A GENEROUS INTERPRETATION OF COLLATERAL

Paper number 06/08

By

Rachel Baskerville

University of Exeter

Trish Keeper*

Victoria University of Wellington

New Zealand

Abstract

This study offers an examination of the decision and implementation in New Zealand of a personal property security regime based in North American Article 9 Models, with specific focus on the approach in force in Saskatchewan at that time. Subsequent to the New Zealand Personal Property Securities Act 1999 coming into force in 2002, a number of cases have considered the conflicting nature of creditor interests in personal property. The research question underlying this study is “Has the new personal property security in New Zealand achieved what it set out to do?” The paper considers this developing jurisprudence and any implications of these decisions for financial reporting when the going concern assumption is under question.

*Contact Author: Trish Keeper, Lecturer in Commercial Law, School of Accounting & Commercial Law, Victoria University of Wellington, PO Box 600, Wellington, New Zealand. Phone: 0064-4-463 5203. Email: trish.keeper@vuw.ac.nz

ISSN 1473 2904

Introduction

When two rich families have a tug-of-war in court over a prize stallion, it was not surprising given that the stallion in question, Generous, was a good earner. He had been flying between the UK and NZ each season, serving mares, and earning \$175,000 in stud fees during the last six-month northern hemisphere 2003/4 season (Chapple, 2004). Added to the mix, a court conclusion, according to Mr Justice Allan, that “may be difficult to accept” for those unfamiliar with the law (*ibid*). What was this decision? The legal background to this dispute was the enactment of the Personal Property Security Act 1999 (PPSA). The PPSA, when it came into force, changed the rules of the game in relation to leased goods or goods sold on conditional sale. For prior to its enactment, title to goods was “some kind of mystical trump card which overwhelms any other claims” (Allan 2004). However, the PPSA changed the rules of the game so completely that in the post-PPSA world, the rights of the owner of leased property, such as a stud horse, are merely secured creditors whose rights, like those of other interested parties, are determined by a statutory priority system.

Generous, a multimillion-dollar former top-class international racehorse with victories in the English and Irish Derbies and the King George and Queen Elizabeth stakes, was leased from NZ Bloodstock Ltd (NZ Bloodstock) to Glenmorgan Farm Ltd (Glenmorgan) under a lease to purchase arrangement in August 2001. The lease was to expire in July 2004, at which time it was agreed that NZ Bloodstock would sell the stallion to Glenmorgan for a price equal to its residual value. Until that time, title and ownership presumably remained with NZ Bloodstock. When Glenmorgan went into receivership in 2003, NZ Bloodstock repossessed the horse as its ‘lease-to-purchase’ deal with Glenmorgan had collapsed. However, Glenmorgan had also granted a general security agreementⁱ (GSA) to S H Lock (NZ) Ltd (‘Lock’) over all of its assets. The general security agreement, granted under the pre-PPSA legal regime, was secured over both specified chattels and assets and stock in trade. It was registered under the Companies Act 1993 (NZ) in November 1999. When the PPSA came into force, Lock utilised the transitional arrangements and registered a financing statement in relation to this existing security interest in order to perfect its interests in Glenmorgan’s assets under the PPSA. However, what was crucial for this case was the NZ Bloodstock did not perfect its security interest at this time by the same process

of negotiation. When Glenmorgan was placed in receivership and irrespective of the fact that NZ Bloodstock had repossessed the stallion, as Lock had perfected its interest, and NZ Bloodstock had not, Lock interest in the stallion subsumed that of NZ Bloodstock. The question as to whether or not the Court decision in Lock's favour was a fair one remains a live issue. In addition, when combined with consideration of how accounting and accounting standard setters consider lease arrangements when the going concern assumption is called into questions. Thus this new Act raises questions concerning recognition of such leases on the balance sheet of an entity that controls an asset.

