

CITATION: Tricor Automotive Group, Inc. v. Premier Dealer Services, Inc., 2026 ONSC 3326
COURT FILE NO.: CV-18-00598848-0000 and CV-18-00598795-0000
DATE: 20260610

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
TRICOR AUTOMOTIVE GROUP, INC.	)	
	)	<i>Niklas Holmberg and Harris Khan, for</i>
Plaintiff in CV-18-00598848-0000	)	Tricor Automotive Group, Inc.
	)	
Defendant in CV-18-00598795-0000	)	
	)	
– and –	)	
	)	
PREMIER DEALER SERVICES, INC.	)	
	)	
Defendant in CV-18-00598848-0000	)	<i>Robert B. Bell and Spencer Jones, for</i>
	)	Premier Dealer Services, Inc.
Plaintiff in CV-18-00598795-0000	)	
	)	
	)	
	)	
	)	HEARD: April 13, 14, 15, 16, 17, 20, 21,
	)	22, 23, and 24, 2026

AKAZAKI J.

REASONS FOR JUDGMENT

OVERVIEW

May 29 – The day Premier’s service portal went dark

- [1] On May 29, 2018, sales managers at car dealerships belonging to the Tricor Automotive Group (a.k.a. “TAG”) service network found themselves locked out of the portal for quoting and registering aftermarket warranty and service contracts on vehicle sales. Tricor’s Ohio subcontractor, Premier Dealer Services (a.k.a. “PDS”), had brought an abrupt and unannounced end to its business relationship with Tricor and refused to quote new contracts. The end of May is one of the busiest times for vehicle sales.
- [2] When dealerships called Premier’s help desk, support personnel told them the incident was an IT glitch. This explanation was plausible, because Premier had inadvertently blocked access to the whole portal, both for quoting new business and for administering existing

contracts. Although Premier soon corrected this error by reinstating the portal for existing contracts, the dealers received confirmation from Premier of the intentional shutdown several days later, when a letter from Premier notifying them of the contract termination arrived in the mail.

- [3] The post-mortem of the incident and ensuing litigation played itself out at the trial of the parties' competing claims for breach of contract. Despite the extensive backstory from a two-decade connection, the May 29 incident and its sequela could be readily retraced to a rapid escalation from misunderstandings in a handful of cordial emails to the portal closure and to these lawsuits. Had the presidents of the companies, both accomplished and well-spoken professionals, picked up the phone or met over coffee, they could have come to a mutually acceptable resolution. Instead, they each retreated behind lawyers and settled into the trenches of the Ontario Superior Court. It now falls on the court to determine whether Premier was within its rights to terminate the agreement this way.

Background to Premier's Service Shutdown

- [4] Tricor administers an array of automotive warranty and service contracts offered by a network of Canadian car dealerships. Dealers rely on sales of extended warranties and loyalty-inducing financial products to supplement their margins on automobile sales. Because it is owned by the dealers, Tricor self-insures the risk and employs a fronting insurance company to comply with consumer protection legislation in various jurisdictions. Tricor also administers other point-of-sale add-ons, such as rust protection and car loan insurance.
- [5] For many years, Tricor used to offer several of these products through Premier, from the time it was a consumer automotive underwriting and claims management subsidiary of Great American Insurance. By 2014, Great American withdrew from this line of insurance and sold Premier to a group of private equity firms, of which Prairie Capital became 60% shareholder. In October 2014, Tricor and Premier negotiated a three-year agreement for Premier to serve as its agent for underwriting the products and managing customer warranty claims, subject to automatic annual renewal.
- [6] By the end of the three-year term in 2017, Premier's agency role grew incompatible with Tricor's business model as the dealerships' captive administrator. The whole point of Tricor was to increase member dealers' profits from vehicle sales. It was not to develop a secondary aftermarket ecosystem. Tricor approached Premier to restructure the relationship by acquiring a minority stake in Premier. Tricor preferred to keep Premier's existing platform, to preserve service continuity for dealerships. The ensuing negotiations ultimately failed, because of disagreement over the capital value of Tricor's revenue stream for Premier. Feeling undervalued, Tricor then turned to a rival of Premier, Dealer VSC,

Ltd., operated by Haytham Elzayn.¹ In early 2018, Tricor struck a non-binding letter of intent with Dealer VSC for creating a joint-venture subsidiary called Allegiance Administrators, controlled 49/51% by Tricor and Allegiance respectively.

