IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Summit Leasing Corporation v. Rutledge,* 2025 BCSC 2142

Date: 20251030
Docket: S235189
Registry: Vancouver

Between:

Summit Leasing Corporation

Plaintiff

And

Donald Graham Rutledge and Leslie Anne Rutledge

Defendants

Before: The Honourable Justice Blake

Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	D.A. Frenette
Counsel for the Defendants:	J.D. Shields
Place and Date of Hearing:	Vancouver, B.C. July 24, 2025
Place and Date of Judgment:	Vancouver, B.C. October 30, 2025

Table of Contents

I. INTRODUCTION

[1] The plaintiff, Summit Leasing Corporation ("Summit"), is a judgment creditor of the defendant Donald Rutledge, pursuant to the order of Justice Sharma pronounced September 21, 2023 (the "Sharma Order"). Pursuant to the Sharma Order, Mr. Rutledge is to pay to Summit $250,000 USD (the "Principal Debt"), plus interest at the rate of 30% per annum, compounded monthly, from December 31, 2021. He is also to pay all legal fees and recovery costs of this action to Summit.

[2] Mr. Rutledge's wife, Leslie Rutledge, and her company, Falco Investment Inc. ("Falco") signed a Collateral Security Agreement dated September 29, 2021 with Summit (the "CSA"), which identified certain property they each posted as collateral security for the loan proceeds Mr. Rutledge borrowed from Summit. Summit now seeks declarative relief concerning the nature of the collateral posted—specifically Summit seeks a declaration that:

a) the CSA is not a security agreement which provides for a security interest in consumer goods within the meaning of s. 67 of the *Personal Property Security Act*, R.S.B.C. 1996, c. 259 [*PPSA*];

b) the plaintiff's rights and remedies in the present execution proceeding are not limited by s. 67 of the *PPSA* upon taking possession of the collateral, or the sale proceeds therefrom; and

c) the seizure, surrender, or transmission to Summit (*in specie* or proceeds of sale relating thereto) of the collateral does not extinguish the unperformed obligations of Mr. Rutledge, either under the loan agreement he entered into with Summit dated September 29, 2021, nor with respect to the judgment of Justice Sharma pronounced on September 21, 2023.

[3] Summit also seeks full indemnity costs of this application.

II. BRIEF BACKGROUND

[4] The defendants object to two affidavits of Allan MacKenzie, tendered by Summit in support of this application, which I will address below. However, the following is a summary of the background to this application, which is not contested.

[5] Summit is engaged in the business of leasing finance and specializes in providing leasing finance to small and medium-sized businesses.

[6] Pursuant to the loan agreement entered into by Summit and Mr. Rutledge, dated September 29, 2021 (the "Loan Agreement"), Summit agreed to lend, and Mr. Rutledge agreed to borrow, the sum of $250,000 USD (the "Loan Principal"). The Loan Agreement included the following terms:

a) the Loan Principal would be advanced to Mr. Rutledge in two tranches, as follows:

   i. a first tranche of $150,000 USD, to be advanced by Summit to Mr. Rutledge upon the signing of a promissory note evidencing and including the terms of the Loan (the "Promissory Note"); and

   ii. a second tranche of $100,000 USD, to be advanced by Summit to Mr. Rutledge upon the issuance of certain shares in Aquagold International, Inc. ("Aquagold") as described below;

b) the Loan Principal would be repaid on or before December 30, 2021 (the "Maturity Date");

c) Mr. Rutledge would pay to Summit the sum of $10,000 USD as an advancement fee in lieu of interest, which amount was non-refundable and would be deducted by Summit from the first tranche of the Loan Principal;

d) within five days after the provision of the first tranche of the Loan Principal by Summit to Mr. Rutledge, Mr. Rutledge would deliver to Summit:

i. 1,000,000 shares in Aquagold which would become the property of Summit, in consideration for the Loan; and

ii. 4,000,000 shares in Aquagold as security for the repayment of the Loan, in connection with which:

e) the shares would be canceled if the Loan were repaid by the Maturity Date;

f) Summit would retain and own the shares if the Loan were not repaid by the Maturity Date; and

g) in the event of non-payment of the principal amount of the loan by the Maturity Date:

i. interest would accrue at the rate of 30% per annum, compounded monthly; and

ii. all legal fees and recovery costs would be payable by Mr. Rutledge.