It is the objective of this study to

- Outline events that led to the introduction of the New Zealand Personal Property Securities Act 1999. This section includes a review of the legal position prior to the enactment of the PPSA, highlighting anomalies and problems with the previous regulatory framework, as well as briefly reviewing the motivations to enact a regulatory framework for personal property securities based on the North American Article 9 models; more specifically, the systems that operated in Saskatchewan and were also at that time under consideration in British Columbia.
- Review the detail of the Act; in particular, the regulation of security interests over a specific type of personal property. This includes a consideration of the potential conflicting interests that may exist in personal property of an insolvent company, when more than one creditor claims a security interest in such property.
- Consider the developing jurisprudence in New Zealand concerning conflicting creditor interests in personal property; and any implications of this for financial reporting when the going concern assumption is under question.

The research question underlying this study is "Has the new Act achieved what it set out to do?" The basis for this legislation was the Saskatchewan Act, and thus we hope this conference paper will be of interest to both local and international academic commercial lawyers and accountants attending this Banff conference.

Events leading to the introduction of the New Zealand Personal Property Securities Act

Personal property security laws

Personal property security laws regulate the ways in which a lender can obtain security for a debt by taking an interest in a borrower's personal property. Personal property is the term used to refer to all types of property other than land and includes both intangible and tangible assets, from copyright to plant, stock and accounts receivablesⁱⁱ. The Personal Property Securities Act 1999 (NZ) is modelled on the Canadian legislation, but this case also provides an unusual insight into how a slight change in the law in its jurisdictional adaptation resulted in an outcome potentially distinct from the approach that a Canadian court may adopt, although as discussed later in this paper, although the issue is clearly established in New Zealand, the position in Canada is not as clear cut. It was somewhat surprising, therefore, to find that some commentators (Gedye 2006) claimed that one defining feature of the New Zealand regime had been the lack of litigation so far, in view of the profile of the *Generous* case. Another distinguishing characteristic, according to Gedye, was there was little opposition to the reform proposals. New Zealand had been the first Commonwealth jurisdiction outside Canada to implement a personal property security regime derived from Article 9 of the American Uniform Commercial Code.

The Pre PPSA Regulatory Framework

The origins of the adoption of the Act can be traced back to 1986, when the New Zealand Law Commission ('the Law Commission') was asked to undertake a substantial review of the Companies Act 1955. As Part IV of the Companies Act 1955 dealt with registration of charges (given by companies), the Law Commission was required to review the regulatory framework of the securities over corporate personal property. It formed the view that any review "ought properly to be considered in the wider context of personal property security laws, including the Chattels Transfer Act" (Farrar and O'Regan v). At that time, the Chattels Transfer Act 1924 was the governing Act for securities over personal property owned by non-corporate entities, although as discussed later, the registration system under that Act was characterised by archaic complexity and inconsistent coverage. Subsequently in 1987 input was

received from the New Zealand Law Society that there was widespread recognition by the legal profession that the current laws were inadequate.

Professor John Farrar then submitted a memorandum to the Law Commission which supported the overthrow of the then current laws and replaced by a system based on Article 9 of the American Uniform Commercial Code and Canadian legislation based on Article 9 (Farrar and O'Regan, iv). Farrar and O'Regan visited both the United States and Canada in February/March 1988 and reported favourably on the Saskatchewan and proposed British Columbia legislation in a report to the Law Commission in 1988. This Report referred to the five features identified by Professor R Goode's in his article; *Modernisation of Personal Property Security Law* including that all transactions intended as security should be regulated as such, regardless of the technical legal form in which they are cast and that whenever a secured creditor wishes to leave the debtor in possession of the security, the secured creditor should be able through a simple, efficient and inexpensive legal process be able to give public notice of the existence of this security interest. The legal form of a transaction was problematic under the private property securities regulatory framework at that time, although, this was probably not the most significant of the regime's defects.

