woodworx is the time in which they registered their security interest. Under the default priority rules,⁵¹ Unibank would therefore have priority due to having the earliest 'priority time', by way of ss 33 and 321.

However, there are situations that can displace the default priority rules, including where a 'Purchase Money Security Interest' ('PMSI') is involved. If Woodworx's security interest falls under the definition of a 'PMSI', then it will have priority over Unibank's interest.⁵² This security interest very clearly falls under the definition of a 'Seller PMSI': 'a security interest in collateral to the extent that it secures all or part of its purchase price.'⁵³ In order to have priority over Unibank's interest, Woodworx must have registered their interest as a 'PMSI' 'in accordance with item 7 of the table

⁴⁵ Ibid s 20(1)(a).

⁴⁶ Ibid s 19(5).

⁴⁷ Ibid s 10 (definition of 'consideration').

⁴⁸ Ibid s 21.

⁴⁹ Ibid s 10 (definition of 'value').

⁵⁰ Ibid s 21(3).

⁵¹ Ibid s 55(4).

⁵² Ibid s 62.

⁵³ Ibid s 14(1).

in section 153'.⁵⁴ Further enquires are necessary to ascertain whether or not this is the case. Additionally, as the unit is non-inventory (see above), it must have been registered within 15 business days in order to gain 'PMSI' priority.⁵⁵ More information is necessary, particularly, the date in which Solidworks took possession of the unit. If it exceeds the 15 days, Woodworx could apply for a court order seeking extension of this time.⁵⁶ This is something that you need to be aware of as it could result in Woodworx gaining priority over Unibank in receivership.

It is also necessary to briefly illustrate the way in which the *Corporations Act 2001* (Cth), interacts with the PPSA in terms of security interests upon insolvency. S 588FL⁵⁷, in tandem with s 267 of the PPSA, provides that Woodworx's security interest may vest in the grantor upon liquidation, as it was registered less than six months before the commencement of liquidation.⁵⁸ This would turn on whether or not 20 days had passed since the security agreement was entered into:⁵⁹ if it has, then the security interest will vest in the Solidworks. This is not stipulated on the facts. In such a case, Woodworx security interest would cease to compete with yours (save it applying to the court for an extension of time⁶⁰). The case of *Central Cleaning Supplies (Aust) Pty Ltd v Elkerton*⁶¹ illustrates an application of these provisions.

It is difficult for me to provide you with more definitive advice without the further necessary information as specified. However, this confirms that there is some risk of Unibanks security interest losing priority to that of Woodworx.

iv. Pat's Interest

Although this arrangement between Bob and Pat appears to be merely casual between brothers, situations like this may fall within the definition of a PPS Lease. For this, however, the interest must still satisfy the requisite s 10 definitions. A 'mobile cement mixer' clearly falls within the definition of personal property, as it is tangible

⁵⁴ Ibid s 62(3)(c).

⁵⁵ Ibid s 62(3)(b)(i).

⁵⁶ Ibid s 293. Considered in *Re Cardinia Nominees Pty Ltd* [2013] NSWSC 32.

⁵⁷ *Corporations Act 2001* (Cth).

⁵⁸ Ibid, s 588FL(1).

⁵⁹ Ibid, s 588FL(1)(i).

⁶⁰ Ibid, a 588FL(b)(iv).

⁶¹ [2014] VSC 61.

property.⁶² It may also be considered commercial property for the purposes of the act, which is relevant in relation to the registration requirements to be discussed below.⁶³ Some lease-type transactions may fall within the definition of an in substance security interest,⁶⁴ however, this is not so in the present case. There are a number of indicators of this: there is no credit or acquisition element built in, no ‘residual value guarantee’,⁶⁵ Bob does not have the same burdens from the cement mixer,⁶⁶ and Pat is under no obligation to purchase it at the end of the lease.⁶⁷ Regardless, Pat’s interest may be a ‘deemed security interest’ within the meaning of the act.⁶⁸ The requirements for this are set out in s 13 of the PPSA.⁶⁹

The provisions stipulate that a PPS lease must be for a term of one year, 90 days (if registrable by serial number), or an indefinite length.⁷⁰ If the mobile cement mixer falls within the definition of motor vehicle, it can be registered by serial number.⁷¹ Without further clarification as to the nature of the cement mixer, I would advise that it is likely that it would fall within this definition. If the cement mixer is permanently attached to a truck, such as an agitator truck, then it will fall under the definition as it ‘is built to be propelled on land by a motor that forms part of the property.’⁷² If it is a separate cement mixer, then it may still fall under the definition of motor vehicle: ‘capable, when being towed... of travelling greater than 10km/h,’ and as it is ‘a piece of machinery... that is equipped with wheels and designed to be... towed...’.⁷³ Hence, if it has a serial number, it is likely that the mobile cement mixer will be considered a commercial motor vehicle. The *Personal Property Securities Regulations 2010 (Cth)* state that such classes of collateral may be registered with reference to the serial number.⁷⁴ Therefore in order to be considered a PPS lease, 90

⁶² PPSA s 10 (definition of ‘personal property’).