[7] Ms. Rutledge and Falco posted security for the debt owed by Mr. Rutledge to Summit, pursuant to the CSA. They granted to Summit a general and continuing security interest in the following collateral:

a) a 2014 Ford Mustang Shelby automobile owned by Falco;

b) a 2016 Yamaha motorcycle owned by Ms. Rutledge;

c) a 2007 Honda motorcycle owned by Ms. Rutledge;

d) a 2013 Larson 328 LXI boat hull with motor owned by Ms. Rutledge; and

e) a 2013 Shorelander boat trailer owned by Ms. Rutledge

(collectively, the “Collateral”).

[8] Both Ms. Rutledge and Falco are parties to the CSA, which states that in the event of any default by Mr. Rutledge, Summit will request, and Ms. Rutledge and Falco will make available, the Collateral to Summit. Specifically, the CSA provides:

> **5. Rights and Remedies upon default**. Summit may declare Debtor to be in default under the Promissory Note and all or any part of the Indebtedness to be immediately due without notice upon the happening of any Event of Default. The rights and remedies of Summit as set forth in this Agreement and in this section are in addition to any other rights that Summit might have upon the happening of any Event of Default, Summit's rights with respect to the Collateral shall be those of a secured party under the applicable laws of British Columbia and Canada and any other applicable law from time to time in effect. Summit shall also have any additional rights granted herein and in any other agreement now or hereafter in effect between Debtor and Summit or Grantor and Summit or otherwise granted by law or equity. If requested by Summit, Grantor will assemble the Collateral and make it available to Summit at a place to be designated by Summit. Without limiting the generality of the foregoing, Grantor expressly agrees that, after an Event of Default, Summit may (i) lawfully enter any premises where any Collateral may be without judicial process and take possession of the Collateral and (ii) sell, lease or otherwise dispose of the Collateral in a commercial reasonable manner.

[9] Further, Ms. Rutledge and Falco signed transfer documents for each asset which comprised the Collateral, which if filed, would transfer the Collateral to Summit (collectively, the "Transfer Documents").

[10] Summit registered its security interest in the Collateral with the British Columbia Personal Property Registry on September 29, 2021, and subsequently renewed its interest on November 21, 2022.

[11] Summit commenced the within action by a notice of civil claim filed on July 20, 2023. The Sharma Order was made on September 21, 2023, following a short summary trial in judge's chambers. Despite execution efforts made by Summit, the terms of the Sharma Order remain unsatisfied. No payments have been made by Mr. Rutledge to Summit. Further, Summit's attempts to organize the surrender or collection of the Collateral have not attracted a response from Ms. Rutledge, Falco, or Mr. Rutledge.

[12] Both Mr. Rutledge and Ms. Rutledge are defendants in the notice of civil claim, while Falco is not. At the hearing, counsel for the defendant, Mr. Shields, confirmed he also acts for Falco.

III. LEGISLATIVE SCHEME OF THE *PPSA*

[13] The *PPSA* replaced a "patchwork of statutory, common law, and equitable rules with a statutory regime that was designed to introduce greater clarity and symmetry in British Columbia's secured financing law": *Merchant Growth Asset Financing Ltd. v. Pyke*, 2022 BCSC 696 [*Merchant Growth BCSC*] at para. 34, rev'd *Pyke v. Merchant Growth Asset Financing Ltd.,* 2024 BCCA 188 [*Merchant Growth BCCA*]. The primary goal of the *PPSA* is to provide commercial certainty and predictability: *Merchant Growth BCCA* at para. 32.

[14] Section 1(1) of the *PPSA* contains a number of relevant definitions. "Debtor" is defined as meaning:

> (a) a person who owes payment or performance of an obligation secured, whether or not that person owns or has rights in the collateral,
>
> (b) a person who receives goods from another person under a commercial consignment,
>
> (c) a lessee under a lease for a term of more than one year,
>
> (d) a transferor of an account or chattel paper,
>
> (e) in sections 17, 24, 26, 58, 59 (14), 61 (8) and 69, a transferee of or successor to the interest of a person referred to in paragraph (a), or
>
> (f) <u>if the person referred to in paragraph (a) and the owner of the collateral are not the same person,</u>
>
> > <u>(i) if the term debtor is used in a provision dealing with the collateral, an owner of the collateral,</u>
> >
> > <u>(ii) if the term debtor is used in a provision dealing with the obligation, the obligor, and</u>
> >
> > <u>(iii) if the context permits, both the owner and the obligor.</u>
>
> [Emphasis added.]

