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Docket: CI 18-01-17977
(Winnipeg Centre)
Indexed as: William Frank Ralph O/A Motorwerks et al. v.
The Manitoba Public Insurance Corporation
Cited as: 2023 MBKB 116

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

WILLIAM FRANK RALPH O/A MOTORWERKS, AND NADINE DAWNE CABAK RALPH,	)	William Frank Ralph Nadine Dawne Cabak Ralph on their own behalf
plaintiffs,	)	
- and -	)	
THE MANITOBA PUBLIC INSURANCE CORPORATION,	)	Anthony L. Guerra Andrew W. Johnson for the defendant
defendant.	)	
	)	Judgment Delivered: July 14, 2023

GRAMMOND J.

INTRODUCTION

[1] The plaintiffs' claim relates to the total loss (the "Loss") of a 2009 Dodge Ram Truck (the "Truck"), which was damaged in a tornado in rural Manitoba in August 2018. At the time of the Loss, a dealers' number plate (the "Plate") was affixed to the Truck. The defendant denied coverage for the Loss on the basis that the use of the Plate at the material time did not comply with applicable legislation.

BACKGROUND

[2] The plaintiff William Frank Ralph ("Mr. Ralph") has carried on business as a "dealer", defined in s. 1(1) of ***The Drivers and Vehicles Act***, C.C.S.M. c. D104, (the "***DVA***") since 1998. He obtained the Plate in the course of his business as a dealer, which he operates as a sole proprietor.

[3] The plaintiff Nadine Dawne Cabak Ralph ("Ms. Ralph") purchased the Truck on May 12, 2017. Mr. Ralph signed the bill of sale as a witness. Thereafter, the plaintiffs drove the Truck and Mr. Ralph listed it for sale in the fall of 2017, but it did not sell.

[4] On July 27, 2018 the plaintiffs drove the Truck to Ms. Ralph's family farm (the "Farm") to attend a family reunion. The plaintiffs remained at the Farm when the loss occurred on August 3, 2018.

ISSUES

[5] The issues in this case are:

a) Was the Plate properly affixed to the Truck, such that the Loss should have been covered by the defendant?

b) If so, what amount is payable to the plaintiff(s)?

THE LAW AND ANALYSIS

[6] I will comment first upon the applicable legislative framework.

[7] The defendant delivers a compulsory and universal automobile insurance program to Manitobans pursuant to a series of statutes, including the ***DVA***, ***The Manitoba Public Insurance Corporation Act***, C.C.S.M. c. P215, (the "***MPIC Act***")

and ***The Highway Traffic Act***, C.C.S.M. C. H60, (the "***HTA***"). The law is clear that the defendant must honour claims only where a damaged vehicle is insured properly.[1]

[8] Section 34 of the ***DVA*** sets out the applicable registration requirements for active vehicles in Manitoba, including a valid registration card and an appropriate number plate[2]. Pursuant to the legislative framework, most registration cards and number plates are required to be linked to a specific vehicle, but a dealers' number plate can be attached to multiple vehicles. More specifically, pursuant to s. 35(2) of the ***DVA***, when a dealers' number plate is properly affixed to a vehicle, that vehicle is deemed to be registered, and it becomes identified and insured as would a vehicle with a specific number plate.

[9] Pursuant to s. 64(5) of the ***DVA***, no person shall drive or tow a vehicle on a highway if a dealers' number plate is attached to the vehicle contrary to s. 64. In other words, s. 64 must be complied with to enable the proper use of a dealers' number plate. In this case, the legislative provision at issue is s. 64(2) of the ***DVA***, which provides as follows:

> **Use of dealers' number plates generally**
>
> 64(2) No person shall attach a dealer's number plate to a vehicle other than a vehicle that is
>
> (a) kept for sale by a dealer;
>
> (b) used in the promotion of sales by a dealer, including use of the vehicle by the dealer in his or her personal capacity or by an employee or agent of the dealer or by any person with the consent of the dealer or the dealer's employee; or

[1] ***Kotello v. West***, 2010 MBQB 113, at para. 6.
[2] The term "number plate" is defined at s. 1(1) of the ***DVA***, and is known commonly as a "licence plate".