- [7] Tricor made no secret of its intention to replace Premier with another business prepared to offer Tricor an ownership stake to circulate dividends back to the dealerships. To avoid service interruption in case the Allegiance platform took longer than a year to establish, Tricor elected not to provide Premier with 12 months' notice of termination. Premier took the refusal to provide the contractual notice as anticipatory breach or repudiation of the 2014 agreement and invoked a clause permitting termination on short notice, in the event of contractual breach by Tricor.

Premier terminated, because Tricor would not terminate

- [8] Premier terminated the agreement, because Tricor breached the agreement by refusing to terminate it. If this seems like an invitation into a legal rabbit hole, one should not be faulted for hesitating at the opening.
- [9] Premier's anticipatory breach theory required the 2014 agreement to have been exclusive. Otherwise, Tricor's expressed plan to replace Premier with another platform would not have required Tricor to give notice and wait 12 months before moving the business to Allegiance. By treating Tricor's refusal to give notice of termination as grounds for Premier's accelerated termination, Premier claimed damages for a year's lost business from Tricor. The competing lawsuits pitted Premier's belief in the contract's exclusivity against Tricor's belief that it could bring Allegiance online without terminating the contract with Premier. Even with exclusivity, Premier's legal theory did not lack problems. However, exclusivity emerged as the inflection point of the whole dispute.
- [10] Despite some ambiguity in the agreement that supported either interpretation, I ultimately found the contract could not be read as exclusive without clearer language. If I were incorrect in my conclusion regarding exclusivity, Premier's affirmation of the agreement and withdrawing service before properly terminating the agreement precluded it from relying on anticipatory repudiation as a basis for terminating the agreement and for pursuing Tricor for damages. Premier's withdrawal of performance occurred while the agreement was still in force, even if it had valid grounds for invoking the early termination provision. As the party responsible for preventing Tricor's further performance of its contractual obligations, Premier cannot sue for the halt in revenue from Tricor.
- [11] As an aside, I also considered Tricor's refusal to give 12 months' notice because of real uncertainty whether Allegiance would even be ready to replace Premier by the end of that

¹ Dealer VSC, Ltd. operated as "Allegiance Administrators" since 1985. To avoid confusion with the new company by that name, I will refer to the Elzayn entity as "Dealer VSC" and the new Tricor/Dealer VSC joint venture as "Allegiance."

interval. Perhaps if Tricor had communicated this fact to Premier before the exchange of writs, they could have negotiated a sensible coda to the notice period. The lack of certainty whether Tricor would replace Premier during such a period could have further undermined Premier's repudiation theory. However, Premier's failure to comply with the early termination provision made it unnecessary for me to delve further into this point.

Competing Damages Claims

- [12] Premier's breach of the agreement caused Tricor to incur losses. Moreover, Premier's withholding of commissions admittedly owed to Tricor was unjustified. Despite the panic that initially set in at the dealers, Tricor's business loss turned out not to be as extensive as they had thought. It was able to transition to Allegiance with much of the revenue delayed but not lost.
- [13] If I am incorrect in my determination that Premier breached the 2014 agreement instead of Tricor, Premier's main damages claim involved a straightforward exercise in arithmetic based on the previous 12 months' business data.
- [14] Premier successfully sued Allegiance in the Ohio for copyright infringement for one type of service contract called the Loyalty Certificate. In the crunch to maintain continuity, Allegiance copied the existing Premier document, making minor changes, instead of developing its own certificate. In Ontario, Premier did not sue Tricor for copying but included a claim in its Ontario action for breach of a "proprietary" right. In the absence of a pleaded statutory intellectual property infringement, I found no basis for the claim against Tricor. Moreover, I found the economic case for damages underdeveloped, because the commissions earned by Tricor were funded by Tricor's member dealers and not from vehicle purchasers.

