

**IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

**CIV 2011-485-1968  
[2012] NZHC 483**

UNDER the Personal Properties Securities Act 1999

IN THE MATTER OF Personal Property Security Interest Change  
Demand Numbers 10036732 & 10036712

BETWEEN UNIVERSAL TRUCKS AND  
EQUIPMENT LIMITED  
Applicant

AND GRANT BRUCE REYNOLDS  
Respondent

Hearing: 7 March 2012

Counsel: G Dewar/J Cameron for the Applicant  
B Pamatatau for the Respondent

Judgment: 21 March 2012

---

**JUDGMENT OF MALLON J**

---

**Table of contents**

<b>Introduction .....</b>	<b>[1]</b>
<b>Background.....</b>	<b>[3]</b>
<b>The PPSA .....</b>	<b>[22]</b>
<b>Approach to a s 167 application .....</b>	<b>[28]</b>
<b>Is there a security agreement between the secured party and the debtor? .....</b>	<b>[40]</b>
<b>Are the trailers collateral under the security agreement between the secured party and the debtor? .....</b>	<b>[46]</b>

## **Introduction**

[1] Universal Trucks (the applicant) claims to have a valid security interest in two industrial trailers. Universal Trucks registered its security interest under the Personal Property Securities Act 1999 (“the PPSA”), naming Mr van der Oord as the debtor. The registered owner of the trailers is Chars Transport Limited (a company in which Mr van der Oord is a director and shareholder). Chars Transport Limited is now in liquidation.

[2] Under the procedure provided in the PPSA, the liquidator of Chars Transport Limited (the respondent) made demand of Universal Trucks that it register financing change statements to exclude the trailers from the registered interest. Universal Trucks responded with an application for an order maintaining the registration of its security interest. It is that application which is before me.

## **Background**

[3] Universal Trucks is in the business of repairing motor vehicles. It specialises in heavy trucks, trailers and diesel equipment. One of its customers was a business operated by Mr and Mrs van der Oord. Mr and Mrs van der Oord initially operated the business as a partnership which traded under the name of “Crackaboe Haulage”.

[4] In 2006 Universal Trucks agreed to open a credit account under that trading name. In accordance with Universal Trucks’ usual practice, the customer was required to complete an application. Universal Trucks had a standard form application for that purpose. That application included a requirement for the applicant to certify that:

I have read and understand the GENERAL TERMS AND CONDITIONS OF TRADE (overleaf) of Universal Trucks & Equipment Limited which form part of and are intended to be read in conjunction with this Credit Application and agree to be bound by these conditions.

[5] Universal Trucks’ general terms and conditions of trade ran to two and a half pages and contained 45 clauses. They included ownership/a general lien provision as follows:

15. Ownership/General Lien

- (a) The Vendor shall retain ownership of all Goods supplied until it receives payment in full of all amounts owing by the Customer for all Orders.
- (b) If any of the Goods are incorporated in or used as material for other goods before payment is made ownership in the whole of the other goods shall be and remain with the Vendor until payment is made. The Vendor's Security Interest in the Goods shall continue in the terms of section 82 of the PPSA.
- (c) The Vendor shall have a right to stop and retrieve the Goods on transit whether or not ownership has passed.

[6] They also provided for a security interest as follows:

24. Personal Property Securities Act 1999

- (a) The Customer hereby acknowledges that these Terms and Conditions of Trade constitute a security agreement which creates a security interest in favour of the Vendor in all Goods and Services previously supplied by the Vendor to the Customer (if any) and all after acquired Goods and Services supplied by the Vendor to the Customer (or for the Customer's account) to secure the payment from time to time and at a time, including future advances. The Customer agrees to grant a purchase money security interest to the Vendor as that term is defined in the PPSA.

...

- (c)(ii) the Customer undertakes to not register a financing change statement as defined in section 135 of the PPSA or make a demand to alter the financing statement pursuant to section 162 of the PPSA in respect of the Goods without the prior written consent of the Vendor.

