IN THE HIGH COURT OF NEW ZEALAND
NAPIER REGISTRY

CIV 2009-441-207

	BETWEEN	RABOBANK NEW ZEALAND LIMITED Plaintiff/Counterclaim Defendant
	AND	STOCKCO LIMITED Defendant/Counterclaim Plaintiff

Hearing: 21 - 24 February 2011

Counsel: G J Toebes and J Grant for Plaintiff
F M R Cooke QC and M H L Morrison for Defendant

Judgment: 11 March 2011

JUDGMENT OF SIMON FRANCE J

Table of Contents

Introduction

[1] This case concerns a dispute between two financiers. Both provided significant funding to a large farming operation run in the Gisborne region by Alexander Campbell and his wife Megen. The Campbells' operation failed, and stock left on the properties was sold. The proceeds of those sales, about $2 million, are presently held on trust. Each party claims priority to the money.

[2] Both parties held securities over Campbell livestock. Rabobank's was registered first on the Personal Properties Security Registry. Notwithstanding this, StockCo says the money is its because the stock left on the property either:

(a) was subject to a Purchase Money Security Interest (PMSI) which takes priority over Rabobank's general security; or

(b) was stock which Rabobank had released from its prior security at StockCo's request.

[3] Once these issues are determined, each party contends that the other's financing statement, as registered on the Securities Register, is defective and invalid. Those arguments will be explored later.

[4] The Campbells' farming operation was originally conducted on one block, the address of which was Awapapa Station. In 2002 Mr Campbell expanded his operation. He purchased the adjacent property and leased a further block. The farming business was primarily one involving fattening stock and on-selling it. This case involves bulls. Concerning those, Mr Campbell would typically buy them from a calf rearing business, keep them for a year or so, and then either on-sell or send them to the works.

StockCo's method of financing

[5] An early description of how StockCo provided finance to farmers will assist an understanding of the disputes that arise.

[6] When a farmer wants finance from StockCo, he or she will enter into a livestock agreement, which is a standard contract used by StockCo. The basic method was for StockCo to purchase the stock, and then lease it to the farmer.

[7] There are two routes by which StockCo might acquire the stock:

(a) first, where the farmer wants help to acquire fresh stock, the farmer will identify the stock to be purchased. Acting as StockCo's agent under the livestock agreement, the farmer will then arrange for StockCo to buy the stock. The stock will then be transported to the farmer's farm pursuant to a bailment under the livestock agreement (Option A);

(b) second, where the farmer already owns the stock and wants to use it to obtain financing, StockCo will buy the stock from the farmer, pay the purchase price to the farmer straight away, but leave the stock on the farm pursuant to a bailment under the livestock agreement. When the stock is ultimately sold, StockCo is repaid its purchase price, plus a fixed rate of interest on that money. Any surplus over that is kept by the farmer (Option B).

(a) Option A

[8] This method of financing, where StockCo buys it from a third party and leases it to the farmer, has significance in terms of the Personal Property Securities Act 1999. The bailment to the farmer involves what is called a Purchase Money Security Interest (PMSI).[1] If properly registered, a PMSI takes priority over general prior charges, such as Rabobank's.

[9] StockCo's PMSI arrangements with Mr Campbell were secured by a Livestock Agreement with Mr Campbell. Although signed in 2002, it was not registered by StockCo until 2006.

---

1 Defined in s 16 of the Act.

[10] A feature of this form of stock purchase is that the farmer generally does the legwork. The Livestock Agreement appoints the farmer its agent, and the farmer buys the stock "in accordance with instructions given by StockCo from time to time". The agency is described in these terms:

> StockCo appoints the Farmer to act as its agent for the sole purpose of acquisition of the Stock within the time and within the price specified by StockCo.

[11] In the second half of 2007, Mr Campbell arranged the purchase of a large number of bulls from a variety of vendors. Both Mr Campbell and StockCo say the purchases were examples of an Option A purchase. Mr Campbell was acting as an agent for StockCo. The invoices were sent to StockCo who paid them.

[12] Rabobank question this in relation to the bulls purchased from a particular vendor, the Bococks. Rabobank says that whatever the intention, it is clear that it was Mr Campbell who actually purchased them. If that is so, those bulls are not covered by a PMSI. This dispute will be later addressed under the heading "Born in 2007 bulls".

(b) Option B

[13] This method of financing, where the farmer seeks to obtain cash by selling stock he or she already owns, does not create a PMSI priority. The Act specifically excludes sale and leaseback. Instead, in order to obtain priority, StockCo requested Rabobank to release the particular stock from its security. Rabobank almost always agreed, since amongst other things, the purchase price was paid into the Campbells' Rabobank current account.

[14] In 2006, StockCo purchased 773 born in 2006 bulls pursuant to this financing option. Rabobank gave the appropriate releases. When the Campbells' farming business collapsed, there were 341 x 2006 bulls on the farm. StockCo says they are part of the 773 bulls over which they held Rabobank releases. Rabobank disputes this.

(c) Rabobank's underlying challenge

[15] Both Rabobank's challenges have a common underlying theme. It disputes that StockCo is really buying specific stock rather than just providing finance with livestock as a security. Thus in relation to 2006, it asks StockCo to show that the bulls left on the farm are part of the specific cattle which Rabobank gave releases for. In relation to 2007, it says the "system" failed. Mr Campbell was the actual purchaser, albeit using StockCo finance. Therefore, there was no PMSI.

