

COURT OF KING'S BENCH OF MANITOBA
(GENERAL DIVISION)

B E T W E E N:

YELLOWHEAD INDUSTRIES LTD.,	)	<u>Keith Murkin,</u>
garage keeper/respondent,	)	for the garage keeper/respondent
	)	
- and -	)	
	)	
MINTY'S MOVING LTD.,	)	Nicole D.M. Hamilton,
owner/applicant.	)	<u>Dale Beynon,</u>
	)	for the owner/applicant
	)	
	)	<u>Judgment delivered:</u>
	)	May 19, 2026

LEVEN J.

SUMMARY

[1] This was an application by Minty's under ***The Garage Keeper's Act***, C.C.S.M. c. G10 (***GKA***). The vehicle owner (Minty's) made some sort of oral contract with the garage keeper (Yellowhead) to build two "hardox boxes" for two semi-trucks ("the 2007" and "the 2008"). The parties disagree on the price. The boxes were constructed separately and were meant to be attached to the trucks after they were

completed. The trucks were parked on Yellowhead's premises. Minty's also owned a third vehicle ("the Kenworth"), which is not subject to this litigation.

[2] Yellowhead eventually built the two hardox boxes, installed one on the 2007 but, because of a dispute about price, never installed a box on the 2008. On March 21, 2025, Minty's paid Yellowhead some money. Yellowhead considered it to be a partial payment. When, it became clear that there was a dispute about price, Yellowhead erroneously placed **GKA** liens on the 2007, the 2008 and the Kenworth. Realizing its error, on May 20, 2025 (unless otherwise noted, all dates are in 2025), Yellowhead discharged the liens on the Kenworth and the 2008, and advised Minty's of the discharge.

[3] On May 21, Harold Minty (HM) affirmed an affidavit, which was filed on May 22 ("HM #1"). It mentioned the liens, but did not mention that they had been discharged.

[4] On May 22, Minty's paid \$57,226.40 into court, under section 13(2) of the **GKA**. This included the \$50 required by **GKA** section 13(2)(c).

[5] On May 26 or 28, Minty's employees went to Yellowhead and picked up the 2007, the 2008 and the Kenworth. The 2007 had a box attached; the 2008 did not.

[6] On or about June 13, HM affirmed a second affidavit (HM #2).

[7] On July 16, Minty's filed a Notice of Motion to have the \$57,176.40 paid out of court. It was paid out.

[8] Yellowhead has since sold the second box (the one that would eventually have been installed on the 2008). Yellowhead feels that Minty's still owes a small amount of money, but Yellowhead is not seeking to litigate. Minty's filed a Notice of Application,

citing the **GKA**, and requesting an order that Yellowhead immediately release the second box (for the 2008) to Minty's.

[9] For reasons explained below, the Application fails.

FACTS

[10] This is not a comprehensive recitation of all evidence and argument; it is a concise summary.

[11] On December 4, 2024, Minty's paid Yellowhead \$35,000 by electronic funds transfer (EFT) for work on a vehicle ("the Sterling")(HM #2, paragraph 15).

[12] When the first box (for the 2007) was built and installed (in January 2025), Yellowhead sent Minty's an invoice (#26178) for \$50,563, on January 31. About a month later, Minty's raised concerns about the price, taking the position that the real price was only \$30,000 plus tax [i.e. \$33,600]. HM confirmed that the alleged quote was for \$30,000 plus taxes (see paragraph 13 of the HM affidavit affirmed February 23, 2026 – "HM #3").

[13] Neither party alleged that there was a written quote or estimate for \$30,000, or for any other dollar figure. If there was a contract, it was some sort of oral contract.

[14] Construction, but not installation, of the second box was started about January 31, and finished by March 5. On or about March 10, Yellowhead sent Minty's an invoice for \$53,233.49 the 2008 (#26137). This invoice included taxes. The box had not yet been installed.

[15] On March 21, Minty's sent Yellowhead a cheque for \$70,999.91, with an attached "Payment Stub" saying that the \$70,999.91 was meant to cover \$30,000 for the first

box, \$30,000 for the second box, \$4,252.50 for a third item (the Kenworth), and \$6,747.41 for a fourth item ("the Sterling"). Yellowhead cashed the cheque.

[16] Yellowhead filed liens against the 2007, the 2008 and the Kenworth, and obtained a confirmation statement from the Personal Property Registry (PPR) on March 31.