25. Security Interest

The Customer gives the Vendor a Security Interest in all of the Customer's present and after-acquired property that the Vendor has performed services on or to or in which goods or materials supplied or financed by the Vendor have been attached or incorporated.

[7] Universal Trucks' standard form application was signed by Mr van der Oord on 2 March 2006. The completed form stated that the business was a partnership and that the trade name of the business was "Crackaboe Haulage".

[8] There is conflicting evidence about whether Mr van der Oord received Universal Trucks' general terms and conditions when he completed the application. The evidence for Mr van der Oord is that he did not receive them. The evidence from Universal Trucks is to the effect that he would have received them because it was standard practice for these to be included with every credit application. I will come back to the conflict in the evidence and the liquidator's objection to Universal Trucks' affidavit evidence later.

[9] After the credit application was signed, Mr van der Oord regularly engaged Universal Trucks to undertake work on various pieces of equipment. In accordance with instructions from Mr van der Oord, invoices were initially rendered to "Crackaboe Haulage". In accordance with clause 15 of the general terms and conditions, the invoices stated that "ownership of goods supplied remains the property of Universal Trucks until paid for".

[10] In September 2007 Mr van der Oord incorporated two companies. One of those was Crackaboe Limited, a company of which Mr van der Oord was a director and shareholder. This company was incorporated because one of the partnership's truck drivers wanted to work more as a mechanic than a driver. Crackaboe Limited employed the mechanic.

[11] The other company incorporated at this time was Chars Transport Limited. Mr van der Oord was the sole director of that company and Mr and Mrs van der Oord were 50:50 shareholders. Mr van der Oord's evidence was that from this time the partnership business ceased and Chars Transport Limited took over the business. His evidence was that the assets of the partnership became the assets of Chars Transport Limited and no financial accounts were prepared for the partnership after the incorporation of Chars Transport Limited.

[12] Mr van der Oord's evidence was that after Chars Transport Limited was incorporated he purchased two trailers. These are the two trailers which are the subject of the present application. According to the 31 March 2010 financial statements for Chars Transport Limited, those trailers were recorded as assets of Chars Transport Limited from 2008.

[13] Universal Trucks was not advised that the partnership had ceased business until early 2010. At that time Mr van der Oord contacted Kerry Partridge of Universal Trucks to advise him that invoices should be issued to Chars Transport (rather than Crackaboe Haulage). Following this conversation, Universal Trucks' invoices were issued to "Chars Transport" in respect of work carried out on the instructions of Mr van der Oord.

[14] There is a dispute in the evidence about whether Mr van der Oord advised Mr Partridge that Chars Transport was a limited liability company. Mr van der Oord's evidence was that he told Mr Partridge that the partnership had closed and that it was now Chars Transport Limited. Mr Partridge's affidavit evidence said that he did not recall it being mentioned that this was a limited liability company. He said that the impression he gained was that this was the new trading name of the partnership.

[15] The liquidator objected to Mr Partridge's affidavit evidence (I refer to this later) but it is not necessary to rule on this objection. That is because Mr van der Oord accepted in his evidence that, as a result of this conversation, the new business had taken over the contract with Universal Trucks and was subject to whatever terms the partnership had been subject to. That new business was in fact Chars Transport Limited.

[16] Universal Trucks carried out work on the two trailers in late August 2010. An invoice for this work was rendered to "Chars Transport" on 31 August 2010 in the sum of \$6,215.31. Further work was undertaken by Universal Trucks on one of those two trailers in September 2010. An invoice for this work was issued to "Chars Transport" on 30 September 2010 in the sum of \$2,066. As with all other invoices from Universal Trucks, the August and September 2010 invoices stated that "ownership of goods supplied remains the property of Universal Trucks until this invoice is paid for".

[17] From about the middle of 2010, invoice payments had become sporadic. Universal Trucks became concerned that the August and September 2010 invoices,

and a number of other invoices, were outstanding. It decided to register a security interest on the Personal Property Securities Register against the trailers.

