

Equipment Lessors vs. Insolvent Lessees: The Battle Over the Stay

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Timothy Dunn of Blaneys recently secured a key win for equipment lessors navigating insolvency proceedings. The court's decision provides important clarifications on how a stay of proceedings affects the return of leased equipment when lessees file for bankruptcy under the *Bankruptcy and Insolvency Act* ("BIA") or for protection from creditors under the *Companies' Creditors Arrangement Act* ("CCAA").

In [Walgre Transport Inc. \(Re\), 2025 ONSC 7143](#), TD Equipment Financing ("TDEF") leased eight trucks and 41 trailers ("Leased Equipment") to Walgre. Pursuant to the leases, TDEF remained the legal owner of the Leased Equipment.

Walgre first defaulted on payments in May 2025. In June, TDEF sent Walgre a letter terminating the leases, demanding the accelerated balance of about \$3 million owing under the leases, and requiring the immediate return of all the Leased Equipment.

TDEF's letter also included a notice under s.63(4) of the *Personal Property Security Act* ("PPSA"). This notice informed Walgre of TDEF's intention to dispose of the Leased Equipment if Walgre failed to pay the amounts due and redeem the equipment by the prescribed deadline later that month. Walgre did not do so.

Instead, Walgre filed a Notice of Intention to make a proposal ("NOI Proceedings") under the *Bankruptcy and Insolvency Act* ("BIA"). This triggered an immediate stay of all proceedings against Walgre under s.69(1) of the *BIA* (the "Stay"). A stay normally prohibits creditors from continuing to take enforcement steps against a debtor during the stay period.

Notwithstanding the NOI Proceedings and the Stay, TDEF continued to make demand on Walgre to disclose the location of, or to voluntarily surrender, the Leased Equipment. Walgre knew the location of the Leased Equipment but refused to disclose it to TDEF. Walgre eventually voluntarily surrendered three trucks to TDEF, but it deemed the remainder of the Leased Equipment to be essential to its continuing business and did not return it.

This set the stage for the dispute between TDEF and Walgre: Did the Stay prevent TDEF from taking possession of the Leased Equipment?

The hearing went before Justice Kimmel on the Toronto Commercial List of the Superior Court of Justice. Justice Kimmel held that the Stay did not apply to TDEF and granted an order of possession to TDEF over the remaining Leased Equipment.

In reaching this result, the Court confirmed that the terminations of the equipment leases under TDEF's demand letters had crystallized before the commencement of Walgre's NOI Proceedings and the Stay. Once the leases were terminated, Walgre had no legal right to use or possess the Leased Equipment, as it derived this right solely by virtue of the leases, which were no longer in force.

A stay under the *BIA* aims to preserve the status quo. As of the date the Stay took effect, the status quo was that the leases had already been terminated. The *BIA* could not resurrect them. The relevance of the expiry of the *PPSA* notice period was that the lessee has the legal right of redemption under Part V of the *PPSA*, and TDEF could not legally sell the equipment until that right of redemption period had expired. Justice Kimmel held as follows:

- TDEF's termination of the Lease Agreements in this case was not a continuing remedy, it was a final remedial step taken prior to the NOI Notice... Once the notice periods lapsed, TDEF's enforcement action was complete. Its further remedies (e.g., for damages) may be stayed, but its absolute right, as the owner, to the use and possession of the Leased Equipment pre-existed the *BIA* Stay.

The Court also drew a crucial distinction between a lessor exercising ownership rights versus a secured creditor exercising enforcement remedies. Even though Part V of the *PPSA* treats lease-financing arrangements similarly to security interests for registration and notice purposes, this does not transform the lessor's ownership into mere security over property of a debtor. TDEF was entitled to the return of its equipment because, unlike in a situation where a lender has a security interest/mortgage over the debtor/borrower's property, TDEF owned the Leased Equipment and was entitled by its lease terms to have the equipment returned to it. Once the leases were terminated, TDEF was exercising its rights as owner, not as a secured party taking enforcement action.

That said, the timing of the steps taken by both parties was critical in determining the outcome. The Court confirmed that had Walgre filed an NOI prior to TDEF terminating the leases, TDEF's right to repossess the Leased Equipment would likely have been stayed. Although not directly decided, if the lessee had filed a NOI after termination but before expiry of the *PPSA* notice, Justice Kimmel's decision supports the argument that Walgre would not have been entitled to use the equipment as part of any restructuring process, but that it would have had the legal right of redemption, meaning the equipment could still be purchased from TDEF for the full amount of the lease debt if Walgre could have come up with the funds.

Key Takeaways

This decision reinforces the importance of timing in equipment lease disputes and underscores the distinction between ownership rights and security interests in the insolvency context. The case provides both equipment lessors and lessees with the following key takeaways.

If you are an equipment lessor:

1. Ensure you are complying with both contractual and statutory procedure. TDEF's success was partly attributable to its meticulous compliance with all statutory notice requirements and following the terms of its leases.
2. Review the terms of your leases, especially the ownership, default and remedial provisions to ensure that you know your options and the process to be followed. If your leases are unclear or are missing key information, then it may be time to update them.
3. When lessees default under a lease, it may require a harder look at whether it makes sense to terminate the lease. If you are concerned about the lessee filing under the *BIA* (or *CCAA*), then beginning your termination efforts before they have a chance to file may make for a smoother process for the return of your equipment.
4. If you have terminated the lease, and the lessee files under the *BIA* (or *CCAA*) and refuses to return your equipment, then this decision should assist you in arranging for the return your equipment without conditions or hassle.

If you are an equipment lessee:

1. You should understand that the *PPSA* redemption right is a genuine opportunity to retain equipment. The court noted that if Walgre had wanted to avoid TDEF exercising its enforcement rights, it could have paid the redemption amount.
2. For companies facing financial difficulty, the timing of an insolvency filing can be critical. Filing under the *BIA* or *CCAA* before a lessor terminates your equipment leases may help preserve access to essential equipment during a restructuring.
3. Walgre knew where the Leased Equipment was located but refused to tell TDEF. The Court viewed this as evasion, which tipped the equities in TDEF's favour. The lesson: Evasive conduct during repossession disputes can undermine a lessee's position if it later seeks assistance from the court.

How Blaneys Can Help

Blaneys has extensive experience and expertise to assist equipment lessors and lessees alike. Our team can assist with equipment lease and finance contract drafting and negotiation as well as enforcement, in and outside of the bankruptcy and insolvency contexts.

Please contact [Stephen Gaudreau](#) or [Timothy Dunn](#) for any assistance you may require.

