SUPREME COURT OF NOVA SCOTIA

Citation: *Primmum Insurance Company v. Bill Young's Auto-Body Salvage* 2024 NSSC 359

Date: 20241125
Docket: Syd No. 529111
Registry: Sydney

Between:

Primmum Insurance Company, Security National Insurance Company

Plaintiffs

v.

Bill Young's Auto-Body Salvage, Sandy & Sons Auto Repair & Sales

Defendants

DECISION

Judge: The Honourable Justice Peter P. Rosinski

Heard: October 18, 2024 in Sydney, Nova Scotia

Counsel: Michelle Kelly, KC, and Ryan Chute for the Plaintiffs
Tony Mozvik, KC, for the Defendants

By the Court:

Introduction

[1] The plaintiffs (also sometimes referred to herein collectively as "TD") are insurers of motor vehicles.

[2] They say that the salvage lot operator defendants have been unlawfully withholding motor vehicles that TD presently owns, as a result of having paid out the insurance to the individual owners of those vehicles.

[3] When motor vehicles are stolen, vandalized or damaged in collisions or otherwise, they are expeditiously towed to salvage yards such as those of the defendants.

[4] However, the salvage yard defendants have no way of knowing until they are told by someone else - who is the insurer in relation to any of the relevant vehicles?

[5] On the evidence in this case, I am satisfied more likely than not, for all of the vehicles in issue here, the plaintiffs knew to what salvage yard they had been taken before the defendants were told that the plaintiffs were the insurers.

[6] Ongoing disputes arose between the plaintiffs and defendants, particularly in the later part of 2023 and early 2024, regarding the plaintiffs' vehicles after them having been towed to the defendants' salvage yards.

[7] These disputes were about the amounts the defendants claimed for recovery and storage fees of the plaintiffs' vehicles.

[8] Generally speaking, the plaintiffs were reluctant to pay the entirety of the amounts claimed, and the defendants were frustrated by the plaintiffs' position regarding such claims.

[9] The plaintiffs sought by Notice of Motion filed on January 22, 2024, an Order for an interlocutory injunction as against the defendants:

> … enjoining the defendants and any persons acting under their counsel, directions or instructions, or anyone aiding or assisting any of them, and any person having

> notice of this order, until a final decision is rendered in this matter or until this order is varied, from:
>
> (a) knowingly **acquiring** and/or **storing** motor vehicles insured by one or more of the plaintiffs without first obtaining express instructions to do so from the appropriate plaintiff; and
>
> (b) **detaining** vehicles determined after recovery to be insured by one or more of the plaintiffs.
>
> And, in the event that the defendants determine that a vehicle in their possession is insured by one or more of the plaintiff's subsequent to recovery, the defendants must immediately return the vehicle to the appropriate plaintiff.

[10] The plaintiffs and defendants agreed to an Order, in the form above-noted, which was then approved by a Justice of this Court on March 4, 2024.

[11] In their Notice of Motion for Contempt Order, filed May 7, 2024, the plaintiffs allege that the defendants have violated the March 4, 2024, Court Order, which required the defendants to return the vehicles in question to them.

[12] The defendants are salvage lot operators owned by and operated by Sandy Young, son of Bill Young, who passed away in July 2020.

[13] The defendants say that they have done everything the Court Order required of them, and that they have acted in good faith throughout the circumstances.

[14] As this is a motion seeking a ruling that the defendants are in contempt of the March 4, 2024, Order, the plaintiffs have the burden to prove beyond a reasonable doubt that:

1. the terms of the order are clear and unequivocal;

2. the defendants had actual knowledge of the terms thereof; and

3. the defendants have intentionally done an act(s) that the Order prohibits or failed to do an act(s) that the Order compels.

[15] I am not satisfied that the plaintiffs have proved their allegations against the defendants beyond a reasonable doubt, or alternatively, as referenced at paras. 15 and 23 in *Betts v. Bezanson-Gallant*, 2022 NSSC 114, citing para. 37 of *Carey v. Laiken*, 2015 SCC 17, had the plaintiffs proved some of the allegations of contempt (the strongest case being in relation to the storage of the plaintiff's vehicles), I would

have exercised my discretion to decline to impose a contempt finding in light of the overall circumstances in this case, including that the defendants generally acted reasonably and in good faith, and because it would work an injustice otherwise.

[16] I dismiss the motion.

Background

[17] On **January 22, 2024**, the plaintiffs filed a Notice of Motion as against the two defendants:

> The plaintiffs move for an order for an interlocutory injunction enjoining the defendants and any persons acting under their counsel, directions or instructions, or anyone aiding or assisting any of them, and any person having notice of this order, until a final decision is rendered in this matter or until this order is varied, from:
>
> (a) knowingly acquiring and/or storing motor vehicles insured by one or more of the plaintiffs without first obtaining express instructions to do so from the appropriate plaintiff; and
>
> (b) detaining vehicles determined after recovery to be insured by one or more of the plaintiffs.
>
> And, in the event that the defendants determine that a vehicle in their possession is insured by one or more of the plaintiff's subsequent to recovery, the defendants must immediately return the vehicle to the appropriate plaintiff.

[18] The hearing was set for March 11, 2024, supported by the first affidavit of Pam Cole (sworn October 26, 2023).

[19] The motion did not proceed, because the parties entered into a Consent Order issued by the Court.

[20] The intention of the Consent Order was to give control over the plaintiffs' insured vehicles exclusively to the plaintiffs when their vehicles were towed to, and deposited at, the defendants' salvage lot.

[21] The plaintiffs were entitled under the Order to not have any of their insured vehicles remain at the defendants' lots unless they expressly instructed so.

[22] The defendants were required under the Order to not acquire or store any of the plaintiffs' insured vehicles at their salvage lots - and that if any were discovered there - they must "immediately return the vehicle to the appropriate plaintiff".

[23] To incentivize the defendants, the Order limited their claim for costs for recovery and storage fees of any vehicle only up to and including the date upon which the vehicle is first determined [i.e. by the defendants] to have been insured by one or more of the plaintiffs.