[18] Before registering the financing statements (one statement for each trailer), Universal Trucks checked the ownership registration of the trailers. It was noted that Chars Transport Limited had become the registered owner of both trailers on 1 October 2010. Prior to this date, Mr van der Oord was registered as the owner. After discussing this by telephone with staff at the PPSR, Universal Trucks listed Mr van der Oord as the debtor on the financing statements. The financing statements were registered on 4 October 2010.

[19] In the meantime, Avanti Finance had lodged a financing statement on 1 September 2010. It seems that this statement did not refer to the trailers. These were added as collateral on 18 April 2011.

[20] On 7 June 2011, Chars Transport Limited was placed in liquidation by order of the High Court. Following the liquidation, the trailers were taken by Universal Trucks to its agent's premises. They were subsequently removed from there by the liquidator. The liquidator had formed the view that Universal Trucks' security agreement with Mr van der Oord did not cover trailers that were owned by Chars Transport Limited.

[21] The liquidator made demand under the PPSA that Universal Trucks register financing change statements within 15 working days excluding the trailers from the description of the collateral. Universal Trucks did not respond to that letter. In accordance with the PPSA procedure, the liquidator then registered "Change Demands" on the PPSR seeking to remove the trailers as collateral from the registered security interests. Universal Trucks responded with the application that is before me. Pending this hearing, Universal Trucks also obtained an interim order maintaining the trailers as collateral.

## The PPSA

[22] The PPSA applies to security interests in personal property. It provides a system for the creation, formation and prioritisation of security interests.<sup>1</sup> A security interest may be created by agreement. Except as otherwise provided by the PPSA or any other Act or rule of law or equity, a security agreement is enforceable according to its terms.<sup>2</sup> A security interest may be registered under the PPSA. Enforcement of the security does not depend on registration of the security.<sup>3</sup> Registration may, however, affect the priority of the security as against a competing security.

[23] Registration is effected through the filing of a financing statement. Registration serves to provide notice to searching parties of the existence of security interests over collateral.<sup>4</sup> The mere fact of registration does not mean that the registration is valid. The general rule is that the validity a registration is not affected by “any defect, irregularity, omission, or error” in the financing statement unless it is “seriously misleading”.<sup>5</sup> An error in the name of the debtor is a “seriously misleading” error and invalidates the registration.<sup>6</sup> An invalid registration does not, however, invalidate the underlying security agreement.<sup>7</sup>

[24] Where a security interest has been registered, there is a procedure for changes to be made to the register. This procedure begins with a demand to the secured party to register a financing change statement. Section 162 sets out the circumstances in which such a demand may be made as follows:

### **162 When debtor, etc, may demand registration of financing change statement**

The debtor or any person with an interest in property that falls within the collateral description included in a registered financing statement may give a written demand to the secured party if –

---

<sup>1</sup> Roger Fenton (ed) *Garrow & Fenton's Law of Personal Property in New Zealand, Volume 2* (7th ed, LexisNexis, Wellington, 2010) at [1.2.2].

<sup>2</sup> Section 35 of the Personal Property Securities Act 1999 (PPSA).

<sup>3</sup> Section 36 of the PPSA (re enforcement against third parties).

<sup>4</sup> Fenton, above n 1, at [19.5].

<sup>5</sup> Section 149 of the PPSA.

<sup>6</sup> Section 150 of the PPSA.

<sup>7</sup> Michael Gedye, Ronald Cuming and Roderick Wood (eds) *Personal Property Securities in New Zealand* (Brookers, Wellington, 2002) at 490.

- (a) All of the obligations under the security agreement to which the financing statement relates have been performed:
- (b) The secured party has agreed to release part or all of the collateral described in the collateral description included in the financing statement:
- (c) The collateral described in the collateral description included in the financing statement includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor:
- (d) No security agreement exists between the parties:
- (e) The security interest is extinguished in accordance with this Act.

[25] The terms “collateral”, “debtor”, “secured party” and “security agreement” are defined terms as follows:<sup>8</sup>

**Collateral** means personal property that is subject to a security interest

...