[17] On April 2, Yellowhead issued a "Balance Due Statement". It said the price of the Sterling was \$48,397.39; that \$35,000 was paid towards this; and that a balance of \$13,387.39 remained due. It showed that the price of the 2008 was \$53,223.49; that \$30,000 was paid; and that \$23,223.49 was due. It showed that the price of the 2007 was \$50,563.52; that \$30,000 was paid; and that \$20,563.52 was due. It added up the three balances, added a \$172.00 service charge, and showed a total balance of \$57,348.40.

[18] An almost identical statement was issued on May 2. The only difference was that it showed a \$265.99 service charge, and a \$57,442.39 grand total. The service charges and the difference were never explained.

[19] On May 2, Yellowhead sent Minty's an updated invoice for the 2008 (#26137) for \$53,223.49, consisting of \$46,489.28 for one hardox box, plus shop supplies, plus batteries, plus tax.

[20] On or about May 16, Yellowhead sent Minty's a "Balance Due Statement". It showed a January 31 invoice (#26178) for the 2007, for \$50,563.52; a payment of \$46,620.61; and a balance due of \$3,942.91.

[21] In May, Yellowhead decided that it “should never have registered a lien against the 2008 for the full amount of the invoice, because the work had only been partially completed” (see affidavit of Tia Morrissey (TM) affirmed about February 5, 2026). Yellowhead also concluded that it should never have put a lien on the Kenworth, because the Kenworth had been paid in full (TM affidavit paragraph 77).

[22] On or about May 16, Yellowhead issued an updated Balance Due Statement, referring only to the 2007. It showed \$50,563.52 billed; \$46,620.61 paid; and \$3,942.91 due.

[23] On May 20, Yellowhead discharged the liens. Yellowhead got a financing change statement under the PPR showing that a lien remained on the 2007, but no liens remained on the 2008 and the Kenworth. On May 20, Yellowhead’s lawyers emailed Minty’s lawyers that the liens would be discharged, and that the 2008, the Sterling and the Kenworth would be released to Minty’s. The lawyer’s email said that there would be “no charges” for the 2008. It also said that the 2007 would be released as soon as Minty’s paid the final \$3,942.41. (Apparently, Yellowhead soon changed its mind about requiring this small payment.)

[24] On May 21, HM affirmed HM #1, which was filed on May 22. It mentioned the liens, but did not mention the May 20 email from Yellowhead’s lawyers.

[25] On May 22 (two days after the May 20 lawyers’ email), Minty’s paid \$57,226.40 into court, under section 13(2) of the **GKA**.

[26] On May 26 or 28, Minty’s employees went to Yellowhead and picked up the 2007, the 2008 and the Kenworth. The 2007 had a box attached; the 2008 did not.

(The \$3,942.41 allegedly owing for the 2007 was never paid, and Yellowhead is not pursuing any claim for this small amount.)

[27] On July 16, Minty's filed a Notice of Motion to have the \$57,176.40 paid out of court. Yellowhead did not contest this. On July 23, the money was paid out of court.

[28] In its brief at paragraph 34, Yellowhead commented: "Yellowhead admits that that it may have improperly filed the Liens against the vehicles and likely should not have filed against the 2008 International for the complete project."

[29] Yellowhead says that, altogether, Minty's paid Yellowhead \$95,000 (TM affidavit, paragraph 87).

[30] Yellowhead feels that Minty's still owes it a small amount of money (\$3,942), but Yellowhead has decided not to pursue this claim.

[31] There was no cross-examination on affidavits.

LAW

[32] *Kobi's Auto Ltd. v 5174245 Manitoba Ltd. et al*, 2018 MBCA 134 was a recent case about the **GKA**. The facts were very different from those in our case. At paragraph 41, the court observed that "where a lien is created by statute, the entitlement to the lien will be strictly construed but, when a claimant's lien rights are established, the law will be liberally interpreted to accomplish the objective of the enactment."

[33] At paragraph 44, the court added that the "objective of the power of sale conferred under section 9 of the **GKA** is to provide a lienholder with a remedy that does not otherwise exist – a power of sale without judicial approval. This statutory remedy

provides a more expedient and less costly alternative than retaining the vehicle until paid the debt owed or seeking the permission of the Court to sell it.”

[34] At paragraph 54, the court added that “there must be rigorous compliance with any condition set out by the Legislature that extends or enlarges what the common law would otherwise permit”.

[35] The parties filed other cases, and I have carefully considered them all.

Rules

[36] Relevant ***Court of King’s Bench Rules***, M.R. 553/88 include:

Proportionality

1.04(1.1) In applying these rules in a proceeding, the court is to make orders and give directions that are proportionate to the following:

- (a) the nature of the proceeding;
- (b) the amount that is probably at issue in the proceeding;
- (c) the complexity of the issues involved in the proceeding;
- (d) the likely expense of the proceeding to the parties.