[15] Section 1(1) also contains definitions for three categories of "goods" for the purpose of the statute: "consumer goods", "inventory" and "equipment". Goods are categorized based on their use by the debtor, rather than their inherent

characteristics: *Merchant Growth BCSC* at para. 35. “Consumer goods” is defined as meaning “goods that are used or acquired for use primarily for personal, family or household purposes”. “Inventory” is defined as meaning goods that are:

> (a) held by a person for sale or lease, or that have been leased by that person as lessor,
>
> (b) to be furnished by a person or have been furnished by that person under a contract of service,
>
> (c) raw materials or work in progress, or
>
> (d) materials used or consumed in a business;

“Equipment” is a catch all (or residual) category, and is defined as meaning “goods that are held by a debtor other than as inventory or consumer goods”.

[16] Section 1(4) provides that, unless otherwise provided in the *PPSA*, “the determination whether goods are consumer goods, inventory or equipment must be made as of the time the security interest in the goods attaches”.

[17] Part 5 of the *PPSA* address the rights and remedies which arise on default. Section 55(3) makes clear that, except as provided in s. 58(3) (which is inapplicable on this application) and in s. 67, the rights and remedies in Part 5 are cumulative. On this application, ss. 55(4) and (5) are also relevant:

> (4) Sections 58 (3), 59 (7) (f), 62 (1) (b) and (2) and 67 do not apply if, at the time the security interest in the goods attached,
>
> > (a) each debtor having rights in the goods was a corporation, a partnership of corporations or a joint venture of corporations, or
> >
> > (b) all the goods were used primarily, or acquired for use primarily, for the purposes of an artificial body.
>
> (5) Subsection (4) does not affect the definition of "consumer goods".

[18] Section 67 of the *PPSA* provides certain exceptions to the rights of a secured party with respect to collateral which is classified as consumer goods. It is commonly described as a “seize or sue” provision. It is the provision at the heart of this application. The relevant portions of s. 67 provide:

> **Rights and remedies: consumer goods**

> 67 (1) Subject to section 58 (3), if a debtor is in default under a security agreement that provides for a security interest in consumer goods, the secured party may
>
> (a) exercise the secured party's rights as provided in section 58,
>
> (b) proceed as provided in section 61,
>
> (c) accept surrender of the goods by the debtor, or
>
> (d) subject to the terms of the agreement, bring action to recover a judgment or take proceedings to obtain a certificate under the *Creditor Assistance Act* against the debtor.
>
> …
>
> (6) If a secured party proceeds under subsection (1) (d) and, as a result of legal proceedings taken to enforce a judgment against the debtor or proceedings to enforce a lien against the goods referred to in subsection (1), the goods are seized and sold and the secured party receives money or other value as a result of the proceedings, the right of the secured party to recover under the judgment against the debtor or against a guarantor of or indemnitor with respect to the debtor's obligations under the security agreement is limited to the gross amount realized from the sale of the goods referred to in subsection (1) under the proceedings.
>
> …
>
> (10) If the secured party brings an action or takes proceedings under subsection (1) (d),
>
> (a) the security interest in the goods referred to in subsection (1) is extinguished, and
>
> (b) the secured party must discharge any registration relating to the security interest not later than one month after the exercise of the rights.
>
> [Emphasis added.]

[19] In 2024, the Court of Appeal addressed s. 67 in *Merchant Growth BCCA*. In that case, the debtors were a brother and sister who acquired a logging truck. They signed a rental agreement with Merchant Growth Asset Financing Ltd. (“Merchant Growth”), and also a security agreement which listed certain property owned by the brother, Daryl Pyke, including a motorcycle, as collateral for the performance of their obligations under the rental agreement. The security agreement expressly provided the collateral was not consumer goods. The defendants defaulted, and Merchant Growth seized two pieces of collateral, including the motorcycle. The issue at the summary trial was whether the motorcycle was a “consumer good”, such that the “seize or sue” provision of the *PPSA* was engaged, with the result that the debtors’

outstanding obligations under the rental agreement were extinguished: *Merchant Growth BCSC* at para. 29.

