

Index of New Zealand Personal Property Securities Act Cases

The New Zealand Courts have, since 2004, been building up a body of case law that explains and clarifies the Personal Property Securities Act (PPSA).

We have gathered all of these cases together in this index, with a copy of each case and a brief summary of the PPSA issue that it addresses. We will continue to monitor the Courts to make available to you a complete set of the New Zealand decisions on PPSA matters. If you would like further assistance on PPSA-related issues, please contact us.

No.	Case	Citation	Date of judgment	Section(s)	Key point
84	<i>Maginness v Tiny Town Projects Ltd</i>	[2023] NZHC 494	14 March 2023	17, 23, 53, 93	The Contract and Commercial Law Act 2017 assists in applying s 53, consistent with <i>Orix</i> (No. 10 below). An agreement for sale of goods only becomes a "sale" for the purposes of s 53 when all conditions for the transfer of the property are met. Section 23(b) excludes equitable liens from the PPSA regime despite meeting the s 17 definition of security interest. A purchaser of goods prior to transfer of title may have an equitable lien where the goods are readily identifiable as attributable to the contract. Equitable liens are equivalent to property rights in the goods and therefore have priority over security interests.
83	<i>Premier Legal Finance Partnership v Morrison Kent</i>	[2022] NZHC 1798	26 July 2022	unspecified	A right to bring an action in a debtor's name (or in the secured party's name, if provided for in the security agreement) can be property subject to a security. Where the debtor is bankrupt, that right arguably remains with the secured party rather than vesting in the Official Assignee. [A better interpretation of the judgment may be that the right is vested in the Official Assignee, but remains subject to the creditor's security].
82	<i>Owens v Dong</i>	[2022] NZHC 411	11 March 2022	36	Security interests are enforceable against third parties in respect of particular collateral if the debtor has signed a security agreement containing an adequate description of the collateral by item or kind and enables the collateral to be identified.
81	<i>The Vintage Aviator Ltd v DeMarco</i>	[2021] NZHC 3096	18 November 2021	19, 41, 52	A company was deemed under s 19(1)(b) to have knowledge because of the knowledge of a director and shareholder that he had obtained in his role as trustee.
80	<i>Mann v Scutter</i>	[2020] NZHC 755	17 April 2020	25	Section 25 requirement of good faith can be used to challenge the appointment of a receiver. Further, whether s 25 requires active misleading conduct remains undecided.
79	<i>Eastlight Asset Trading No. 5 Ltd v Ground Support (Wgtn No. 1) Ltd</i>	[2019] NZHC 2534	4 October 2019	Not specified	A receiver appointed under a general security agreement has the power to deal with both personal property and real property, notwithstanding that the appointing creditor also holds a mortgage over the real property.



No.	Case	Citation	Date of judgment	Section(s)	Key point
78	<u>Brown v Heartland Bank Ltd</u>	[2019] NZHC 1105	21 May 2019	16, 17, 23, 45, 75A, 102	Heartland Bank entered into a “whole turnover” factoring arrangement with Stages Civil & Electrical Ltd. Stages subsequently went into liquidation. The key issue for the Court was whether Heartland had provided “new value” giving it priority over preferential creditors in respect of proceeds arising from account receivables. Ultimately the Court called for further submissions and did not give a final determination on the issue.
77.2	<u>Re Thompson, ex parte McCollum</u>	[2020] NZHC 542	18 March 2020	120, 123	Notice under s 120, read in light of s 123, requires clear and unequivocal advice that states the secured party proposes to take the collateral in satisfaction of the obligation.
77.1	<u>McCollum v Thompson</u>	[2019] NZHC 915	30 April 2019	109, 110, 114, 116, 117, 120, 123, 132	The legal implications of s 120 are uncertain; that is, whether the retention of the collateral is satisfaction that all of the debts (so that there is nothing outstanding) or whether the debt is only satisfied to the extent of the value of the collateral.
76	<u>Auto Finance Direct Ltd v Morton</u>	[2019] NZHC 664	2 April 2019	162, 163, 167	Morton lodged a notice under s 162 in an attempt to discharge AFDL’s financing statement. The financing statement was in respect of a vehicle that Morton had purchased with finance from AFDL. Morton argued that she had various claims against AFDL under the Consumer Guarantees Act that, by way of set off, extinguished her obligations under the security agreement. AFDL successfully applied for an order maintaining the financing statement on the basis that there was insufficient evidence that the value of the CGA claims exceeded the secured debt.
75	<u>Partners Finance and Lease Ltd v Richmond</u>	[2019] NZHC 34	29 January 2019	142, 149, 150	The High Court granted ASB defendant summary judgment on Partners Finance and Lease Ltd’s (PFL) claim that PFL had a first ranking registered security interest over a bulldozer. PFL’s financing statement was seriously misleading because the collateral type listed on the financing statement for the bulldozer was “goods - other” rather than “goods - motor vehicles”. As a result, ASB’s search of the register failed to disclose PFL’s financing statement.
74	<u>Murray v UDC Finance Limited</u>	[2018] NZHC 3386	18 December 2018	110	The principles applicable to a mortgagee’s duty when exercising a power of sale under s 176 of the Property Law Act (PLA) 2007 are relevant by analogy to the duty under s 110 of the PPSA. The duty under s 110 of the PPSA requires the secured party to select an appropriate method of marketing and sale that is likely to achieve market value, or close to market value, for that particular form of personal property.