Decision and Issues

- [15] After finding Premier in breach for having unlawfully barred Tricor dealers' access to the service portal and for having withheld commissions earned prior to the shutdown, judgment for damages will issue in favour of Tricor. Premier's action will be dismissed.
- [16] In arriving at these conclusions, I will address the following points:
 - 1. Who was in breach?
 - (a) Exclusivity
 - (b) Anticipatory Breach
 - 2. Premier's claim for breach of proprietary rights

3. Premier's Damages
4. Tricor's Damages

1. WHO WAS IN BREACH?

- [17] The events of spring 2018 occurred after Tricor and the shareholders of Premier failed to reach a deal for Tricor to purchase an equity stake in Premier. The details of the negotiations were less important to the origin of the dispute than the parties' perception of the value of the business Tricor brought to Premier. Beyond payment for the shares, Tricor sought recognition of its "sweat equity" in the annual revenues it brought to Premier through fees and commissions from the vehicle purchasers and dealerships. It was also no accident that Tricor's restlessness coincided with the end of the third year of the three-year contract.
- [18] After the talks for Tricor's acquisition of a stake in Premier broke down in the final quarter of 2017, Tricor approached Haytham Elzayn, the CEO of Dealer VSC, Ltd. Dealer VSC was a competitor of Premier administering after-market warranties and service contracts, with similar insurance arrangements. After Tricor scouted Dealer VSC's facilities, these parties entered a non-binding letter of intent to create a joint subsidiary called Allegiance Administrators. Shares would be allocated 49/51, with Dealer VSC possessing the 1% advantage in managerial control.
- [19] In January 2018, Premier approached Tricor to salvage the negotiations for Tricor's acquisition of a portion of Premier. On January 11, 2018, Tricor advised Premier of Tricor's rejection of Premier's last proposal and of Tricor's intention "to explore other alternatives." Nevertheless, their talks continued at some level until March 27, 2018, when Joe Campbell, the President of Tricor, emailed his counterpart at Premier, Lisle Greenweller, that Tricor would not be proceeding with the proposal to become a shareholder of Premier. By that point, Mr. Campbell had already obtained his board's approval to move forward with the transaction with Dealer VSC.
- [20] Then, on March 28, Ms. Greenweller responded to Mr. Campbell:
- Thanks for the notice. I am very sorry to hear that is your decision. Please know we value the 18 year relationship we have and would love to continue handling the Tricor business. Let me know if there is anything else for us to discuss at this time.
- [21] On March 29, Mr. Campbell wrote back:

We likewise continue to value our 18 year relationship with PDS, however, we believe the path we have chosen will provide the best opportunity to maximize our enterprise value. This decision should in no way reflect on the level of service that the PDS team has delivered since day one, as it has been nothing but professional.

One thought does come to mind, however, after we complete our transition to our new servicing platform, could we assume the claims adjudication for the runoff our business? We are not looking for any refund of the fees we paid you, rather we are attempting to make it smooth for the customer by avoiding different claim centers based upon when a policy was written. We will take full responsibility for the underwriting results post any transition if that was a concern. Thoughts?

(underline added)

- [22] The proposal underlined above, if accepted, would have provided a clean break for Premier and absolved it of the long-tail cost of administering claims under the warranties with no new money coming in. In essence, it amounted an offer to allow Premier to keep the fees without any further obligation to perform claims adjudication of warranty claims. I do not cite this point as affecting the transactional facts leading to the mutual claims for breach. However, it did provide evidence of Tricor's vision for the transition to a new service platform. Premier's attempt at trial to cast Tricor as having strung Premier along while planning to leave Premier stranded with legacy obligations did not reflect the evidence. That evidence demonstrated that Tricor acknowledged some economic impact on Premier from having to maintain service capacity until the business shifted from Premier to Allegiance.
- [23] Ms. Greenweller responded to Mr. Campbell on March 30, stating that the proposal was interesting; but also that she would have to consult her team before discussing it further. On April 12, Mr. Campbell sent a one-line note to follow up on the proposal. Ms. Greenweller's response and ensuing exchange, between April 13 and 16, contained the seed of the dispute over the 12 months' notice:

L.G.: We should be able to come up with a solution to make this a smooth transition for all. What is your expectation on when you will provide notice of termination?

J.C.: Thanks for being willing to make the future smooth for all. As for termination, I hadn't planned on actually terminating the contract, rather we are going to add a second administrator to the platform and simply transition the new business over to them over the coming months.

L.G.: Joe - You negotiated a one-year notice into the administration agreement for both parties and through these discussions we have

expected that you would honor that commitment. However, during that period we can ensure all communication and setup is prepared which will ensure that the point of transition is a clean / smooth break.