**Debtor—**

(a) Means —

- (i) A person who owes payment or performance of an obligation secured, whether or not that person owns or has other rights in the collateral; or

...

- (vi) If the person referred to in subparagraph (i) and the person who owns or has other rights in the collateral are not the same person, includes—

- (A) The person who owns or has other rights in the collateral, where the term debtor is used in a provision of this Act dealing with the collateral; or

...

**Secured party—**

- (a) means a person who holds a security interest for the person’s own benefit or for the benefit of another person; and

...

---

<sup>8</sup> Section 16 of the PPSA. These definitions apply “unless the context otherwise requires”.



### **Security agreement—**

- (a) means an agreement that creates or provides for a security interest;  
and

...

[26] Once a demand is made the secured party has 15 working days to comply with the demand or to obtain a court order maintaining the registration. If the secured party fails to do either of these things then the person making the demand may enter the financing change statement in the register.<sup>9</sup> The Registrar then gives the secured party notice that the financing change statement will be registered unless a court order maintaining the registration is served on the Registrar within 15 working days of the notice.<sup>10</sup>

[27] An application to maintain the register is made under s 167 which provides:

#### **167 Secured party may obtain court order in cases not involving security trust deed**

- (1) At any time before the financing change statement referred to in section 163 is registered, the Court may, on application by the secured party, and if the Court is satisfied that none of the grounds for making a demand under section 162 exist, order that the registration -
  - (a) Be maintained on any condition, and subject to sections 153 and 154, for any period of time; or
  - (b) Be discharged or amended.

...

### **Approach to a s 167 application**

[28] In this case the liquidator made demand on the ground set out in s 162(c). The demand prompted Universal Trucks to make an application under s 167 for an order maintaining the registration. Under s 167 an order maintaining the registration may be made if I am “satisfied” that the ground relied upon for the demand does not “exist”.

---

<sup>9</sup> Section 165(1) of the PPSA.

<sup>10</sup> Section 165(2) of the PPSA.

[29] The ground for making the demand was that the collateral described in Universal Trucks' financing statement included the trailers and those were "not collateral under the secured agreement between the secured party and the debtor". Therefore, to order that the registration be maintained, I need to be satisfied that this ground does not exist. The ground on which the demand was made would not exist if I am satisfied that the trailers are collateral under a secured agreement between the secured party and the debtor.

[30] The wording of s 167 is more confusing if the Court is to order that the registration be discharged or amended. It appears that such an order can be made only on the same pre-condition as an order maintaining the registration: that is, if the Court is satisfied that none of the grounds for making the demand under s 162 exist. It is unclear why a Court would discharge the registration if it was satisfied that the debtor's grounds for the demand to change the registration are not made out.<sup>11</sup> An order for discharge of the registration would be appropriate if the Court was satisfied that the grounds for the demand were made out and, despite the confusing wording, that appears to be the intention.<sup>12</sup>

[31] Counsel for Universal Trucks referred me to High Court authority to the effect that the person seeking to maintain the registration must establish a "seriously arguable" or a "reasonably arguable" case for maintaining the registration. If that approach is correct, in this case Universal Trucks would have to establish that it was seriously arguable that the trailers were collateral "under the secured agreement between the secured party and the debtor".

[32] The "reasonably arguable" approach appears to have first been taken in *Asset Traders Ltd v Favas Sportscar World Ltd*.<sup>13</sup> Counsel for both parties in that case had submitted that this approach was appropriate because of the perceived similarities between the procedure under ss 162 and 167 of the PPSA and the procedure for

---

<sup>11</sup> The application under s 167 can only be made before the financing change statement has been registered. Therefore the discharge order could only relate to the original registration and not any change to the registration made pursuant to the demand.

<sup>12</sup> That is in fact what the High Court ordered in *Asset Traders Ltd v Favas Sportscar World Ltd* (2006) 3 NZCCLR 545 at [35] where the Court was not satisfied that there was the claimed security interest and an order discharging the financing statement was made.

