

CANADA / JUDGMENT

Kuzilla (Re)

2008 BCSC 1546

COURT

Supreme Court of British Columbia

DECIDED

13 November 2008

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2008 BCSC 1546 Kuzilla (Re) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Kuzilla (Re), 2008 BCSC 1546 Date: 20081113 Docket: B081354 Registry: Vancouver IN THE MATTER OF THE BANKRUPTCY OF KARL KUZILLA Before: Master Caldwell Reasons for Judgment Appearing in person for the Trustee, Murphy & Associates L. Murphy Appearing in person for the Creditor, Ice Cube Leasing Ltd. E. Enns Date and Place of Trial/Hearing: September 29, 2008 Vancouver, B.C.

- [1] On or about June 29, 2008 Karl Kuzilla doing business as Yukon Joes - Brats Carts leased various ice making and storage equipment from Ice Cube Leasing Ltd. The lease was for a period of three years and provided expressly for registration pursuant to the Personal Property Security Act, 1996 R.S.B.C. 359 ("PPSA"). Registration of the lease under the PPSA was not perfected until September 17, 2008. In the interim, and more particularly on or about August 22, 2008, Karl Kuzilla made a general assignment into bankruptcy. On or about September 2, 2008 Ice Cube Leasing Ltd. by its president Eric Enns filed its Proof of Claim seeking status as a secured creditor to the extent of \$25,233.16. That claim was disallowed by the trustee and Ice Cube Leasing Ltd. appeals that decision.
- [2] Mr. Enns acknowledges that the lease was for a term of three years and was not registered at the time of the assignment into bankruptcy. He argues that this failure was due to oversight and seeks relief in the form of allowing his claim to stand as a secured claim.
- [3] Sections 19 and 20 of the PPSA provide as follows:
19. A security interest is perfected when
- (a) it has attached, and
 - (b) all steps required for perfection under this Act have been completed, regardless of the order of occurrence.
20. A security interest
- (a) in collateral is subordinate to the interest of

- (i) a person who causes the collateral to be seized under legal process to enforce a judgment including execution, garnishment or attachment, or who has obtained a charging order or equitable execution affecting or relating to the collateral, (ii) a sheriff who has seized or has a right to the collateral under the Creditor Assistance Act, (iii) a judgment creditor entitled by law to participate in the distribution of property or its proceeds seized under legal process as provided in the Creditor Assistance Act, and (iv) a representative of creditors, but only for the purposes of enforcing the rights of a person referred to in subparagraph (i), if that security interest is unperfected at the time
- (v) the interest of a person referred to in subparagraph (i), (ii) or (iv) arises, or (vi) the judgment creditor referred to in subparagraph (iii) delivers a writ of execution or certificate to the sheriff under section 3 of the Creditor Assistance Act,
- (b) in collateral is not effective against
 - (i) a trustee in bankruptcy if the security interest is unperfected at the date of the bankruptcy, or (ii) a liquidator appointed under the Winding-up and Restructuring Act (Canada) if the security interest is unperfected at the date that the winding-up order is made, and
 - (c) in chattel paper, a document of title, a security, an instrument, money, an intangible or goods is subordinate to the interest of a transferee who
 - (i) acquires an interest under a transaction that is not a security agreement, (ii) gives value, and (iii) acquires the interest without knowledge of the security interest and before the security interest is perfected.
- [4] The definition section of the PPSA provides as follows: "collateral" means personal property that is subject to a security interest; "lease for a term of more than one year" includes
 - (a) a lease for an indefinite term including a lease that is determinable by one or both of the parties within one year from its execution,
 - (b) subject to subsection (3), a lease initially for a term of one year or less if the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the leased goods for a period in excess of one year after the day the lessee first acquired possession of the goods, and
 - (c) a lease for a term of one year or less if
 - (i) the lease provides that it is renewable for one or more terms automatically, at the option of one of the parties or by agreement of all the parties, and (ii) the total terms, including the original term, may exceed one year, but does not include
 - (d) a lease involving a lessor who is not regularly engaged in the business of leasing goods,
 - (e) a lease of household furnishings or appliances as part of a lease of land if the goods are incidental to the use and enjoyment of the land, or

- (f) a lease of a prescribed kind of goods regardless of the length of the term of the lease
"security interest" means
- (a) an interest in goods, chattel paper, a security, a document of title, an instrument, money or an intangible that secures payment or performance of an obligation, but does not include the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading or its equivalent to the order of the seller or to the order of an agent of the seller, unless the parties have otherwise evidenced an intention to create or provide for a security interest in the goods, and
- (b) the interest of
- (i) a transferee arising from the transfer of an account or a transfer of chattel paper, (ii) a person who delivers goods to another person under a commercial consignment, and (iii) a lessor under a lease for a term of more than one year, whether or not the interest secures payment or performance of an obligation;
- [5] In my view the provisions of the PPSA do not allow the exercise of discretion. A security interest includes the interest of a lessor under a lease of more than one year. This case involves a lease of more than one year. The security interest is not effective against a Trustee in Bankruptcy if it is not perfected at the date of the bankruptcy. The security interest here was not registered or perfected until well after the bankruptcy. The security interest is therefore not effective as against the Trustee. The application/appeal of Ice Cube Leasing Ltd. is dismissed. In the circumstances each party will bear their own costs. "Master Caldwell"

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Prepared on 28 October 2026 · Esheria