- [24] The email thread appeared to have run out at this point. Premier hired external counsel to open a dispute under Part IX of the 2014 agreement. A draft demand letter from the Kentucky attorney appeared in the exhibit book, dated April 25, 2018. According to Ms. Greenweller, it was never sent out. Instead, Premier retained Canadian lawyers to pursue the issue in accordance with Canadian law. (Art. XVIII chose the law and courts of Ontario.) Neither side could explain the provenance of this draft letter, or its recital of a further April 16 email from Mr. Campbell denying intention to cancel the agreement – which email neither side ever located. Counsel for Premier did not reclaim privilege over the draft letter.
- [25] Ultimately, I agree with Premier’s counsel that the draft letter’s contents are immaterial to the issues in the proceeding. Even the timing of the retainer of the attorney is not altogether significant, because, by April 27, Premier instructed lawyers in Toronto to pursue the alleged anticipatory breach with Tricor.
- [26] On April 27, 2018, Toronto counsel for Premier wrote to notify Tricor of his client’s position that Tricor’s plan to displace Premier without providing 12 months’ notice amounted to bad faith and repudiation of the 2014 agreement. The letter also contained a warning that Premier would pursue Tricor for misuse of Premier’s proprietary rating system. After estimating damages exceeding USD 2 million for the breach of the notice requirement, Premier’s counsel then stated:

While Tricor’s repudiation of the Agreement could be accepted and the contract treated as at an end, we are instructed that PDS rejects Tricor’s repudiation and calls upon Tricor to perform its obligations. Tricor is on notice that it has 30 days to cure its breach failing which PDS will pursue all of its claims, including damages and injunction relief.

However, third parties are not entitled to the cure periods specified in the Agreement. Legal action may be taken against them without further notice.

- [27] The reference to “cure periods” evidently invoked Part IX of the 2014 agreement, containing mutually applicable provisions for termination of the agreement upon 30 days’ notice, first to allow the counterparty to cure the breach, failing which the notifying party may terminate the agreement by providing notice effective after a further 30 days. Because of the importance of this point to Tricor’s case, I recite the clause in full:

If the material breach is not cured within thirty (30) days, or in accordance with subsection e) above, PDS may immediately exercise its right of termination by providing TAG with written notification thereof.

Termination shall be effective thirty (30) days following the date of such notice.

- [28] If Tricor had breached or repudiated the agreement by failing to provide 12 months' notice of termination, it did not take steps to cure the alleged breach by providing the notice. Relying on its position that Premier's right of offset under Art. X of the agreement allowed it to withhold commissions in mitigation of damages caused by Tricor's breach, Premier retained commissions otherwise due to Tricor. At trial, it became common ground that the net value of the withheld commissions was \$575,772. But for this offset, Premier claimed damages for the value of the income stream over 12 months.
- [29] Premier's theory of Tricor's breach of the 12-month notice provision necessarily required it to establish that the 2014 agreement provided Premier with exclusivity over the management of four categories of program contracts. A collateral issue in the exclusivity dispute was Premier's claim to a proprietary interest over a set of Loyalty Powertrain Products that it had developed. Because they consisted of a proprietary and/or confidential product, Premier argued that it was the only entity that could administer them on behalf of Tricor.
- [30] Tricor submitted that Premier breached this effective 60-day period by shutting down the portal on May 29. In other words, Premier stopped performing its obligation before it brought the agreement to an end, even if Tricor had been in breach.
- [31] The irony in the case was that, in Mr. Campbell's mind, he and Mr. Elzayn had little faith that the new Allegiance entity could be launched by the July 2018 target. The process could have taken up to a year, if the May 29 crisis had not accelerated their efforts.
- [32] Ms. Greenweller and Mr. Campbell's April cordial emails initiated this dispute over the 12 months' notice. The notice issue would only matter, if Tricor could not switch from Premier to another subcontractor during the notice period. I will now turn to the exclusivity of the 2014 agreement.

(a) Exclusivity

- [33] Premier's argument that Tricor breached the 2014 agreement by failing to provide 12 months' notice of termination was somewhat unconventional. Ordinarily, the party losing the benefit of a contract for *inadequate* notice would sue for the extra time instead of relying on the breach for early termination. (E.g., inadequate notice of termination of a lease could allow the tenant to sue for the right to remain in possession.)
- [34] Mr. Campbell's emails to Ms. Greenweller made it clear that Tricor did not intend to terminate the agreement. Tricor asked the court to infer two meanings from his emails and from Mr. Campbell's testimony: first, the intention to transfer the line of business from Premier to Allegiance, and second, the absence of obligation on Tricor's part to continue to send new work to Premier. In essence, Tricor argued that it could keep Premier under

contract, even if they transacted no business, at least until Premier gave notice of termination.