> (c) in the dealer's custody and control to test or service it, or to move it from one place to another in connection with servicing or testing it.

[10] As such, s. 64(2) provides for three alternative circumstances in which a dealers' number plate can be properly attached to a vehicle. The question is whether the use of the Plate on the Truck at the time of the Loss complied with any of those options.

STATUTORY INTERPRETATION

[11] The defendant advised that s. 64(2) of the ***DVA*** has not been interpreted by or commented upon by the court previously. The law is clear that the court must interpret a statutory provision by applying the "modern principle", which provides that the words of a statute must be read "…in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament".[3] In other words, legislative intent can be understood only by reading the language chosen by the legislature with regard to the purpose of the legislative provision, in its entire context.

[12] In ***Thunderbird Holdings Ltd. v. Manitoba et al.***, 2013 MBCA 78, the court stated that the court must consider "…the words that are used and the context in which they are used, the scheme of the Act and both the object of the Act and the intention of the legislature in enacting the legislation" (at para. 36). In this case, I must consider the language of s. 64(2) of the ***DVA*** in the context in the overall legislative scheme, which as set out above includes the ***MPIC Act*** and the ***HTA***. In other words, I must

[3] ***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65, at para. 117, citing ***Rizzo & Rizzo Shoes Ltd. (Re)***, 1998 CanLII 837 (SCC), and other authorities.

interpret the legislation holistically (***R. v. Ibrahim***, 2015 MBCA 62, at para. 42, citing ***R. v. Stonefish***, 2012 MBCA 116).

[13] In addition, provincial legislatures have provided guidance by way of statutory rules that explicitly govern the interpretation of statutes and regulations. In Manitoba, s. 6 of the ***The Interpretation Act***, C.C.S.M. C. I80, provides that:

> **Rule of liberal interpretation**
>
> 6 Every Act and regulation must be interpreted as being remedial and must be given the fair, large and liberal interpretation that best ensures the attainment of its objects.

[14] The defendant argued that the purposes of the legislative insurance scheme in Manitoba include limiting the use of uninsured or unsafe vehicles in Manitoba, and limiting instances in which the owner of a vehicle cannot be identified.

[15] I have already referenced s. 34 of the ***DVA*** which sets out the applicable registration requirements for active vehicles in Manitoba. The ***DVA***[4] and the ***MPIC Act***[5] contain many other provisions relating to vehicle registration and insurance, including the documentation required to register a vehicle, the eligibility of registrants, the requirement to pay insurance premiums, the filing of an inspection certificate, and the prohibition on registration of hazardous or irreparable vehicles.

[16] On the strength of the legislative framework pursuant to which the defendant operates, I accept that the purposes of the scheme include limiting the use of uninsured or unsafe vehicles in Manitoba, and identifying the owners of vehicles.

[4] ss. 39, 40(6), 43, 44(2), 46(2), 67(3), and 107.
[5] ss. 35, 37 and 48.

[17] I will now consider the language of each of the sub-sections of s. 64(2) of the ***DVA***, and whether the Plate was properly affixed to the Truck at the time of the Loss.

a) <u>Section 64(2)(a) "kept for sale"</u>

[18] The plaintiffs testified that on or about September 1, 2017, they agreed that Mr. Ralph would sell the Truck for Ms. Ralph on consignment, through his business. Their agreement was not reduced to writing. From September to December 2017 the Truck was listed for sale online and was stored at Mr. Ralph's place of business in East Selkirk, Manitoba. It did not sell.

[19] In January 2018, Mr. Ralph experienced a serious medical issue as a result of which he underwent approximately six months of rehabilitation and was unable to work. Understandably, the Truck was not reposted for sale during that time, and no efforts were made to sell it. Ms. Ralph may have driven the Truck during that timeframe, and if she did so, the Plate was attached to the Truck. The plaintiffs' evidence at trial regarding the use of the Truck from January to June 2018 was vague.

[20] The Truck was driven approximately 6,500 kilometres after Ms. Ralph bought it and before the Loss was incurred. The plaintiffs did not keep records of when it was driven, by whom, or for what purpose, and they testified at trial that they could not remember those details.

