

PPSA - *Nichibo v Ludich*

Please feel free to pass this Update (in its entirety, including the disclaimer) on to anyone whom might be interested.

This update provides general information only and does not constitute legal advice. If you want legal advice on any of these issues, please feel free to contact me. Let me know if you don't want to receive these emails.

On a quick reading so far, this case probably does little to shed any new light on the PPSA but is not an uninteresting read. It concerns s53 (sale in the ordinary course of business) and s58 (purchase by a consumer).

Nichibo (N) applied to maintain a financing statement (ss162, 167). Pursuant to an agreement with Baja (B), N supplied vehicles. It had a security interest until payment and registered a financing statement against B. B had sold a VW supplied by N to a buyer and had taken a Pajero as a trade in as part payment. It never paid N the balance for the VW. Under the PPSA, the Pajero was proceeds of the VW.

L, a car salesman employed by B, sold the Pajero to his mother and both he and his mother ended up being registered as owners of the Pajero. L's mother had originally bought a Toyota from B and as part of the price, L traded in a vehicle owned by him. L's mother was allowed possession of the Toyota notwithstanding that there was a balance owing and before the balance was fully paid, L's mother traded in the Toyota for the Pajero.

N repossessed the Pajero. L's mother argued that she had bought the Pajero in the ordinary course of B's business and satisfied s53 of the PPSA. The court held that s53 applied. L's mother was at least a buyer, even though L may also have been a buyer; on balance, the sale was in the ordinary course of B's business even though it was by L as an employee and to his mother, and though L had some general knowledge of an arrangement between N and B, L had no specific knowledge so that neither L nor his mother knew that the sale of the Pajero (as proceeds of an earlier sale by B) constituted a breach of the agreement between N and B.

As to s58, it was held not to apply on evidential grounds but it was held that if L was a buyer, he was a consumer, despite being engaged in the industry - he was only a salesman and not a registered trader. I haven't had time yet to decide for myself whether I agree with that.