[16] Rabobank draws support for this general analysis of StockCo's activities by pointing to StockCo's own internal accounting practices. Mr Kight, StockCo's director, gave a helpful example. Let us say StockCo bought 100 sheep at $50 per head. These are then leased to the farmer at a 10% rate. If 50 of the flock were sold in circumstances that yielded only $40 per head, the money obtained from that sale would be enough to account for only 36 of the 100 sheep StockCo originally purchased. So, on its books StockCo would record itself as still owning 64 sheep at $50 per head, even though physically there were only 50 sheep left. Likewise, StockCo generally operated a "first in first out" policy as regards a farmer's account. So as regards those 50 sheep that were sold, on StockCo's books the proceeds may instead be credited against an earlier sheep purchase. This would mean that the 100 sheep in our example would still be recorded on StockCo's books as being owned by it, even though 50 had gone. Thus, says Rabobank, StockCo is not really buying specific stock.

[17] With this general background, I turn to the factual disputes requiring resolution. In resolving the disputes I have had regard to this accounting evidence, although ultimately it did not appear to me to alter the analysis of each discrete purchase.

Born in 2006 bulls

[18] This dispute concerns the 341 x 2006 Friesian bulls that were left on the property at the time the farming business failed.

[19] StockCo and Mr Campbell say that these bulls were the remainder of 773 bulls that were bought by StockCo from Mr Campbell and bailed back to him. StockCo further says that, although it can show this, it would not matter because the only options as regard 2006 bulls were Rabobank released bulls, or StockCo PMSI bulls.

[20] I am obliged to say that, even at this stage, I am unsure what Rabobank's answer to this latter proposition is. Mr Campbell (the farmer) said StockCo was correct that all bulls were either Rabobank release bulls, or PMSI's, and he did not seem to be challenged on the evidence. However, because of the financing statement challenges, it potentially matters whether StockCo's entitlement to the proceeds of the 2006 bulls is because they are Rabobank released bulls or because they are StockCo PMSI bulls, so I will resolve the issue.

[21] The evidence shows that in October and November 2006, Mr Campbell bought 998 weaner Friesian bulls from a calf rearing business run by the Bococks. The total purchase cost, including GST, was just under $350,000. Mr Campbell says that he used his Rabobank current account facility to make the purchases. Rabobank has not disputed that.

[22] Mr Campbell observes that these were in fact the last bulls he bought in his own name. Thereafter, his declining finances, and the fact that he was at the limit of his Rabobank facility, meant that he needed specific assistance. All other stock acquired by him was bought for him by StockCo.

[23] Mr Campbell's evidence as to what happened to these 998 Bocock bulls is that:

(a) 773 were sold to StockCo;

(b) 60 were sold to other people. These 60 were the last ones left;

(c) the remaining 165 were stock losses.

[24] Mr Campbell testified that he was sure that the 341 bulls that were left were part of the 773 sold to StockCo. He said that he is able to know this because the bulls were part of a new "Minda/Trace Solutions" system being run by Richmond Meats. The idea behind the scheme was that Richmond could provide a chain of custody for its meat from birth through to processing. If the farmer kept within the Minda system, Richmond would pay a premium. For this reason, Mr Campbell kept them separate. He kept them in mobs of 100, which needed adjusting from time to time to take account of stock losses. He also had to hold onto them longer than he normally would, another reason why he felt he could say the 2006 bulls remaining on the farm were part of the Bocock purchase.

[25] The sales he made sold to StockCo were in four tranches – 73, 200, 300 and 200. Mr Campbell said that before each sale he identified the mob, obtained an average weight and notified it to StockCo. When challenged as to why he would mark out specific bulls for the sale when the bulls were never leaving the property, Mr Campbell said he would do so because that is what StockCo wanted. StockCo's evidence confirms these were its requirements.

[26] The primary challenge to Mr Campbell's evidence of identification was based on a factual misunderstanding by Rabobank. It initially appeared to Rabobank that these sales to StockCo were the last of the 998 bulls. Rabobank's focus was therefore on how likely it would be that such perfectly round numbers would be left to sell. It is a fair point but as it transpires they were not the last bulls – there were 60 more left which were sold subsequently to two other private buyers. There are invoices for these later sales and there is no doubt they occurred subsequent to StockCo's purchases. Accordingly, it was fully possible for Mr Campbell to sell rounded numbers to StockCo.

[27] The evidence left me in no doubt at all that the bulls that remained were known by Mr Campbell to be the ones he had initially owned and had then sold to StockCo. Generally I accept the honesty of Mr Campbell's evidence. It is supported by such records as there are and there was hardly any direct contrary evidence.

[28] The one exception to the absence of contrary evidence from Rabobank was that given by the Rabobank manager who was present for the final stocktake when the 341 x 2006 bulls were identified. He testified that there was no apparent separation of any of the bulls on the farm at that time. Mr Campbell said that might be so at that date, but it had not been how they were kept previously. The only 2006 bulls left were his that he sold to StockCo, and as stated I accept that.

[29] Rabobank accepts that if this was my conclusion StockCo is entitled to the proceeds without further inquiry since they are bulls Rabobank had fully released from its security.

Born in 2007 bulls

[30] At final stocktake there were 3,053 born in 2007 bulls on the property. StockCo's position is that they were all purchased by it, from third party calf rearers, and sent to Mr Campbell pursuant to the longstanding Livestock Agreement. StockCo accepts that Mr Campbell arranged the purchases but says he did so with StockCo authority and not as its agent.