[20] Notwithstanding the security agreement expressly provided the collateral, including the motorcycle, was not consumer goods, the debtors provided affidavit evidence to the contrary on the summary trial. This evidence included that Mr. Pyke had purchased the motorcycle in 2017 as a way of relieving stress and having fun in his downtime: *Merchant Growth BCSC* at para. 20. He also deposed he could not recall anyone telling him the collateral was not allowed to include consumer goods.

[21] At the summary trial, Justice Horsman (as she then was) concluded that the security agreement in question expressly excluded the collateral as consumer goods, and the defendants could only succeed by overriding the terms of that agreement. She concluded that their attempt to do so was not consistent with either the terms of the security agreement or the *PPSA*, and she found Merchant Growth was entitled to judgment*: Merchant Growth BCSC* at paras. 61 to 63.

[22] However, on appeal, this decision was overturned. Justice Groberman, writing for a unanimous Court, focussed on s. 56(3) of the *PPSA*, which had not been argued on the summary trial. That provision provides that:

> (3) Except as provided in subsection (4) and sections 17, 17.1, 59, 60 or 62, no provision of section 17, 17.1 or 58 to 69, to the extent that it gives rights to the debtor or imposes obligations on the secured party, can be waived or varied by agreement or otherwise.
>
> [Emphasis added.]

He reviewed the evidence of Mr. Pyke with respect to his purpose in purchasing the motorcycle, and the manner in which he used it, and noted “[t]his evidence is unchallenged, and supports the position that the motorcycle is a consumer good”: *Merchant Growth BCCA* at para. 20. He determined:

> [26] Regrettably, I am unable to agree with the judge’s analysis. Section 56(3) of the *PPSA* specifically states that parties cannot contract out of the provisions of s. 67. Determining whether a security agreement provides for a security interest in consumer goods, therefore, requires more than a simple perusal of the contractual language. Section 56(3) does not allow parties to

> contract for remedies that are prohibited by the statute. They cannot, with a nudge and a wink, use contractual language to state that consumer goods are other than consumer goods.
>
> [27] That does not mean that the debtor's representations will be irrelevant. As Merchant Growth argued, the debtor is in a privileged position when it comes to identifying property as a "consumer good" or as "equipment". A clear representation by the debtor that an item is not a consumer good, if reasonably relied on by the secured party, may form the basis for an estoppel. Where it does, the debtor will be stuck with its representation, and will be precluded from relying on evidence that contradicts it.
>
> [28] Had the judge analysed the issue in this case as one concerned with estoppel rather than with contractual interpretation, she would not have reached the conclusion that she did. There is, in the circumstances of this case, no clear representation by the Pykes to the effect that the motorcycle was other than a consumer good.

[23] Justice Groberman expressly noted that the statute strives for commercial certainty and predictability but that it also contains provisions (such as s. 67) which "appear to have a consumer-protection function": *Merchant Growth BCCA* at para. 33. Those provisions (including s. 67) "cannot be judicially excised from the statute — like all other legislation, they are to be 'construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects' in accordance with s. 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238": at para. 33.

[24] While Groberman J.A. noted that secured parties are entitled to demand clear representations by debtors at the time security agreements are entered into, such as "I certify that the following items of collateral are not goods used or acquired primarily for personal, family or household purposes", he noted Merchant Growth had made no efforts to determine the nature of the goods before entering into the security agreement. He also noted that the motorcycle in question is much more commonly seen as a "consumer good" than as "equipment" and was clearly not "inventory": *Merchant Growth BCCA* at paras. 34 to 35. He concluded:

> [36] It is not, in my view, unfair to a lender to expect it to take steps, before taking security, to ascertain the nature of that security. A debtor cannot unilaterally change the categorization of an asset at the time of default. Section 1(4) of the *PPSA* provides that, in the absence of a more specific statutory provision, the determination of whether a piece of property is a consumer good is determined at the time the security interest attaches.