⁶³ Ibid s 10 (definition of commercial property’).

⁶⁴ Ibid s 12.

⁶⁵ E.g. *Crop & Soil Service Inc v Oxford Leaseway Ltd* (2000), 186 DLR 85, 94.

⁶⁶ E.g. in *Re Cronin Fire Equipment Ltd* (1993) 14 O.R. (3d) 269.

⁶⁷ *Federal Business Development Bank v Bramalea Ltd* (1985), 38 R.P.R. 12.

⁶⁸ PPSA s 12(3).

⁶⁹ Ibid.

⁷⁰ Ibid s 13.

⁷¹ *Personal Property Securities Regulations 2010 (Cth)* reg 1.7 (2)(b).

⁷² Ibid, s 1.

⁷³ Ibid s 2.

⁷⁴ Ibid sch 1 pt 2.2(c).

days is the requisite length as prescribed by the act.⁷⁵ As it has been ‘onsite for four months’, this provision is satisfied. Even if the mobile cement mixer cannot be considered a motor vehicle (such as if it is not designed to be towed), it will still likely satisfy this part of the provisions as it is for an ‘indefinite term’.⁷⁶

In addition, Pat will not be a PPS lessor if he does not ‘regularly [engage] in the business of leasing goods.’⁷⁷ This is not clear on the facts. Solidworks ‘very occasionally’ borrows such equipment from Pat. This in itself may not satisfy the proviso, however the facts do not indicate whether Pat leases equipment to other parties. This is important: is the leasing of construction machinery a service Pat offers to his customers?⁷⁸ Likewise, Pat’s business being a ‘construction company’ suggests that the company is primarily involved in building, and not leasing its property. The facts indicate that Pat was not intending to profit from the specific lease, but rather gaining from the maintenance of an amicable relationship with his brother and his wife more generally. This may indicate that he is not ‘engaged in the business of leasing goods’.⁷⁹ More information is necessary before I can provide you with a more definitive answer. That said, on the facts currently available, it would appear that Pat does not regularly engage in leasing his construction machinery. If this is the case, Pat would most likely not have a security interest. As such, he would rely on common law causes of action to recover his property.

If, however, upon further investigation, it appears that Pat’s interest does satisfy the definition of a PPS lease, it will need to be enforceable against third parties in order to affect Unibank’s security interest.⁸⁰ As discussed above, one aspect of this is that the security interest has attached to the collateral.⁸¹ This is relatively straightforward. As in the above case with the interest of Woodworx, possession will qualify as rights in the collateral under a PPS lease.⁸² Value is given by the accounting completed by

⁷⁵ *PPSA* s 13(e).

⁷⁶ *Ibid* 13(b).

⁷⁷ *Ibid* s 13(2)(a).

⁷⁸ *David Morris Fine Cars Ltd v North Sky Trading Inc* (1996) 7 WWR 332, 351.

⁷⁹ *Rabobank New Zealand Ltd v McAnulty* [2011] NSCA 212.

⁸⁰ *PPSA* ss 19–20.

⁸¹ *Ibid* s 19(2).

⁸² *Ibid* s 19(5).

Bob's wife.⁸³ In order to be enforceable against third parties, it also has to satisfy the 'written security agreements' provisions.⁸⁴ The facts strongly suggest that there is no writing stipulating the terms of the security agreement, let alone that it is signed by Bob,⁸⁵ or that any of the other specific provisions have been satisfied. The agreement by its very nature as being an informal one suggests that it would not be in writing. Thus, although the liquidator would not constitute a third party (and hence it would still be enforceable against Solidworks in voluntary liquidation),⁸⁶ Pat's security interest would be unenforceable against other secured creditors, such as Unibank.

There is some highly persuasive case law from Australia and other jurisdictions which further highlight the strength of Unibank's interest. In the case of *Graham v Portacom New Zealand Ltd*,⁸⁷ the New Zealand Supreme Court held that as against secured creditors, the rights the lessee had extended to ownership in the goods sufficient for the secured creditor to acquire rights in the collateral. Similarly, the landmark case of *'Maiden Civil'*⁸⁸ confirmed a similar position is held in Australia. The facts of this case, similar to that of Pat's interest, detailed a lease agreement that was neither in writing nor of any agreed duration, but as it was a lease in 'serial numbered goods,' constituted a PPS lease. The court confirmed that in this instance, the security interest held by creditors over the collateral is not merely limited to the rights in the lease, but the collateral itself. These cases therefore support the proposition that if Pat's interest is that of a PPS lessor, then he will lose priority to the interest of Unibank.

Similar to Woodworx, Pat's security interest would vest upon liquidation.⁸⁹ Even though serial numbered PPS leases are excluded from this section, as the lease is still for an 'indefinite time', it would vest in Solidworks regardless.⁹⁰

⁸³ Ibid s 10 (definition of 'value').

⁸⁴ Ibid s 20(2).

⁸⁵ Ibid, as required by s 20(2)(a)(i).

⁸⁶ *Dunphy v Sleepyhead Manufacturing Co Ltd* [2007] 2 NZLR 602.