[31] Concerning only some of these bulls, Rabobank challenges the proposition that it was StockCo which bought them from the calf rearer directly. It says that instead the farmer bought them using StockCo funds. The challenge relates only to about 1,000 of the 2007 bulls.

[32] A factor supporting Rabobank is that the process between Mr Campbell and the Bococks seems the same whether Mr Campbell was buying in his own name (2006) or as agent for StockCo (2007). Sometime in July, Mr Campbell would order the number of stock he wanted, at what appears from the documents to be a fixed price. Delivery would occur around October or November, and sometimes later. Although the July price seemed fixed, the evidence satisfies me that the price was not as firm as it looks. The Bococks have not yet themselves got the stock, and so the actual price is not finalised until nearer delivery from Bocock to Campbell. This was the consistent evidence of all three people involved in the transaction – Messrs Bocock, Campbell and Kight.

[33] Mr Campbell's evidence is that in 2007 he could not buy his own stock. He was already selling his own 2006 bulls to StockCo to free up funds, and he had no money. So he approached StockCo for them to buy them under the Livestock Agreement, and they did.

[34] Rabobank's challenge to this has the disadvantage of lacking any contrary evidence. It is really done only by challenging StockCo's evidence but I am obliged to say it did not get anywhere. There are many reasons why I am satisfied that StockCo was the buyer. First, Mr Campbell says he did not buy them, and I believe him. Rabobank has access to his accounts and cannot point to any payments that could represent purchase by Mr Campbell. Rabobank accept they looked at the accounts for this purpose.

[35] Second, the lack of prior documentation from StockCo to Campbell authorising the purchases does not concern me. Rabobank placed weight on this. It noted that the Livestock Agreement says the farmer can only act on instructions. Mr Toebes points out that there is no written instruction prior to the Campbell order with the Bococks in July. However, in December, Mr Kight did request Mr Campbell to set out in writing what he was doing before StockCo would approve purchases. Having received something from Mr Campbell, StockCo gave its written agreement. Mr Toebes submits the timing is instructive. Not only had the orders been placed in July, but several purchases had been completed prior to this written December authority. Mr Toebes submits it must be the case that these "prior to written plan" purchases were by Mr Campbell in his own capacity.

[36] There is a common explanation from Mr Campbell and Mr Kight. Most instructions were given orally. They would consist of a general approval covering numbers and a maximum dollar value. The farmer as agent would then arrange the purchases within that broad context. That is what happened with the earlier 2007 purchases. In late 2007, the scale of what Mr Campbell was proposing was changing. For example, in 2006 StockCo had initially bought just over 1,100 bulls, although subsequently it increased that when Mr Campbell asked it to buy some of his own bulls. With 2007, Mr Campbell was talking about buying 4,000 plus bulls, and because of the change in scale Mr Kight requested a written plan. In a question

from me Mr Kight confirmed the oral instructions were consistent with how he dealt with other farmer clients under these agreements.

[37] The form of Mr Campbell's written plan is, in my view, consistent with all this. It is a three page hand written document. This was not the world of formal typed proposals and acknowledgements. I accept StockCo's submission that the existence of a written plan from late December 2007 does not undermine the fact that earlier 2007 purchases were done with approval. They were all made by Mr Campbell as agent for StockCo, which was the purchaser.

[38] Rabobank, focussing on the same documentary trail, turns to what happened in 2008, the year of the collapse. There was again a July order from Mr Campbell – a large one representing $750,000 worth of stock. Mr Kight cannot recall if he gave prior authorisation or not. Mr Campbell says that Mr Kight did, and again I accept his evidence and consider, given his circumstances, it would be inconceivable for him to place an order like this without prior StockCo agreement.

[39] The 2008 order fell through because Mr Campbell's business failed and StockCo, Mr Campbell says, told him to cancel it. Rabobank relied on the fact that the Bococks sought recovery from Mr Campbell as indicating who was the true buyer. However, I do not consider there is enough evidence to show that. It may just be a lack of understanding of the situation on the part of the Bococks, or there are other explanations. It is a fair point Rabobank raise, but not one which shifts me from what I consider is an irresistible inference that StockCo was the purchaser in 2007.

[40] The invoices say as much. There is some inconsistency in how the Bocock's addressed them – most were addressed to StockCo but one or two were addressed to Mr Campbell. Mr Bocock could not explain this difference but confirmed his understanding that in every case StockCo was the purchaser. He says, and the invoices show, StockCo paid.

[41] There is another point of significance. When StockCo was not buying from a third party, they were assiduous in seeking Rabobank releases. They did not do this for any of the bulls born in 2007 stock. I am sure StockCo would have sought releases if Mr Campbell was the true purchaser. Mr Toebes' point in response to this is that StockCo was intending to be the buyer but did not succeed. However, I consider in making this submission Rabobank places too much weight on the forward order Mr Campbell placed in July. In my view, when doing that he was acting as an agent for StockCo, but even if he were not, by the time the stock were ready for delivery to the Campbell farm I have no doubt it was StockCo who bought them, paid for them, and owned them. They then bailed them to Mr Campbell under the Livestock Agreement.

