

PPSA CASE UPDATE

**King Robb – Unsigned
Security Agreements, an
issue now put to bed**

Presentation to Banking &
Financial Services Law
Association Conference 2007

Presenter
Mariette van
Ryn

10 August 2007



**Simpson
Grierson**

<p>Presenter Mariette van Ryn 10 August 2007</p>	<p style="text-align: center;">PPSA CASE UPDATE</p> <p>King Robb – Unsigned Security Agreements, an issue now put to bed</p> <p>Presentation to Banking & Financial Services Law Association Conference 2007</p> <div style="text-align: right;">  </div>
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<p><i>Dunphy & Anor v Sleepyhead Manufacturing Co Ltd</i> CA CA63/06 [14 June 2007]</p> <ul style="list-style-type: none"> • An appeal from the High Court by Dunphy and Shephard, liquidators of King Robb Ltd (in Liquidation) • Reasons of the Court given by O'Regan J <p style="text-align: right; font-size: small;">Simpson Grierson</p>

<p>Facts</p> <ul style="list-style-type: none"> • Goods supplied to King Robb on Sleepyhead's ordinary terms and conditions of trade (included retention of title provisions). • Terms and conditions received by King Robb, however, no signed agreement. • Sleepyhead registered financing statement in respect of its security interest on PPSR. <p style="text-align: right; font-size: small;">Simpson Grierson</p>
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Facts (cont'd)

- Sleepyhead supplied goods up until liquidation.
- King Robb liquidated by special resolution of shareholders.
- King Robb had already granted debenture in favour of BNZ – registered on the PPSR.
- No issue taken by Sleepyhead as to the bank's priority over total collateral.

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Facts (cont'd)

- Liquidators sold all of King Robb's assets, including the goods supplied by Sleepyhead.
- More than sufficient from sale of collateral to meet amount owing to BNZ.
- Liquidators applied entire surplus to liquidation without paying Sleepyhead anything.
- Sleepyhead brought proceedings against liquidators for, among other things, conversion.

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Issues

- Did Sleepyhead have an enforceable security interest?
- If so, did that security interest survive the liquidation?
- Is the liquidator a "third party" for the purposes of the PPSA and is this relevant?
- Was there a distinction between Sleepyhead's "security interest" under the PPSA and a "charge" under the New Zealand Companies Act 1993?

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Issues (cont'd)

- If Sleepyhead held an enforceable security interest, did the liquidator have any right to take possession of the goods secured in favour of Sleepyhead?
- If the liquidators uplifted the goods as agent for BNZ were the liquidators obliged to distribute the surplus in accordance with s117(1) PPSA after payment to BNZ?

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Decision

- The Court of Appeal dismissed the appeal. Court found:
 - Sleepyhead had a security interest in the goods supplied to King Robb and in the proceeds of sale of those goods;
 - Sleepyhead's security interest was enforceable against the liquidators;
 - Sleepyhead's security interest was a charge for the purposes of the Companies Act;

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- While the liquidators were not liable for conversion they were required to account to Sleepyhead for the proceeds of the sale of the goods subject to Sleepyhead's security interest;
- The liquidators were not a "third party" for the purposes of the PPSA;
- Section 254(a) should be read in the limited sense that it absolves liquidators from any duty to realise assets on behalf of a secured creditor;
- Section 117 PPSA applies to liquidators.

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Other recent PPSA cases

- *Orix New Zealand Ltd v Milne*, HC Auckland, 17 May 2007, Hansen J
- *New Zealand Bloodstock Leasing Ltd v Jenkins*, HC Auckland, 19 April 2007, Winkelmann J
- *Keybank National Association v The Ship "Blaze"*, HC Auckland, 9 February 2007, Baragwanath J (reported [2007] 2 NZLR 271)

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- *Simpson v New Zealand Associated Refrigerated Food Distributors Ltd*, CA36/06, 11 December 2006 (reported [2007] 2 NZLR 130, (2007) 10 NZCLC 264,263)
- *Harvestpro Logging Ltd v Cordylina Holdings Ltd*, HC Auckland, 3 October 2006, Associate Judge Doogue
- *Asset Traders Ltd v Favas Sportscar World Ltd*, HC Auckland, 3 August 2006, Winkelmann J (reported (2006) 9 NZCLC 264,138; (2006) 3 NZCCLR 545)

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