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on

Insolvency Law

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FRASER MILNER CASGRAIN LLP

THE IMPORTANCE OF REGISTERING NAME CHANGES

In *Royal Bank of Canada v. Head West Energy Inc.*, the Court of Appeal considered the priority of two security interest registrations against the same collateral, namely industrial camp trailers, and the obligations, pursuant to the *Personal Property Security Act*, R.S.A. 2000, c. P-7 (“PPSA”) of a security holder to amend its registration to reflect a name change when the security holder has knowledge of that name change.

In the spring of 2004, Wells Fargo Equipment Finance Company (“Wells”) entered into leases with Harrison Western Canadian Inc. (“HWC”) and 876625 Alberta Ltd. (“876”), administered by third party intermediary, Canada West Finance Inc. (“CW”). In turn, Wells registered its interest in those leases at the Alberta Personal Property Registry (“PPR”) against HWC. In June 2004, CW sent correspondence to Wells notifying them of a name change whereby HWC would be changing its name from HWC to Head West Energy Inc. (“HW”). The June 2004 correspondence was admittedly received by an appropriate bank officer at Wells.

HWC effected the name change to HW on July 8, 2004. Wells amended its security registrations to reflect the name change in October 2005, when it learned of the receivership of HW. Within that interim period, Royal Bank of Canada (“RBC”) loaned money to HW and registered its general security agreement against HW in November 2004 at the Alberta PPR.

Under the provisions of the PPSA, Wells had 15 days, after coming to know of the name change, to register its security interest against the new corporate name failing which its security interest would be subordinate to any intervening creditors registering a security interest registered against the debtor’s new name; such as RBC. The PPSA imbues the creditor with knowledge of a name change in two circumstances: first, where it has actual knowledge; second, where information comes to the right person within the creditor’s structure, such that a reasonable person would take cognizance of it.

The chambers judge concluded that Wells had actual knowledge of the name change. The chambers judge also concluded that had she not found actual knowledge, she would have found constructive knowledge as the June 2004 correspondence provided to Wells was sufficient to place it on notice requiring reasonable investigation.

The issue on appeal was whether Wells had knowledge of the name change prior to RBC registering its security interest. Court of Appeal concluded that the chambers judge did not err with respect to her findings and the decision was upheld.

For further information please contact David Mann at 403 268-7097 or David LeGeyt at 403 268-3075, or visit our [website www.fmc-law.com/insolvency](http://www.fmc-law.com/insolvency).