[21] The defendant acknowledged that to comply with s. 64(2)(a) the Truck need not have been actively marketed, or advertised for sale at the time of the Loss. It submitted, however, that two general requirements must be met for that sub-section to apply: a vehicle must be in the physical possession of a dealer, and it must be in their

possession for the purposes of or with the intention of sale. The defendant acknowledged that a vehicle need not be owned by the dealer to be "kept for sale", and that a vehicle of which a dealer was a bailee or consignee could qualify.

[22] The plaintiffs argued that a vehicle can be "kept for sale" for an indeterminate length of time, and that a vehicle is "kept for sale" for as long as it is in a dealer's inventory. They also pointed to the French version of s. 64(2)(a) which includes the phrase "le commerçant garde le véhicule pour le vendre". The plaintiffs submitted that the use of the word "garde" is stronger than the English "kept", because it connotes holding an item for later use.

[23] The law is clear that the interpretation of bilingual statutes begins with a search to determine whether there is discordance between the English and French versions of the provision and, if so, whether a shared meaning can be found[6]. Where a provision may have different meanings in each language, the court has to determine whether the discrepancy is irreconcilable, whether one version of the statute is ambiguous, or whether one version contains broader language than the other[7].

[24] I accept that the meaning of the English word "kept" and the French word "garde" may not be identical, but in the context of s. 64(2)(a) I have concluded that there is a shared meaning. Both words mean to retain possession of, care for, or keep an item, and for the purposes of s. 64(2)(a), that item is a vehicle.

[6] ***5185603 Manitoba Ltd et al v. Government of Manitoba et al***, 2023 MBCA 47, citing ***R. v. S.A.C.***, 2008 SCC 47.

[7] In this case, discordance as between the English and French versions of the legislation was raised only with respect to s. 64(2)(a) of the ***DVA***.

[25] The word "for" explains why a dealer is keeping a vehicle, namely to sell it as indicated by the word "sale". I accept both the defendant's submission that a vehicle need not be actively marketed, or advertised for sale for s. 64(2)(a) to apply, and the plaintiff's submission that there is no pre-determined timeframe within which a dealer may affix a dealers' number plate under s. 64(2)(a).

[26] The phrases "kept for sale" and "le commerçant garde le véhicule pour le vendre" in s. 64(2)(a) mean that a dealer must have possession of a vehicle for the purposes of selling it, regardless of whether it is listed for sale or advertised at the material time. This interpretation reflects the context of the legislative framework and the grammatical and ordinary sense of the words used in both English and French.

[27] I will now consider whether the Plate was properly affixed to the Truck pursuant to s. 64(2)(a).

[28] The defendant argued that the Truck was not in Mr. Ralph's possession as a dealer at the time of the Loss, because it had not been consigned to him by Ms. Ralph.

[29] Although the plaintiffs did not execute a written consignment agreement, I have concluded that from September to December 2017, the Truck was "kept for sale" by Mr. Ralph in his capacity as a dealer, on consignment from Ms. Ralph. Both of the plaintiffs testified that they agreed to a consignment in early September 2017, and there is no evidence before me to the contrary. In addition, during that timeframe the Truck was stored at Mr. Ralph's compound and listed for sale.

[30] In my view, the circumstances in which the Truck was kept during that timeframe were no different than they would have been had Ms. Ralph consigned it to

an arms-length, third party dealer instead of her husband. I am prepared to infer that the same is true for the period from January 2018 to June 2018 while Mr. Ralph was unwell and recovering. More particularly, the evidence reflects that the Truck was often parked at his place of business during that time, and I accept that it was still on consignment.

[31] The issue is whether, at the time of the Loss in early August 2018, Mr. Ralph "kept" the Truck in his capacity as a dealer. The plaintiffs argued that the Truck was kept for sale, but the evidence of events on and after July 26, 2018 must be reviewed. More particularly, on July 26, 2018, Mr. Ralph sought a new certificate of inspection for the Truck because the previous one had expired. On July 27, 2018, he drove the Truck to a parts store to buy the tie rod end necessary to repair it. I accept that Mr. Ralph obtained the certificate of inspection and purchased the tie rod end in his capacity as a dealer, and for the purposes of readying the Truck for sale as required by s. 107 of the ***DVA***.