Farrar and O'Regan at 50-51 of their Report succinctly summarised the defects of the then present system. They stated that a great deal of the problems arose from the lack of one framework for dealing with such securities. Securities over personal property owned by companies were registerable at the Companies Office, securities over personal property owned by individuals at the local High Court under the Chattels Transfer Act, although securities over motor vehicles were covered by a separate Act and registration system regardless of ownership. Both the Chattels Transfer Act registration system and Companies Office system were manual and there was no co-ordination between the two. Also distinctions between types of securities that were registerable under the two systems existed and specifically Farrar and O'Regan stated "neither system provides adequately for stock in trade financing.....There are problems in creating a fixed charge over stock in trade." Further they continue there "are intrinsic problems with the floating charge which case law has highlighted – what interest is conferred before crystallisation, what constitutes crystallisation and what are the priority rules." They also observed that reservation of property clauses were an area of continuing confusion and complexity and the registration

requirements were far from clear under either system. In short the two concluded, and this conclusion was endorsed by the Law Commission, that the present law was complex, uncertain, anomalous and inflexible.

The Law Commission then proceeded to establish an Advisory Committee as a second stage in the reform process. The Advisory Committee was charged to complete a draft Bill. The Committee (6) strongly concluded that the best model for New Zealand was provided by Article 9 of the Uniform Commercial Code and the legislative regimes based on Article 9 which had been adopted in a number of Canadian provinces. Specifically the existence of Article 9 regimes in Canadian provinces which have similar legal traditions to those of New Zealand and which, prior to the adoption of an Article 9 regime, had similar laws relating to personal property security as those which at that time applied in New Zealand. The key features of the draft Bill proposed by the Committee, which was modelled on the Saskatchewan Personal Property Security Act, were that there would be uniform rules for all security interests regardless of form. Further that security interests would attach to personal property and then may be perfected either by registration of taking possession of that property. Also the Bill contained a comprehensive set of rules in order to simplify the order of priority between the interests of competing security interests. Priority in most cases was to be determined by the 'first to file' rule, although exceptions for super priority would operate to ensure providers of finance, specifically for the purchase of personal property receive additional protection.

Although the Committee identified that form of a security interest should not affect the registerability of an interest, the Committee did not go so far as recommending that the rights of a creditor under a perfected security interest may be enforceable against third parties regardless of ownership of the collateral. For traditionally in New Zealand, with its common law legal system, the concept known as *nemo dat quod non habet* or no one gives what he does not have has been a fundamental principle. This principle was recognised in New Zealand property and securities law, such as the Sales of Goods Act 1908, which provided that subject to specific exceptions, that a person can not transfer, whether by way of gift, sale or by way of succession, better rights than the person has him/herself. In a property law system based on the sanctity of personal property such as this, ownership is inherently more important than in

commerce (Hammond 173). However, the adoption of a system based on Article 9 of the Commercial Code has resulted in some respects in a reversal of these priorities.

The Personal Property Securities Act 1999

The Personal Property Securities Act was passed in the final weeks of the National Government in 1999, and came into force on May 1, 2002. The Act applies to ‘security interests’ in ‘personal property’ as both of these terms are defined in the Act. Personal Property is defined in section 16 in a non-exhaustive manner as including “chattel paper, documents of title, goods, intangibles, investment securities, money and negotiable instruments” with goods being separately defined as specifically meaning tangible personal property. The term security interest is defined in section 17:

17(1) In this Act, unless the context otherwise requires, the term “security interest”—

- a) Means an interest in personal property created or provided for by a transaction that in substance secures payment or performance of an obligation, without regard to—
 - i. The form of the transaction; and
 - ii. The identity of the person who has title to the collateral; and
- b) Includes an interest created or provided for by a transfer of an account receivable or chattel paper, **a lease for a term of more than 1 year**, and a commercial assignment..... (emphasis added)

The transactions listed in section 17(1) (b) are deemed to be a security interest for the purposes of the PPSA, regardless of whether the transaction that creates them secures payment or performance of an obligation (Widdup & Mayne 19).

Section 17 further elaborates on the meaning of security interest by providing subsection (4) a non-exclusive list of interests in property that are stated to be security interests for the avoidance of doubt. This list includes fixed and floating charges, a conditional sale agreement (including an agreement to sell subject to retention of title), hire purchase agreement provided that the agreement or arrangement secures payment or performance of an obligation.