...

Originating process

2.01(2) The court shall not set aside an originating process on the ground that the proceeding should have been commenced by an originating process other than the one employed.

...

Proportionnalité

1.04(1.1) Lorsqu’il applique les présentes règles dans le cadre d’une instance, le tribunal rend des ordonnances et donne des directives qui sont proportionnées :

- a) à la nature de l’instance;
- b) au montant probablement en litige;
- c) au degré de complexité des questions en litige;
- d) au coût probable de l’instance pour les parties.

...

Acte introductif d’instance

2.01(2) Le tribunal n’annule pas un acte introductif d’instance pour le motif que l’instance aurait dû être introduite par un autre acte.

...

Contents — motions

39.01(4) An affidavit for use on a motion, including a motion for summary judgment, may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit.

Contents — applications

39.01(5) An affidavit for use on an application may contain statements of the deponent's information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit.

Contenu — Motions

39.01(4) L'affidavit à l'appui d'une motion notamment une motion en vue d'obtenir un jugement sommaire peut faire état des éléments que le déposant tient pour véridiques sur la foi de renseignements, pourvu que la source de ces renseignements et le fait qu'ils sont tenus pour véridiques soient indiqués.

Contenu — Requêtes

39.01(5) L'affidavit à l'appui d'une requête peut faire état des éléments que le déposant tient pour véridiques sur la foi de renseignements relativement à des faits non contestés, pourvu que la source de ces renseignements et le fait qu'ils sont tenus pour véridiques soient indiqués.

Personal Property Security Act

[37] Relevant sections of ***The Personal Property Security Act***, C.C.S.M. c. P35

(***PPSA***) include:

Registry continued

42(1) The Personal Property Registry is hereby continued for the purpose of registrations under this Act, under prior registration law and under any other Act, that are permitted or required to be made in the Registry

...

Registration of financing statement

Bureau d'enregistrement relatif aux biens personnels

42(1) Le Bureau d'enregistrement relatif aux biens personnels est maintenu aux fins des enregistrements qui sont prévus par la présente loi, la loi d'enregistrement antérieure et toute autre loi et qui peuvent ou doivent être faits au Bureau d'enregistrement.

...

Lieu de l'enregistrement

43(1) Les états de financement

43(1) A financing statement may be submitted for registration in the Registry as prescribed.

...

Amendment of registration

44(3) An amendment to a registration may be effected by registering a financing change statement at any time during the period that the registration is effective, and the amendment is effective from the time when the financing change statement is registered to the expiry of the registration that is amended.

peuvent être présentés à l'enregistrement au Bureau d'enregistrement en conformité avec les règlements.

...

Modification de l'enregistrement

44(3) La modification d'un enregistrement peut être effectuée par l'enregistrement d'un état de modification de financement pendant que l'enregistrement est en vigueur, auquel cas la modification est en vigueur à partir de l'enregistrement de l'état de modification de financement jusqu'à l'expiration de l'enregistrement modifié.

Garage Keepers Act

[38] Relevant sections of the **GKA** include:

Definitions

1 In this Act,

"garage" means a building or part of a building within or in connection with which any service is rendered upon a motor vehicle in the ordinary course of business;

"garage keeper" means a person, firm, or corporation, who or which renders service upon a motor vehicle in a garage for or at a charge, price, or consideration, in the ordinary course of business and as the principal employment or one of the principal employments of that person, firm, or corporation;

"motor vehicle" includes

Définitions

1 Les définitions qui suivent s'appliquent à la présente loi.

« garage » Bâtiment ou partie d'un bâtiment dans lequel ou relativement auquel des services sont fournis à l'égard de véhicules automobiles dans le cours normal des affaires.

« garagiste » Personne, firme ou corporation qui fournit des services à titre onéreux à l'égard de véhicules automobiles dans un garage dans le cours normal des affaires et à titre d'activité principale ou de l'une de ses activités principales.

« véhicule automobile » Les automobiles, les motocyclettes, les tracteurs et les autres véhicules

automobile, motor bicycle, tractor, and any other vehicle propelled or driven otherwise than by muscular power, and any internal combustion engine; but does not include a car of an electric or steam railway, or any other vehicle running only upon rails, or a trolley bus;

"service" means

(a) the making of bona fide repairs to a motor vehicle or farm vehicle, or any part, accessory or equipment pertaining thereto, by or under the supervision of an automobile repair mechanic who holds a valid and subsisting certificate of qualification as such issued pursuant to The Apprenticeship and Certification Act, or by the supplying of parts or accessories therefor, or

(b) the painting, storing, or caring for a motor vehicle or farm vehicle, or any part, accessory or equipment pertaining thereto, by a garage keeper.