No.	Case	Citation	Date of judgment	Section(s)	Key point
73	<i>Pioneer Finance Ltd v Green Cars Ltd</i>	[2017] NZHC 2782	14 November 2017	16, 17, 36, 40, 162, 167	For the purpose of s 40(1)(b) of the PPSA, a debtor has rights in goods leased to the debtor by virtue of its possessory interest. Accordingly, a debtor may grant a security interest in goods leased to the debtor, and that security interest is not brought to an end by the conclusion of the lease.
72.2	<i>Fatupaito v Harris</i>	[2018] NZCA 497	14 November 2018	25	A mortgagee need not have purity of purpose when appointing a receiver, but a mortgagee does act in bad faith if, judged objectively, it acts for a predominant purpose which is collateral to its interests as mortgagee in preserving its security and obtaining repayment of a secured debt.
72.1	<i>Harris v Bank of New Zealand</i>	[2017] NZHC 2374	29 September 2017	25	High Court decision reversed on appeal. See Court of Appeal decision [2018] NZCA 497, above.
71.2	<i>Patrick v Bank of New Zealand</i>	[2018] NZCA 122	26 April 2018	25	Appeal dismissed.
71.1	<i>Bank of New Zealand v Patrick</i>	[2017] NZHC 1184	1 June 2017	25	The bank did not breach its good faith duty under s 25 when it appointed receivers. The Court said a secured party is unlikely to be found to have acted in bad faith where the secured party was motivated by a desire to recover the amount due to it or otherwise protect its collateral.
70	<i>Norris v Bowater Finance Ltd</i>	[2016] NZHC 2156	13 September 2016	176, 177, 178, 179	A request for a copy of a security agreement and other information under s 177 is not made until the person making the request provides authentication of his or her claim to be authorised, and shows that the person he or she represents holds a security interest in personal property of the debtor.
69.3	<i>Conway v Mercedes-Benz Financial Services New Zealand Ltd</i>	[2017] NZCA 463	17 October 2017	16, 17, 24, 114	With limited exceptions, the PPSA is "title neutral" and apply equally to all forms of security. By contrast, whether a security interest is a charge or mortgage for the purposes of the PLA depends on a traditional, title-based approach. The Court of Appeal's earlier comments to the contrary (in <i>Dunphy v Sleepyhead</i>) should not be followed.
69.1	<i>Mercedes-Benz Financial Services New Zealand Ltd v Conway</i>	[2016] NZHC 1896	16 August 2016	114, 185	Whether a security interest is a charge or mortgage for the purposes of the PLA, depends on questions of ownership. That approach was explained further by the Court of Appeal, which affirmed the High Court's decision.
68	<i>Glover No 2 Ltd v Bank of New Zealand</i>	[2016] NZCA 182	6 May 2016	17	A General Security Agreement (GSA) can create security over land, but the PPSA will not apply.
67	<i>Fisk v Attorney General</i>	[2016] NZHC 479; [2016] NZAR 551	21 March 2016	23,44	Statutory charge under Customs and Excise Act 1996 out-ranks a GSA. Irrelevant that GSA attached first, or that Customers had released goods.
66.2	<i>McCullum v Thompson</i>	(2017) 23 PRNZ 467	23 February 2017	Not specified	Court of Appeal overturned the loss calculation but did not reconsider the scope of "proceeds".