[32] On July 27, 2018, after purchasing the tie rod end, Mr. Ralph picked up Ms. Ralph and their son, and drove the Truck to the Farm, which was a two-and-a-half hour drive. The plaintiffs acknowledged that the Truck was being used personally at the time of the Loss, at least in part, because they had travelled to the Farm to attend a family reunion, and while at the Farm they drove the Truck for personal errands, as well as a hiking trip. I am satisfied that Mr. Ralph had the consent of Ms. Ralph to drive the Truck to the Farm on July 27, 2018, and to use it as described, but in my view he did so as her spouse and not as a dealer.

[33] I have considered a scenario in which the owner of the Truck was an arms-length consignment customer, and I have difficulty accepting that Mr. Ralph would have used that customer's vehicle to pick up his family, to travel for over two hours to a family farm for a gathering, to stay for several days, and to conduct personal errands. Clearly, using the Truck for those purposes was personal use, in the vein of a family vehicle. For these reasons, I do not accept that the Truck was "kept" for sale by Mr. Ralph in his capacity of a dealer at the time of the Loss. Certainly, the language of s. 64(2)(a) does not contemplate the use of a dealers' number plate by a dealer in any capacity other than that of a dealer, unlike s. 64(2)(b) which includes a reference to "personal capacity".

[34] I will add that throughout this process the plaintiffs seem to have failed to recognize the distinction between Mr. Ralph's role as a dealer, in which he was entitled to use the Plate pursuant to s. 64(2), and his role as the spouse of the owner of the Truck, Ms. Ralph. Pursuant to the legislation, Mr. Ralph could use the Plate only in his capacity as a dealer.

[35] Moreover, at times the plaintiffs seem to have failed to recognize the distinction as between them as individuals. Mr. Ralph alone filed the claim with the defendant relative to the Loss, even though he did not own the Truck. Similarly, Mr. Ralph initially filed this claim on his own behalf, and later amended it to include Ms. Ralph as a plaintiff. It is clear, however, that if any amount is awarded to be paid relative to the value of the Truck, Ms. Ralph as its owner is the sole proper claimant of that amount.

Mr. Ralph, as a dealer claiming to have kept the Truck on consignment at the time of the Loss, has no claim to its value.

[36] I have concluded that although the plaintiffs intended to sell the Truck prior to the Loss, it was not "kept" for sale at the time of the Loss in Mr. Ralph's capacity as a dealer. As such, the Plate was not properly affixed to the Truck at the time of the Loss pursuant to s. 64(2)(a) of the ***DVA***.

b) <u>S. 64(2)(b) "promotion of sales"</u>

[37] On or about May 16, 2018, Mr. Ralph purchased a 2017 Salem trailer (the "Trailer"), which he towed to the Farm using the Truck on June 29, 2018. The Trailer was then left at the Farm and posted for sale online. Mr. Ralph testified that one of the reasons the Truck was driven to the Farm on July 27, 2018 was so that the Trailer could be towed back to Winnipeg, because he had received expressions of interest to purchase it. One such expression of interest was tendered as an exhibit at trial.

[38] Mr. Ralph testified that at the time of the Loss, the Truck was parked near a public beach for greater exposure, though he did not assert that there was a "for sale" sign on it. He argued, however, that the Plate itself would have drawn attention to the Truck, and shown that it was or could be for sale. The plaintiffs did not advance any evidence to support that assertion, however, and as a result I cannot consider the impact of the Plate as a promotional tool.

[39] The plaintiffs argued that s. 64(2)(b) permitted the use of the Plate on the Truck, because as a dealer, Mr. Ralph could use the Plate in his personal capacity. The

plaintiffs also argued that if s. 64(2)(b) reflects a dual purpose as argued by the defendant, the details should have been in the dealer handbook, which is only source of information from which dealers operate aside from the legislation itself.

[40] The defendant argued that s. 64(2)(b) provides for a duality of purposes, in that personal use of a dealers' number plate must be paired with a promotional purpose. The defendant offered as examples a shuttle vehicle used by a dealer to transport customers, a vehicle loaned to customers, the use of a dealer's vehicle to deliver a prize or other donation by a dealer, and a vehicle that was not for sale but was used by a dealer for promotion through the presence of signage or decals. The defendant submitted that if s. 64(2)(b) does not include a promotional component, and any personal use would qualify for use of a dealers' number plate an absurdity would result, because those plates could then be affixed without restriction, which would be inconsistent with the object of the legislative framework.