[24] The "**Consent Order for Interlocutory Injunction**" was authorized by Justice Patrick J. Murray on **March 4, 2024**. It reads:

> It is ordered that:
>
> 1 - **The defendants and any persons** acting under their counsel, directions or instructions, or anyone aiding or assisting any of them, **and any person having notice of this order are prohibited**, until a final decision is rendered in this matter or until this order is varied, **from**:
>
> a) **knowingly acquiring and/or storing motor vehicles insured by one or more of the plaintiffs without first obtaining express instructions to do so from the appropriate plaintiff**; and
>
> b) **detaining vehicles determined after recovery to be insured by one or more of the plaintiffs.**
>
> 2 - It is further ordered that **where the Defendants determine that a vehicle in their possession is insured by one or more of the plaintiff's subsequent to recovery, the defendants must immediately return the vehicle to the appropriate plaintiff.**
>
> 3 - It is further ordered that **where the defendants determine that a vehicle in their possession is insured by one or more of the plaintiffs subsequent to recovery as outlined in paragraph 2 of this Order, the insuring plaintiff is liable only for the reasonable costs of the vehicles recovery and for storage of the vehicle up to and including the date upon which the vehicle is first determined to be insured by one or more of the plaintiffs.**
>
> [My underlining added]

[25] In spite of the March 4, 2024, Order, the parties continued to have difficulties in relation to the plaintiffs' motor vehicles still being acquired and stored at the salvage yards of the defendants.

[26] The defendants say at the time of "acquiring" such motor vehicles they were not aware of, and had no way to be aware of, the fact that the plaintiffs were the insurers. Regarding "storing vehicles" / "detaining vehicles" insured by the plaintiffs, they say that once they did become aware, they notified the plaintiffs (unless the plaintiffs were already aware) and were at all times, ready, able and willing to have the plaintiffs' agents remove those vehicles from their salvage lots,

that being consistent with the requirement that they "immediately return the vehicle to the appropriate plaintiff".

[27] Under the terms of the Order, time was not on the side of the plaintiffs or defendants.

[28] The longer that the plaintiffs' vehicles remained at the defendants' premises:

1. the greater would be the potentially payable storage fees by the plaintiffs to the defendants, and

2. the greater would be the potential risk that the defendants would be found to have violated the Order, and they would not be paid the full amount of their claim for storage fees by the plaintiffs.

[29] On **May 7, 2024**, the plaintiffs filed a **Notice of Motion for Contempt** against the defendants.[1]

[30] **The allegation**[2] therein was stated as:

> It is alleged that you have **on a continuing basis and with respect to 25 separate vehicles, failed to comply** with the Consent Order for Interlocutory Injunction of Justice Patrick J Murray dated March 4, 2024, prohibiting you from:
>
> (a) **knowingly acquiring and/or storing motor vehicles insured by one or more of the plaintiffs without first obtaining express instructions to do so from the appropriate plaintiff**; and

[1] That motion was initially set for hearing on June 17, 2024, before Justice Denise Boudreau. At the hearing the defendants advised that they were prepared to have the vehicles ready to be claimed by the insurance company within a very short period of time, but also mentioned that the defendants were frustrated because they have not yet been paid for extensive services provided in relation to the vehicles, and that an Action has been filed. The plaintiffs' counsel indicated his clients' frustration at being unable to get a clear and accurate list of the vehicles in the defendants possession, particularly since the list of the original vehicles subject to the order as of March 4, 2024 had grown longer in the meantime. The hearing was adjourned to June 25, 2024. On that date, Justice Boudreau presided and reluctantly adjourned the matter further to July 8, 2024, when I began hearing the matter. On July 8, 2024, the plaintiffs' materials having been filed, their witness was subjected to cross-examination. Legal arguments were presented, including, regarding the admissibility of purported hearsay in the plaintiffs' affidavits and the Court adjourned to July 19 at which brief appearance the matter was again adjourned to August 29, 2024. At that date the Court was advised that Mr. Young had suffered a concussion and was unable to attend. The matter was then further adjourned to October 18, 2024, when the hearing of the matter was completed. The decision was reserved.

[2] The wording of the allegation is the equivalent to the wording of a criminal/quasi-criminal charge as against an individual or an entity.

(b) **detaining vehicles determined after recovery to be insured by one or more of the plaintiffs**.

[31] As the Court stated in *Carey v. Laiken*, 2015 SCC 17:

> [38] It is well settled in Canadian common law that all that is required to establish civil contempt is proof beyond a reasonable doubt of an intentional act or omission that is in fact in breach of a clear order of which the alleged contemnor has notice: …As it noted, to require a contemnor to have intended to disobey the order would put the test "too high" and result in "mistakes of law [becoming] a defence to an allegation of civil contempt but not to a murder charge" (para. 59). Instead, contumacy or lack thereof goes to the penalty to be imposed following a finding of contempt: para. 62; see also *Sheppard*; and *Sharpe*, at ¶ 6.200.
>
> …
>
> [42] The appellant correctly notes that civil contempt is quasi-criminal in nature, which he says justifies a higher fault element where contempt cannot be purged. But civil contempt is always quasi-criminal, so this provides no justification for carving out a distinct mental element for particular types of civil contempt cases. As I have already discussed, requiring contumacious intent would open the door to mistakes of law providing a defence to an allegation of civil contempt. It could also permit an alleged contemnor to rely on a misinterpretation of a clear order to avoid a contempt finding, which would significantly undermine the authority of court orders.…
>
> [My underlining added]

Have the plaintiffs established beyond a reasonable doubt that the defendants are guilty of contempt of Court as set out in the allegations?

A - The law of contempt

[32] In *Betts v. Bezanson-Gallant*, 2022 NSSC 114 Justice Jamieson helpfully set out the foundational aspects of the law of contempt between paras. 14 – 22.

> [15] The Supreme Court of Canada summarized the law of contempt in *Carey v. Laiken, supra* at paras. 30-37:
>
> > 30 Contempt of court "rest[s] on the power of the court to uphold its dignity and process... . The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect": …
> >
> > 31 The common law has developed to recognize two forms of contempt of court: criminal contempt and civil contempt. The distinction, which the

parties to this appeal accept, rests on the element of public defiance accompanying criminal contempt: …

32 **Civil contempt has three elements which must be established beyond a reasonable doubt: …These three elements, coupled with the heightened standard of proof, help to ensure that the potential penal consequences of a contempt finding ensue only in appropriate cases**: *Bell ExpressVu*, at para. 22; *Chiang*, at paras. 10-11.

33 **The first element is that the order alleged to have been breached "must state clearly and unequivocally what should and should not be done"**: …This requirement of clarity ensures that a party will not be found in contempt where an order is unclear: …An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning: …

34 **The second element is that the party alleged to have breached the order must have had actual knowledge of it**: *Bhatnager*, at p. 266; *College of Optometrists*, at para. 71. **It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the wilful blindness doctrine** (*ibid*.).

35 **Finally, the party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels**: …

36 **The contempt power is discretionary, and courts have consistently discouraged its routine use to obtain compliance with court orders: …It is an enforcement power of last rather than first resort**:… .