These definitions are fundamental to the application of the Act and reflect the objectives to create a framework that applies uniformly regardless of the form of the

security interest and the type of interest that the secured party has in the collateral. Section 24 also expressly provides that the fact that title to collateral may be in the secured party rather than the debtor does not affect the application of any provision of this Act relating to the rights, obligations and remedies. The term ‘collateral’ is defined in section 16 as meaning “personal property that is subject to a security interest”.

Part 3 of the Act sets out the principles and applicable rules which determine both the enforceability of a specific security interest against a debtor and / or third parties and also the various rules that determine who has priority when two secured parties claim an interest in the same personal property. Like the Canadian regimes, a secured party in order to maximise its rights under the Act must ensure that its interest is perfected. This involves a two step process. Firstly, the security interest must under section 40 attach to the collateral. This occurs when value is given by the secured party and the debtor has rights in the collateral. Also the security interest must be enforceable against third parties, by either the secured party being in possession of the collateral or, in the more common situation, the debtor has signed a security agreement that complies with the Act in terms of the description of the collateral covered by the agreement. The second step requires the security interest to be perfected by the completion of attachment and either by registering a financing statement or by the secured party having possession of the collateral. Once this has occurred, regardless of the order of completion, the security interest is perfected. This gives a secured party the best possible rights with regard to the collateral against the rights of other parties.

Section 66(a) provides if a party with a security agreement fails to perfect that agreement, that in the absence of any other applicable provision, a perfected security interest in that collateral will have priority over that unperfected security interest. Section 66(b) provides that priority between perfected security interests in the same collateral is to be determined, in the absence of any other applicable provision, by who first perfected. However, if the second in time security interest is a purchase money security interest (PMSI), then the rights of the first in time secured party may be subsumed. For example, pursuant to sections 73 and 74, a perfected security interest that is stated to be taken in all of a debtor’s present or after-acquired property (an all assets security interest) will not take priority over a later in time PMSI in

collateral or inventory of property of the debtor provided the PMSI is perfected in accordance with those sections. Unlike Canadian jurisdictions, the super priority granted to inventory financiers is not dependant upon the financiers serving advance notice on prior registered financiers.

However, although the Act created a less complex and more certain regime for the parties involved in any security interest over personal property, some areas of uncertainty remained. One such issue was the interrelationship of the section 17 in terms of the status of a deemed security interests for a lease for more than one-year and whether an all assets security interest extends to assets that the debtor only holds on lease.

A Consideration of subsequent Case Law

In the first case to consider this issue, *Graham v Portacom New Zealand* [2004] 2 NZLR 528, the High Court made it clear that the existing notions of the sanctity of ownership as exemplified by the *nemo dat* principle were largely a thing of the past. The facts of the Portacom case are substantially identical to the NZ Bloodstock case, with Portacom as the owner of the leased assets failing to protect its ownership rights. As the leases between Portacom and the lessee were PMSI's, potentially Portacom could have had priority over all other interests in the collateral in question, but as it had failed to perfect its interest, it forfeited this statutory protection. In this situation, his Honour Hansen J held that s 40 enabled a secured creditor's security (in all of the debtor company assets of whatever kind or wherever situated) to attach, through the debtor's interest as lessee, to the portable buildings themselves. An important element in his finding that the interest of the secured creditor attached to the portable building itself was that the debtor had not just a possessory interest in the building, but also a proprietary one. This decision clearly illustrated a key change introduced in the new regime (Ahdar, 2004).

The subsequent decision of the High Court in *Waller v New Zealand Bloodstock* [2005] 2 NZLR 549 (**The Generous case**) reinforced the dramatic effect of the PPSA, as it upheld the rights of Lock, regardless of the fact that NZ Bloodstock had repossessed the collateral. This decision was sustained on appeal by the Court of Appeal. As outlined above, the key event was the PPSA coming into force. Interestingly all of the transactions with regard to the establishment of the various

security interests in Generous had taken place prior to the PPSA coming into force, and as Duncan Webb stated:

“The rights of the parties under the old law would have been clear. The rights of SH Lock (NZ) Limited under its debenture would be limited to the assets of the company. The stallion, being leased and ownership not having passed to the company, was not secured under the debenture. Accordingly, the rights of New Zealand Bloodstock Limited, as owner of the stallion, would have prevailed”.