- [35] Premier attached considerable weight to the definite article in the phrase, “PDS shall serve as *the* administrator” (emphasis added), as signifying no room for another subcontracted administrator. As indicators of exclusivity go, the definite article is unclear without review of other contextual factors: *Builders Capital (2014) Ltd v Aviva Insurance Company of Canada*, 2022 ABCA 120, at paras. 30-35. The preamble used the same article to describe Tricor as “the administrator of the Program Contracts.” This could have meant Tricor simply sought to subcontract its administrator function with Premier on an exclusive agency basis. It could also have meant that, in every program contract purchased using the Premier portal, Premier would be required to administer it. This would at least open the door to another agent, such as Allegiance, to be *the* subcontracted administrator of contracts issued under its rating and registration portal.

- [36] To resolve the apparent ambiguity, the parties each put forward extrinsic evidence of surrounding circumstances. Art. XIV, the “Full Agreement” clause, was rather weak and did not exclude past or future evidence unless it purported to amend the contract:

This Agreement shall take precedence in the event of conflict between this Agreement and any and all previous agreements covering the subject matter herein, whether written or oral, between TAG and PDS or their predecessors with respect to the type of business to be written hereunder. Except as otherwise provided herein, no amendment to this Agreement shall be valid unless in writing, and signed by the parties hereto.

- [37] Tricor relied on a draft of the agreement originally containing exclusivity. In particular, the following wording was struck out from the draft: “PDS shall be the exclusive administrator / obligor for PROGRAMS as described in Agreement marketed by COMPANY.”
- [38] The editing of exchanged drafts of an agreement is inherently evidence from pre-contract negotiations. This type of evidence has traditionally been excluded from consideration. There remains some doubt in the Canadian law after *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 SCR 633, at para. 57 whether the “surrounding circumstances” principle has opened the door to the inclusion of evidence from negotiations: *Corner Brook (City) v. Bailey*, 2021 SCC 29, [2021] 2 SCR 540, at para. 56; *Huber Estate v. Murphy*, 2022 BCCA 353, at paras. 34-35.
- [39] For its part, Premier objected to reliance on the removal of the exclusivity clause from the draft agreement but did not shy from relying on post-contractual conduct. Relying on *Soboczynski v. Beauchamp*, 2015 ONCA 282, at para. 60, Premier argued that the absence of any other service providers for the listed programs was post-contractual evidence of exclusivity capable of resolving ambiguity in the agreement. *Soboczynski* dealt with the adequacy of an entire agreement clause in an agreement of purchase and sale, as a defence to a claim based on extracontractual representations contained in the seller’s “information statement.” The Court of Appeal upheld a finding that conduct of the parties treating the

additional document as having legal effect resolved ambiguity in the entire agreement clause of the APS in favour of not ousting the tort of misrepresentation.

- [40] Reliance on Premier's status as the only administrator of the listed programs could also be countered by other post-contractual evidence, namely the inclusion in the presentation used to negotiate Tricor's investment in Premier of the following separate wordings:

Tricor to execute long-term agreement with PDS as exclusive administrator company for all current products

Tricor to execute long-term agreement with PDS as exclusive administrator for Triton for all PDS products.

Tricor argued that Premier's need to include exclusive status as a demand in Tricor's negotiations with Prairie Capital implied that the existing arrangements were not exclusive.

- [41] The Supreme Court's allowance of "surrounding circumstances" evidence in appropriate instances was subject to limits. It should only consist of objective evidence of the background facts "at the time of the execution of the contract": *Sattva*, at para. 57. Since every simple past moment is surrounded by earlier and more recent past events, there should no hard rule including or excluding pre-contract or post-contract evidence of surrounding circumstances. Examining the entrails of contractual relations ultimately leads to the uncertainty of extra-contractual evidence.
- [42] The deletion of the exclusivity clause from the initial draft agreement could be meaningful, or it could have been redundant if the parties understood the definite article in "shall serve as *the* administrator" to suffice. The proposed insertion of such a clause in the share purchase proposal could also signify a change of heart as to the sufficiency of the existing wording. The fact that Premier was the sole subcontract administrator for the listed programs could also have been insignificant, if there was no need for another service provider until a rival appeared willing to offer Tricor an equity stake.
- [43] After these three pieces of proposed "surrounding circumstances" evidence are subject to exhaustive analysis, the practical and obvious reality is that the parties could have expressly stated the relationship was exclusive or non-exclusive. The use of pre-contractual negotiation evidence to interpret a written agreement can interfere with freedom of contract, in that a party should be entitled to the certainty of the signed document without being haunted by what the parties stated during the bargaining process. On the other side of that temporal line, post-contractual performance of exclusive relations could signify practicalities without limiting Tricor's right to bring in another administrator. The need for extrinsic evidence to prove the significance of "the" in a contract can resemble the classification of a faintly detected celestial body.
- [44] This analysis ultimately settles to the bottom-line fact that interpreting the 2014 agreement as an exclusive arrangement requires the court to consider the words, "PDS shall serve as the administrator" as a restrictive covenant. At common law, restrictive covenants give rise to a tension between freedom to contract and policies against restraint of trade.