[42] Mr Toebes pointed to an internal StockCo email where a StockCo officer says "they never know" what Mr Campbell is up to. He takes this as support for the submission that Mr Campbell could be the buyer. I consider the email, as is often the case with isolated items of evidence like this, to be ambiguous. Rather than a broad observation of Mr Campbell, it could refer only to the issue of when Mr Campbell was sending stock to the works. Further, it was not Mr Kight's email, and he was the one primarily dealing with Mr Campbell.

[43] There is some looseness in the arrangements but that does not defeat the essentials. Three people were involved – Mr Kight, Mr Campbell and Mr Bocock. All three say StockCo was the buyer of all the 2007 Bocock stock that went to the Campbells. Mr Campbell had no money. When StockCo financed the "purchase from farmer" (Option B) route, it always sought a release from Rabobank. It is consistent with StockCo being the purchaser that it did not for these transactions. Finally, there is no other documentation suggesting a later transfer from Mr Campbell to StockCo.

[44] The simple answer is Mr Campbell could not buy the stock and he did not. StockCo paid for them as purchaser.

[45] Accordingly I hold that the born in 2007 stock were on the farm pursuant to a Purchase Money Security Interest in StockCo's favour. As long as its Personal Property Securities Act 1999 registrations are in order, StockCo is entitled to the proceeds of this stock.

Challenges to financing statements registration

(a) The challenge against StockCo's financing statement explained

[46] Sections 149 and 150 of the Personal Property Securities Act 1999 provide:

> **149 Registration of financing statement invalid only if seriously misleading**
>
> The validity of the registration of a financing statement is not affected by any defect, irregularity, omission, or error in the financing statement unless the defect, irregularity, omission, or error is seriously misleading.
>
> **150 When financing statement seriously misleading**
>
> Without limiting the circumstances in which a registration is invalid, a registration is invalid if there is a seriously misleading defect, irregularity, omission, or error in –
>
> (a) The name of any of the debtors required by section 142 to be included in the financing statement other than a debtor who does not own or have rights in the collateral; or
>
> (b) The serial number of the collateral if the collateral is consumer goods, or equipment, of a kind that is required by the regulations to be described by serious number in a financing statement.

[47] It can be seen that the validity of a registration is undermined if:

(a) there is a defect, irregularity, omission, or error in the financing statement; and

(b) the nature of the defect etc is seriously misleading. Further,

(c) a registration <u>is</u> invalid if the seriously misleading defect relates to the name of a debtor who has an interest in the collateral.

[48] StockCo's initial registration was made on 8 December 2006. It related to the Livestock Agreement signed several years earlier by Mr Campbell. The registration described the debtor as Alex Campbell.

[49] This description arguably fails to meet the formal registration requirements as set out in Schedule 1 to the Personal Property Security Regulations 2001. Paragraph 2(2) requires that individual debtors be described as they appear on official documents such as a birth certificate or passport. Presumably for Mr Campbell this will be Alexander Campbell. However, nothing turns on this error. It could not be a seriously misleading defect.[2]

[50] In August 2007, StockCo entered into a second security arrangement with the Campbells. The Campbells had proposed that they keep for breeding purposes some ewes which were presently covered by the Livestock Agreement. This arrangement was outside the scope of the Livestock Agreement and required a different sort of agreement to be signed. The Campbells indicated they both wished to sign the new agreement.

[51] This was done and StockCo amended its financing statement to record the fact. Changes were made both to the description of the debtor, and of the collateral. Mr and Mrs Campbell were added as joint debtors under the "organisation" option. The entry recorded the debtor as "A M and M J Campbell", a partnership. It is this partnership description that Rabobank says is both wrong, and seriously misleading.

[52] The assessment of this challenge requires the Court to undertake a review of how the farming business was run.

---

[2] Further, in any event, on 28 August 2007 StockCo amended its registration to Alexander. This change was done prior to the particular PMSI transactions in issue.

(b) The Campbells in partnership?

[53] In 2002, about two weeks after Mr Campbell had signed the StockCo Livestock Agreement, the Campbells rearranged their personal affairs. It seemed they wished to better record Mrs Campbell's contribution to the farming enterprise. This was done by signing two documents:

(a) a Matrimonial Property Agreement which transferred to Mrs Campbell a half interest in the farms and in the farming business, including livestock, standing trees, and plant and machinery;

(b) a Partnership Deed recording they were going to carry on the farming business in partnership, and that the partnership name would be "Awapapa Station".

[54] Following on from this, the Campbells' solicitor wrote to Rabobank advising them of the new arrangements. Rabobank agreed to extend Mr Campbell's existing facility to Mr and Mrs Campbell, trading as Awapapa Station. It required that the titles to the farm properties be amended to recognise Mrs Campbell's half share, and that a new security document be signed.

[55] This was duly done, and the solicitor's certificate to the bank recorded that the borrowers were "Mr and Mrs Campbell trading as Awapapa Station". Rabobank then perfected its security by registering a financing statement on the Personal Properties Securities Register.

[56] Some comment is needed on Rabobank's documentation. The letter of offer from Rabobank to the Campbells recorded the borrower as Mr and Mrs Campbell trading as Awapapa Station. The Rabobank Security Agreement sent to them has four separate signing options for different types of debtor. The options are individuals, companies, trusts, and "other organisations including partnerships". When the Campbells signed, they deleted the last three options. They initialled these deletions and signed the Agreement as individual debtors.