While the decision of the High Court contained a number of legal arguments arising from the application of the Act to pre-Act transactions, these do not need to be examined here. More importantly was the decision of the court as to whether the stallion was an asset of NZ Bloodstock that was covered by an all assets security agreement to Lock. The High Court decided in the affirmative largely on policy grounds and this was upheld by the Court of Appeal. The key findings of its decision that Lock’s security interest took priority over NZ interest are set out at paragraph 51.

Specifically it held that as the lease to purchase was for a period of more than one year, for the limited purpose of fixing priorities of competing security interests, then NZ Bloodstock’s title became a security interest under s 17(1) (b) of the Act.

Glenmorgan, which apart from the Act had no property rights in the stallion, secured rights in it under the Act when its interest as a lessee attached by Glenmorgan taking possession. Further that Lock’s security agreement was written in such language as to capture interests such as Glenmorgan’s future rights in the stallion. As such Glenmorgan’s statutory rights in the stallion formed part of the Lock’s security and Lock’s interest had both attached to the stallion as collateral, was enforceable against third parties as it was signed by Glenmorgan and perfected. Accordingly as NZ Bloodstock had not perfected its security interest, Lock’s interest took priority, even though NZ Bloodstock had repossessed Generous and it was clear had retained title in the collateral. It was not disputed that if NZ Bloodstock had perfected the lease to purchase in the transition period when the Act was first introduced, it would have qualified as a PMSI and as such would have qualified for a super-priority ahead of Lock’s interest. The decisions of the High Court and Court of Appeal have made it

clear that decisions in these circumstances are to be determined in accordance with the provisions of the Act and not in accordance to the directives of common law.

Like in the *Portacom* case, defence counsel relied on a decision of a decision of the Alberta Court of Appeal in *Sprung Instant Structures Ltd v Caswan Environmental Services Inc* [1998] 6 WWR 535 (CA, Alb), a case involving similar facts. However in both *Portacom* and in the *New Zealand Bloodstock* decisions, the courts preferred to follow the decision of the lower court in that case, that is the decision of the Queen's Bench. In the *Portacom* decision, the High Court dismissed the Court of Appeal in decision in *Sprung* because of its concision and lack of analysis, but more importantly because it was decided before the decision of the Supreme Court of Canada in *Re Giffin* (1998) 155 DLR (4th) 332. *Giffin* was stated to be the leading case as "for the purposes of this case, the Canadian authorities have direct application to the New Zealand Act (*Portacom* para 20). In *Giffin* the Canadian Supreme Court at para 26 in overturning a decision of a lower court stated that PPSA had set aside the traditional concepts of title and ownership to a certain extent. Although *Giffin* concerned an analysis of the assets of a bankrupt in a bankruptcy situation, the

Chart one: A schematic representation

reasoning was adopted in *Portacom* in construing the extent of the assets of the debtor under the New Zealand PPSA.

In the High Court decision in *NZ Bloodstock*, Allan J commented that he shared the misgivings of Rodney Hansen J in the *Portacom* case (para 91) with regard to the Alberta Court of Appeal's decision in *Sprung* and concluded that "the judgment is highly unsatisfactory". Allan J took the view that the fact that NZ Bloodstock had legal title was "simply irrelevant". The lessee although did not itself hold legal title to *Generous*, is nevertheless capable of passing good title to the leased assets, despite the fact it had absolutely no contractual right to require title itself. This, in the opinion of his honour, was spelt out by section 24, which does not have any express counterpart in the Canadian legislation. A majority of the NZ Court of Appeal upheld the decision of Allan J, although acknowledged that the present decision must turn on the effect of the New Zealand legislation, which is not wholly identical to that in the various Canadian jurisdictions. (para 16).