[25] He allowed the appeal, declared the motorcycle was a consumer good, and concluded that as a result of its' seizure, Merchant Growth was precluded by s. 67 of the *PPSA* from pursing further legal action to recover damages for the defendants' default under the rental agreement: *Merchant Growth BCCA* at para. 37.

IV. EVIDENTIARY OBJECTIONS

[26] On this application, unlike in *Merchant Growth BCSC*, the defendants have chosen to provide no affidavit evidence. As I understand their argument, Ms. Rutledge and Falco say it is not up to them to prove the nature of the Collateral as it was at the time the security interest in the Collateral attached; rather, they say it is Summit's evidentiary burden, which Summit has failed to meet.

[27] Ms. Rutledge and Falco say if they had filed an affidavit, it would be self-serving and so it would be inadmissible on that basis: *British Columbia Investment Management Corporation v. Canada (Attorney General),* 2016 BCSC 2554 at para. 7; *Lu v. Shen,* 2020 BCSC 490 at para. 118*.* I do not accept this broad assertion in these circumstances. As in *Merchant Growth BCCA*, the evidence of the owner of the Collateral, as to the use of the specific good at the time the security interest attached, is relevant to the determination this Court must make in this matter. While Horsman, J. noted that "subjective state of mind or intent of each party is not a relevant consideration" (*Merchant Growth BCSC* at para. 47), Groberman, J.A. clearly accepted such subjective evidence as relevant. I find such evidence would have been admissible, and highly relevant, evidence.

[28] The defendants also argue that the entirety of the first affidavit of Allan MacKenzie sworn July 19, 2023 (the "First Affidavit"), and his fourth affidavit sworn May 22, 2024 (the "Fourth Affidavit"), are inadmissible. Summit agrees that paras. 10 to 12 of the Fourth Affidavit are either inadmissible opinion evidence or irrelevant, and I strike those portions of that affidavit from the record.

[29] However, the balance of the two affidavits set out the details of the Loan Agreement and the CSA, the registration in effect for the Collateral, and the executed Transfer Documents prepared by Summit, Ms. Rutledge and Falco for the

Collateral. Mr. MacKenzie is a director of Summit, and in that capacity attaches the relevant documentation that underlies the transaction in issue. I accept he has properly attached documentary evidence relevant to the transaction in question. Further, I cannot accept the defendants' argument that the attached exhibits are not evidence of the truth of their contents and so are inadmissible. While I accept the attached documents to Mr. MacKenzie's affidavits, in particular the Transfer Documents, are hearsay documents, they are not tendered for the truth of their contents.

[30] Rather, I accept that Mr. MacKenzie, in his First Affidavit, attaches the documents Summit entered into to effect the agreement with Mr. Rutledge relating to the Loan Agreement, including the documents Falco and Ms. Rutledge provided, and executed, pursuant to the CSA. His affidavit properly details the steps in the transaction and attaches the executed documents. While I note that para. 13 of the First Affidavit is hearsay evidence, namely, Mr. Rutledge's advice to Mr. MacKenzie (on behalf of Summit) on the background as to why he needed the loan and Mr. Rutledge's assurances to Mr. MacKenzie, I accept that this evidence is not tendered for the truth of its' contents but rather is narrative to understand Mr. MacKenzie's state of mind, and is an explanation for the steps taken by the parties to finalize their agreement. I also accept para. 13 as narrative as evidence of Mr. MacKenzie's involvement with Mr. Rutledge when the parties negotiated the final terms of the agreement.

[31] Turning to Mr. MacKenzie's Fourth Affidavit, Mr. Mackenzie attaches as Exhibit "A" a copy of the registration presently in effect for the Collateral through the British Columbia Personal Property Registry. The defendants accept that s. 48(2) of the *PPSA* specifically provides that a person may request a search in the name of a debtor, and such printed search results that purport to be issued by the registry is receivable in evidence as proof of its contents (absent evidence to the contrary). There is no evidence to the contrary, and I find the copy of the registration is properly admissible.