37 **For example, where an alleged contemnor acted in good faith in taking reasonable steps to comply with the order, the judge entertaining a contempt motion generally retains some discretion to decline to make a finding of contempt**: see, e.g., Morrow, Power v. Newfoundland Telephone Co. (1994), 1994 CanLII 9723 (NL CA), 121 Nfld. & P.E.I.R. 334 (Nfld. C.A.), at para. 20; TG Industries, at para. 31. **While I prefer not to delineate the full scope of this discretion, given that the issue was not argued before us, I wish to leave open the possibility that a judge may properly exercise his or her discretion to decline to impose a contempt finding where it would work an injustice in the circumstances of the case**.

[Underlining in original; my bolding added]

[16] In short, the three elements of contempt are as follows: the terms of the order must be clear and unequivocal, they must have actual knowledge of the terms, and they must have intentionally done the act that the order prohibits or failed to do the act the order compels. Underlying this analysis, is the guidance from the court that contempt of court should be used cautiously and with great restraint, being an enforcement power of last resort (*Carey v. Laiken*, *supra*).

[17] In relation to the third requirement that the party allegedly in breach must have "intentionally" done the act that the order prohibits or intentionally failed to do the act that the order compels, Justice Cromwell said:

> (3) The Required "Intent"
>
> 38 **It is well settled in Canadian common law that all that is required to establish civil contempt is proof beyond a reasonable doubt of an intentional act or omission that is in fact in breach of a clear order of which the alleged contemnor has notice: … to require a contemnor to have intended to disobey the order would put the test "too high" and result in "mistakes of law [becoming] a defence to an allegation of civil contempt but not to a murder charge"** (2013 ONCA 530 (Ont. C.A.) (para. 59). Instead, contumacy or lack thereof goes to the penalty to be imposed following a finding of contempt: para. 62; see also *Sheppard*; and *Sharpe*, at ¶6.200.
>
> (Underlining in the original)
>
> …

[19] T**he law is clear that the intention required for civil contempt is the intention to commit an act which is, in fact, prohibited by the order. There is no requirement to prove an intent to defy an order. In other words, there is no burden on the applicant to show the respondent intended to act contemptuously**.

[20] **The burden is on the moving party, Ms. Betts, to prove each element of contempt beyond a reasonable doubt. Because civil contempt is quasi-criminal in nature, an alleged contemner is afforded the same protection and procedural safeguards as an accused in a criminal proceeding**. The procedural protections afforded to an alleged contemner in the civil context accord with the principles of fundamental justice applicable to an accused in a criminal proceeding.

[21] With reference to **defining the beyond a reasonable doubt standard**, Justice Norton stated in *Ucore Rare Metals Inc. v. IBC Advanced Technologies Inc.*, 2020 NSSC 232:

[38] **The burden of proving civil contempt lies with the moving party, in this case Ucore, which must prove each element of contempt beyond a reasonable doubt**. The heightened criminal standard applies to ensure that the potential penal consequences of a contempt finding are only imposed in appropriate cases.

[39] **What is meant by "beyond a reasonable doubt"?** The burden has been canvassed in many decisions, perhaps most notably in *R. v. Lifchus*, [1997] 3 S.C.R. 320 (S.C.C.), wherein Justice Cory stated the following:

> 39. Instructions pertaining to the requisite standard of proof in a criminal trial of proof beyond a reasonable doubt might be given along these lines:
>
> > **The accused enters these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until such time as the Crown has on the evidence put before you satisfied you beyond a reasonable doubt that the accused is guilty**.
> >
> > **What does the expression "beyond a reasonable doubt" mean?**
> >
> > …A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.
> >
> > Even if you believe the accused is probably guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the Crown has failed to satisfy you of the guilt of the accused beyond a reasonable doubt.
> >
> > On the other hand, you must remember that it is virtually impossible to prove anything to an absolute certainty and the Crown is not required to do so. Such a standard of proof is impossibly high.
> >
> > In short if, based upon the evidence before the court, you are sure that the accused committed the offence you should convict since this demonstrates that you are satisfied of his guilt beyond a reasonable doubt.

[22] **Further**, in discussing how to define the reasonable doubt standard, Iacobucci J., writing for the Supreme Court of Canada in ***R. v. Starr***, 2000 SCC 40 stated:

> 242. In my view, **an effective way to define the reasonable doubt standard for a jury is to explain that it falls much more closer to absolute certainty than to proof on a balance of probabilities**. …

[23] **Justice Norton in *Ucore, supra* referenced two further principles that should guide courts in applying the three part test for contempt**:

> [41] **First**, according to the Supreme Court of Canada in Carey, given that contempt is such an extraordinary remedy, **the Court's power should be exercised only as a last resort**. Similarly, the court in *Blackman v. CIBC Wood Gundy Financial Services Inc.*, 2009 NSSC 416, held (citing *T.G. Industries Ltd. v. Williams*, 2001 NSCA 105) that the contempt power should be exercised "...cautiously and with great restraint...". In *Skipper Fisheries Ltd. v. Thorbourne*, 1997 NSCA 16, Justice Hallett held for the Majority of the Nova Scotia Court of Appeal that "[t]he jurisdiction of the Court to make a finding of contempt should be exercised with scrupulous care and only when the contempt is clear".
>
> [42] **Second**, as the Supreme Court of Canada noted in *Carey* (at para 37), **Judges have inherent discretion to decline to impose a contempt finding where the offending party has acted in good faith in taking reasonable steps to comply with the Order, and/ or where it would work an injustice in the circumstances of the case**.
>
> [My bolding added]

B - What obligations did the Order impose upon the defendants?

1 - Knowingly acquiring and/or storing motor vehicles insured by the plaintiffs without obtaining the plaintiffs' express instructions to do so.

[33] On March 4, 2024, the Consent Order became effective.

[34] A close inspection of the wording is vital to understanding whether or not the defendants have been shown to have violated the Order using a beyond a reasonable doubt standard.

[35] In plain language, the defendants are prohibited from certain actions and inactions.

[36] Given the distinct circumstances of each vehicle's arrival at the defendants' premises, which have not been fulsomely put into evidence, and there being no reliable evidence about the likelihood precisely when the defendants in any particular circumstance did <u>"know" at the time of **acquiring motor vehicles**</u> that

one of the plaintiffs is the insurer (for example, as set out in Mr. Young's affidavit at para. 11(c)), and considering all the evidence considered as a whole, I am not satisfied beyond a reasonable doubt, that in any of the relevant circumstances, the defendants have been shown to be in breach of the March 4, 2024, Order's requirement that the defendants not knowingly acquire any of the alleged vehicles owned by the plaintiffs "without first obtaining the express instructions to do so from the appropriate plaintiff".

[37] Insofar as "**knowingly storing motor vehicles** insured by one of the plaintiffs", there is clear evidence that the defendants did so.

[38] The act of storage is ongoing.

[39] Nevertheless, there does arise a question of precisely when did the defendants first become aware that the plaintiffs were the insurers of any particular vehicle they had stored on their premises.