[underlining added]

Garage keeper's lien

2 Subject to subsection 5(6), every garage keeper has a lien upon every motor vehicle or farm vehicle for service rendered upon it by the garage keeper to an amount not exceeding the charge, price, or consideration therefor.

...

Definitions

13(1) In this section,

"owner" means the owner of a

propulsés ou conduits autrement que par la force musculaire, ainsi que les moteurs à combustion interne. Sont exclus de la définition les voitures des compagnies de chemin de fer électrique ou à vapeur, les autres véhicules circulant uniquement sur rails et les autobus à trolley.

« service »

Les réparations véritables effectuées à l'égard d'un véhicule automobile ou d'un véhicule agricole, ou d'une pièce, d'un accessoire ou d'un équipement s'y rapportant, par un mécanicien d'automobile qui est titulaire à ce titre d'un certificat de qualification valide et en vigueur délivré en vertu de la Loi sur l'apprentissage et la reconnaissance professionnelle, ou sous la surveillance d'un tel mécanicien, ou par la fourniture de pièces ou d'accessoires à cet effet;

la peinture, le remisage ou l'entretien d'un véhicule automobile ou d'un véhicule agricole, ou d'une pièce, d'un accessoire ou d'un équipement s'y rapportant, par un garagiste.

Privilège du garagiste

2 Sous réserve du paragraphe 5(6), le garagiste a un privilège sur chaque véhicule automobile ou véhicule agricole pour les services qu'il fournit à son égard. Le montant du privilège ne peut toutefois dépasser le montant du prix ou de la considération demandé en échange des services.

...

Définitions

13(1) Les définitions qui suivent s'appliquent au présent article.

« propriétaire » Le propriétaire d'un

vehicle;

"vehicle" means a motor vehicle or farm vehicle or any part, accessory or equipment pertaining thereto.

...

Payment into court

13(2) Notwithstanding any other provision of this Act, where a garage keeper has a lien on a vehicle and

(a) has detained the vehicle under section 3; or

(b) has seized the vehicle under section 7; or

(c) has the right to seize the vehicle under section 7;

and the owner disputes the indebtedness with respect to which the lien arose, notwithstanding that the owner has signed an acknowledgment of the indebtedness as required under subsection 5(1), the owner may pay the amount of the alleged indebtedness, together with 10% thereof or \$50., whichever is the lesser, into court and, upon the garage keeper being served with the notice of the payment, the lien ceases to exist.

Form of notice of payment

13(3) The notice of payment may be in Form 2 of the Schedule ...

and shall have annexed to it a statement of the garage keeper's charges showing the amount claimed and how it is calculated or, where the garage keeper has not delivered a

véhicule.

« véhicule » Véhicule automobile ou véhicule agricole, ou pièce, accessoire ou équipement s'y rapportant.

...

Consignation au tribunal

13(2) Malgré toute autre disposition de la présente loi, lorsqu'un garagiste est titulaire d'un privilège sur un véhicule, et qu'il :

a) a retenu le véhicule en application de l'article 3;

b) a saisi le véhicule en application de l'article 7;

c) a droit de saisir le véhicule en application de l'article 7,

le propriétaire peut, s'il conteste la dette à l'égard de laquelle le privilège a pris naissance, en dépit du fait qu'il a signé la reconnaissance exigée par le paragraphe 5(1), consigner au tribunal le montant de la dette qui aurait été contractée, ainsi que 10 % de ce montant ou 50 \$, en prenant la somme la moins élevée. Le privilège s'éteint dès que l'avis de consignation est signifié au garagiste.

Forme de l'avis de consignation

13(3) L'avis de consignation peut être fait selon la formule 2 de l'annexe et il doit contenir :

Un relevé des frais du garagiste indiquant le montant réclamé et la façon dont il est calculé est également joint à l'avis; toutefois, si le garagiste

statement of the garage keeper's charges to the owner, shall have annexed to the notice an affidavit of the owner setting out the amount claimed by the garage keeper.

Statement of charges

13(4) The statement of charges required under subsection (3) shall be furnished by the garage keeper upon completion of the service to the vehicle.

Notice to be signed by court officer

13(5) The proper officer of the court, if satisfied that the notice of payment complies with subsection (3) and that the owner has paid the required amount into court together with such court fee as may be prescribed, shall sign the notice.

Service of notice of payment

13(6) The notice of payment shall be served personally by leaving a true copy thereof and of the annexed statement of charges with the garage keeper named in the notice, or the garage keeper's service manager or credit manager or other person in charge at the garage keeper's place of business.