- [45] Parties with equal bargaining power enjoy greater freedom to restrict another's ability to contract with others than in other contexts, such as employment: *Shafron v. KRG Insurance Brokers (Western) Inc.*, 2009 SCC 6, [2009] 1 SCR 157, at paras. 16-21. As stated at para. 21 of that decision, a sale of a business might reasonably include a restrictive covenant if the firm's goodwill was part of the consideration. In considering these legal principles, I observe that the common law has scrutinized restrictive covenants and their enforceability. The court must be even more skeptical of non-express wording that one party *interprets* as restraining the other's freedom to contract.
- [46] What was the true commercial background or surrounding circumstance of the 2014 agreement? The three main background facts proposed by the parties, the deletion from a draft, the absence of a second subcontractor, and the insertion of exclusivity as a bargaining point in presentation slide decks, must be considered the flotsam and jetsam of their relation, not its defining factors. The real background to the 2014 agreement was the decision of Premier's parent, Great American Insurance, to exit the business of vehicle warranty underwriting and claims.
- [47] Great American's sale of Premier required a reconfiguration of the former subsidiary's business, because it no longer had the backing of an anchor insurer. Tricor also lost Great American. Instead of contracting with Arch Insurance, Premier's nominee, Tricor contracted with Industrial Alliance to provide fronting insurance for regulatory purposes and created its own captive reinsurer in Bermuda. Starting in 2014, Tricor's dealer programs administered by Premier thus changed from a package underwritten and administered by a separate U.S. corporate group vertically integrating Premier and Great American to one whose ultimate obligors and underwriters operated under Tricor's corporate tent. Premier's post-2014 role as contracts administrator without the integration with the underwriter now isolated it and exposed it to being replaced after the three-year term. By 2017, Tricor telegraphed its intent to absorb a piece of Premier to enhance Tricor's "enterprise value." From Tricor's perspective, Premier's new masters at Prairie Capital misread the opportunity and made the equity investment unattractive. Tricor sought integration with Premier, essentially replacing Great American's previous role in the Tricor programs Premier administered. Prairie Capital's reluctance to accept the value of Tricor's integration into Premier's service model necessarily jeopardized Premier's practical exclusivity.
- [48] By the end of 2017, the precarity of Premier's position was that the 2014 agreement contained no exclusivity clause. I can see how Ms. Greenweller and her colleagues at Premier considered the relationship with Tricor an 18-year relationship. However, in 2014, the parties had reset their relationship structurally. 2017 saw the end of a 3-year relationship, extended only by the automatic annual renewal. Without vertical integration with Great American to anchor the practical exclusivity of the arrangement, Premier was exposed to a precarity in its continued handling of Tricor business.
- [49] After Tricor received Premier's last proposal as a rejection of Tricor's "sweat equity" value, it was reasonable for Mr. Campbell to read the 2014 agreement as a non-exclusive subcontracting arrangement and conclude that Tricor could replace its existing

subcontractor with another, without having formally to terminate the relationship with Premier. Tricor proposal to absolve Premier of future obligations for existing warranties was likely intended to head off future complications of having two separate administrators. However, it also recognized the potential cost to Premier of excess underwriting and claims handling capacity in the aftermath of a transition of Tricor's business from Premier to Allegiance. Tricor, through Mr. Campbell, was offering commercial magnanimity to ensure the relationship ended advantageously for both sides.