[40] After March 4, 2024, there arose the consequent obligation upon the defendants to ascertain from its existing stock of stored vehicles which of those that were insured by the plaintiffs, and then for that subgroup to seek express instructions from the plaintiffs to permit the defendants to continue to store those vehicles.

[41] The relevant evidence will be fact specific in relation to each of the affected vehicles.

[42] Once the defendants first became aware that a specific vehicle stored on their premises was insured by one or more of the plaintiffs, they had an obligation at the earliest reasonable opportunity to seek the plaintiffs' "express instructions" to continue to store such vehicle there. If they did not have the plaintiffs' express instructions to continue storing the vehicle, the defendants "must immediately return the vehicle to the appropriate plaintiff".

[43] Have the defendants acknowledged or have the plaintiffs proved which vehicles were actually stored at the defendants' premises on March 4, 2024?

[44] It is difficult to conclude with confidence how many, and which specific vehicles, were in the defendants' possession on that date.

[45] The Consent Order does not contain a listing of those vehicles.

> On March 6, 2024, TD Insurance through its lawyer wrote to counsel for the defendants renewing past requests for a list of all relevant vehicles currently in the Defendants possession… On March 7, 2024, TD insurance through its lawyer received correspondence from counsel for the Defendants advising that the defendants had prepared an inventory of vehicles in their possession insured by the plaintiffs… The defendants did not produce an inventory of vehicles at that time. (Cole affidavit sworn May 1, 2024, paras. 32-33)

[46] It appears that on March 19, 2024, counsel for the defendants attached an inventory listing of the cars the plaintiffs have insured which are on the premises of the defendants. (Cole affidavit, Exhibit "R")

[47] On March 21, 2024, TD received confirmation from the defendants that they were in possession of vehicles; and on March 22 TD received from counsel for the defendant a scanned copy of a Consent Temporary Recovery Order signed by counsel for the defendants which also had attached a Schedule "A", listing 22 vehicles specifically identified.

[48] The Cole affidavit, Exhibit "W", para. 50 reads: "To date, the Defendants have not provided TD insurance with the original copy of the signed March 22, 2024 Consent Temporary Recovery Order for filing."

[49] That Order included the following language:

> It is ordered that:
>
> Sheriff to seize property
>
> 1 The sheriff to whom the original, or a certified copy, of this Order is delivered, or another sheriff designated by the sheriff to whom it is delivered, must immediately take possession of the property described in the attached Schedule "A" (photographs of which are attached as schedule "B") located at 360 Main St., Florence, NS and held by Bill Young's Autobody Salvage Limited and Sandy and Sons' Auto Repair and Sales.
>
> Entering places, taking movable, and breaking obstructions
>
> 2 The sheriff has the right to enter on lands, going to any building on the land, to control of any movable, break any law, or teardown any other obstruction.
>
> Injunction against obstruction and for cooperation

3 A person who receives a copy of this Order or otherwise has notice of it shall not obstruct the seizure and, if the person has means of access to the property, must provide access to the sheriff.

Storage and protection

4 The sheriff may make arrangements for storage and protection of the property before it is turned over to a party.

Expenses to be paid by party who obtains Order

5 The party who obtains this Order must pay the expenses of seizure, storage, and protection of seized property and the sheriff of need not act, or continue acting, on this Order if the party fails to pay the expenses or provide a reasonable advance.

Party to cause Order to be delivered

6 The party who obtains this Order must, as soon as possible, cause a person, other than a party or director, officer, or employee of a party, to deliver a certified copy of the Order to each other party by personal delivery or, if they have designated an address for delivery in this proceeding, by delivery to the party's place for delivery.

Registration of land is seized

[omitted as it is not relevant]

Re-acquiring property

8 The party against whom this Order is made may reacquire possession of the property by filing a bond and delivering a prothonotary’s certificate in accordance with the Nova Scotia Civil Procedure Rules before the property is turned over to the party who obtains the Order.

Delivery of property by sheriff

9 The sheriff must turn the property over to the party who obtains this Order 5 days after the day the party delivers a certified copy of this Order to the party against whom it is made, unless the party against whom the Order is made delivers a prothonotary’s certificate to the sheriff. The sheriff must return the property to the party against whom this Order is made, if the party delivers a prothonotary’s certificate before the property is turned over to the party who obtains the Order.

Report

10 The sheriff must file a report of the actions taken under this Order no more than 50 days after the day it is issued, and a report of each further action taken after that time.

> Contempt
>
> 11 Failure to comply with this Order may be punished as a contempt.

[50] There was no further explanation in the evidence whether the plaintiffs had signed the Order, and why the plaintiffs did not insist on the defendants being required to produce the original Consent Temporary Recovery Order.

[51] As of May 1, 2024, the swearing date of the Cole affidavit, at paras. 54-55, there appears a listing of 25 vehicles that Ms. Cole swears "the defendants have continued to detain … in direct and intentional contravention of the Order … 4 of the 25 vehicles currently being detained by the defendants were knowingly acquired after March 4, 2024".

[52] The defendants' evidence is largely based upon "adjusters notes" (e.g. Cole affidavit, para. 38) to support their position that on the given date of the notes, the defendants had acquired, detained and stored various specifically identified vehicles on its premises.

[53] However, these notes are second and third-hand hearsay, which reduces the weight attributable to them, but also only capture what vehicles are on the premises on that specific date in any event.

[54] Without a physical inspection of the defendants' premises on any given day, in the absence of acknowledgements by the defendants, the plaintiffs are left to request the Court to infer beyond a reasonable doubt how many, and which specific, vehicles subject to the Order are actually on the premises of the defendants at the relevant times.

[55] The inventory of the plaintiffs' vehicles stored at the defendants' premises also fluctuated over time.

[56] There is imprecise evidence regarding how long (and for what periods of time unique to) each vehicle had been stored on the defendants' premises in contravention of the Order.

[57] Nevertheless, I am satisfied beyond a reasonable doubt that at the relevant times, some of the plaintiff's vehicles were "stored" at the defendants' premises as of March 4, 2024, and thereafter, yet the defendants did not seek express instructions from the plaintiffs to continue doing so.

[58] I bear in mind Mr. Young's affidavit evidence at para. 20, which, unless I say otherwise, I accept:

> That attached to my affidavit as Exhibit "A" is a correspondence from Mr. Chute to my lawyer and my lawyer's response. This is typically how I find out about a vehicle being in my possession. However, it is usually somebody from the insurance company that produces such information.

[59] The attachment is a July 10, 2024, letter from Mr. Chute which reads in part:

> Our clients are now aware of a further vehicle insured by one of the plaintiffs that has been collected and stored by your clients in contravention of the Order… [They] demand the immediate release and return of this vehicle [2014 Honda Civic].