Action within 30 days

13(7) A garage keeper served with a notice of payment may, within 30 days from the date of service of the notice, commence an action in the court, regardless of the amount, to realize their claim, and where the action is so commenced the moneys in court shall be paid out in

n'a pas remis un tel relevé, un affidavit du propriétaire indiquant le montant réclamé par le garagiste accompagne l'avis.

Relevé des frais

13(4) Le garagiste remet le relevé des frais exigé par le paragraphe (3) dès que la fourniture du service à l'égard du véhicule est terminée.

Avis signé par l'auxiliaire compétent

13(5) L'auxiliaire compétent du tribunal signe l'avis de consignation s'il est convaincu que cet avis respecte le paragraphe (3) et que le propriétaire a déposé le montant requis au tribunal ainsi que le droit prescrit.

Signification de l'avis de consignation

13(6) L'avis de consignation est signifié en main propre par remise d'une copie conforme de cet avis et du relevé des frais qui y est joint au garagiste qui y est mentionné ou à tout responsable à l'établissement du garagiste notamment, son directeur des services ou son directeur du crédit.

Action intentée dans les 30 jours

13(7) Le garagiste à qui un avis de consignation a été signifié peut, dans les 30 jours qui suivent la signification de l'avis, intenter une action devant le tribunal, sans qu'il soit tenu compte du montant, en vue de réaliser sa réclamation; les sommes consignées sont alors versées en conformité avec

accordance with the order of a judge.

Failure to commence action

13(8) Where the action is not commenced within the time limited by subsection (7), the moneys paid into court shall be paid out to the owner when the owner applies therefor.

Garage keeper to give up possession

13(9) Upon the notice of payment being served in accordance with subsection (6), the garage keeper shall forthwith give up possession of the vehicle to the owner, and if the garage keeper, upon being requested by the owner to give up possession of the vehicle, fails or refuses to give up possession of the vehicle to the owner, the garage keeper is guilty of an offence and liable, on summary conviction, to a fine of not more than \$100. for each day that the garage keeper has refused or failed to give up possession of the vehicle.

FORM 2

NOTICE OF PAYMENT INTO COURT
UNDER THE GARAGE KEEPERS ACT

IN THE COURT OF KING'S BENCH

TO: (Name and Address of Garage
Keeper)

TAKE NOTICE THAT (Name and
Address of Owner)

hereafter referred to as "the owner"
has paid into this court the sum of
\$_____ being the amount claimed by
you (together with costs) in
accordance with the annexed
statement of the garage keepers

l'ordonnance d'un juge.

Omission d'intenter l'action

13(8) Les sommes consignées au tribunal sont versées au propriétaire dès qu'il en fait la demande si l'action n'est pas intentée dans le délai prévu au paragraphe (7).

Remise de possession

13(9) Dès la signification de l'avis de consignation en conformité avec le paragraphe (6), le garagiste remet la possession du véhicule au propriétaire; le garagiste commet une infraction s'il omet ou refuse de remettre la possession du véhicule au propriétaire après que celui-ci lui en ait fait la demande et, il se rend passible, sur déclaration sommaire de culpabilité, d'une amende maximale de 100 \$ pour chacun des jours au cours desquels l'infraction se continue.

FORMULE 2

AVIS DE CONSIGNATION AU TRIBUNAL
EN VERTU DE LA LOI SUR LES
GARAGISTES

COUR DU BANC DU ROI

DESTINATAIRE : (Nom et adresse du
garagiste)

PRENEZ ACTE QUE (nom et adresse du
propriétaire)

ci-après dénommé « le propriétaire » a
consigné au tribunal la somme de
_____ \$ constituant le montant de
votre réclamation (et des frais
judiciaires) en conformité avec le relevé

charges showing the amount claimed and how it is calculated (or as set out in the annexed affidavit of the owner) in respect of service performed upon the vehicle described as follows:

(Insert description of motor vehicle, etc.)

AND TAKE NOTICE that the owner disputes the amount claimed on the following grounds:

(Here state grounds of dispute)

AND TAKE NOTICE that you are ordered on receipt of this notice to deliver up the vehicle to the owner. Dated at _____, in Manitoba, this ____ day of _____, 20__.

Registrar of the Court

Note: Under subsections 13(6) and (7) of The Garage Keepers Act, a garage keeper may commence an action in the court into which the moneys are paid, regardless of the amount, to realize their claim out of the moneys in court, within 30 days of the date of service hereof, failing which the moneys shall be paid to the owner when he applies herefor.

