

Case Law Update: Bank of Montreal v. Innovation Credit Union

December 20, 2010

Security Interests Priority Competing Statutory Interests

The Supreme Court of Canada was faced with competing security interests under the federal *Bank Act* and the *Personal Property Security Act* ("PPSA") of Saskatchewan. Innovation Credit Union had taken an unsecured interest over farm equipment from the debtor pursuant to the PPSA. Subsequently, the Bank of Montreal (the "Bank") registered a security interest over the same farm equipment pursuant to the *Bank Act*. The application judge found that registration under the *Bank Act* trumped an unsecured interest under the PPSA, and thus the Bank had first priority. However, the Saskatchewan Court of Appeal unanimously overturned this decision.

The Supreme Court unanimously affirmed the Court of Appeal's decision. The *Bank Act* governs the dispute because provincial legislation cannot affect the priority of a validly created federal security interest. However, this does not mean that the PPSA is irrelevant. The *Bank Act* can only give a secured party an interest in property as great as the interest the owner of the property has at the time of the security agreement. In this case, the owner's interest in the property was subject to the Credit Union's unregistered interest. Thus, the owner could only convey to the Bank an interest that was also subject to the Credit Union's interest.

In the companion case of *Royal Bank of Canada v Radius Credit Union Ltd*, 2010 SCC 48, released 5 November 2010, both the unregistered interest under the PPSA and the *Bank Act* registration occurred prior to the purchase of the equipment, and thus theoretically attached to the equipment at the same time. However, under the PPSA, an unregistered interest is created at the time of the creation of the security agreement. As the agreement with the Credit Union was executed before the security agreement with the Bank, the Bank took its security subject to the Credit Union's interest. Again, the unregistered PPSA agreement trumped the subsequent, registered *Bank Act* security agreement.

The Court recognized that its decisions may create a commercially absurd result. The decisions make several references to the potential desirability of legislative amendments in the area, and cite (although not explicitly with approval) articles that have advocated the repeal of the *Bank Act*.

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