<sup>13</sup> *Asset Traders Ltd v Favas Sportscar World Ltd* (2006) 3 NZCCLR 545.

removing caveats under the Land Transfer Act 1952. The Judge in that case was satisfied this approach was appropriate, but there was no elaboration of why that was. Reference was made to commentary in Gedye's *Personal Property Securities in New Zealand*.<sup>14</sup> However, that commentary notes only that the compulsory amendment or discharge procedure under ss 165-167 of the PPSA is similar to be procedure for maintaining a caveat under the Land Transfer Act "in that the onus of maintaining a registration is on the 'secured party'". The commentary draws no further parallel between the two statutory procedures.

[33] The approach to an application under s 167 was further considered in *Toyota Finance New Zealand Ltd v Christie*.<sup>15</sup> In that case the High Court Judge agreed that the approach for maintaining a caveat was appropriate where a party seeks to maintain its registration under the PPSA and the existence of a security interest is at issue. The Judge considered that the originating application procedure, by which an application under s 167 is brought, is not suited to a final determination of rights. The Judge equated a "seriously arguable" case to the "reasonably arguable" test used in caveat applications. Subsequently, in two further High Court cases, the *Toyota Finance* approach was applied without further analysis.<sup>16</sup>

[34] At the hearing I indicated that I was not necessarily persuaded that the "reasonably arguable" or "seriously arguable" approach should be applied here. The parties did not have any submissions to make on this topic. They were content to abide my view as to whether the secured party needed only to establish a seriously arguable case that the trailers were collateral under the security agreement between the parties, or whether I had to be satisfied that the liquidator's claim that the trailers were not collateral under the agreement was or was not made out. They both considered that it did seem unnecessary for there to have to be a subsequent final determination of that issue in other proceedings.

---

<sup>14</sup> Gedye, Cuming and Wood, above n 7, at 512-516.

<sup>15</sup> *Toyota Finance New Zealand Ltd v Christie* HC Auckland CIV 2009-404-3797, 15 July 2009.

<sup>16</sup> *Daniel Smith Industries Ltd v Cranes International NZ Ltd* HC Rotorua CIV 2009-463-286, 16 December 2009. In this case counsel submitted that "seriously arguable" was a higher threshold than "reasonably arguable". The Judge applied the "seriously arguable" test noting that it was unnecessary in that case to resolve whether this was a higher threshold. See also *Nichibo Trading Company New Zealand Ltd v Adam Len Lucich & Or* (2011) 9 NZBLC 103,253 at [37].

[35] The statutory test requires that the Court be “satisfied” that “none of the grounds ... exist”. In other contexts where a statute requires that a decision maker be “satisfied”, the Courts have said that it requires the decision maker to evaluate all the relevant matters and to reach a judgment as to whether he or she is satisfied. It does not imply any onus or standard of proof.<sup>17</sup> Here the statutory words require that a judgment be made as to whether the debtor’s ground for requiring a change does not exist. If the applicant establishes only a reasonably or seriously arguable case that the registered interest exists, that does not seem to me to be the same as saying that the Court is “satisfied” that “none of the grounds for making the demand ... exist”.

[36] The enquiry of the Court on a s 167 application is a narrow one. The Court is considering only whether:

- (a) All the obligations under the security agreement have been performed (effectively whether the debtor has paid the debt); and/or
- (b) The security party has agreed to release the collateral; and/or
- (c) The financing statement refers to property which is not collateral under the security agreement; and/or
- (d) There is no security agreement between the parties; and/or
- (e) The security agreement is “extinguished in accordance with the Act”.

[37] It is not concerned with the validity of the security interest<sup>18</sup> nor necessarily its enforceability<sup>19</sup> although the Court’s decision may affect the priority of the

---

<sup>17</sup> *R v A* [2009] NZCA 380 at [9] to [12] following *R v Leitch* [1998] 1 NZCR 420 at 428 (in the context of the preventive detention legislation); *Favae v Minister of Immigration* [1996] 2 NZLR 243 at 249 (in the context of immigration legislation); *Woolworths Ltd & Ors v Commerce Commission* [2008] NZCCLR 10 at [105] and [109]; *Commerce Commission v Woolworths Ltd* [2009] NZCCLR 12 at [102] (in the context of competition law).