No.	Case	Citation	Date of judgment	Section(s)	Key point
66.1	<i>McCollum v Thompson</i>	[2015] NZHC 28	28 January 2016	16(1), 45(1)(b)	"Proceeds" does not include progeny of livestock.
65	<i>McKay v Johnson</i>	[2015] NZHC 242	23 February 2015	36, 41	Bank could not locate GSA document. The requirement that the security agreement be evidenced in writing was satisfied by other evidence.
64	<i>Thomas and KMA Group v Equipment Finance Ltd</i>	[2014] NZHC 2542	16 October 2014	110	The duty to obtain the best price reasonably obtainable is directed to the time of sale. To show sale at undervalue, independent evidence on reasonableness of steps taken is required.
63	<i>UDC Finance Ltd v Brunton</i>	[2014] NZHC 2247	17 September 2014	16, 110	The High Court interpreted s 110 to include that a secured party selling collateral owes a duty to a guarantor to obtain the best price reasonably obtainable. A guarantor is a "debtor" under s 16(1) because he or she has payment obligations under the deed of guarantee, even though they may have no interest in the collateral. The guarantor had an arguable defence that the secured party did not take reasonable care to obtain the best price reasonably obtainable.
62	<i>Working Capital Solutions Holdings Ltd v Pezaro</i>	[2014] 3 NZLR 379	15 May 2014	162, 167	Another application to sustain a financing statement. As in <i>Universal Trucks and Equipment Ltd v Reynolds</i> the High Court in this case rejected the analogy with caveat cases, and the "seriously arguable" test. Instead, the test is whether the Court is "satisfied" that none of the grounds for discharge exist.
61	<i>BNZ v Waewaepa Station 2002 Ltd</i>	[2013] NZHC 3321	12 December 2013	16, 45, 53, 90, 109	Claim in conversion by secured creditor after the debtor transferred collateral (sheep) to a related party. Recipient of the sheep claimed it took the sheep free of any security interest either because they were sold in the ordinary course of business (s 53), or because the sale had been authorised by the secured party (s 45). Sale was not in the ordinary course of business. The transaction was arranged so that the secured party did not receive any of the proceeds of the sale of the sheep. The proceeds were applied against a debt between the debtor and the related party, in an attempt to get around the bank security.
60	<i>Hughes v Fea & Heenan</i>	[2013] NZHC 2863	30 October 2013	16(1)(i), 17	Whether a lease of plant bulbs was an "in substance" security interest. Held that it was not a security interest to the extent that it did not give the lessor new rights over the collateral. However, an interest in the sale proceeds of goods that a lessee is obliged to return at the lease's conclusion (even where the lessee is permitted to sell and replace the goods) did constitute a security interest.



No.	Case	Citation	Date of judgment	Section(s)	Key point
59	<u>Carey & Anor v Smith & Ors</u>	(2013) 11 NZCLC 98-019	05 September 2013	17, 53, 109	A sale and buy-back arrangement between a company and its shareholders was not a sale of inventory in the ordinary course of business. The inventory was therefore transferred subject to the bank's GSA. Further, the sale and buy-back was for funding purposes, so was an in-substance security interest.
58	<u>Polymers International Ltd v Toon & Ors</u>	(2013) 11 NZCLC 98-017	30 July 2013	142(1)(c), 145, 149, 150, 151, 172	Failure to register a debtor company's incorporation number on the Personal Property Securities Register (PPSR) will result in a financing statement being seriously misleading. The problem could have been avoided if whoever filled out the financing statement had indicated that the debtor was a company, because the PPSR website would have prompted the person to add the correct company number. The addition of a superfluous space in the abbreviation "NZ" in the name did not make it seriously misleading, because the system automatically excludes all spaces and abbreviations in the words "NZ" in the searching process.
57	<u>Perpetual Trust Ltd v Bank of New Zealand</u>	[2013] NZHC 1800	17 July 2013	16, 108	Application of s 108 PPSA. The first-ranking secured creditor took enforcement action following default by a debtor under a trust deed, and was owed reasonable court costs by the debtor. Under s 108, the Court ordered that, on receipt of a request from the secured creditor for payment, the bank which held the debtor's accounts would be entitled to apply the funds to meet the sums due to the creditor's debt.
56	<u>McCloy & Bridgeman v Manukau Institution of Technology</u>	[2013] 3 NZLR 390	1 May 2013	16, 17, 36, 40, 45, 53, 66, 88, 89, 90, 91, 93	A construction contract can give rise to a security interest. Where the principal has the right to use and sell materials and equipment following default by the contractor, the principal has a security interest in those materials and that equipment. The transfer of the equipment under the contract was not authorised by a GSA holder (s 45), nor was it a sale in the ordinary course of business (s 53).
55	<u>NZ Natural Juice Co v Heartland Bank Limited</u>	[2013] NZHC 755	22 April 2013	45, 93, 102	A conflict between the rights of an assignee of an account receivable, and those of the account debtor. Section 102(1)(a) applied, such that the assignee was bound by the terms of the contract between the assignor and the account debtor, which included a contractual right of set off. The account debtor's ability to rely on that contractual right was not limited by the time limit in s 102(1)(b), which provides that an account debtor may not exercise a set off against the assignee, where the account debtor's claim arose after the account debtor knew of the assignment.