[60] This latter exchange is important.

[61] It is consistent with Pam Cole's affidavit sworn May 1, 2024, at paras. 11, 34, 43, 45, 52, and 56. Particularly noteworthy are paras. 43-45 and 52:

> 43. On March 15, 2024, TD Insurance through its lawyer wrote to counsel for the defendant advising that the defendants were in contravention of the Order as they continue to store and detain vehicles insured by the plaintiffs. TD Insurance demanded that the defendants immediately identify and return all relevant vehicles to the plaintiff in accordance with the Order. Attached as Exhibit "Q" is a true copy of Mr. Chute's letter to Ms. MacDougall dated March 15, 2024.
>
> [In Mr. Chute's letter he states: "In your correspondence of March 7, 2024, you advised your clients had prepared an inventory of the vehicles in their possession insured by my clients. To date, your clients have not produced that inventory or cooperated with our efforts to identify and recover the impugned vehicles. … We now assume that your clients are not willing to identify all relevant vehicles in their possession and are forgoing any claim in relation to vehicles not previously identified."]
>
> 44 On March 19, 2024, TD Insurance through its lawyer received correspondence from counsel for the defendants enclosing an inventory of relevant vehicles in the defendants' possession. …
>
> 45 On March 19, 2024, TD Insurance through its lawyer wrote to counsel for the defendants advising that the provided vehicle inventory was insufficient and omitted at least seven relevant vehicles known to be in the defendants' possession.
>
> 52 On March 28, 2024, TD Insurance through its lawyer wrote to counsel for the defendants advising the TD Insurance had become aware of the 2013 Hyundai

> Elantra recovered by the defendants on March 14, 2024. This vehicle was not listed in the defendants' March 19, 2024, vehicle inventory.

[62] These exchanges are consistent with the remainder of the associated evidence that I accept.

[63] I find it established more likely than not that TD always knew more precisely what vehicles insured by them were in the possession of the defendants than did the defendants themselves, and TD knew this before the defendants were aware that they were in possession of vehicles insured by TD.

[64] TD insurance had more timely and better quality of information about how many, and which in particular of TD's insured vehicles were in the possession of the defendants, than did the defendants.

[65] Moreover, although TD regularly insisted on the defendants producing a list of such vehicles, the March 4, 2024, Order did **not** require the defendants to do so. Yet, I find that, in good faith, the defendants did so, to the best of their knowledge and ability, on or about March 19, 2024.

[66] In an ongoing manner, TD did specifically identify to the defendants which of their vehicles were in the possession of the defendants.

[67] Once TD identified its vehicles to the defendants, if the defendants did not earlier know this, the defendants were on notice that the Order applied to those vehicles.

[68] During the time interval between March 4 and early September 2024, the plaintiffs were doing much writing in relation to whether the defendants were complying with the March 4, 2024 Order. I conclude that the plaintiffs had at least as good information about which of their insured vehicles were at the defendants premises throughout this time interval, yet they did not insist on their strict legal rights to recover their vehicles, by actively enforcing their rights and sending transport vehicles that could load their insured vehicles onto them and take them away.

[69] Why did they not, other than on June 20, 2024, attempt to retrieve all or some of the plaintiff's vehicles stored at the defendants' premises? They knew they were there.

[70] The most recent factual evidence in affidavit form, regarding the relevant facts in relation to this matter, are contained in the affidavit of Mr. Chute which was sworn on June 20, 2024.[3]

[71] Other than that instance, there was no other actualized attempt by the plaintiffs to retrieve their insured vehicles from the defendants' premises.

[72] I recognize that especially during the months of June, July and August 2024, the parties were communicating between themselves hoping to resolve the matter.

[73] While these efforts were ongoing, it is understandable, and I find, that a *status quo* developed such that the defendants continued to "store" at their premises the plaintiffs' insured vehicles, and the plaintiffs did not further attempt any pickups of their vehicles.

[74] This would explain in large part why the defendants did not seek "express instructions" from the plaintiffs to continue to store their vehicles at the defendants' premises and why none were "immediately" returned to the defendants.

[75] I conclude that the plaintiffs temporarily waived their strict rights in that respect.

[76] I also note that the provisions of the *Warehouseman's Lien Act*, RSNS 1989, c. 499, s. 1., arguably also provided a temporary basis for the defendants not to have had an overriding obligation to "immediately return" a specific vehicle. The Consent Order does not expressly render inapplicable that legislation.

[77] Moreover, I am satisfied that a "return" of a vehicle is properly interpreted as meaning: the defendants need not deliver the vehicle to the plaintiffs' choice of location outside of the defendants' premises, but the defendants must make it reasonably accessible so the plaintiffs can remove it from the defendants' premises.

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[3] In Mr. Chute's June 20, 2024, affidavit at Exhibit "H" there is an email of June 18, 2024, from Natasha Erskine to other persons identified as being with Stark Auto Sales or Copart.com. His affidavit paragraph 14 reads: "On June 19 that 2024, **I received correspondence from Emily Wainwright attaching correspondence from Natasha Erskine**, dispatcher for Copart, **originally addressed to Marie Ducasse** an employee of Stark. I am advised and do verily believe that Copart is a vendor assisting Stark with the recovery and salvage of vehicles on Cape Breton Island. **Ms. Erskine advised Mr. Young was refusing to identify or locate relevant vehicles on his lot and that relevant vehicles were believed to be located in inaccessible areas**. Attached as Exhibit "H" is a true copy of email correspondence from Emily Wainwright attaching correspondence from Natasha Erskine to Marie Ducasse dated June 18, 2024." As indicated elsewhere, I give this second and third hand evidence little weight insofar as it purports to set out what happened on any given date at the premises of the defendants, or what were the content of any related purported verbal exchanges.

[78] Yet, although they understood they were legally entitled to the "immediate return" of their vehicles, the plaintiffs did not actively pursue retrievals of their vehicles (for example, by sending their agents with transport vehicles to the defendants' premises, to pick up the vehicles they owned).

[79] They did not send a transport vehicle but once on June 20, 2024, TD's agent was unable to lift the salvaged vehicles onto the transport vehicle, which had only a 3-vehicle capacity in any event.

[80] As Sandy Young testified: "95% of the vehicles [in his salvage yards] are not drivable" – the implication being you need a loader to get them onto the vehicle that will haul them away from the defendants' premises.

[81] Let me recite here some of Sandy Young's testimony, which I accept as credible (based on my notes taken during the hearing):

- "Answer – **You [TD] never came – never showed up**…"
- Question (Michelle Kelly) – "**We did not because you told us not to unless we paid you for all cars**."
- Answer – "They're there, go get them… the cars are ready today… there's nothing blocking them… **your truck driver came and refused to take the vehicles**."