The implications of this Act and the case law for accounting and accounting standard setters

There may be implications of this for accounting and accounting standard setters. In particular, after the adoption of this Act the order of priority of creditors in some circumstances may be reversed. This may have implications for recognition of inventory and other assets on the balance sheet, particularly when leasing arrangements are involved, or, at the very least, disclosure requirements for assets which may be subject to competing ownership claims when there is any question concerning the “gong concern” assumption.

One other issue concerns NZ Bloodstock, and its financial reporting of the lease-to-buy arrangement. Whether or not an entity was complying with the New Zealand SSAP-18 *Leases*, or the NZ IAS 17 *Leases*, such arrangements would be treated as finance leases. In this case NZ Bloodstock would have recognised that in substance Glenmorgan was the owner as soon as the ‘lease-to-buy arrangement commenced; and it should have securitised its right to the value of the outstanding lease payments. This meant the asset (the stallion) and liability for lease payments are on the balance sheet of the lessee (Glenmorgan), and the only asset on the balance sheet of the lessor is the present value of the lease payments receivable. The rewards and risks of ownership are passed from NZ Bloodstock to Glenmorgan, and the court judgment is consistent and fair from this point of view.

NZ IAS 17 *Leases* para 36 requires that in the case of a finance lease, “Lessors shall recognise assets under a finance lease in their balance sheets and present them as a receivable at an amount equal to the net investment in the lease”. Lessors are also required to disclose a general description of the lessor’s material leasing arrangements.

NZ IAS 16. *Property, Plant and Equipment*, para 74 requires entities to disclose “the existence and amounts of restrictions on title, and property, plant and equipment pledged as security for liabilities”.

Together, these standards would require the directors of both Glenmorgan and NZ Bloodstock to consider whether the lease arrangements could be subject to competing claims of ownership from other creditors of the lessee, and if so, ensure that the restriction on title was disclosed. The directors of NZ Bloodstock would also consider whether the lease payments receivable could be in jeopardy if Glenmorgan could fail. In fact, it appears that NZ Bloodstock considered itself to be, in substance, the owner

of Generous; as they state on their website, “for the duration of the lease the horse is officially owned by the lessor (New Zealand Bloodstock Leasing Ltd). Ownership is transferred to the lessee at the conclusion of the lease period” (see Appendix 1). The failure of NZ Bloodstock to register their security interest is less puzzling if this was, in fact, the case, and they had considered themselves the legal owner of Generous irrespective of the sustainability of Glenmorgan’s operations.

Conclusion

The two research questions underlying this study were: has this new Act achieved what it set out to do; and what accounting issues are implicated.

From May 2002 NZ Bloodstock was apparently unaware that the Act had classified any lease over 12 months as effectively transferring ownership, irrespective of how they treated it on their own balance sheet. This provided an opportunity for Lock to take the position as the preferentially ranked creditor over NZ Bloodstock as far as rights to ownership of Generous were concerned. The particular accounting issues implicated in this case demonstrate:

- that the requirements to capitalise finance leases and reflect the substance of a lease-to-buy arrangement such as this would have required NZ Bloodstock’s directors to only recognise the lease payments receivable as an asset, although it appears this was treated as an operating lease.
- The disclosure requirements in accounting standards would necessitate an evaluation of any restrictions on title to such an amount when the going concern assumption is called into question. Although this disclosure requirement is only in the standard on non-current assets - *Property, Plant and Equipment*, it would also enhance the quality of financial reporting for such a requirement to be applied to non-current or current assets such as amounts receivable on lease payments, especially when a jurisdiction (such as Saskatchewan or New Zealand) offers such ease of prioritisation of title for general security agreements that other creditors can lose what appears to others as their ‘natural’ rights of recourse.

In New Zealand, Hammond suggests there has been a pragmatic compromise with respect to title to goods between the concerns of ownership and the concerns of commerce (1992, p.174). Referring to Lord Denning in *Bishopgate Motor Finance Ltd v Transport Brakes Ltd* [1949] 1 KB 332 at 366

“In the development of our law, two principles have striven for mastery. The first is for protection of property: no one can give better title than he himself possesses. The second is the protection of commercial transactions. The person who takes in good faith and for value without notice should get good title. The first principle has held sway for some time, but it has been modified by the common law itself and by statute to meet the needs of our times”.