No.	Case	Citation	Date of judgment	Section(s)	Key point
54	<i>Haar v Eastland Tyres Ltd</i>	[2013] NZHC 692	9 April 2013	Not specified	A creditor owes a duty to a guarantor to perfect a security interest granted by the principal debtor for the debt, so that it is available in the exercise of a guarantor's subrogation rights where the guarantor makes payment of the principal debt. Follows <i>NZ Bloodstock v Jenkins</i> (see case 9). On the facts, the guarantor was not discharged from liability because the creditor's failure to register did not cause any loss.
53	<i>Thorn v RFD Finance Limited</i>	[2012] NZHC 1959	7 August 2012	114, 132	The High Court rejected an argument that s 132 of the PPSA ("Entitled persons may redeem collateral") was a code that ousted the provisions in the PLA which permit redemption of mortgages. The PLA continued to apply.
52	<i>Vegar-Fitzgerald v Noyce</i>	[2012] NZHC 1311	29 May 2012	162, 165, 166, 167	Application to sustain financing statement. Court prefers earlier approach of "is there serious or arguable case", on a summary basis. Court rejects <i>Universal Trucks</i> approach where Court determines fully and finally whether a security interest exists.
51.1	<i>Gibbston Downs Wines Ltd v Perpetual Trust Ltd & Ors</i>	[2014] NZCCLR 6	22 October 2013	40, 41, 66, 69, 70, 135, 153, 159	Appeal dismissed. Not necessary to resolve the time at which priority is to be determined, but High Court's analysis "has much to commend it".
51	<i>Gibbston Downs Wines Limited v Perpetual Trust Ltd</i>	[2012] 2 NZLR 574	28 May 2012	40, 41, 66, 69, 70, 130, 135, 153, 159	Priority between competing security interests should be determined at the time those interests come into conflict. This analysis will depend on the facts. It will often, but not necessarily, be the point when the debtor is placed in receivership.
50	<i>Air Liquide v SupaGas 2009 and Ors</i>	[2012] NZHC 2583	10 May 2012	16, 17, 25, 66A, 135	In order to argue that a transaction is "a lease for a term of more than one year", it was necessary to bring evidence that the lessor was regularly engaged in the business of leasing goods. Lack of such evidence prevented summary judgment being entered".
49	<i>MJN McNaughton v Thode</i>	[2012] NZHC 982	10 May 2012	109, 114, 120(2)	Relationship between Sale of Goods Act (SOGA) and PPSA. Purchaser of goods granted "security interest", agreed to restrictions on use of the goods. Terms did not include any express retention of title. Title passed to the purchaser in terms of the SOGA.
48	<i>Universal Trucks v Reynolds</i>	(2012) 10 NZBLC 99-706; (2012) 11 NZCLC 98-003	21 March 2012	16, 35, 36, 89, 90, 149, 150, 162, 165, 167	Revision of how courts should approach applications to maintain financing statements. It is not enough to establish a seriously arguable case for maintaining registration, instead, the court must be satisfied that no grounds exist for demanding change.
47	<i>Swindle v Matakana Estate</i>	[2012] 1 NZLR 806; [2012] NZCCLR 4	28 October 2011	53, 82, 83, 84, 85	Section 53 - sale by winemaking companies to related companies for financing purposes was in the ordinary course of business.



No.	Case	Citation	Date of judgment	Section(s)	Key point
46.2	<i>Strategic v Bridgman</i>	[2013] 3 NZLR 650	09/08/2013	16, 17, 23, 35, 40, 43, 44, 35, 47, 53, 107	High Court decision affirmed on appeal. The Court of Appeal added that a possible liability to pay an unidentifiable sum at an uncertain future date will not amount to an account receivable, but an existing monetary obligation that is not earned by performance under a contract is.
46.1	<i>Burns v Commissioner of Inland Revenue</i>	(2011) 25 NZTC 20-070; (2011) 10 NZCLC 264,885; (2011) 9 NZBLC 103,284	10/08/2011	16, 23	Definition of "accounts receivable" is not limited to book debts. An "account receivable" is any monetary obligation, subject to the exceptions in the definition in the PPSA, and in s 23 of the PPSA. <i>North Shore Taverns</i> case expressly rejected. A receivable will only be available to referential creditors if the monetary obligation was owed to the company at the time that the receivership or liquidation started. Appeal Pending.
45	<i>Nichibo v Lucich</i>	(2011) 9 NZBLC 103,253; [2011] NZCCLR 31	15/07/2011	16, 17, 45, 53, 57, 58, 73, 162, 163(a), 165(1), 167	The fact that the employee of the vendor is the purchaser of the goods does not, by itself, take the transaction outside of the ordinary course of business
44	<i>R. v Kiriona; Lima</i>	(unreported) Gendall J, HC Palmerston North, CRI-2008-054-001871	12/07/2011	17	Relief against forfeiture case – on facts, applicant had no security interest.
43	<i>Stockco v Walker</i>	[2011] NZAR 669; (2011) 9 NZBLC 103,243	24/06/2011	23, 93, Pt 8	Common law lien has priority over security agreement (ss 23 and 93). Whether the grazing contract created a common law lien depended on whether the grazing contract was for the purpose of improving the goods
42.2	<i>Marac Finance Ltd v Greer</i>	[2012] 2 NZLR 497	01/03/2012	16, 17, 23, 41, 66, 95	The mortgage containing an assignment of rental does not need to be registered on the PPSA. The receiver appointed under a mortgage has priority over a receiver appointed under a GSA.
42.1	<i>Marac Finance Ltd v Greer</i>	(2011) 9 NZBLC 103,189	17/03/2011	17, 23, 86	The right of a mortgagee of land to rental payments (collected by a receiver appointed by the mortgagee) falls outside the scope of the PPSA by operation of s 23.
41.2	<i>Healy Holmberg v Grant</i>	[2012] 3 NZLR 614	02/10/2012	36, 40, 66	Court of Appeal rejected High Court's analysis and confirmed that, as between registered security interests, priority is determined by order of registration, not by order of perfection.
41.1	<i>Healy Holmberg v Grant</i>	(2011) 10 NZCLC 264,833; (2011) 9 NZBLC 103,182	24/02/2011	36, 40, 41, 66, 67	Ruling on the validity and priority of alleged security interests. The Court held that date of perfection, not registration, governs priority. [The judgment is wrong on this point and should not be relied on. If there is any injustice in having a later executed security agreement take priority over an earlier agreement, merely because it was registered first, that is a matter for the voidable transactions regimes.]



