

District of Nova Scotia  
Division No. 02  
Court No. 27517 and 27518  
Estate No. 116284 and 116285

Date: February 2, 2005  
Docket No. B-27517 and B-27518

IN THE SUPREME COURT OF NOVA SCOTIA  
IN BANKRUPTCY AND INSOLVENCY  
Citation: Arseneau (Re), 2005 NSSC 26

In the Matter of the Bankruptcies of Patricia Lynn Arseneau  
and Peter Michael Arseneau

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DECISION

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Registrar: Richard W. Cregan, Q.C.  
Heard: January 19, 2005  
Counsel: Gary Richard representing Chrysler Financial Canada  
Peter Darling representing PricewaterhouseCoopers Inc.

### Introduction

- [1] This is an appeal by the Applicant, Chrysler Financial Canada, a division of Daimler Chrysler Services Inc., as a secured creditor, of the decision of PricewaterhouseCoopers Inc., the trustee in the bankruptcies of Peter Michael Arseneau and Patricia Lynn Arseneau, set out in two Notices of Disallowance of Claim, Right & Priority or Security, dated October 18, 2004, pursuant to Section 135 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, the “Act” .

### Facts

- [2] The bankrupts were originally from Nova Scotia. However, they had been living in Canmore, Alberta for nine years prior to 2001. In 2001 they returned to Nova Scotia and incorporated a company in May 2001 which only operated for nine months. They returned to Canmore in 2002, took up residence there and found employment. In April of 2003 they bought a 1996 Jeep Cherokee. The financing for it was assigned to the Applicant. It provided for 60 monthly payments, the first to be made on May 21, 2003. The security was perfected pursuant to the personal property security

legislation of Alberta.

- [3] In late 2003, Mr. Arseneau was offered employment in Halifax. He returned to Nova Scotia to take up the new position on January 4 or 5, 2004. Mrs. Arseneau stayed in Canmore with the Jeep to close out their residence there. He returned to Canmore by plane in early February 2004. They loaded their possessions in a U-Haul trailer, hitched it to the Jeep, and returned to Nova Scotia arriving on February 14, 2004, or the day before. The Jeep remained in Nova Scotia until they handed it over to their trustee in July 2004.
- [4] They had used a branch of the Bank of Montreal in Canmore continuously from before their first return to Nova Scotia in 2001 until at least the time of their assignments in bankruptcy. They had found no need to change branches as transactions could be done electronically.
- [5] The payments on account were made to the Applicant by “Autopayments” from this branch. Apparently they were always paid without any problems until the payment due in May 2004. It was reversed and no payments were successfully made after that date.

- [6] As the registration of the Jeep was to expire sometime in February 2004, they renewed it in Alberta before leaving for Nova Scotia, so that it would be properly registered until they could reregister it in Nova Scotia, once they settled there.
- [7] From the time of the purchase of the Jeep until after their assignment neither of them had had any communication with the Applicant.

Assignment in Bankruptcy

- [8] The bankrupts made their assignments in bankruptcy on May 26, 2004. The Jeep was listed as an asset in their respective estates. In the opinion of the trustee the security of the Applicant was not valid as it had not been perfected in Nova Scotia at the time of the assignments. The trustee treated the Applicant as an unsecured creditor.
- [9] Notice of the assignment was sent on May 26, 2004, to the Applicant at an address in Mississauga, Ontario, found in the trustee's data base. Notwithstanding, the notice sent to the Applicant, no one within the

Applicant's organization had learned of the move to Nova Scotia until a couple of days before July 19, 2004, the day on which the Applicant perfected its security in Nova Scotia.

[10] The Jeep was delivered to the trustee and sold to a third party on July 13, 2004.

[11] The Applicant submitted Proofs of Claim dated August 30, 2004, asserting a secured claim for \$24,159.68 with the Jeep as collateral.

[12] The trustee gave notices of disallowance of the secured claim on October 18, 2004, asserting that the security interest had not been registered in time pursuant to the *Personal Property Security Act*, S.N.S. 1995-96, c.13, the *PPSA* , but admitting the claim for \$24,159.68 as an unsecured claim. It is from these notices of disallowance that this appeal is taken.

### Law

[13] Provisions for perfection in Nova Scotia of a security interest already perfected in the jurisdiction where it attached and then brought into Nova

Scotia are made in subsection 6(3), of the *PPSA*. They are as follows:

A security interest in goods perfected pursuant to the law of the jurisdiction in which the goods are situated, at the time the security interest attaches but before the goods are brought into the Province, continues perfected in the Province if it is perfected in the Province

- (a) not later than sixty days after the goods are brought into the Province;
- (b) not later than fifteen days after the secured party has knowledge that the goods have been brought into the Province; or
- (c) before perfection ceases under the law of the jurisdiction in which the goods were situated when the security interest attached,

whichever is earliest.