[57] When it came to registering a financing statement, the Personal Property Securities Register offers the same four debtor options as the Rabobank document. Despite how the Campbells had signed the form, Rabobank chose the "organisation" debtor option, and recorded the debtor as "Awapapa Station". There was no mention of the Campbells.

[58] Rabobank also renamed the Campbells' bank account "Awapapa Station". Previously, the account used to be in Mr Campbell's sole name. The new account had the same client number as Mr Campbell previously had. The farming business was run through this account. There is no evidence of what name appeared on cheque books.

[59] So, in August 2002, it seemed there was to be this new trading entity carrying on the Campbells' farming operation. However, beyond the changes just described, no steps were ever taken to give effect to these changes. In particular:

(a) no IRD number was obtained for the partnership. The only tax number the Bank ever had was Mr Campbell's personal number;

(b) the farming accounts were still prepared in Mr Campbell's name. Not only were they not prepared for the Awapapa Station partnership, but they did not recognise a partnership at all. There was no splitting of income, and things such as GST were processed under Mr Campbell's personal IRD number;

(c) to the outside world Mr Campbell remained the farmer. Sometimes invoices were for Mr and Mrs Campbell but generally they were to Mr Campbell only;

(d) there were three other financing statements registered throughout the period. Two were for farm vehicles, and the other concerned timber supply. The debtor in each financing statement, as entered by three different financiers, is Mr Campbell.

[60] There is no suggestion of fraud here. It is just that, having signed these documents, and having amended title where necessary, such as for land, the Campbells carried on as things had always been. Mr Campbell said as much in evidence. He did not use Awapapa Station other than as an address.

[61] Rabobank was not in ignorance of this. It had never sought or received the Partnership Deed or Matrimonial Property Agreement that underlay its changes. Obviously it never asked for the partnership's IRD number because there was none. It did, however, receive the annual accounts which clearly showed Mr Campbell as the farmer. They contained no reference of any relevance to Awapapa Station. The Rabobank manager responsible for the account noticed this when he received the annual accounts. He asked the Campbells' accountant about it. He was told there were no tax advantages so it had not been given effect to. The Manager decided it was none of his business.

[62] And so matters proceeded until the Campbells signed the new Sheep Flock Lease security document with StockCo. When the Campbells told StockCo they would both sign it, no mention was made of the Partnership Deed. StockCo never asked. Mr Kight explains it was common for husband and wife farmers to jointly enter an agreement without there being any formal partnership documentation, so there was no reason to expect one or ask about it.

[63] So what StockCo did was amend its existing financing statement in the way earlier described. A M and M J Campbell were added as an organisation debtor.

A seriously misleading registration?

[64] Rabobank contends this is seriously misleading such as to make the registration invalid. Rabobank's position is that in August 2007 StockCo became aware that the Campbells were operating as a partnership. This is evident from the fact that they described A M and M J Campbell as a partnership. The issue then becomes how the partnership was to be registered. Rabobank says the options were either Awapapa Station, or Alexander and Megen Campbell trading as Awapapa

Station, a partnership. Anything else was an error in terms of s 149 of the Act, triggering an inquiry into whether it is seriously misleading.

[65] Rabobank relies on the requirements set out in the Personal Property Securities Regulations 2001. Schedule 1 provides:

> **1 Identification of each debtor**
>
> If a financing statement relates to more than 1 debtor, each debtor must be identified as a separate debtor.
>
> **2 Name of debtor: individual**
>
> (1) If the debtor is an individual, the following data:
>
> (a) the first name of the debtor:
>
> (b) the middle name of the debtor (if any) or, if the debtor has more than 1 middle name, –
>
> ...
>
> (c) the last name of the debtor.
>
> (2) For the purposes of this clause and clauses 3 to 5, the debtor's name must be the same as the debtor's name that appears on an official document such as a birth certificate, marriage certificate, certificate of New Zealand citizenship, passport, driver's licence, or other similar official document evidencing the name currently used by the debtor.
>
> (3) To avoid doubt, in this clause and clause 3, the **last name**, in relation to a debtor, means the surname of the debtor.
>
> ...
>
> **5 Name of debtor: individual carrying on business**
>
> If the debtor is an individual who carried on business as a sole trader under a name or style other than the debtor's own name, the debtor's own name.

6 Name of debtor: organisation

If the debtor is an organisation, the following data:

(a) if the debtor is incorporated under an enactment, the statutory or registered name of the organisation:

(b) *if paragraph (a) is not applicable, the name of the organisation as set out in its constitution or other document defining its constitution:*

(c) if paragraphs (a) and (b) are not applicable, the trading name of the organisation or the name by which it is common known (if it does not have a trading name).

[66] The focus is on paragraph 6(b). Rabobank submits the constitution is the Partnership Deed, which says the name of the partnership is Awapapa Station. Anything else is an error.

[67] On the facts of this case, I disagree that StockCo was required to register Awapapa Station as the partnership name. I do not consider there ever was a partnership called Awapapa Station. The documentation is no doubt effective between the couple, but a partnership called Awapapa Station just never happened. There was a deed saying it was going to happen, but it never did for the reasons stated earlier. If it did exist it had been abandoned, but I prefer the idea that it did not exist.

[68] I consider it important not to lay down general rules about how a provision such as Schedule 1 applies. It cannot contemplate every situation and the purposive rule of interpretation is important. The Personal Properties Securities Register is a document designed to give the world notice of securities. It should be applied in a particular case to give effect to the purpose.