<sup>18</sup> The validity of a financing statement does not invalidate the underlying security agreement, although it will render the security interests “unperfected” if registration was the perfecting step (Gedye, Cuming and Wood, above n 7, at 490). As to the validity of the underlying security agreement, the PPSA is not a code (Gedye, Cuming and Wood, at 13) and the security agreement remains subject to other relevant legislation and the common law and equity, for example, the law relating to misrepresentation, mistake, undue influence and so on (Fenton, above n 1, at [1.2.1]).

security interest. Validity, enforcement and priority are matters which may arise at another time, in a different proceeding and with other parties (for example, the party claiming a competing security interest).

[38] The first four grounds the Court may need to consider on a s 167 application are all matters which ordinarily ought to be capable of ready proof by, for example, presenting proof of the debt or the security agreement. The last ground appears to contemplate that some other action has already been taken under the Act. If that has occurred, that too ordinarily ought to be capable of ready proof. If, however, there are disputed facts the originating application procedure enables evidence to be taken orally<sup>20</sup> and for cross-examination to take place.<sup>21</sup> If there are affected parties then a judge may give directions as to who is to be joined.<sup>22</sup> Although there are time constraints for obtaining an order maintaining the registration, an interim order can be obtained to preserve the position (as was done here).

[39] I approach the application on the basis that the Court is required to evaluate the material put forward and determine on the basis of that material whether the asserted ground has not been made out. In this case, if I am satisfied that the trailers are collateral under the security agreement between the secured party and the debtor, then the ground for making the demand does not exist.

### **Is there a security agreement between the secured party and the debtor?**

[40] In this case the registrations name Mr van der Oord as “debtor”. In support of the registrations, Universal Trucks has produced the credit application signed on 2 March 2006 together with the general terms of conditions. That was in the name of the van der Oord partnership, trading under the name “Crackaboe Haulage.” At some point someone has written alongside that trade name “(Chars Transport)”. Had that been the only evidence then an order would be made that the registration be maintained.

---

<sup>19</sup> Section 35 of the PPSA.

<sup>20</sup> Rule 19.13 of the High Court Rules.

<sup>21</sup> Rule 19.14 and 9.74 of the High Court Rules.

<sup>22</sup> Rule 19.11 and Rule 7.9 of the High Court Rules.

[41] However the liquidator has produced evidence that the partnership ceased business and that business was taken over by Chars Transport Ltd before the trailers were purchased. In light of the evidence from Mr van der Oord, Universal Trucks accepts, for the purposes of this application, that the trailers are owned by Chars Transport Ltd rather than Mr van der Oord. It contends that Chars Transport Ltd became subject to the security agreement when it took over the business of the partnership.

[42] The liquidator accepts, in light of Mr van der Oord's evidence, that Chars Transport Ltd traded with Universal Trucks on the same terms and conditions that Mr van der Oord and his wife had previously traded with Universal Trucks. However the liquidator submits that those terms and conditions did not include Universal's general terms and conditions because they had never been received by Mr van der Oord. The liquidator submits that Mr van der Oord certified that he was bound by the general terms of conditions "overleaf" but there were no terms and conditions overleaf.

[43] On this issue, affidavit evidence was filed by Mr van der Oord in support of the liquidator's position; and by Mr Kerry Partridge (a director and shareholder of Universal Trucks) and Michelle Partridge (who dealt with the administration side of the business) for Universal Trucks. Notices were given by each side requiring those deponents to attend for cross-examination. Mr van der Oord and Ms Partridge duly attended the hearing and were cross-examined. However Kerry Partridge has recently died. The liquidator objected to Kerry Partridge's affidavit evidence because Mr Partridge was not available for cross-examination.

