

interests created by the financing agreements. His arguments were rejected in the High Court and judgment was entered in favour of the respondent.¹

[3] The applicant appealed to the Court of Appeal, which dismissed his appeal.² He now seeks leave to appeal to this Court against the decision of the Court of Appeal.

[4] The essence of the applicant's argument in the Court of Appeal was that each of the financing agreements between him and the respondent was a "mortgage over goods". That argument was rejected by the Court of Appeal. If it had been accepted, the applicant argued that the respondent had not complied with the notice requirements of the Property Law Act 2007, which, he said, applied because of the operation of s 114(4) of the Personal Property Securities Act 1999 (PPSA).

[5] Section 114 provides for the giving of notice of the proposed sale of collateral other than consumer goods (at the relevant time, the notice requirements relating to consumer goods were those set out in the Credit (Repossession) Act 1997). Section 114(4) of the PPSA provides an exception to the notice requirements under s 114. It applies where the security interest is created or provided for by a mortgage over goods and requires that the notice comply with ss 128 to 136 of the Property Law Act 2007, rather than s 114 of the PPSA.

[6] The Court of Appeal reviewed the documentation relating to the sale of the vehicles to the applicant and the financing agreements between the applicant and the respondent. It concluded that the security arrangements between the applicant and the respondent were not a mortgage over goods so s 114(4) of the PPSA did not apply.

[7] The applicant argues that the application of s 114(4) to the documentation between the respondent and the applicant in this case gives rise to a matter of commercial significance, though there is no elaboration on that statement in the

¹ *Mercedes-Benz Financial Services New Zealand Ltd v Conway* [2016] NZHC 1896 (Fogarty J).

² *Conway v Mercedes-Benz Financial Services New Zealand Ltd* [2017] NZCA 463 (Clifford, Simon France and Toogood JJ).

submissions filed on behalf of the applicant.³ The respondent takes issue with that, on the basis that the issue before the Court of Appeal depended on the documentation between the parties. The respondent also argues the outcome of the appeal would be unlikely to change the outcome of the case.

[8] We accept that the notice requirements under s 114 of the PPSA may give rise to a point of commercial significance.⁴ But we accept the respondent's submission that the issue in each case will be largely governed by the terms of the security arrangements between the parties. We do not see this case as an appropriate one to address the point given that its resolution is unlikely to affect the ultimate issue of the applicant's obligation to pay the respondent the amounts owing under agreements pursuant to which the respondent provided credit to the applicant.

[9] The application for leave to appeal is dismissed.

[10] The applicant must pay costs of \$2,500 to the respondent.

Solicitors:
Simpson Western, Auckland for Respondent

³ The notice of application for leave to appeal raised only the point about the application of s 114(4), but in submissions the applicant raised a number of consequential issues. As these were not dealt with by the Court of Appeal and were not raised in the notice of appeal, we do not engage with them.

⁴ Senior Courts Act 2016, s 74(2)(c); Supreme Court Act 2003, s 13(2)(c).