⁸⁷ [2004] 2 NZLR 528, 544.

⁸⁸ *Maiden Civil (P&E) Pty Ltd v Queensland Excavation Services Pty Ltd & Ors* [2013] NSWSC 852.

⁸⁹ *PPSA* s 267.

⁹⁰ Ibid s 268(1)(s)(ii).

Unibank has perfected its security interest. In this case, however, the ‘priority time’ is not particularly significant due to Pat having not registered (or otherwise perfected) his interest, giving Unibank priority.⁹¹ It is therefore evident the strong position Unibank is in relation to Pat’s interest. It may not be a security interest, but if it is, Unibank’s security interest has priority over Pat’s.

⁹¹ Ibid s 55(3).

C. Woodworx's interest – Ontario Law

PPSA Acts share striking similarities internationally, as evidenced by the use of international case law to influence the Australian interpretation of the act: as the legislation is ‘...modelled on the New Zealand and Canadian legislation, [the Commonwealth Parliament] intended the same approach.’⁹² A comparison of Woodworx's interest under the Ontario *PPSA*⁹³ highlights this. Woodworx would similarly have a security interest, with the definition identical in practice regarding in substance security acts.⁹⁴ Likewise, the act explicitly applies to conditional sales agreements,⁹⁵ with the courts establishing that the seller is considered to have taken a security interest after transferring the title to the buyer.⁹⁶ While the unit would also fall under s 1 definitions of personal property, the Ontario act provides greater clarity in relation to the issue of security interests in fixtures. The act establishes that debtors (‘grantors’ within the Australian act), may have a security interest in a fixture provided that it has attached before the property became a fixture.⁹⁷ Thus while it is extremely necessary to determine if the unit is a fixture in Australia, this distinction is less important in Ontario. It is however necessary to notify persons with an interest in the real property of the security agreement.⁹⁸ This is relevant to both Woodworx and Unibank.

The provisions for attachment are largely the same: ‘when value is given, the debtor has rights in the collateral...’,⁹⁹ and there is a valid security agreement. The act makes no distinction between enforceability inter partes and third parties, however this difference has little practical effect. Value has an identical definition and would thus similarly be satisfied under the Ontario act.¹⁰⁰ Unlike in the Australian act, there is no provision expressly stating that possession is a sufficient right in retention of title agreements, however a similar position is taken within the case law.¹⁰¹ The act also

⁹² Maiden Civil

⁹³ *Personal Property Securities Act 1990* (Ontario) (‘*OPPSA*’).

⁹⁴ *Ibid* s 2.

⁹⁵ *Ibid* s 2(i).

⁹⁶ *National Trailer Convoy of Canada Ltd v Bank of Montreal* (198) 1 PPSAC.

⁹⁷ *OPPSA* s 34.

⁹⁸ *Ibid* s 30(1).

⁹⁹ *Ibid* s 11(2).

¹⁰⁰ *Ibid* 1(1) (definition of ‘value’).

¹⁰¹ E.g. *Euroclean Canada Inc v Forest Glade Investments Ltd* (1985), 49 OR (2d) 769 (CA).

requires a debtors signature on a written security agreement.¹⁰² However, it does not provide for the alternative as in the Australian act, whereby an act by the grantor can indicate acceptance of the security agreement. This may threaten the validity of Woodworx's interest, due to the nature of retention of title agreements. The agreement must also contain a description of the collateral 'sufficient to enable it to be identified,' likely to be similarly satisfied.¹⁰³ The act provides for the additional requirement that the secured party give a copy of the security agreement to the debtor within 10 days;¹⁰⁴ it is unclear if that is satisfied on the facts, however this will not effect the validity of the agreement. As in Australia, the security interest must be perfected:¹⁰⁵ completed by Woodworx by registration.

Unibanks interest is similarly likely to be perfected under the Ontario act. The courts have accepted general security agreements as adequately describing the collateral.¹⁰⁶ There is no material differences in the Ontario act otherwise likely to alter the validity of Unibanks interest.

Thus, turning to the priority rules, the similar 'first to register' residual rule applies.¹⁰⁷ Similar to in Australia, however, if Woodworx's interest is a properly registered 'PMSI', it may gain priority over Unibank's interest regardless of being registered second. The definition is functionally identical,¹⁰⁸ with the core issue similarly being whether or not Woodworx registered their interest within the necessary 15 days.¹⁰⁹ Woodworx may, however, be in a weaker position under the Ontario act, as it does not provide for the Courts discretion to grant extensions of time.

Thus while the Ontario act is largely similar, Unibank is arguably in a stronger position in this jurisdiction.

¹⁰² *OPPSA* s 11(2).

¹⁰³ *Ibid* s 11(2)(a).

¹⁰⁴ *Ibid* s 10.

¹⁰⁵ *Ibid* s 19.

¹⁰⁶ *Access Advertising Management Inc v Servex Computers Inc* (1993) 15 O.R. (3d) 635.

¹⁰⁷ *OPPSA* s 30(1).

¹⁰⁸ *Ibid* s 1(definition of 'PMSI').

¹⁰⁹ *Ibid* s 33(2).