[14] The consequences of failure to perfect a security interest in the context of bankruptcy are found in paragraph 21(2)(a). It is as follows:

An unperfected security interest in collateral is not effective against

- (a) a trustee in bankruptcy if the security interest is unperfected at the time of the bankruptcy;

[15] The situation is well covered in the following commentary of Professor Catherine Walsh in her book: *An Introduction to the New Brunswick*

*Personal Property Security Act, 1995*, at page 55:

If goods subject to a security interest that attached abroad are later removed to New Brunswick, s. 5(3) requires that the security interest be registered or otherwise perfected locally to retain its perfected status under New Brunswick law. Although the old registration statutes imposed a similar requirement, the registration obligation was not triggered until the out-of-province secured party learned of the relocation of the goods to New Brunswick after which it had a thirty day period to register. In contrast, s. 5(3) stipulates an outside time limit of sixty days for perfection, regardless of whether or not the secured party knows of the relocation before that period expires, an approach that encourages closer monitoring by the secured party.

- [16] If the secured creditor fails to comply with these requirements and the debtor becomes bankrupt, the security interest is “ineffective” as against the trustee in bankruptcy.

#### Analysis

- [17] The question then is whether the security interest of the Applicant was perfected at the time of the bankruptcy, i.e., on May 26, 2004. This depends on when the goods were brought into the province under Subsection 6(3). Perfection did take place when the Applicant registered in Nova Scotia on July 19, 2004. However, for the security to be good against the trustee the

bringing of the goods into Nova Scotia would have to have happened within the 60 days prior to the perfection on July 19, 2004.

[18] When then was the Jeep “brought into the province”? Mr. Arseneau says in his affidavit that he and Mrs. Arseneau arrived in Nova Scotia with the Jeep and a U-Haul in tow with all their effects in early February 2004, at least by the 14<sup>th</sup>, Valentine’s Day. They have been in Nova Scotia ever since and the Jeep has been in Nova Scotia at least until it was sold by the trustee on July 13, 2004, long after the bankruptcy.

[19] The trustee’s submission is that in the circumstances, the Jeep was brought into the province at that time. Perfection took place long after 60 days from that time expired. Therefore, the Applicant’s security interest was not perfected at the time of the bankruptcy and according to subsection 21(2) is not effective against the trustee.

[20] The Applicant’s counsel submitted that the simple arrival of the Arseneaus with the Jeep and all their possessions in a U-Haul is not conclusive. He says I should consider the fact that monthly payments continued to be made

from the bank in Canmore and that the registration was renewed in Alberta immediately before they left, as suggesting that the bringing into the province might be at some later date.

[21] The only case submitted that is exactly on point is **Re Steed** (2001), 22 C.B.R. (4<sup>th</sup>) 148 (Alberta, Registrar Funduk). The bankrupt had purchased a truck while working in the Northwest Territories. He moved to Alberta and settled into a new job and residence in September 1999. He returned to the Northwest Territories 10 days before Christmas to bring back the remainder of his possessions. The secured creditor argued that the truck had not been brought into Alberta until the return from the Territories at Christmas. At page 150 the Registrar commented:

No one would likely seriously argue that the British Columbian who comes into Alberta on a 10 day motoring holiday has “brought” his automobile into Alberta within the context of s.5(2)(a).

In line with this thinking he found that the truck was brought into the province in September. The trip at Christmas was just “a retrieval trip”.

[22] Some judgment has to be applied to the facts. Mr. Arseneau gave reasonable explanations of why he continued to use the Alberta bank

account and renewed the registration in Alberta. Neither suggests any reservation about whether the Jeep was brought into Nova Scotia.

Disposition

- [23] I have therefore no difficulty in finding that the Jeep was brought into Nova Scotia when the Arseneaus arrived with it in mid February 2004. Therefore, the security was not perfected in time so as to be effective against the trustee.
- [24] They had come to Nova Scotia with the intention of staying. They brought the Jeep with them and they have stayed in Nova Scotia. To find otherwise would have at least, required a strong suggestion that the Arseneaus were simply visiting Nova Scotia to, as it were, test the waters for new opportunities and without any definite intention or commitment to stay in Nova Scotia.
- [25] The Applicant's appeal is dismissed and the disallowance by the trustee is confirmed.

[26] I award the trustee costs of \$750.00.

R.

Halifax, Nova Scotia  
February 2, 2005