

## *Royal Bank of Canada v. Ramco Sales Inc.: Court of Queen's Bench of Alberta Ruling on the Limit of the Priority of a Purchase Money Security Interest*

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In *Royal Bank of Canada v. Ramco Sales Inc.*, 2010 ABQB 1, the Court of Queen's Bench of Alberta issued a ruling on the limit of the priority of a purchase money security interest ("PMSI").

The Canadian Western Bank ("CWB") provided a loan to Ramco Sales Inc. ("Ramco") to acquire over a dozen different pieces of equipment (the "Equipment"). The security agreement stipulated that a security interest was granted in each piece of Equipment to secure repayment of "all indebtedness" of Ramco to CWB. As each piece of Equipment was acquired, CWB created a separate schedule to the security agreement.

The Royal Bank of Canada ("RBC") held a prior general security agreement from Ramco, with the usual provision for an all present and after acquired personal property security interest ("ALLPAPP"). RBC placed Ramco into Receivership.

The Receiver reviewed CWB's security, and determined that it may have a valid PMSI priority with respect to four pieces of equipment. CWB had provided the Receiver with a payout statement which broke down the indebtedness/payout with respect to each piece of equipment. Two of those pieces had

excess equity above and beyond their payout amounts, and the Receiver attempted to redeem those pieces of equipment based on the payout statement. CWB asserted that its PMSI "super-priority" could be used to capture the excess equity and it could apply those funds to its entire loan account pursuant to the "all indebtedness" clause in the security agreement. On the other hand, RBC and the Receiver took the position that any equity in a specific piece of Equipment is limited to the amounts actually advanced (and paid down) for each specific item, and any funds over and above that limit would be subject to the ALLPAPP held by RBC.

Justice Kent ruled that the RBC would have priority over the CWB to any equity in each piece of Equipment. In particular, Her Ladyship considered the provisions in the *Alberta Personal Property Security Act* ("PPSA") regarding surplus and deficiency, and the policy reasons behind a PMSI. In the end, she concluded that the overall intent of the PPSA to provide an ordered and balanced regime for financing would be served by limiting the priority of a PMSI to the acquired asset, and the amounts actually advanced/paid down with respect to each item.

Scott Watson and Karen Fellowes of our Calgary Office represented the Receiver. For more information, please contact Scott Watson (403) 294-7038, [swatson@parlee.com](mailto:swatson@parlee.com), or Karen Fellowes (403) 294-7031, [kfellowes@parlee.com](mailto:kfellowes@parlee.com).

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