...

des frais du garagiste ci-joint et indiquant le montant réclamé et la façon dont il est calculé (ou figurant dans l'affidavit du propriétaire ci-joint) pour services fournis à l'égard du véhicule décrit comme suit :

(Insérer une description du véhicule automobile, etc.)

PRENEZ ÉGALEMENT ACTE que le propriétaire conteste le montant réclamé pour les motifs suivants :

(Donner ici les motifs de contestation)

PRENEZ ENFIN ACTE que vous êtes enjoint de remettre le véhicule au propriétaire dès réception du présent avis.

Fait à _____, au Manitoba, ce _____ jour d _____ 20__.

Le registraire du tribunal

Note : en vertu des paragraphes 13(6) et (7) de la Loi sur les garagistes, le garagiste peut intenter une action devant le tribunal où les sommes sont consignées, sans qu'il soit tenu compte du montant, en vue de réaliser sa réclamation sur les sommes consignées au tribunal, dans les 30 jours qui suivent la signification de l'avis, à défaut de quoi les sommes sont versées au propriétaire dès qu'il en fait la demande.

ARGUMENT

Minty's

[39] Minty's argument was simply that, as soon as Minty's paid \$57,226.40 into court (which included the \$50 required by the **GKA**), its legal rights crystalized, and it gained the right to pick up the 2007 (with a box), the 2008 (with a box) and the Kenworth,

from Yellowhead. Section 1 of the **GKA** defines “garage keeper” as person who renders service upon a motor vehicle in a garage. The **GKA** defines “service” as the making of repairs to a motor vehicle or any part pertaining thereto. The box for the 2008 is a “part” of a motor vehicle.

[40] In section 13(1), “vehicle” is again defined as a motor vehicle or any part pertaining thereto. Again, the box is a “part”. Section 13(2) says that, where the owner of a vehicle (e.g. Minty’s) disputes the indebtedness in respect to which the lien arose, the owner may pay the amount of the alleged indebtedness into court. That’s what Minty’s did.

[41] Under section 13(7), if the garage keeper (Yellowhead) acts within 30 days, the dispute can go to court, and the court can decide how the money paid into court should be paid out. Under section 13(8), if the garage keeper doesn’t file a claim within 30 days, the money paid into court is paid out to the vehicle owner. That’s what happened.

[42] Yellowhead could have filed a statement of claim within the time limits set out in the **GKA**, but it never did. Yellowhead did allow Minty’s to pick up the 2007 with a box, the Kenworth, and the 2008, but it did not turn over the box for the 2008. Therefore, Minty’s is now allowed to seek a court order that Yellowhead provide the box.

[43] Minty’s also argued that, when it paid Yellowhead \$70,999.91 for four vehicles, and indicated with the cheque how it wanted to allocate the money between the vehicles, Yellowhead had no legal right to change the requested allocation. Yellowhead

had to allocate the money as Minty's directed. Minty's filed case law that allegedly supported this position.

[44] To make the order Minty's is requesting, the court does not have to settle the dispute about whether the price was \$30,000 or some other amount.

Yellowhead

[45] Yellowhead argued that it's theoretically possible that Minty's could pursue various remedies under the common law of contract, but that is not the issue today.

[46] However, Minty's questioned whether the box to the 2008 (which was never attached to the 2008) was a "part" of the 2008. If it wasn't, the **GKA** didn't apply to it (although the common law of contract still did).

[47] Furthermore, when Minty's paid the money into court, the liens had already been discharged, and Yellowhead's lawyers had advised Minty's lawyers in writing. Section 13(2) says that an owner can pay money into court "where a garage keeper has a lien on a vehicle". Therefore, Minty's had no legal right to pay any money into court pursuant to former liens which no longer existed. Even more egregious was the fact that HM #1 failed to mention that the liens had been discharged. Yellowhead argued that this failure was so serious that it should justify elevated costs in favor of Yellowhead.

[48] Neither party tried to explain the apparent discrepancy between HM #2 and the TM affidavit about how much money Minty's paid Yellowhead altogether (\$95,000 or about \$105,000).

[49] Yellowhead disagreed with Minty's about Yellowhead's right to allocate the \$70,999.91 in ways other than the way requested by Minty's. Yellowhead cited case law.

[50] Minty's never explained why it paid precisely \$57,226.40 into court. However, it is obvious that his was the total of three balances due, as indicated on the April 2 and May 2 "Balance Due Statements", minus the "service charge" (which, for some reason, varied slightly on the two statements), plus the \$50 required by **GKA** section 13(2)(c).

[51] Both parties sought solicitor-and-client costs or, in the alternative, elevated costs.