- [50] The phrase, "shall serve as the administrator of Program Contracts" in the 2014 agreement could be read to mean that Premier was to be the only one. However, it was insufficient to restrict Tricor's freedom to enter similar arrangements with another subcontracted administrator. "Program Contract" was defined as "a document" under the listed Tricor program, meaning Premier's obligation was specific to individual warranty or service agreements and not to all such documents. Had the agreement qualified the phrase, "Program Contracts," with words such as "all," "every," or some other indication of exclusivity, perhaps the contract could have been construed as exclusive without a specific independent clause defining the relationship as excluding other subcontractors.
- [51] Without something more than the use of a definite article and a practical exclusivity weakened by change in circumstances, I cannot read the contract in the way Premier has urged the court. I appreciate that a non-exclusive reading allocated some financial risks of the transition to another subcontractor to Premier beyond what a 12-month lead-up would have afforded, I cannot construe the agreement in a way that would amount to a rewriting of the contract: *AXA Insurance (Canada) v. Ani-Wall Concrete Forming Inc.*, 2008 ONCA 563, at para. 30.
- [52] I am therefore satisfied that the 2014 agreement did not preclude Tricor from employing another contractor without having terminated the agreement with Premier. Because of this finding, the failure to provide 12 months' notice cannot amount to breach of contract, if Tricor did not intend to terminate the agreement. The absence of exclusivity meant Tricor did not breach the agreement by signalling its intent to transition the business to Allegiance without terminating the agreement with Premier. Premier, however, breached the agreement by shutting down the portal while still under contract with Tricor to provide services.

(b) Anticipatory Breach

- [53] In the event I am wrong in my conclusion about the exclusivity of the agreement, I will address the issue of its manner of termination.
- [54] If the contract had been exclusive, the expression of future intention to introduce another subcontractor without giving 12 months' prior notice could have caused Premier to suffer the immediate loss of the capital value of 12 months' exclusivity under the agreement: S. M. Waddams, *The Law of Contracts, Eighth Ed.* (Toronto: Thomson Reuters Canada Limited, 2022), at page 441.

- [55] When a party expressly states or shows its intention not to be bound by an agreement, the innocent party may accept the repudiation and sue immediately for damages arising from that breach. This principle can operate, even if the party refusing performance mistakenly believes in the correctness of refusing under the agreement. Acceptance of the repudiation terminates the agreement and discharges both parties from future obligations. If the innocent party rejects the repudiation, the contract remains in force, and each party retains the right to sue for damages in respect of both past and future breaches: *Guarantee Co. of North America v. Gordon Capital Corp.*, 1999 CanLII 664 (SCC), [1999] 3 SCR 423, at para. 40; *Ali v. O-Two Medical Technologies Inc.*, 2013 ONCA 733, at para. 24; *Rahbar v. Parvizi*, 2023 ONCA 522, at para. 28. In *Brown v. Belleville (City)*, 2013 ONCA 148, at para. 44, the Court of Appeal adopted the following description of the innocent party's election when faced with a repudiation:

... Thus, although the innocent party is entitled to disaffirm the agreement immediately and sue, that party may prefer to affirm the agreement and encourage or insist upon performance by the repudiating party or, more passively, simply wait and see whether the repudiating party does in fact eventually refuse to perform his or her contractual obligations when they fall due.

- [56] The innocent party's rejection of repudiation will mean that the repudiation has no legal effect, at least until the repudiating party's future breach occurs: *Ching v. Pier 27 Toronto Inc.*, 2021 ONCA 551, at para. 32. This effect remains subject to the possibility of a party who rejected the repudiation to reinstate reliance on the anticipated breach, on reasonable notice: *Ching*, at para. 52; and *Rahbar*, at para. 32. Rejecting repudiation and pressing for performance is affirmation of the parties' contract: *Rahbar*, at para. 25; and *Ching*, at paras. 36-38.
- [57] The April 27, 2018, letter from Premier's lawyer stated that Tricor's repudiation of the Agreement could be accepted and the contract treated as at an end. However, Premier expressly rejected the repudiation and called on Tricor to provide 12-months' notice and continue to feed Premier program contracts as the exclusive administrator during that time. Premier also gave 30 days to cure its breach, failing which Premier would sue Tricor. Breaking down the precise implications of this letter could be as important as the textual analysis was to testing Premier's assertion of the contract's exclusivity.
- [58] Tricor's expressed intention to continue its agreement with Premier while introducing a second administrator could have been construed as intention to breach the agreement, if it had been exclusive. Premier assessed the situation as entitling it to require Tricor to give notice of termination and promise not to replace Premier with another subcontractor until Tricor's obligations to Premier ended 12 months later. The repudiation was not so much the refusal to give notice; but, rather, the refusal to perpetuate the exclusive arrangements for at least 12 months. Tricor's position, prompting Premier's position of Tricor's

anticipatory repudiation, was that it could keep the contract alive indefinitely and introduce another subcontractor at a time of its choosing.