Bibliography

- Ahdar, Rex, 2004, "New Zealand Newsletter: Personal property securities in the courts: A new era begins" *Australian Business Law Review*. 32 (5) pg. 372
- Chapple, Irene, 2004, "High Court ruling sees top-class Glenmorgan sire awarded to finance company", *Sunday Star Times*, 5th Dec Page 5.
- Farrar, John H., and Mark A. O'Regan, 1988, *Reform of Personal Property Security Law*. Report to the Law Commission, Preliminary Paper No. 6, Wellington, New Zealand
- Gedye, Mike, 2006, "A Distant Export: The New Zealand Experience with a North American style Personal Property Security Regime". *The Canadian Business Law Journal* 43 (2) pg. 208
- Goode R., 1984, *The Modernisation of Personal Property Security Law*, 1000 LQR 234 at 237
- Hammond R.G., 1992, *Personal Property: Commentary and Materials*, 2nd edition OUP, Oxford
- Hattaway, Peter, and Alan Liddell, 2002, *The Credit Revolution: A Practical Guide to Surviving the Personal Property Securities Act*. Privately published; www.hattaway.co.nz
- Webb, D., 2005, 2 *NZ Law Review*, 251,259.
- Widdup, Linda and Mayne, Laurie, 2002, *Personal Property Securities Act: A conceptual Approach*, revised edition, Lexisnexis Butterworths, Wellington.

Cases

- Graham v Portacom New Zealand Ltd* [2004] 2 NZLR 528 (HC)
- Waller v New Zealand Bloodstock Ltd* [2005] 2 NZLR 549 (HC)
- Waller v New Zealand Bloodstock Ltd* [2006] 3 NZLR 629 (CA)
- Giffen, Re* [1998] 1 SCR91; [1998] 7 WWR 1.
- Sprung Instant Structures Ltd v Caswan Environmental Services Inc* [1998] 6 WWR 535.
- Sprung Instant Structures Ltd v Caswan Environmental Services Ltd*

Appendix 1:

Extract from Web-page: Lease arrangements offered by New Zealand Bloodstock

<http://www.nzb.co.nz/leasing.cfm>

If a New Zealand breeder identifies a mare, filly, stallion or colt they wish to acquire then, provided the horse meets New Zealand Bloodstock's criteria, including principally "enhancing the thoroughbred bloodstock of New Zealand", New Zealand Bloodstock would agree to purchase the horse on behalf of the breeder (who becomes the lessee) and lease it back to him/her.

For mares/fillies purchased, the standard term of the lease is 36 months. Typically the lessee may make automatic repayments monthly or annually in advance. There will be a residual of 25% of purchase price at the end of the lease period owed by the lessee.

Lease repayments are calculated based on the principal amount plus interest. The interest rate will be fixed for the duration of the lease and will be generally in line with "going market rates" at the time the lease application is made.

For the duration of the lease the horse is officially owned by the lessor (New Zealand Bloodstock Leasing Ltd). Ownership is transferred to the lessee at the conclusion of the lease period, but the lessee assumes full management and responsibility for the horse. Any progeny of the leased horse will be owned by the lessee and the lessee will be regarded as the official breeder of any progeny.

A condition of any lease agreement is that the leased horse is to be insured through New Zealand Bloodstock Ltd's Insurance division.

The breeder can include any costs associated with importing a horse to NZ, for example, airfreight costs, within the lease arrangement.

For stallions or colts purchased, typically the term of the lease is 24 months. The residual amount owed by the lessee at the end of the lease period will be 10%.

ⁱ A general security agreement (GSA) replaced a debenture as a primary form of security. The terms may be used interchangeably, depending on the context of the discussion.

ⁱⁱ It also includes ships, but this is not going to be referred to when matters of scope are further described in this study.