…

- Question – "We tried to pick them up."
- Answer – "No you did not.. I put them on the street – it was cancelled 7 times.… Nobody came – one guy came…"
- Question – "The Court Order did not require TD to fully pay you before TD can get the cars."
- Answer – "**I'm having no part of it if I'm not being paid… You can go get them…**"
- Question – "**They are available for pickup - but you insist on payment for your services?**"
- Answer – "**Right**." …
- Question [regarding the emails June 17 – June 20 of 2024] – "You were to locate, retrieve and surrender the vehicles to TD by June 20?"
- Answer – "I did. [On June 20, 2024] **I retrieved them from throughout the yard… I took them from multiple locations and pointed out where they were in our unsecured compound**."

- Question – "But [Dave Horne the Copart agent with the car transport vehicle that day] could not access them?"
- Answer – "**He could – he chose not to**."
- Question – "Did you tell Copart [Dave Horne] you would not 'pull out any vehicles' – 'I am not working for free'?"
- Answer – "Yes… **The proper way to do it is with the loader – I have a loader – but it costs – they declined – so later, they wanted me later, and I declined. They did not have a car hauler – they chose not to take them."** [i.e. the vehicles that Mr. Young had made accessible and ready for pickup]
- Question – "You have areas that are not accessible or easily accessible?"
- Answer – "**There was nothing obstructing them**."
- Question – "Did you do any work in assisting in the retrieval of vehicles for TD?
- Answer – "I did not load any TD vehicles onto a truck – **I did point out where the TD vehicles were… I would put them together in spots… made sure the roadway was clear – there was no obstruction… I have never prevented anyone to come and get TD's vehicles**…"

  [And in Redirect]

  Answer – "**They were all in one area – I put them there myself**."

  Question – "Did anyone from TD come to get them?"

  Answer – "No."

  Question – "**Did you say that they could not take them?**"

  "No… **Before the Order [March 4, 2024] I would ask to be paid first – but after the Order I did not**."

  [My bolding added]

[82] I note that Mr. Young's evidence is also confirmed by some of the emails placed into evidence.

[83] The defendants knowingly stored the plaintiffs' vehicles without obtaining the plaintiffs' express approval to do so after March 4, 2024.

[84] However, when examined closely, the plaintiffs' argument is made of straw.

[85] The plaintiffs had, since March 4, 2024, unambiguously signalled their position that thereafter, no express approval would be granted for any of their vehicles to be stored with the defendants.

[86] The defendants understood this and acted as if there was no express approval, and there would be none.

[87] Why would the defendants have even asked the plaintiffs in those circumstances – the answer was a foregone conclusion.

[88] However, that circumstance then triggers the requirement for the "immediate return" of the vehicles to the plaintiffs.

[89] I am satisfied the defendants' obligations under the Order were as follows: to identify the location of the plaintiffs' vehicles and make them reasonably accessible such that they could be taken by the plaintiffs' agents from the defendants' premises.

[90] The defendants did so on one occasion at least, and I find were prepared to do so on a continuing basis.

[91] The plaintiffs on the other hand did not actualize any serious plan to retrieve their vehicles.

2 - Detaining vehicles acquired by them, after the defendants determined that they are insured by a plaintiff.

[92] I infer that counsel, having been involved in the drafting of the Consent Order, will have applied their combined legal expertise in light of their clients' interests to their choice of words.

[93] The word "detain" is defined in the *Encyclopedic Dictionary of Canadian Law*, LEXIS-NEXIS Canada Inc. 2021 at page D – 168 in part as: "a verb first recorded during the late Middle English from the Latin verb *detinere* … to detain… holdback."; and "*detinue*" is defined as: "In order to succeed in an action for detinue a plaintiff must prove, a) – that a chattel was in the possession of the defendant who refuses to deliver the same, and b) – that, if the defendant on the issuance of the writ no longer has possession of the chattel, he parted with it wrongfully.… A claim in detinue does not require proof of any wrongful use of the goods by the bailee himself, but simply the failure to deliver them up when required to do so."

[94] I interpret the use of the word "detain" in the Order as requiring the plaintiffs to prove beyond a reasonable doubt that the defendants refused to deliver/i.e. reasonably make available to the plaintiffs or failed to deliver/i.e. reasonably make available to the plaintiffs, when required to do so, any of the vehicles in issue.

[95] Clearly, the defendants must first know which vehicles in their possession are insured by the plaintiffs.

[96] The plaintiffs are obliged to prove beyond a reasonable doubt that after March 4, 2024, the defendants by their action or inaction, knowingly and wilfully refused or failed to reasonably make available to the plaintiffs the vehicles in issue.

[97] When were the defendants "required to do so"?

[98] Surely only when the plaintiffs had a serious plan in place with a fixed date when they anticipated coming and picking up their insured vehicles.

[99] The Order requires that "where the defendants determine that a vehicle in their possession is insured by one of the plaintiffs subsequent to recovery [i.e. after the vehicle is initially transported to and left at the premises of the defendants and a reasonable period of time has passed to allow for the necessary initial inquiries and paperwork to be addressed] the defendants must immediately return the vehicle to the appropriate plaintiff".

[100] Once again, in relation to interpreting "return the vehicle to", I am satisfied that it was not the intention of the parties that the defendants had to transport any vehicle insured by the plaintiffs to a location chosen by the plaintiffs.

[101] I interpret the Order as requiring the defendants, upon proper notice and acting reasonably, to immediately make available to the plaintiffs any vehicles in issue, that the plaintiffs then wished to transport elsewhere.

[102] To my mind, this aspect has at least two components.

[103] The defendants must identify to the plaintiffs the location of each of the vehicles insured by the plaintiffs on the defendants' premises and the defendants must make accessible and have prepared otherwise those vehicles for pickup by the plaintiffs' agents.

[104] Sandy Young's affidavit filed July 19, 2024, sets out the defendants' position. He was also cross-examined.

[105] I note here that the plaintiffs did not file affidavit evidence from any person who was physically present on or around the premises of the defendants at the relevant times.

[106] The plaintiffs' evidence is restricted to:

1. The **two affidavits of Pam Cole** of Edmonton, Alberta, who is an auto litigation and complex auto loss specialist for one of the insurers [sworn October 26, 2023, and May 1, 2024, in which she relies substantially on "adjusters notes", which although they are likely "business records" at common law and under the *Evidence Act*, RSNS c. 154, at section 23, I generally find deserve only modest weight as they are curt notes significantly bereft of context and are put forward for the truth of their contents – i.e. hearsay. It must be borne in mind that a contempt proceeding is a quasi-criminal proceeding, and in that regard, decisions such as those from the Supreme Court of Canada in *R. v. Khelawon*, 2006 SCC 57, [2006] 2 S.C.R.; *R. v. Youvarajah*, 2013 SCC 41, [2013] 2 S.C.R. 720; *R. v. Bradshaw*, 2017 SCC 35, [2017] 1 S.C.R. 865; *R. v. Charles*, 2024 SCC 29, have informed my analysis of the hearsay proffered by the plaintiffs.