DECISION

[52] I have left out some information about the Sterling and the Kenworth, because they are not the subject of this litigation.

The affidavits

[53] Although neither counsel raised the issue, there were irregularities in the affidavits filed by both parties. Firstly, as this was an Application, statements based on contentious information and belief should not have been filed. Even if the lower standard used for motions had been used (contentious information and belief are acceptable as long as the source of the information is provided), the affidavits were sometimes irregular. For example, HM #1, at paragraph 12, states: "It was my understanding that the payment of \$35,000 resolved and settled invoice 26094." The source of the "understanding" is not included. Did the understanding come from a

document? Did someone at Yellowhead say this to HM? If so, who? Merely saying "it was my understanding" is not acceptable.

[54] Yellowhead is not without blame. In the TM affidavit, as paragraph 99, TM commented: "I suspected that Minty's was going to claim that they were missing things, so I voice recorded the conversation between myself, Darrell and Minty's staff. There were no concerns about any missing parts." Like oral evidence, affidavit evidence must be relevant. Paragraph 99 is obviously irrelevant, if not vexatious.

[55] Neither party objected to any affidavit evidence. It would not be proportional to dissect all affidavits and to identify every inadmissible word and phrase. I will simply give inadmissible words and phrases zero weight.

The essence of the dispute

[56] The essence of the dispute between the parties can be summarized as: what was the real price of a hardox box? Minty's says that there was some sort of oral contract between the parties that Yellowhead would build and install a box on the 2007 for \$30,000 plus tax, and would build and install a box on the 2008 for \$30,000 plus tax. Yellowhead says that there was no such contract. The real price of the box built and installed on the 2007 (including tax) was the price on the invoice - \$50,563. Yellowhead says that the real price to build and install a box on the 2008 (including tax) would have been \$53,223.49.

[57] The parties agree that the box intended for the 2008 was built but never installed. The parties agree that, on or about March 21, Minty's sent Yellowhead a cheque for \$70,999.91 and that Yellowhead cashed it. Minty's intended the cheque to

cover four separate items, including \$30,000 for the 2007 and \$30,000 for the 2008. Of course, even according to Minty's theory of the oral contract, the real price would have been \$30,000 *plus* tax (not \$30,000 *including* tax).

[58] It now appears that Yellowhead sold the box intended for the 2008 to some other customer. I realize that this was not mentioned in any affidavit. Yellowhead's brief stated this fact and Minty's had no evidence to the contrary, I suspect that, if Yellowhead's counsel had had more time for trial preparation, he would have included this fact in a supplemental affidavit.

[59] In short, if things had played out differently, Minty's might have filed a statement of claim against Yellowhead, citing contract law, and seeking specific performance or (in the alternative) damages for breach of contract. The **GKA** does not *prevent* garage keepers from suing vehicle owners and/or owners from suing garage keepers under contract law, rather than using the **GKA**.

[60] If Minty's had been willing to "write off" some of its alleged damages, it might even have filed a statement of small claim. The parties to the oral contract would have testified and the court would have determined the credibility and reliability of the two parties and their opposing positions. If the court found that HM was the more credible and reliable witness, and if specific performance was not available, the court would have heard submissions about the quantum of damages.

[61] Of course, given the fairly modest amount of money at stake, the parties might have settled their dispute.

[62] However, everything changed when Yellowhead registered the liens. Instead of a statement of claim about contract law, we ended up with a notice of application about liens, and payment into court under the **GKA**.

[63] Minty's paid precisely \$57,226.40 into court, which included the \$50 required by the **GKA**.

[64] The parties disagreed about what Yellowhead did with the \$70,999.91 that it received on or about March 21. Citing various cases, Minty's argued that it had the legal right to allocate the money to the various accounts payable, any way that it wanted. The "Payment Stub" enclosed with Minty's cheque said that Minty's wanted \$30,000 to be allocated to the 2007, and \$30,000 to be allocated to the 2008. Minty's never did explain why this "Payment Stub" ignored the tax which Minty's admitted that it owed Yellowhead (even according to Minty's theory of the case). Yellowhead argued that case law gave it the legal right to allocate the \$70,999.91 any way it wanted, regardless of Minty's wishes. It chose to allocate \$50,563.52 to the 2007 (which amounted to payment in full, including tax, under Yellowhead's theory of the case).

[65] Minty's argument about allocation does not assist Minty's. The box for the 2007 was built and installed. Under Minty's theory of the case, Minty's should have paid \$30,000 plus tax for the 2007. If Yellowhead had followed Minty's requested allocation (including \$30,000 for the 2007), Minty's would still owe Yellowhead tax for the 2007 even today. Instead, Yellowhead has treated the 2007 as paid in full and released it (with the box installed) to Minty's long ago.