[32] Mr. Mackenzie also attaches as Exhibits “B” through “F” copies of the Transfer Documents: the materials prepared by Summit, Ms. Rutledge and Falco, which provided for a transfer of the Collateral from Ms. Rutledge and Falco to Summit in the event of a breach of the repayment terms by Mr. Rutledge. The defendants argue that all of the exhibits attached to the Fourth Affidavit are inadmissible, because Mr. MacKenzie has failed to provide evidence they were effective as of the date the CSA was entered into, and he has failed to set out his belief that the contents of the exhibits are true and the grounds for that belief: *L.M.U. v. R.L.U.*, 2004 BCSC 95 at para. 32; *The Owners, Strata Plan VR29 v. Kranz and others*, 2020 BCSC 2171 at para. 35; *Clough Pacific Joint Venture and PPM Civil Contractors, ULC v. AECOM Canada Limited*, 2025 BCSC 164 at para. 47.

[33] I must respectfully disagree. These were documents prepared to implement the transaction, all executed by the relevant parties. I accept these exhibits as evidence that Ms. Rutledge and Falco advised Summit, at the time the transaction was entered into, that these documents were effective. While I accept the drafting of the affidavit could have set out more clearly the source of Mr. MacKenzie’s knowledge, it still identifies him as a director of Summit who interacted with Mr. Rutledge at the time the transaction was agreed to. As such, his Fourth Affidavit and the attached exhibits are admissible, as evidence that the Collateral was posted by Ms. Rutledge and Falco to secure the obligation of Mr. Rutledge under the Loan Agreement. To be clear, the attached exhibits are evidence that each of Mr. Rutledge, Ms. Rutledge and Falco provided and executed the attached documents to effect the transaction. I do not accept that Mr. MacKenzie’s affidavit fails to identify the source of the information or his belief in it: *Albert v. Politano*, 2013 BCCA 194 at para. 22.

[34] Accordingly, I accept both Mr. MacKenzie’s First and Fourth Affidavits and their attached exhibits, into evidence, except I strike paras. 10 to 12 from his Fourth Affidavit. The use and weight I put on these affidavits is addressed below.

V. ISSUES

[35] Summit frames the issue broadly as whether Summit can avail itself of the remedies associated with the status of a secured credit under both the *PPSA* and the terms of the CSA, or whether it has lost that right pursuant to the *PPSA*; specifically, if any or all of the Collateral are properly consumer goods, and so are caught by s. 67(10) of the *PPSA*.

[36] Narrowly, Summit says the two specific issues which I must determine are:

a) whether any or all of the goods put up as the Collateral are “consumer goods” or “equipment” with the definition of s. 1 of the *PPSA*; and

b) whether Summit retains the right to pursue Ms. Rutledge and Falco for the Collateral, notwithstanding its judgment against Mr. Rutledge, pursuant to s. 67(10) of the *PPSA*.

[37] The issue which clearly arose during oral argument is who bears the burden of proving the nature of the Collateral. The defendants say Summit bears that burden and has failed to satisfy it. Summit says it does not bear that burden; rather, the *PPSA* is such that if this Court cannot determine the Collateral consists of “consumer goods” or “inventory”, then the Collateral must fall into the residual category of “equipment”. If that is so, Summit says it is entitled to the declaration it seeks.

VI. ANALYSIS

[38] Ms. Rutledge chose not to file any evidence on behalf of either herself or Falco as to the use to which she or Falco put any of the Collateral. In these unusual circumstances, the only evidence to assist the Court are the terms of the CSA, the uncontested background to the loan itself, and the admissible evidence tendered by Summit.

[39] Although the defendants argue that there is nothing in the CSA that shows who owned what, I am not persuaded that is of any significance. As part of the

overall agreement, Ms. Rutledge and Falco entered into the CSA and signed the undated Transfer Documents for each piece of the Collateral. Although these documents are not evidence of actual legal ownership at the time the security interest attached; I accept these documents as evidence of what Ms. Rutledge and Falco advised Summit as to their ownership. That is, the transfer form signed in the name of Falco can be taken as evidence that Summit was advised the asset in question was owned by Falco; and the same for those forms signed by Ms. Rutledge. Summit may rely upon these documents as evidence of what they were advised by Ms. Rutledge and Falco, as part of the strength of their guarantee for the loan obligation under the CSA.