   [Although our *Civil Procedure Rules* may generally permit hearsay for motions, an exception arises in the case of a motion for civil and criminal contempt given their analogous procedural protections to those involved in true criminal proceedings - see for example s. 127 *Criminal Code* and the reasons in *R. v. Gibbons*, [1981] 2 SCR 468.]

2. The June 20, 2024, sworn **affidavit of plaintiffs' counsel Ryan Chute** which generally attaches ongoing correspondence between counsel for the plaintiffs and defendants between June 17 and June 20, 2024, but also attaches email exchanges between agents of the plaintiffs summarizing facts at those relevant times for which the writers of the emails were not personally present and which contain second and third hand hearsay. I attribute them appropriately reduced weight depending on the individual circumstances – see for example, Exhibits "H"-"N".

3. And Exhibits of emails/letters:

   (a) an email chain (handwritten "#1") between counsel for the plaintiffs and counsel for the defendant and Sandy Young between July 10 – August 14, 2024;

(b) an August 14, 2024 letter from Plaintiffs' counsel, Ryan Chute.

(c) an email chain (handwritten "#2") between counsel for the plaintiffs, counsel for the defendant and Sandy Young between August 14 – 15 2024 enclosing three invoices, as well from the defendants to the plaintiffs;

(d) an email chain (handwritten "#3") between August 14 – 16, 2024 between counsels for the plaintiff, defendants, and Mr. Young.

(e) a package of letters dated May 24, 2024 – August 27, 2024, between counsel for the parties.

[107] In his testimony, Sandy Young stated that he had assembled those vehicles insured by the plaintiffs in one location in order to facilitate the plaintiffs' access to them (see also his affidavit, paras. 13-15).

[108] Sandy Young repeatedly referenced in his **July 19, 2024, affidavit**, and cross-examination, that he has yet to be paid for the storage of numerous vehicles insured by the plaintiffs, e.g. para. 18 of his affidavit: "I have not been paid for any vehicle storage or retrieval to date involving the vehicles at issue in this matter."

[109] Moreover, therein at the following paragraphs Mr. Young states, which I find was not seriously contradicted[4]:

[4] On June 17, 2024, Mr. Chute wrote to the defendants' counsel: "As indicated in my correspondence and during today's hearing, we have communicated all known vehicles to your clients as soon as they were identified. Those vehicles are listed in the draft Order filed on June 10, 2024. Again, we ask that your clients confirm that they have those vehicles listed in that draft Order and in all previous correspondence. Failure to identify the vehicles that your client is releasing will prevent the plaintiffs from taking any steps to arrange for recovery. It is our position that the *Warehousemans Lien Act* requires your clients to provide notice of any vehicle recovered and stored pursuant to the *Act*. We are not aware of any circumstances that would require your clients to recover the impugned vehicles without communicating with the vehicle's owner or to break into any vehicle subsequent to the recovery. Please advise if your clients are refusing to identify the vehicles in their possession or to return any vehicles in accordance with the March 4, 2024, Interlocutory Injunction." I accept the evidence of Mr. Young at paragraph 11 of his affidavit that the defendants followed: "the practice of retrieving damaged vehicles in Cape Breton …". The evidence in the precise circumstances of each of the plaintiffs' vehicles is unclear as to when the individual/"person" owner of the vehicle is legally relieved of that status/authority by virtue of the payout by the insurer to that individual/"person" or otherwise.

10 That I have never refused to give any vehicle in my possession to the plaintiffs in this matter on any occasion as long as I get paid for my services.

11 That the practice of retrieving damaged vehicles in Cape Breton is as follows[5]:

(a) I receive a call from the Cape Breton Regional Police to come and retrieve the vehicle that has been in an accident;

(b) I send my wrecker out to retrieve the vehicle and then we bring it back to my shop;

(c) when it returns to my shop, I subsequently hear from either the individual involved in the accident or the insurance company about this vehicle. This is when I first find out who the insurer is;

(d) that upon doing so, I arrange with the insurance company to have them retrieve the vehicle through one of their sub brokers and I render a bill for my services and the storage.

…

13 That on the 19th day of June, I found out through my solicitor, the plaintiff wished to retrieve vehicles in my possession.

14 Upon hearing of this, I identified the vehicles in question to be picked up. This took some time as I have approximately 3000 vehicles in my compound and TD was looking to retrieve approximately 25 of them.

15 That I believe on June 20, 2024, somebody on behalf of the insurance company arrived to retrieve the vehicles. I am not certain of his name, but he did have an opportunity to speak with him. The conversation went very well and I even offered to provide them with lunch. It was my understanding that he did not have the proper equipment to retrieve the vehicles from where they were located.

Therefore, I am not satisfied more likely than not, whether and when there needed to be compliance by the defendants regarding section 4 of the Act in relation to any of the vehicles at issue. Consequently, I do not find persuasive the plaintiff's argument that the defendants had failed to give notice to the plaintiffs pursuant to section 4 of the *Act*. Nevertheless, on the facts, I am satisfied that the defendants were, in a good faith manner, responsive to the plaintiffs as if they were the "owner" of each of the vehicles at issue.

[5] There was no contrary evidence to this assertion, and I accept it was the customary business practice at the relevant times. Mr. Mozvik also emailed Ryan Chute on June 18 2024, Chute affidavit, Exhibit "L" p. 3: "To be clear, the vehicles as identified by your client are in my client's possession. Any other vehicles are unknown at present until we received word from your client. The practice here for the last number of decades has been explained to you."

[Mr. Young elaborated in testimony that the driver of a car transport vehicle did not have the proper equipment to load at least some of the vehicles in question on to his vehicle, and moreover he only had a capacity for three full vehicles, thus he was unable at that specific time to take any more than three vehicles.]

> 16 Last day [counsel for the Plaintiffs] indicated to the Court I wanted to be paid to retrieve the vehicles. This is taken out of context. The plaintiffs in this matter informed me that they would have to retrieve a special type of vehicle in order to retrieve the vehicles in question. It would have to be brought in from out of province.
>
> 17 That in response to this and through my lawyer, **I did offer to retrieve the vehicles with my equipment to avoid this cost. I did however say I wanted to be paid for my time and service associated with this activity. It was my understanding I could do it significantly cheaper than having somebody bring in the machinery from out of province**.
>
> 18 **That I have not been paid for any vehicle storage or retrieval to date involving the vehicles at issue in this matter**.
>
> …
>
> 22 That I am a small business owner and do not have the resources to conduct myself as [counsel for the Plaintiffs] has suggested. As per my lawyer's email, I am perfectly willing to communicate with anybody from TD on a retrieval of their vehicles.