[69] The Campbells signed a Partnership Deed but thereafter ignored it. They did not use the name it prescribed. To the outside world Awapapa Station did not exist as a trading entity. I was not taken to any invoices that described the purchaser in such terms. It just did not exist in reality.

[70] I therefore consider para 6(b) was inapplicable in August 2007 because the Deed signed in 2002 had never been given effect to. It follows that the trading name to be used was that which the Campbells used - A M and M J Campbell.

[71] Mr Cooke QC advanced an alternative route. He suggested that para 6(b) was inapplicable to partnerships. This was because the Partnership Act 1908 carries its own rules as to how a partnership is to be described. Those rules can be given effect to by ignoring para 6(b) in the context of partnerships, and applying s 7 of the Partnership Act 1908, via para 6(c) of Schedule 1.

[72] Section 7 of the Partnership Act 1908 provides:

> **7 Meaning of "firm"**
>
> Persons who have entered into partnership with one another are for the purposes of this Act called collectively a "firm", and the name under which their business is carried on is called the "firm name".

[73] It is submitted that this provision means the proper registration for a partnership should be not the name registered under the Partnership Deed but the name under which the business is carried on.

[74] I see some merit in the point, although it must be said that on most occasions there will hopefully be nothing to reconcile. An active partnership will carry on its business under its name and no issue arises. I am hesitant to use a bad case to lay down such a rule in relation to the Schedule when I do not have particular experience with registrations, and have little evidence on the point. Accordingly, whilst I record the submission, I prefer to decide the matter on the basis para 6(b) is inapplicable because Awapapa Station did not come into existence.

[75] Although I do not consider the StockCo entry of August 2007 contained an error or omission, for completeness I comment on whether such an error would have been "seriously misleading" within s 149 of the Act. Mr Toebes suggested my consideration of this topic would carry implications for the way in which partnerships were to be registered, and so highlighted some policy issues he said arose.

[76] As already noted, I very much prefer to address the case solely on its own facts and therefore observe there is no serious question to be addressed. To the extent that the Campbells operated together, they called themselves by their actual names. One could quibble whether full names would have been preferable but they signed the Sheep Flock Lease as A M and M J Campbell. Rabobank in their closing submissions acknowledge that the Campbells used A M and M J Campbell as a trading name; it becomes difficult to see how registration of the commonly used trading name could be seriously misleading.

[77] StockCo's evidence, which I accept, is that any lender dealing with a farming couple would search the register under the individual names, as well as the name of an organisation if there was one of which it was aware of. Rabobank's contrary evidence came from an employee, now retired, who used to be responsible for its registrations. I suspect that a period away from this activity is quite significant in terms of recalling how the system works, but I was unimpressed with the witness's familiarity or knowledge. The witness was mistaken as regards the capacity to register both individual debtors and an organisation debtor, and generally left me with little confidence in his evidence.

[78] Partly for this reason, and acknowledging my own lack of familiarity with the Register, I prefer to be conservative in the scope of any decisions. I am therefore content to conclude:

(a) in August 2007 it would be correct not to register Awapapa Station as the name of the partnership. No effect had been given by the Campbells to the Partnership Deed and a partnership using that trading name never traded. Paragraph 6(b) of Schedule 1 was, therefore, inapplicable for this factual reason;

(b) had a registration of "A M and M J Campbell" been technically incorrect, the name used by StockCo would not have been seriously misleading given the "notice" rationale of the Register. Therefore, the financing statement is valid.

[79] That deals with the last obstacle to StockCo's case and accordingly I hold that it is entitled to all the proceeds of the born in 2006 and born in 2007 cattle. There are some minor exceptions I will deal with in the final orders.

Other matters

[80] Several other issues were raised. It is not necessary to resolve them given the factual conclusions I have reached, and my assessment of StockCo's financing statement. However, I briefly address each in turn.

(i) The scope of the Rabobank release

[81] As noted, when StockCo bought stock from the farmer, the lease of the cattle back to the farmer did not qualify as a PMSI. Accordingly, StockCo would write to Rabobank seeking a specific release of the stock from Rabobank's security. Rabobank almost always agreed.

[82] The wording of the letters (some 54 in all) has assumed importance so I set out one in full.

> Re: A M Campbell Bank a/c 031353 0004423 000
>
> StockCo Limited has entered into an agreement with the above client of yours to purchase:
>
> > 150 Bulls (Average Weight 220.00 kg) at $500.00 per head (Plus GST)
>
> Title to the above Bulls, will belong to StockCo upon settlement.
>
> Please confirm the above animals will be released from any Security Interest your Bank may have with the above client.
>
> Settlement will take effect within 3 days of StockCo's receipt of your consent of release.
>
> As at July 26, 2006 StockCo owns the following stock that are farmed by the above client.

407	Bull	At	$375	$152,774
1430	Ewe	At	$48	$69,310
100	Heifer	At	$340	$34,000
19460	Lamb	At	$40	$783,456
78	TCow	At	$567	$44,233

These animals will continue to be farmed on the property(s) of the above named client, until slaughter by StockCo. Title will, at all times, be retained by StockCo Limited.

Please confirm your acknowledgement of the above details by facsimile.

[83] It is the second part of the letter where StockCo set out these running totals of stock it has on the farm, which is in dispute. StockCo says the acknowledgement that Rabobank affixed to these letters amounts to a release by it from its security of all the stock listed in the running totals. The Rabobank acknowledgement was worded:

Conditions outlined accepted by the Rabobank.