The liens

[66] There is no dispute that Yellowhead was a garage keeper; Minty's was the owner of the 2008; and the 2008 was a motor vehicle. The question is whether the box for the 2008 was a part "pertaining to" the 2008. When the 2008 entered Yellowhead's garage, the box was obviously not a part pertaining to the 2008. The box did not yet exist.

[67] If the box had ever been installed on the 2008, it would have been a part pertaining to the 2008. Unfortunately for Minty's, that never happened.

[68] In a sense, Yellowhead had a dual function. It was a garage keeper. However, it was also a manufacturer. As a manufacturer, it built the box for the 2008. As a garage keeper it *anticipated* that it would *eventually* install the box. Again, that never happened.

[69] Building the box from scratch clearly does not fall under the definition of "service" in section 1 of the **GKA**. Building the box was not making "repairs" to a motor vehicle. Section 2 of the **GKA** says that garage keepers have liens for "service rendered" upon motor vehicles. At first blush, the **GKA** did not create a lien on the 2008 box.

[70] Registering a financing statement (FS) on the PPR does not *create* a lien. Registering the FS does give the garage keeper certain rights under section 5(1)(b), 5(6) and other sections of the **GKA**. Registering a FS is an *ex parte* process (the vehicle owner does not have to pre-approve the filing of the FS).

[71] Yellowhead argued that it registered the liens in error and, upon realizing its error, it discharged the liens and notified Minty's lawyers. It is obvious that parties who register FSs sometimes make errors. There must be a mechanism for them to correct those errors.

[72] To be blunt, what more could Yellowhead have done? It did everything it could have under the PPSA. Its lawyers told Minty's lawyers in writing that Yellowhead has no lien on the 2008, and that Minty's was welcome to pick up the 2008 any time. If it was not already clear to Minty's that the box was not yet attached to the 2008, that fact became crystal clear when its employees picked up the 2008 from Yellowhead.

[73] Minty's never did give a good explanation for what it did next - i.e. paying \$57,226.40 into court on May 22 and filing a supporting affidavit (HM #1) that never mentioned Yellowhead's lawyers' May 20 email that the liens were discharged and that Minty's was free to pick up the vehicles.

[74] As Yellowhead correctly pointed out, the process of paying money into court is also an *ex parte* process (Yellowhead didn't have to pre-approve Minty's paying money into court). HM #1 should have included all relevant information at the time it was affirmed. The court never did get a good explanation of why HM #1 failed to mention the May 20 lawyers' email.

[75] I agree with Yellowhead's argument that, on May 22, the preconditions for paying money into court spelled out in section 13(2) of the **GKA** had not been met. The section requires that a garage keeper have a lien (present tense is used). As of May 22,

Yellowhead's lawyers had advised Minty's lawyers in writing that Yellowhead did not have a lien on the 2008.

[76] Furthermore, section 13(2) requires that either the garage keeper has detained the vehicle, or has seized the vehicle, or has a right to seize the vehicle with certain conditions. On May 20, Yellowhead's lawyers advised Minty's lawyers that Minty's was welcome to pick up the 2008 any time. Yellowhead was not detaining the 2008. Yellowhead was not seizing the 2008.

[77] The parties had still not resolved their underlying dispute about how much Minty's would have to pay Yellowhead to install the box on the 2008. But the procedures set out in the **GKA**, including paying money into court, are not designed to deal with fact situations and disputes of this nature.

[78] It appears that the parties did not communicate with each other as clearly as they should have. Yellowhead should never have filed an FS in the first place. It now more or less concedes this point. However, once Yellowhead realized its error and took all reasonable steps to correct it, the **GKA** was essentially spent. Minty's did not gain any new legal rights by rushing to pay money into court as fast as possible.

[79] There is nothing in the **GKA** saying that, if a garage keeper is building a "future part" for a vehicle from scratch, and the parties dispute the correct price for this service, the owner can obtain a court order under the **GKA** forcing the garage keeper to install the future part on to the vehicle.

[80] To conclude, the parties anticipated that the box for the 2008 would someday become a part of the 2008. But it never did. Therefore, the **GKA** never applied to this

dispute. If I have erred in this conclusion, then I also conclude that section 13(2) of the **GKA** was not available to Minty's on May 22 (because there was no lien on that date, and the 2008 was neither detained nor seized on that date).

[81] Minty's is still able to pursue its rights under the common law of contract.

[82] Yellowhead was successful and is entitled to normal (tariff) costs.

[83] I thank counsel for their courtesy.

_____.J.