No.	Case	Citation	Date of judgment	Section(s)	Key point
40.3	<u>Stiassny v Commissioner of Inland Revenue</u>	[2013] 1 NZLR 453	28/11/2012	17, 19, 23, 25, 45, 53, 94, 95, 195, 196, 197, 198	The Supreme Court upheld the Court of Appeal's decision. The Supreme Court also noted that all security interests under the PPSA are statutory fixed charges, and that there are no longer any securities which are recognised as operating as floating charges.
40.2	<u>Commissioner of Inland Revenue v Stiassny</u>	[2012] 11 NZCLC 98-002	15/03/2012	17, 24, 25, 43, 44, 95, Pt 8	Section 95 (recipient of debtor-initiated payment takes free) protects a creditor only from a proprietary claim. It does not operate to extinguish any other legal claim, such as damages for money paid under a mistake. However, s 95 prevents an in personal claim based on priority from being made. Decision upheld on appeal to Supreme Court.
40.1	<u>Stiassny v Commissioner of Inland Revenue</u>	(2011) 10 NZCLC 264,786	04/11/2010	95	High Court decision later upheld on appeal. See Court of Appeal decision dated 15/03/2012.
39.2	<u>Glenmorgan Farm Ltd (in rec and in liq) v New Zealand Bloodstock</u>	[2012] 1 NZLR 555	20/12/2011	10, 16(1), 17, 107, 109	High Court decision affirmed on appeal.
39.1	<u>Glenmorgan Farm v New Zealand Bloodstock</u>	(Unreported) Potter J, HC Auckland, CIV-2008-404-1759 (HC)	27/09/2010	40(3), 109	Secured creditor's failure to register its security interest did not affect the debtor's obligation to pay the secured debt. It affected only priority. Debtor remained liable to repay both secured creditors.
38.2	<u>Rabobank v McAnulty</u>	[2011] 3 NZLR 192 (CA)	23/05/2011	16, 17, 40	Three key rulings on definition of "lease for a term of more than 1 year": (i) qualifiers in (b) and (c) apply to bailments as well as leases; (ii) a bailment will be a lease for more than 1 year only if the bailor is to profit from the bailment (and not merely the transaction). (This matches the Australian Act); and (iii) "regularly" in (c) will require some recurrence of leasing transactions, either before or after, actual or intended.
38.1	<u>Rabobank v McAnulty</u>	(Unreported) Associate Judge Gendall, HC Wellington, CIV-2010-485-647	23/08/2010	16, 17, 35, 36, 40, 66	High Court decision later considered on appeal (result upheld, but on different reasons). See Court of Appeal decision 23/05/2011.
37	<u>Commerce Commission v Budget Loans</u>	(Unreported) Wilson DCJ, DC Auckland, CRI-2009-004-028349 (DC)	26/07/2010	44	Sentencing decision under the Fair Trading Act. Lender had misrepresented its rights under an all present and after acquired property clause in relation to consumer goods (there being restrictions on such security in s 44). [The details are not apparent from the sentencing notes. See the summary of facts.]
36.3	<u>StockCo v Gibson</u>	(2012) 11 NZCLC 98-010	26/07/2012	16, 17, 19, 36, 40, 45, 53, 82, 87, 88, 177	The Court of Appeal largely upheld the High Court's decision. The main difference key difference is that the Court of Appeal did not accept that "750 mixed age cows" were adequately described just because the debtor could identify them.