[41] In considering the language of s. 64(2)(b) in the context of the legislative framework, I am mindful of the following quote from ***National Bank of Greece (Canada) v. Katsikonouris,*** 1990 CanLII 92 (SCC), [1990] 2 S.C.R. 1029, where the court stated:

> ... Whatever the particular document one is construing, when one finds a clause that sets out a list of specific words followed by a general term, it will normally be appropriate to limit the general term to the genus of the narrow enumeration that precedes it. But it would be illogical to proceed in the same manner when a general term precedes an enumeration of specific examples. In this situation, it is logical to infer that the purpose of providing specific examples from within a broad general category is to remove any ambiguity as to whether those examples are in fact included in the category.

[42] In addition, as stated in Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham, Ont.: LexisNexis, 2008), pp. 238 and 239:

> …not every enumeration of specifics that is linked to a more general term is meant to limit the scope of that general term. Sometimes the enumeration of specifics have a different purpose, such as removing doubt respecting the scope of the provision or expanding its scope by adding specifics that would not ordinarily be included in the general term. Sometimes the purpose is simply to provide examples. To determine why a given list of specifics has been included, the provision must be analyzed with care.
>
> It is arguable, however, that in carrying out such an analysis the fact that the list follows rather than proceeds the general description to which it is linked is not conclusive. The important factor here is not so much word order as the meaning of the words used to introduce the list of specific terms and to link them to the general category. The relationship between the specifics listed in the general categories is also important.
>
> La Forest J. [in *National Bank of Greece*] himself draws attention to these factors when he notes that the word "including" ("notamment" in French) is used to introduce the list of specifics in the standard mortgage clause. In legal drafting, he writes, "including" is normally used as a term of extension, "designed to enlarge the meaning of preceding words, and not to limit them". La Forest J. also analyzes the enumerated specifics and their relation to the general words.

[43] I note also the well-established principle to which I referred in ***Penner et al. v. Rural Municipality of Montcalm***, 2019 MBQB 122, citing ***Menzies v. MPIC et al.***, 2005 MBCA 97, and ***Stuart v. Toth***, 2011 MBCA 42, that every provision within legislation must be given a fair large and liberal interpretation, to yield a coherent, harmonious and logical result.

[44] In this case, it is clear that the legislature intended that use of a dealers' number plate in a dealer's personal capacity was <u>one way</u> in which sales could be promoted. If personal use by a dealer cannot constitute the "promotion of sales by a dealer", then what purpose does the word "including" serve in s. 64(2)(b)? I note that the legislature identified two other ways that a vehicle to which a dealers' number plate was affixed

could be used in the promotion of sales: by a dealer's employee or agent, or by any person to whom the dealer or their employee gives permission. Having said that, neither of those scenarios arose in this case.

[45] In my view, the various examples of dealers' number plate usage given by the defendant, namely a customer shuttle, a "loaner" vehicle, a delivery vehicle, or a vehicle with signage or decals, would constitute usage in the promotion of sales by a dealer, to which a dealers' number plate may be properly affixed under s. 64(2)(b). Having said that, none of those examples reflect the use of a vehicle in a dealer's personal capacity.

[46] In this case, the defendant argued that at the time of the Loss, the Truck was not at the Farm for promotional purposes, such as attending a dealer event or transporting a prospective customer. Rather, it was being use for personal purposes only. The defendant also argued that there is no evidence either that the Trailer was or would have been sold, such that there was an actual need to transport it back to Mr. Ralph's place of business.

[47] The only evidence tendered at trial relative to the plaintiffs' intention to tow the Trailer using the Truck when they left the Farm is that of the plaintiffs themselves. There is no contradictory evidence before me. I note that the plaintiffs used the Truck to tow the Trailer to the Farm, and in the absence of any other evidence, I accept that they intended to use it to tow the Trailer back to Mr. Ralph's place of business in East Selkirk when they left the Farm.