[40] I will first address the collateral put forward by Falco; namely, the 2014 Ford Mustang Shelby automobile (the "Shelby"). The CSA defines Falco and Ms. Rutledge as the "Grantor" of the Collateral. Each of Falco (by Ms. Rutledge, as President) and Ms. Rutledge (in her personal capacity) executed the CSA as a "Grantor". Schedule "A" of the CSA, with the heading "List of Specific Equipment", identifies the Shelby as one of the assets comprising the Collateral. Finally, Ms. Rutledge, noting her capacity as President of Falco, executed an Insurance Corporation of British Columbia Transfer/Tax Form for the Shelby, to Summit, and provided an Owner's Certificate of Insurance and Vehicle Licence showing Falco was the Registered Owner.

[41] Section 55(4)(a) of the *PPSA* clearly provides that s. 67 does not apply if, at the time the security interest in the goods attached, each debtor having rights in the good was a corporation.

[42] This then raises the question of whether Falco is a "debtor" for the purpose of s. 55(4)(a) of the *PPSA*. Pursuant to the definition of "debtor" in s. 1, as Mr. Rutledge owed the payment obligation, and the owner of the Shelby was a different person, then (f) applies, which states:

> (f) if the person referred to in paragraph (a) and the owner of the collateral are not the same person,

> (i) if the term debtor is used in a provision dealing with the collateral, an owner of the collateral,
>
> (ii) if the term debtor is used in a provision dealing with the obligation, the obligor, and
>
> (iii) if the context permits, both the owner and the obligor.

[43] Counsel searched diligently for jurisprudence considering ss. 55(4) and 55(5) and were unable to find any. This matter is one of statutory interpretation at first instance — and this provision must be construed as being remedial and must be given such construction and interpretation as best ensures the attainment of its objects: *Merchant Growth BCCA* at para. 33.

[44] I cannot accept the defendants' argument that all three subsections must apply, and so Falco is not captured as a debtor for the purpose of the *PPSA*. Rather, the provision clearly provides alternative scenarios, whether the term debtor is dealing with ownership of collateral, or with the obligation of the debtor. In these circumstances, Falco has represented it is the owner of the Shelby, and it has posted that automobile as one piece of the Collateral. The reasonable interpretation of the definition of "debtor" is that Falco, as the owner of the Shelby, separate from Mr. Rutledge, who owes the obligation under the Loan Agreement, falls under (f)(i) and so is a "debtor" for the purposes of the *PPSA*. Accordingly, pursuant to s. 55(4)(a), s. 67 does not apply, as at the time the CSA was entered into, the entity having rights in the Shelby was a corporation.

[45] Further, for the reasons set out below, I conclude the Shelby falls into the residual category of equipment. Accordingly, s. 55(5) is of no application.

[46] I will next address the nature of the Collateral, put forward by Falco and Ms. Rutledge. Again, Falco and Ms. Rutledge executed the CSA as a "Grantor". Schedule "A" of the CSA, with the heading "List of Specific Equipment", identifies the Collateral. Ms. Rutledge and Falco failed to put forward any affidavit evidence whatsoever regarding their use of any of the Collateral as at the time the security interest in the Collateral attached.

[47] The defendants' counsel described this case as being about "smarties", describing the Collateral as a "box of mixed-up smarties". He characterized it as Summit's obligation to prove what the box of smarties contains, and whether any of the assets comprising the Collateral are, in fact, consumer goods. His position is Summit has failed to do that, and their application must fail.

[48] He points to para. 13(b)(i) of the notice of application, and argues the phrase that the goods in question "may appear to meet the definition of "consumer goods" in the *PPSA*, is properly an admission. I do not accept this to be an admission from Summit that the Collateral is comprised of consumer goods; rather, it is merely an acknowledgement they may "appear" to meet that definition, and that will be a factor for my consideration.

[49] Rather, the issue is whether I can determine if any, or all, of the Collateral are consumer goods. Given the decision of the defendants not to adduce any evidence, I must consider the evidence I do have:

a) the loan documents, including the CSA; and

b) the Transfer Documents.

I may also consider, as Groberman J.A. noted in *Merchant Growth BCCA*, how assets are "more commonly seen": at para. 35.