[84] I agree with Mr Toebes that this acknowledgement is to be read as applying only to the specific stock for which release is sought. So in the above example, 150 bulls. It is not sustainable to suggest the running totals are also included in the release:

(a) first, StockCo asserts title in the running totals, not priority of security. I do not accept that the context of the document means one should treat two finance organisations as meaning priority of security when they speak of "owning" and "title";

(b) second, StockCo had never set out for Rabobank what it meant by these running totals. It is not open to it now to give such a dramatic interpretation;

(c) third, it is inconceivable Rabobank would cede priority in such numbers when it had no information about the stock involved, and how they came to be on the farm;

(d) fourth, the running totals could anyway be fictional in that Mr Kight accepted that they would reflect StockCo's internal accounting. As noted earlier, this calculates stock numbers by reference to the farmer's indebtedness, rather than actual numbers. Again it is hard to imagine Rabobank would release what is in effect a summary of indebtedness, rather than actual stock numbers;

(e) fifth, recognition within Rabobank that StockCo might well have priority in these stock is a different thing from formally releasing them from its security. If the running totals meant this, there would be little or no point to the specific release;

(f) finally, the letters were a random event. They occurred when the farmer contacted StockCo and said he or she wanted to sell livestock to StockCo and lease it back. It is hard to believe such a haphazard event led to Rabobank releasing priority in whatever totals of stock StockCo happened to (nominally) have on the property at the time.

[85] For these reasons, in terms of the letters themselves, I do not accept StockCo's proposition that they amounted to releases from security of all the stock mentioned in the running totals.

(ii) Rabobank's collateral description on its financing statement

[86] Rabobank's approach to the Securities Register was somewhat haphazard. It signed 44 of these releases over a period of three and a half years without ever amending the financing statement's description of collateral. Then for some reason the releases started to be dealt with at the National Credit Centre rather than regionally. It was at this time that Rabobank started to record the releases as variations.

[87] An oddity about the variations is that there was no acknowledgement of the earlier 44. Rather, Rabobank just started as if the first recorded variation was the first release. Thereafter, it varied them cumulatively, so for example:

> Variation 1 : All livestock and all products of livestock including carcases, and all present and after-acquired property which is proceeds, except 394 Lambs (ave weight 23.00kg) purchased by StockCo at $27.5017 per head (+GST), & except 305 Lambs (ave weight 20.00kg) purchased by StockCo at $20.82 per head (+GST).
>
> Variation 2 : All livestock and all products of livestock including carcases, and all present and after-acquired property which is proceeds, except 394 Lambs (ave weight 23.00kg) purchased by StockCo at $27.5017 per head (+GST), & except 305 Lambs (ave weight 20.00kg) purchased by StockCo at $20.82 per head (+GST). 2000 Lambs (Average Weight 25.40kg) @ $33 per head + GST to StockCo.

[88] It can be seen that the first variation takes the basic collateral description and adds the contents of a release letter – not the running totals, just the specific releases. Then, the second variation just adds a description of the next lot of stock released.

[89] The third variation was somewhat elliptic in its description:

> Partial release of 73 bulls to StockCo

However, the fourth variation returned to the style of the earlier ones. As it happens, though, there were two other releases given throughout this period which seem not to have gone to the Credit Centre and accordingly they never found their way onto an acknowledged variation. Thus, even once variations started, they were incomplete.

[90] More significantly, however, when variation 5 was done, Rabobank included the running totals that were set out in the relevant release letter. So the variation added not only the specifically released stock but also said that Rabobank had released 11,445 lambs, 1,244 ewes, 1,447 bulls, 368 sheep and 64 cows. Then, for variation 6, the system reverted to just adding the specific release, even though the running totals would have changed.

[91] This inconsistent approach to registering variations creates some difficulties for Rabobank. I agree with it that the running totals were not released,[3] but if that is so, must not the financing statement, at least from variation 5, be seriously misleading in its description of the collateral?

---

[3] *Simpson v NZAFRD Ltd* [2007] 2 NZLR 130 (CA) confirms that registration does not create a security interest different from that created by the security agreement itself.

[92] In *Simpson v New Zealand Associated Refrigerated Food Distributors Limited*,[4] the security holder had overstated the breadth of its security. The Court of Appeal held that there was neither an error, nor one that would be seriously misleading because a searcher could have inquired and ascertained the correct position. They were still alerted to the fact of the security.

[93] The situation is the opposite here, and arguably not so clear. If the letters did not release the running totals, then Rabobank's description of its collateral significantly understates the coverage of its security because it suggests, for example, there are 14,000 lambs released from the security which are not.

[94] Notwithstanding this, with some hesitation, I would have sided with Rabobank. The registration still alerts a searcher that Rabobank holds a general security over the livestock. Anyone thinking of themselves financing Campbell livestock, or taking a security over it, would inevitably appreciate that livestock collateral is a changing event. Stock comes and goes. The particular stock that are released are not identified in the collateral description so an intending financier would need to make inquiries. The essential requirement of notice is achieved and a significant error in the number of livestock covered would not amount to a seriously misleading defect that rendered it invalid. Although I am not with StockCo on this, I acknowledge its position is definitely arguable.

(iii) Rabobank's registration – the debtor's name

[95] StockCo's challenge to the validity of Rabobank's financing statement is not limited to the issue of the description of the collateral. It also contends that the registration for Awapapa Station is seriously misleading.