[48] Certainly, this use of the Plate was for a business related purpose, and I am satisfied that it was "in the promotion of sales", although I recognize that the sale being promoted was that of the Trailer and not of the Truck. Having said that, s. 64(2)(b) does not require that the sale being promoted is necessarily that of the vehicle to which a dealers' number plate is affixed, and I am satisfied that the promotion of the sale of the Trailer in this case by Mr. Ralph as a dealer was sufficient to engage the sub-section. As such, the Truck was being used in the promotion of sales by Mr. Ralph and the Plate was properly affixed to the Truck at the time of the Loss pursuant to s. 64(2)(b).

[49] I will add that even if I was not satisfied that the Truck was going to be used to tow the Trailer back to Mr. Ralph's place of business, I would have concluded that use of the Truck in his personal capacity with the Plate affixed constituted use in the promotion of sales pursuant to s. 64(2)(b). I reject the defendant's argument that use of a dealers' number plate by a dealer in their personal capacity, in the absence of the promotion of sales, would constitute an absurdity within the context of the legislative framework. In my view, the language of s. 64(2)(b) contemplates clearly that use of a dealers' number plate in their personal capacity is one way in which a dealer may promote sales. As I have stated, no evidence was advanced in this case to support the argument that use of a dealers' number plate is itself a promotional tool, but that lack of evidence does not impact my interpretation of the language of s. 64(2)(b).

[50] I will add that Mr. Ralph also testified that the Truck was driven to the Farm with the Plate affixed on July 27, 2018 in order that he could replace the tie rod end, and

that he did so on July 30, 2018. I will comment further upon this service work in the section below, but I am not satisfied that transporting a vehicle for servicing constitutes "the promotion of sales" as contemplated by s. 64(2)(b), because that task is contemplated clearly by the language of sub-section 64(2)(c).

c) s. 64(2)(c) "testing or servicing"

[51] As referenced above, on July 26, 2018, the Truck failed an inspection because the steering linkage required work. In particular, an outer tie rod end had to be replaced. On the same date, Mr. Ralph purchased the tie rod end and travelled to the Farm where he later replaced it a few days later. The plaintiffs argued that, as such, the Plate was properly affixed to the Truck under s. 64(2)(c).

[52] The defendant argued that for s. 64(2)(c) to apply, a dealer must have custody and control of vehicle to test or service it, or to move it for one of those purposes. The defendant also argued that the "custody and control" of a vehicle is distinct from a dealer "keeping" a vehicle pursuant to s. 64(2)(a). The defendant submitted that "custody" means to have care and control of a vehicle for inspection, preservation, or security, while "control" means the authority or ability to regulate, direct, or influence a vehicle. Conversely, "keeping" a vehicle requires that it be in the physical possession of a dealer.

[53] In my view, the language of s. 64(2)(c) is quite straightforward. I accept the submissions of the defendant that "keeping" a vehicle under s. 64(2)(a) is distinct from having "custody and control" of it under s. 64(2)(c). Otherwise, the legislature would not have used different words in each of the sub-sections. I also accept that a dealer

can have "custody and control" over a vehicle without it being "kept" for sale. Having said that, those facts are not before me. In this case, Mr. Ralph had custody and control of the Truck at all material times, from the time he left the safety inspection to the time of the Loss.

[54] Having said that, unlike s. 64(2)(b), there is no personal use component set out in s. 64(2)(c), and the language is clear that use of a dealers' number plate is permitted when a dealer has custody and control of a vehicle "to" test or service it, or "to" move it in connection with doing so. In my view, that language permits use of a dealers' number plate in narrow circumstances, which relate to testing and servicing only.

[55] As such, the question is whether at the time of the Loss, Mr. Ralph had custody and control of the Truck in his capacity as a dealer. As set out above, although Mr. Ralph had the consent of Ms. Ralph to drive the Truck to the Farm on July 27, 2018, in my view he did so as her spouse and not as a dealer.