[50] I cannot accept the defendants' argument that I cannot determine who, in fact, owned each asset. Ms. Rutledge and Falco each made representations, through the Transfer Documents, by way of making clear who had to execute the legal transfer documents (Falco signed for the Shelby, and Ms. Rutledge, in her personal capacity, for the other assets).

[51] The only evidence I have as to the parties turning their mind to the nature of the Collateral is Schedule "A" in the CSA, which is headed "List of Specific Equipment". There is nothing within the CSA itself which can be seen to be a representation of Ms. Rutledge or Falco as to the nature of the Collateral. In and of

itself, the heading of the Schedule is insufficient to conclude that the Collateral is, in fact, equipment. Likewise, the "common usage" of each asset is insufficient to conclude the assets are consumer goods.

[52] The CSA, in particular clause 5, does clearly indicate that Summit's rights and remedies upon default are cumulative: that their rights and remedies as against Mr. Rutledge are in addition to any rights Summit may have with respect to the Collateral.

[53] While *Merchant Growth BCCA* provides guidance to the analysis, it is distinguishable upon its facts. First, unlike in that case, I have no evidence from the owner or user of the Collateral as to the use they put those assets. There is nothing upon which I could conclude the Collateral is used for "personal, family or household purposes". In that context, notwithstanding they may appear to be consumer goods in the normal course, I cannot conclude the Collateral is comprised of consumer goods. The fact they may, in the normal course of events, be used for a consumer purpose, is insufficient in and of itself.

[54] Further, I cannot accept the defendants' argument that the burden of proof is upon Summit to prove, on a balance of probabilities, that the Collateral is not comprised of consumer goods. There is no presumption within the *PPSA* that goods are presumed to be consumer goods. Rather, the statutory scheme set out in the *PPSA* establishes that unless goods can be classified as consumer goods or inventory, they are then categorized as equipment. Equipment is clearly the residual category, defined in the negative. As noted by Professor Richard H. McLaren in *The 2010 Annotated British Columbia Personal Property Security Act*, (Toronto: Carswell, 2010) at 20:

> **"equipment"**
>
> This definition identifies one of the three subcategories of Goods (see also Consumer Goods and Inventory). The subcategory is a residual one, as Goods that do not fall within the other two categories are classed as Equipment.
>
> The categorization of Goods as Equipment does not depend on any inherent characteristic of the Goods; it is based on the use of the Goods. The same

> item may be used by the Debtor at the relevant time. For example, a computer may be Consumer Goods if it is used by a student to prepare for school, Equipment if it is used in a business to prepare invoices, and Inventory if it is held in stock by a business that sells computers. Generally, it is the Debtor's use that is important. For example, bedroom furniture owned by a Debtor hotelier may be used for the personal purposes of hotel guests, but to the Debtor hotelier the furniture is Equipment.

[55] I find there is insufficient evidence tendered before this Court for me to conclude the Collateral is comprised of consumer goods. I do not accept the defendants' argument that Summit must prove that the Collateral is not comprised of consumer goods; that argument ignores both the scheme of the *PPSA* and the representations made by Falco and Ms. Rutledge that they owned the respective pieces of Collateral and posted it as security for the Loan Agreement. Given the defendants' choice not to tender any evidence of either Falco or Ms. Rutledge's use of each asset as at the time the security interest attached, I must conclude that there is insufficient evidence tendered upon which I can conclude the Collateral was comprised of either consumer goods or inventory.

[56] As I cannot find that any of the Collateral, at the time the security interest attached, was used by either Falco or Ms. Rutledge as consumer goods, then those goods must be classified as equipment, as the residual category of the *PPSA*. Accordingly, the CSA is not a security agreement which provides for a security interest in consumer goods within the meaning of s. 67 of the *PPSA*, and the plaintiff's rights and remedies to the Collateral, pursuant to the CSA, are not limited by s. 67.

VII. CONCLUSION

[57] Summit adjourned the relief it sought in Part 1, paras. 1 and 2 of its' notice of application, and it is entitled to the declaration it seeks in para. 3, and to its' full indemnity of the costs of this application.

[58] I am indebted to counsel for their submissions and assistance in addressing this issue.

"Blake J."