No.	Case	Citation	Date of judgment	Section(s)	Key point
36.2	<u>Gibson v StockCo</u>	[2011] NZCCLR 29 (HC)	17/12/2010	16, 17, 19, 25, 36, 40, 45, 53, 66, 82, 87, 88, 89, 177, 185, 187, 191	Lengthy and thorough discussion of: (i) ordinary course of business (ii) subordination under s 88, (iii) the good faith requirement in s 25, requiring positive conduct rather than mere knowledge, and (iv) SOGA applying to determine issues of identifying stock.
36.1	<u>Gibson v StockCo</u>	(Unreported) White J, HC Auckland, CIV-2009-404-7120 (HC)	05/07/2010	Not specified	Interlocutory decision declining an order for sale of disputed collateral prior to trial.
35.2	<u>Toll Logistics v McKay</u>	[2011] 2 NZLR 601 (CA)	16/05/2011	17, 23, 41(1) (b)(ii), 66(b), 93	Toll accepted the High Court's decision on the PPSA point. Toll unsuccessfully appealed the decision that it did not have a common law lien.
35.1	<u>McKay v Toll Logistics</u>	[2010] 3 NZLR 700 (HC)	22/06/2010	17, 23, 41, 66, 74, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 114, Pt 7, Pt 8	The priority given to liens over security interests by s 93 PPSA is only given to common law, statutory and maritime liens. Contractual liens qualify as security interests and are subject to the priority rules governing security interests.
34	<u>Asset Finance v Ministry of Justice</u>	[2011] DCR 1	25/05/2010	Not specified	Financier with charge over vehicle, registered on PPSR, took priority over Ministry of Justice, despite the Ministry having seized the vehicle for non payment of fines, prior to the financier's charge and registration. [Was the decision correct? Judge failed to consider s 103, which gives priority to execution creditors. Ministry was arguably an execution creditor in terms of that section. Policy would certainly support that analysis].
33	<u>Triumph Motorcycles v Keogh</u>	[2010] DCR 824 (DC)	29/03/2010	16, 17, 36	A consignment will not amount to a security interest solely because it imposes certain obligations on the consignee in respect of the goods.
32.3	<u>Tubbs v Ruby 2005</u>	[2011] 3 NZLR 551	27/07/2011	25, 53	Ordinary course of business and s 53. Waimate's sale of timber to Ruby was in the ordinary course of business, despite being between related entities, for cashflow purposes only, timber remaining physically with Waimate and all timber to be later on sold by Waimate to customers. Further, timber provided by Waimate to Ruby to "replenish" converted timber was also taken by Ruby free of the bank's security interest partly on the grounds that the receivers, as agents of Waimate, should not be able to take advantage of Waimate's wrongful conversion
32.2	<u>Tubbs v Ruby 2005</u>	(2010) 9 NZBLC 103,051	05/08/2010	17, 41, 53	Application of "ordinary course of business" test in s 53 PPSA. A transfer of goods to a related company was arguably outside the ordinary course of business, as it was not for cash but in satisfaction of an existing debt.



No.	Case	Citation	Date of judgment	Section(s)	Key point
32.1	<i>Tabbs v Ruby 2005</i>	[2010] NZCCLR 31 (HC)	26/02/2010	53	High Court decision later overturned (in part) on appeal. See Court of Appeal decision 05/08/2010.
31	<i>Motorworld v Turners Auctions</i>	[2010] NZCCLR 30 (HC)	17/02/2010	45, 109	Secured party impliedly authorised dealing and in doing so prevented the security interest from continuing in the collateral and extending to the proceeds. Conversion and knowing receipt claims against auctioneer failed.
30.2	<i>Rabobank v StockCo</i>	(2011) 13 TCLR 191	11/03/2011	16, 25, 149, 150, Sch 1	The lack of a partnership name on the registration was not misleading because in fact the farm was not run as a partnership. Whether name on the registration was seriously misleading depended on detailed analysis of the way in which the debtor organised its business affairs.
30.1	<i>Rabobank v StockCo</i>	[2010] NZCCLR 25	17/02/2010	16(a)(iii), 41, 66, 73, 74, 90, 142, 149, 150, 172	Summary judgment declined, partly because failure to include name of partnership in financing statements was arguably seriously misleading, thus arguably invalidating registration. See substantive decision 11/03/2011
29	<i>Daniel Smith Industries Ltd v Cranes International</i>	(Unreported) Allan J, HC Rotorua, CIV-2009-463-286 (HC)	16/12/2009	16, 17, 36, 162, 165, 167, Pt 10	Order maintaining a financing statement; seriously arguable case that security agreement existed between the parties.
28	<i>NZ Associated Refrigerated Food v Donley</i>	(2010) 10 NZCLC 264,626 (HC)	30/10/2009	17, 45(1)(b), 53, 94	Application of "ordinary course of business" test in s 53 PPSA. Also, summary judgment denied on a claim of knowing receipt; further argument required on whether an equitable interest in the proceeds of sale could stand separately to the security interests under the PPSA.
27	<i>ANZ v SNJ Dairy</i>	(Unreported) Woodhouse J, HC Hamilton, CIV-2009-419-1404 (HC)	23/10/2009	109	Bank entitled to repossess collateral subject to GSA after the debtor leased goods to another party on oral terms and without the bank's permission.
26	<i>ALF No 9 v Ellis</i>	(unreported) Ronald Young J, HC Wellington, CIV-2009-485-435 (HC)	13/10/2009	52, 87, 12	PPSA allows a debtor to sell its interest in a cause of action that is subject to a GSA. Failure to obtain GSA-holder's consent does not render the transfer void.
25.1	<i>Viacom v Scene 1</i>	(Unreported) Andrews J, HC Auckland, CIV 2009-404-4305 (HC)	18/08/2009	16, 35, 36, 40	Copyright is personal property and subject to the operation of the PPSA. The prior-ranking security holder did not breach copyright by selling DVDs, etc., even though copyright held by lower-ranking secured party.
24	<i>Arcus Springs v Jeffreys</i>	(Unreported) Harvey DCJ, DC Auckland, CIV- 2009-004-997 (DC)	17/09/2009	16, 17	An indefinite lease will qualify as a lease for more than one year if it can potentially run for that length of time.



