

NOVA SCOTIA COURT OF APPEAL

Citation: *MacPhee Chevrolet Buick GMC Cadillac Ltd. v. S.W.S. Fuels Ltd.*,
2011 NSCA 35

Date: 20110419
Docket: CA 333521
Registry: Halifax

Between:

MacPhee Chevrolet Buick GMC Cadillac Limited

Appellant

v.

S.W.S. Fuels Limited, C. Dixon Fuels Limited,
Charles E. Dixon and Judy M. Dixon

Respondents

Judge: The Honourable Justice Joel Fichaud

Appeal Heard: March 22, 2011

Subject: *Personal Property Security Act - Priorities*

Summary: In 2005, S.W.S took general security for a truck leased by the debtor from GMAC. MacPhee took title to the truck from GMAC in 2007 and gave the debtor a new lease. The debtor defaulted. The Supreme Court said S.W.S. had priority over MacPhee. MacPhee appealed. S.W.S. registered a Financing Statement for its security in 2005 and MacPhee registered a Financing Statement for its lease in 2007, under the *Personal Property Security Act*.

Issue: Did S.W.S. or MacPhee have priority?

Result:

MacPhee had a purchase money security interest. The debtor had possession of the Truck since 2004. So the debtor did not “obtain” possession within 15 days of MacPhee’s registration of its Financing Statement (December 2007). This meant MacPhee did not have super- priority under s. 35(1)(a) of the *Personal Property Security Act*. Rather, S.W.S had priority as the first registered interest under s. 36(1)(a)(I) of the *Act*. The Court of Appeal dismissed the appeal.

This information sheet does not form part of the court’s judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 16 pages.