[96] The issues surrounding this have been discussed when addressing the challenges to StockCo's financing statement. In Rabobank's case they are not easy to resolve, and since it is not necessary to determine it, I do not do so. I consider

---

[4] Above n3.

there are gaps in the evidence, for example as to what was the name recorded on the Campbells' cheques. As earlier noted, I am not confident the evidence I have in this case gives me a reliable picture of how registrations are effected, and I do not wish to comment more than I have on an Act with which I have no particular familiarity.

[97] In case it proves necessary, I do, however, record the following findings of fact:

(a) at the time Rabobank registered its financing statement, the Campbells had signed a Partnership Deed saying they would farm as a partnership called Awapapa Station;

(b) the Rabobank original financing offer, and later iterations, all recorded the borrower as "Mr and Mrs Campbell t/a Awapapa Station". The actual security was signed by the Campbells as individuals, and an option to record the debtor as a partnership deleted;

(c) Rabobank received annual accounts that make it plain Mr Campbell was continuing to conduct the farming operation in his own name. Mr Campbell's individual tax number continued to be used for the accounts, for GST and by the bank;

(d) the Rabobank manager responsible for the account knew that the partnership had never been given effect to. He initiated this inquiry having received the annual accounts, and was directly told the partnership idea had not been pursued;

(e) apart from some very recent registrations where different financiers have obviously come to learn of "Awapapa Station" and have registered it as a debtor to protect themselves, the name was otherwise not used. Until the litigation, StockCo was unaware of it.

[98] If there is a defect in Rabobank's registration I consider it would be seriously misleading. However, it is not clear to me that there is a defect at all given the Act's

reference to using the constitution name, and the state of affairs that existed when Rabobank registered its financing statement. It is hard to say Awapapa Station was wrong in August 2002. If it was not wrong, it is not apparent that the type of knowledge Rabobank came to have about the Campbells triggered any specific obligation in the Act to amend the financing statement.

(iv) Bad faith

[99] StockCo made an argument based on s 25 of the Act which requires that parties to a security agreement act in good faith and in accordance with reasonable standards of commercial practice. It first contended that the letters of release and acknowledgement created an estoppel that prevented Rabobank from now disputing StockCo's priority. StockCo had continued with funding only on the basis that it thought its security was safe, and Rabobank by signing the letters with the running totals induced that.

[100] Because I take a different view of the letters, I do not accept the submission. StockCo needed to clarify what inference it was taking from the letters, and it should not have used the concept of title if it meant something else. Any belief it had greater priority than it did was based on its own perception of the effect of the letters, and did not found an estoppel.

[101] The second limb of the bad faith argument was based on the common practice between the two. Throughout the course of the 50 plus release letters, Rabobank had never sought to require StockCo to better identify the stock in issue. In particular, in relation to the specifically released stock, which at any time formed only a small portion of the stock on this farm, that stock was consistently either being on-sold or sent to the works. Over the course of years Rabobank did not require any evidence that it was the particular stock that had been disposed of, and it is submitted it was not open to it to do so now.

[102] In *Gibson v StockCo*,[5] White J considered the scope of s 25. I adopt his Honour's analysis which concludes that estoppel type arguments can be accommodated under the Act's concept of good faith.

[103] In the present circumstances, the loose arrangements suited both parties. I accept Mr Cooke's point that it is not open just to change position once it becomes less convenient, but nevertheless I do not see Rabobank's conduct as prohibiting it from requiring proof that the stock on the farm at the time of collapse was StockCo stock concerning which releases had been given.

[104] The theory underlying StockCo's financing is that it buys specific stock. Mr Kight said that StockCo insisted on a process that assured it of the particular stock it was buying and their value. One cannot have it both ways. If that is so, then it must be permissible for Rabobank to seek assurance that the proceeds being claimed by StockCo are from that previously identified stock that StockCo bought. Otherwise, the contention must be that StockCo could just select the ones it wanted and leave the rest (if there were any, which there are not in this case).

[105] I do not see Rabobank's acquiescence in the process up until collapse amounted to conduct that entitles StockCo to say Rabobank cannot now seek identification of the remaining stock. I would, therefore, reject StockCo's bad faith argument.

Conclusion

[106] StockCo is entitled to the proceeds of all sales other than from 39 homebred bulls, 12 cows and 60 heifers concerning which StockCo makes no claim. As discussed at the hearing, the parties have leave to return to Court if there is any matter concerning the proceeds that cannot be resolved. This is less likely given StockCo has succeeded totally.

---

5 *Gibson v StockCo* HC Auckland CIV 2009-404-7120, 17 December 2010.

[107] A dispute concerning sheep does not now require a ruling from the Court.

[108] StockCo is entitled to costs. Memoranda may be filed if agreement cannot be reached. I indicate that at this point I have not seen anything that would suggest a departure from scale costs.

Simon France J

Solicitors:
G J Toebes, Barrister, JT Law, PO Box 25443, Wellington 6140, email: justin@jtlaw.co.nz
J Grant, Barrister, Wellington
F M R Cooke QC, Thorndon Chambers, PO Box 1530, Wellington 6140,
email: francis.cooke@chambers.co.nz
M H L Morrison, Barrister, Lowndes Jordan, PO Box 5966, Auckland, email: mhm@lojo.co.nz