No.	Case	Citation	Date of judgment	Section(s)	Key point
23	<u>Toyota Finance v Christie</u>	(Unreported) Asher J, HC Auckland, CIV-2009-404-3797 (HC)	15/07/2009	17, 40, 162, 165, 167, Pt 10	Detailed analysis of the manner in which courts should approach applications to maintain financing statements.
22	<u>Compass v NZ Guardian Trust</u>	(Unreported) Cooper J, HC Auckland, CIV-2009-404-1500 (HC)	19/03/2009	25	Failed application to prevent appointment of receivers on the basis that the right had not been exercised in accordance with reasonable standards of commercial practice, in reliance on good faith obligation in s 25 PPSA.
21	<u>Fisk (Whaitiri Potato Company) v Grace</u>	(2009) 6 NZ ConvC 194,707 (HC)	18/11/2008	44, 100	Creditor's Purchase Money Security Interest (PMSI) rights in unplanted seeds disappear once seeds are annexed to land and become crops.
20	<u>Blue Water Resort v Marac</u>	(2009) 9 NZBLC 102,409 (HC)	20/08/2008	17, 23, 104, 105(b)(i), 108, 134, Pt 2, Pt 9	Assignee of debt arguably not protected by PPSA because right to payment arose in connection with an interest in land
19	<u>Commissioner of Inland Revenue v North Shore Taverns (in liq)</u>	(2009) 10 NZCLC 264,429 (HC)	27/08/2008	16(1)	Definition of "accounts receivable" is limited to book debts or trade credit accounts. [See criticism by M Gedye in "What is an Account Receivable" (2000) 15 NZBLQ 168.]
18	<u>Gough Finance v PL Adams</u>	(unreported) McDonald DCJ, DC Whangarei, PPN153871812 9 (DC)	23/07/2008	177	Secured party must be notified before a seized motor vehicle is sold to pay off unpaid fines. Security interest has priority over fines. [Note that subsequently the Act is to be amended]
17	<u>Stiassny v Dunedin City Council</u>	(unreported) 30 May 2008, Winkelmann J, HC Auckland, CIV-2007-404-3463 (HC)	30/05/2008	17, 23, 40	A trust can in substance be a security interest if it secures payment or performance of an obligation; no security interest found on the facts.
16.3	<u>NZ Associated Refrigerated Food v Simpson</u>	(unreported) Dobson J, HC Wellington, CIV-2007-485-1563; CIV-2005- 485-1820 (HC)	20/06/2008	17, 82	PMSI supplier only had PMSI in unpaid stock; onus is on supplier to determine which goods supplied were not paid for. Default position is that oldest debts are paid for first.
16.2	<u>NZ Associated Refrigerated Food v Simpson</u>	(unreported) Dobson J, HC Wellington, CIV-2007-485-1563; CIV-2005- 485-1820 (HC)	06/05/2008	Not specified	Minute recalling 28/04/2008 decision.
16.1	<u>NZ Associated Refrigerated Food v Simpson</u>	(2008) 10 NZCLC 264,418 (HC)	28/04/2008	16, 17(3), 82	High Court decision – recalled by minute dated 06/05/2008.
15	<u>Metropolitan Advances v Hollis</u>	[2008] NZCCLR 30 (HC)	06/03/2008	6, 16, 17(1), 40	Accountant's authority to deduct invoices against tax returns did not amount to a security interest.