[56] The evidence at trial reflected that Mr. Ralph had serviced vehicles at or near Winnipeg on previous occasions, and the plaintiffs did not allege that the tie rod end could be replaced only at the Farm. As such, it was not necessary to drive the Truck to the Farm for that purpose. Again, if the owner of the Truck was an arms-length customer, I have difficulty accepting that Mr. Ralph would have driven it for over two hours to a family farm to perform service work. For these reasons, I do not accept that at the time of the Loss Mr. Ralph had custody and control of the Truck "to" service it, or "to" move it in connection with servicing it.

[57] I will add that the Certificate of Inspection form issued to Mr. Ralph with respect to the Truck, and which he signed, contained the following language at its conclusion:

> I am aware that the above-noted vehicle is unsafe to be operated on a highway due to the noted equipment defects. I undertake to prevent this vehicle from being operated on a highway until the repairs or adjustments have been made to restore it to safe condition and a qualified mechanic has re-inspected the vehicle.

[58] The defendant argued that the undertaking constituted a recognition by Mr. Ralph that the Truck should not be driven in the condition that it was in, which is consistent with the policy underlying the legislative framework that unsafe vehicles should not be driven unnecessarily.

[59] I note that the Certificate of Inspection provides, on its face, for three potential outcomes of a vehicle inspection: "pass/safe vehicle", "fail/unsafe vehicle" and "fail/out-of-service". The inspection of the Truck on July 26, 2018 gave rise to a "fail/unsafe vehicle" designation, but there is no evidence before me of the origin, purpose, or intended implication(s) of the undertaking, or that a vehicle designated as "fail/unsafe" should not be driven in any circumstances. In the absence of that evidence and a fulsome hearing on the particulars of the undertaking, I am not prepared to draw any conclusions from Mr. Ralph's signature on the inspection form.

[60] I have determined that although Mr. Ralph had custody and control of the Truck at the time of the Loss, it was not in his capacity as a dealer, and the purpose thereof was not to service the Truck or to move it in connection with servicing it. As such, the Plate was not properly affixed to the Truck at the time of the Loss pursuant to s. 64(2)(c).

REMEDY

[61] The plaintiffs sought reimbursement for the Truck and additional compensation for their costs and expenses of $59,024.57.

[62] I will address first the plaintiffs' entitlement that arises from the Loss. Since the Plate was affixed to the Truck properly pursuant to s. 64(2)(b) of the ***DVA***, the Loss should have been covered by the defendant pursuant to s. 49 of the ***Automobile Insurance Coverage Regulation***, M.R. 290/88 (the "***Regulation***"). Pursuant to ss. 50 and 66 of the Regulation, Ms. Ralph as the owner of the Truck is entitled to recover its actual cash value, which was determined to be $25,000.00 in this case. Pursuant to the Regulation, Ms. Ralph's deductible of $200.00 and the salvage amount that she recovered for the Truck, of $450.00, must be deducted from that value. Ms. Ralph is entitled to payment by the defendant, therefore, of the principal amount of $24,350.00.

[63] With respect to the balance of the claim, the plaintiffs filed in evidence a typewritten summary of the "expenses" they incurred, with no supporting documents attached or provided. That approach presents an evidentiary problem, and I have concluded that the plaintiffs have failed to meet their burden of proof with respect to the expenses.

[64] In addition, I note that included in the claim are lost profits on the sale of the Truck of $6,550.00, a loss of income of $32,095.00, and towing and storage charges for the Truck of $5,140.00. Those items are not compensable pursuant to the compulsory and universal automobile insurance program in Manitoba, and in any event the alleged

losses do not appear to have been incurred by Ms. Ralph, the insured, but instead by Mr. Ralph as a dealer. Although Mr. Ralph is a plaintiff in this action, the amended statement of claim does not disclose any cause of action pursuant to which he could recover those damages, even if supporting evidence had been provided.

[65] The plaintiffs also sought costs and disbursements of over $22,000.00 representing their time spent on this litigation (at a rate of $100.00 per hour) including communications with the defendant, a variety of counsel, and court staff.

[66] I will make no order as to costs at this time. If costs cannot be agreed upon as among the parties, they may seek an appearance before me to make submissions.

[67] I will add, for the plaintiffs' benefit, that prior to returning to court to argue an entitlement to costs, they should research their legal position thoroughly.

CONCLUSION

[68] Ms. Ralph is entitled to judgment against the defendant in the principal amount of $24,350.00.

_____

J.