[110] Even after March 4, 2024, I am satisfied that there likely were legitimate/reasonable disagreements, between the defendants and plaintiffs, including pursuant to s. 3 of the *Warehouseman's Lien Act*, RSNS 1989, c. 499, which statutory authority has not been ousted in the present circumstances, thus permitting the defendants to arguably rely on having a lien on goods deposited with them for storage.

[111] I bear in mind here, as well, Chief Justice Ilsley's reasons in *MacKenzie v. Somers*, [1954] 1 DLR 42, 1953 CanLII 328 (NSSC), being a claim in replevin for the return of wrongfully detained goods (which shares characteristics with detinue):

> It seems to me that **there are three substantial defences to the action**: (1) that **at the time of the notices demanding the articles, the plaintiffs were not, or were not solely, the persons owning or entitled to the possession of the articles** and **therefore** that the defendants' non-compliance with the notices was **not evidence of an unjust detention** of the articles; (2) **that the plaintiffs were not or were not**

> **solely at the commencement of the action the persons owning or entitled to the possession of the articles**; and (3) that no notice of demand to any defendant at the time he was in possession of any article bas been proved.
>
> At this point, a word may be said as to what a plaintiff must prove in an action of replevin where, as here, all the plaintiffs' allegations are put in issue. He must prove that at the commencement of the action he was the owner or entitled to possession of the chattel in question and that it was at that time being unjustly detained from him: see O. XLV, r. 2. Where, as here, the sole evidence of an unjust detention is a refusal to give the chattel up on demand, a demand and refusal before action must be proved. "If there is no refusal before action brought and there is no other conversion alleged, neither trover nor detinue will lie": 33 Hals., 2nd ed., p. 59. See also *Clayton v. Le Roy*, [1911] 2 K.B. 1031. Winfield, Law of Tort, 5th ed., p. 351, dealing with detinue says: "The plaintiff must prove, first, that he is entitled to possession of the chattel and, secondly, that the defendant detained it after demand had been made for its restoration."
>
> [My bolding added]

[112] Subject to compliance with the *Act*, as noted by Chief Justice Ilsley in *MacKenzie*, arguably in present circumstances the plaintiffs were not the only persons entitled to possession of the vehicles in issue.

[113] As noted above, the evidence does permit me to conclude that Mr. Young, for some period of time in relation to each of the relevant plaintiffs' vehicles, had an interest therein by virtue of the *Warehouseman's Lien Act*.

[114] An unlawful detention or holding back of the relevant motor vehicles requires an intentional and purposeful act, done without at least a reasonably/honestly believed legal basis therefor.

[115] In spite of the Order's wording that the defendants "must immediately return" the plaintiffs' vehicles, I understood Mr. Young's position to be that he believed he had an entitlement to their possession pursuant to the *Warehouseman's Lien Act* for his unpaid storage fees.

[116] There was no factual basis or legal argument by the plaintiffs which suggested that the onus was on the defendants to transport the plaintiffs' vehicles to a location chosen by the plaintiffs[6].

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[6] Michelle Kelly, counsel for the plaintiffs, appropriately acknowledged on October 18, 2024, at the hearing, that the directive to "immediately return" vehicles, requires "some assistance and cooperation" by the defendants. She did not suggest the defendants' obligation was any greater.

[117] The plaintiffs knew where "their" motor vehicles were located.

[118] After the March 4, 2024, Consent Order, the plaintiffs only once sent a retrieval vehicle to pick up their vehicles at the defendants' premises – June 20, 2024.

[119] The plaintiffs therefore only created one opportunity for the defendants to render "some assistance and cooperation" to the plaintiffs in the retrieval of their insured vehicles stored/detained at the defendants' premises.

[120] The defendants did not interfere with that process.

[121] Mr. Young testified that on June 20, 2024, the individual who came for the vehicles had a vehicle which would transfer only three motor vehicles at a time, and he had no means of placing the vehicles onto his transfer vehicle.

[122] Consequently, he left without any vehicles.

[123] The defendants had done everything they were reasonably required to do in facilitating the plaintiffs' agent to take the plaintiffs' vehicles off the defendants' premises.

[124] Mr. Young even offered the plaintiffs the services of his loader to do so, but they at no time took him up on the offer or had agents appear before or after June 20, 2024, at the premises of the defendants with equipment to remove the vehicles and to place them on a transfer vehicle.

[125] The evidence satisfies me that if Mr. Young declined provision of the defendants' services to the plaintiffs, he did so for legitimate business reasons – he had a concern that he would not be paid for the work once the vehicle in question had been removed from the premises, such that any protection he might have otherwise had under the *Warehouseman's Lien Act*, might be extinguished.

Conclusion

1. I am satisfied beyond a reasonable doubt (*Carey v. Laiken*, at para. 32) that, whereas the March 4, 2024, Order alleged to have been breached "must state clearly and unequivocally what should and should not be done" - the written Order satisfies this requirement (I note that it was drafted and consented to by the parties who each had legal counsel to

draft and interpret it for them); and the defendants had actual knowledge of the written Order.

2. I am not satisfied beyond a reasonable doubt that before or after March 4, 2024, the defendants were aware at the time the plaintiffs' vehicles were acquired, that the plaintiffs were the insurers and thereby entitled to possession of those vehicles.

3. I am satisfied beyond a reasonable doubt that after March 4, 2024, the defendants, while not aware when vehicles were acquired, they became aware thereafter, that one or more of the plaintiff insurers' had motor vehicle(s) which were transported to the defendants' properties, and the defendants did store and continue to store such motor vehicles without first obtaining the express instructions from the insurer once they were aware;

4. On the other hand, I am satisfied that the plaintiffs could have, and should have, done more to facilitate the removal of their vehicles from the defendants' premises, for example, by more timely and proactive arrangements.

5. I conclude the defendants would likely have facilitated their removal from the defendant's premises in such circumstances, if specifically asked and given sufficient notice.

6. In all the circumstances, for those instances where I might otherwise have found the defendants were guilty of contempt, I exercise my inherent discretion to decline to impose a contempt finding for various reasons, including because the defendants generally acted in good faith and strived to take reasonable steps to comply with the Order.

7. Alternatively, I decline to impose a contempt finding because it would work an injustice in the circumstances of this case.

8. I am not satisfied beyond a reasonable doubt that the defendants detained such motor vehicles.

[126] The motion is dismissed.

[127] If the parties cannot agree on costs, I shall receive their written submissions to a maximum of 10 pages within 20 calendar days of the release of this decision.

Rosinski, J.