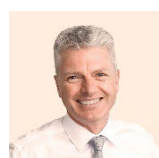


No.	Case	Citation	Date of judgment	Section(s)	Key point
14	<i>K-Auto v McGuire</i>	(Unreported) Associate Judge Robinson, HC Auckland, CIV-2006-404-6784 (HC)	11/02/2008	Not specified	Wrongful registering of financing statement could be a proper basis for a damages claim.
13.2	<i>Stiassny v North Shore City Council</i>	[2009] 1 NZLR 342 (CA)	02/12/2008	17	A trust interest can in substance be a security interest, depending on the purpose of the transaction, the role and relationship of the parties, the practical and commercial reality and the parties' intentions.
13.1	<i>Stiassny v North Shore City Council</i>	[2008] 1 NZLR 825 (HC)	29/11/2007	17, 23(b), 36, 40(1)(a)	High Court decision later affirmed on appeal. See Court of Appeal decision 02/12/2008.
12.2	<i>J S Brooksbank v EXFTX</i>	(2009) 10 NZCLC 264,520 (CA)	06/04/2009	16, 17, 24, 40	Cash on delivery clause, goods delivered without payment, by agent's mistake. Title did not pass, but mere fact it was retained did not create security interest. "In substance" test not satisfied. Owner was bailor and not a secured party.
12.1	<i>J S Brooksbank v EXFTX</i>	(2008) 10 NZCLC 264,338 (HC)	21/11/2007	16, 17, 18, 23, 24, 40, 73	High Court decision later overturned on appeal. See Court of Appeal decision 06/04/2009.
11.2	<i>Segard Masurel v Nicol</i>	(2008) 10 NZCLC 264,386 (HC); [2008] NZCCLR 25	12/02/2008	17, 24	Cash on delivery clause, but goods delivered without payment. SOGA applied to determine that vendor retained no rights in the collateral, so held no security interest. Had title not passed, delivery without payment would have created a security interest.
11.1	<i>Segard Masurel v Nicol</i>	(unreported) Nicola Mathers DCJ, DC Auckland, CIV-2006-004-3020 (DC)	23/05/2007	17, 24	District Court decision later affirmed on appeal. See High Court decision 12/02/2008.
10	<i>Orix v Milne</i>	[2007] 3 NZLR 637 (HC)	17/05/2007	53	When taking goods free of security interest, seller is deemed to include agents selling the relevant goods on behalf of the owner.
9	<i>NZ Bloodstock v Jenkins</i>	(2007) 3 NZCCLR 811 (HC)	19/04/2007	17, 35, 40, 41, 66(1)(a), 69, 73	Guarantors of an agreement were not released from liability by the lessor's failure to register the security interest. The guarantee's terms ousted equitable defences. Court also considered that refinancing an inadequately registered PMSI cannot improve the existing priority position. The substance of the transaction remains the same.
8	<i>Keybank National Association v The Ship "Blaze"</i>	[2007] 2 NZLR 271 (HC).	09/02/2007	23, 25(1), 26, 52, 90	PPSA has no application to a ship which falls directly or indirectly within the Ships Registration Act.
7	<i>Harvestpro Logging v Cordyline</i>	(unreported) Associate Judge Doogue, HC Auckland, CIV-2006-404-3107 (HC)	03/10/2006	17, 25, 109, 117	A security interest entitles the secured party to possession (on default, etc) and so entitles the secured party to sue in conversion.



No.	Case	Citation	Date of judgment	Section(s)	Key point
6	<u>Asset Traders v Favas Sportscar</u>	(2006) 9 NZCLC 264,000 (HC)	03/08/2006	17, 162, 165, 167	The Court should approach applications to maintain financing statements in the same manner as applications to sustain caveats over land.
5.2	<u>Dunphy v Sleepyhead</u>	[2007] 3 NZLR 602 (CA)	14/06/2007	7, 21, 36, 40, 75, 117, Pt 3, Pt 9	A liquidator is an agent of the company and not a "third party" in terms of s 36, meaning that a security agreement not in writing is nevertheless enforceable against a liquidator
5.1	<u>Re King Robb Ltd</u>	(2006) 9 NZCLC 264,000 (HC)	23/02/2006	16, 17, 36, 40, 41(1), 48(1)(a)	High Court decision later affirmed on appeal. See Court of Appeal decision 14/06/2007.
4.2	<u>Simpson v NZ Associated Refrigerated Food</u>	[2007] 2 NZLR 130 (CA).	11/12/2006	16, 17, 74, 149, 162, 167	Overly-broad description of collateral will not render a financing statement "seriously misleading", as it does not prevent the searcher from locating it.
4.1	<u>Service Foods Manawatu v NZ Associated Refrigerated Food</u>	(2006) 9 NZCLC 263,979 (HC)	30/01/2006	16, 17, 24, 36, 41, 74, 142(1) (e), 149, 150, Pt 3, Pt 10	High Court decision later affirmed on appeal. See Court of Appeal decision 11/12/2006.
3	<u>Agnew v Pardington</u>	[2006] 2 NZLR 520 [2006] 3 NZLR 629 (CA)	22/12/2005	16(1), 45(1), 106, 115, 117	The concept of proceeds extends not only to proceeds of sale but also to income arising from the collateral.
2.2	<u>Waller v NZ Bloodstock</u>	[2005] 3 NZLR 629 (CA)	27/10/2005	3, 16, 17, 23(e)(ix), 34, 35, 36, 40, 41, 43, 45, 52, 66, 135, 193, 194, 195, 196, 197, 198, 199, 200, 201, Pt 1, Pt 3, Pt 10	A pre-PPSA debenture created a security interest over all collateral in which debtor has rights and not just assets owned by debtor. It extended to collateral leased to the debtor. Also, perfection cannot be achieved by repossession.
2.1	<u>Waller v NZ Bloodstock</u>	[2005] 2 NZLR 549 (HC)	02/12/2004	4, 16, 17, 23, 24, 36, 40, 41, 43, 45, 66, 73, Pt 5, Pt 6	High Court decision later affirmed on appeal. See Court of Appeal decision 27/10/2005.
1	<u>Graham v Portacom</u>	[2004] 2 NZLR 528 (HC)	17/03/2004	16, 17, 36, 40, 66	Lease for a term of more than one year creates a security interest regardless of who holds title to collateral. Debenture-holder has security interest over collateral itself, not merely debtor's possessory interest.

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