[44] Mr van der Oord's evidence was that he did not receive Universal Trucks' general terms and conditions and he did know about the security provision in those general terms and conditions. If he did not receive the general terms and conditions then that was contrary to Universal Trucks' standard practice. Mr Kerry Partridge's affidavit evidence was that, in every case where a credit account is sought, a full copy of the general terms and conditions are sent. He was best placed to give this evidence as he was responsible for the account management at the relevant time and, along with his son Bruce Partridge, he was involved in the day to day running of the

business. Kerry Partridge's evidence was supported by evidence from Michelle Partridge. She said that Kerry Partridge's practice was to provide new customers with a whole information pack. Her evidence was that this pack would contain Universal Trucks' contact details, the mechanic's contact details, a letter of introduction and the credit application with the general terms and conditions.

[45] I do not need to determine the objection to Kerry Partridge's affidavit evidence. That is because Mr van der Oord has certified that he read the general terms and conditions and agreed to be bound by them. Even if he did not receive them (as opposed to being unable to recall receiving them) he has agreed to be bound by them. There is no challenge to the evidence from Universal Trucks that its general terms and conditions at the relevant time were as produced in the evidence. Mr van der Oord agreed to be bound by those general terms and conditions. Those general terms and conditions include the security agreement set out above (at [6]). As the liquidator accepts that Chars Transport Limited took over the terms and conditions upon which the partnership had been trading with Universal Trucks, then Chars Transport Limited is now the debtor that is bound by the security agreement. The trailers are collateral under that security agreement.

**Are the trailers collateral under the security agreement between the secured party and the debtor?**

[46] The next issue is whether it matters that the financing statements refer to Mr van der Oord as "the debtor" rather than Chars Transport Limited. On this point I agree with the liquidator, that the "debtor" referred to in s 162 must be the debtor named in the financing statements. Universal Trucks did not contend otherwise but instead focused its submissions on whether Chars Transport Limited could challenge the security agreement to which it was a party. That point is concerned with the enforceability of the security agreement as against Chars Transport Limited rather than the issue which is before me, namely whether a change should be made to the registrations.

[47] On the evidence before me, I am satisfied that the trailers are not collateral under a security agreement between Mr van der Oord and Universal Trucks. I am

therefore not satisfied that the grounds for the demand do not exist. To put it the other way, I am satisfied that the grounds for the demand do exist. Therefore an order maintaining the registrations, at least in their present form, should not be made.

[48] On the evidence before me I am satisfied the trailers are collateral under a security agreement between Chars Transport Limited and Universal Trucks. This raises the question of whether some other order should be made. Under s 167 the Court may make an order maintaining the registration subject to conditions or it can order that the registration be discharged or amended.

[49] I consider that the financing statements should be amended so that the debtor's name is changed to Chars Transport Limited.<sup>23</sup> An order for an amendment in this case would ensure that the register accurately records the security interest while preserving the status quo as to the validity or otherwise of the registration prior to the amendment if a competing party (potentially, Avanti Finance) seeks to claim priority. Whether there are competing claims to the security and, if so, what priority they have are not issues for determination on the application before me. Those will be matters for the liquidator to assess and, if there is a dispute about them, then potentially they may come before the Court in a different proceeding.

[50] I note that s 167 appears to contemplate that an order for an amendment is an alternative to an order maintaining the registration. However without an order maintaining the registration, the Registrar is required to register the financing change statement. In this case it would mean removing the trailers from the description of the collateral. I order that the financing statements registered by Universal Trucks are amended to record the debtor's name as Chars Transport Limited in the place of Mr van der Oord. I further order that the financing statements are maintained but on the condition that that this amendment is made.

---

<sup>23</sup> This is consistent with ss 89 and 90 of the PPSA which permit a secured party to amend the registration where it consents to a transfer of the debtor's interest in the collateral or becomes aware of a transfer or a change in the debtor's name. A secured party who makes that amendment within the stated time period for doing so continues to have a perfected security and maintains its priority.



[51] Costs are reserved. If the parties are unable to agree on costs, they may submit brief memoranda on the points of difference within 14 days of the date of this judgment.

Mallon J