- [59] In *Ching*, at para. 39, the Court of Appeal recognized a third way for the innocent party to respond to repudiation: to wait for a reasonable time to elect. Premier's response did not follow this third way, however. By notifying Tricor that it would sue if Tricor did not cure the repudiation within 30 days, Premier effectively did not truly reject the repudiation but suspended it for 30 days. The reference to the Art. IX cure period set up Premier's right to terminate the agreement upon further 30 days' notice. Evidently, Premier felt compelled to rely on the anticipatory breach of intending not to honour exclusivity for at least 12 months' notice, for two reasons. First, Tricor had not brought Allegiance online and had no expected date for that to occur. Second, the failure to provide 12 months' notice is not a breach of the agreement, in the absence of an intention to stop sending program contracts to Premier to administer. Anticipatory repudiation was therefore the cause of action Premier invoked, for lack of a present or past breach of exclusivity by Tricor.
- [60] At trial, Premier relied heavily on various negotiations and agreements between Tricor and Dealer VSC during the first quarter of 2018 as evidence of their bad faith. Because of the nature of the cause of action, none of that was consequential without communications and/or conduct by Tricor directed to Premier. Although repudiation is a breach in law, the termination provisions in Art. IX were designed more with actual (present or past) breaches in mind. Such breaches can be "cured" within 30 days by performing an obligation or suspending a prohibited act. Curing a breach within such an interval for having failed to provide 12 months' notice of termination before a yet unscheduled violation of exclusivity is a less practicable feat.
- [61] Premier's lawyer's letter of April 27, 2018, became a defining artefact of the dispute. It demonstrated how the 30-day cure period and 30-day notice of termination in Art. IX overlaid contractual requirements on the common-law election to accept or reject a breach by anticipatory repudiation. Premier could not have simply accepted the repudiation and sued on that breach, because of the mandatory two-step process in Art. IX. It could have issued an open rejection of the repudiation and waited for Tricor to breach the exclusivity by replacing Premier with Allegiance. However, that did not occur, either. Following the notice contained in that letter, Tricor could only cure the breach in one of two ways: first, by providing 12 months' notice of termination or, second, by undertaking not to bring Allegiance online before the end of a 12-month notice period. When neither was forthcoming, Premier could withdraw its services only after giving a notice of termination under Art. IX and waiting a further 30 days.
- [62] Thus, Premier's instruction to its lawyers to reject Tricor's repudiation for a period of 30 days could have allowed Premier to accept the repudiation and terminate the agreement, because Tricor would have failed to cure the breach. Premier would then have been legally poised to terminate the agreement effective in 30 days and to sue Tricor for damages. However, Premier did not provide the notice of termination. The alleged repudiation by Tricor remained in the rejected column. Assuming the contract was exclusive, Premier could not sue Tricor for breaching exclusivity until Tricor brought Allegiance online.

- [63] Taking the Premier portal offline on May 29 was therefore unlawful, because Premier was obligated to keep it running for both old and new business until 30 days after a notice of termination. The earliest termination date would have been June 26, except that lack of notice meant Premier breached the agreement by withdrawing performance. The fact that Premier initially shut down the whole site and reinstated it for handling legacy claims was of no real moment, beyond contributing to the initial belief, even among Premier's technical staff, that the event had been a cloud computing outage.
- [64] The April 27, 2018, letter could also have been construed as containing a parallel message that Premier was rejecting the repudiation for 30 days only. Such a meaning could explain why Premier shut down the portal on May 29. However, the parties had bargained for mutual covenants requiring notice of termination. Even the provisions providing for immediate termination, in the instance of events such as insolvency, misappropriation, or business abandonment, required notice. Because Premier did not follow the April 27, 2018, letter notifying Tricor of the breach with a further 30-day notice of termination, Premier's closure of the portal for new business without having terminated the agreement.
- [65] I therefore conclude that, even if the contract could be construed as exclusive between Premier and Tricor, Premier mishandled the early termination and were the direct agents of any loss of future revenues under the agreement before the alleged repudiation could bear any legal consequence. Premier was the one in breach of contract for having refused to perform its obligations for quoting new business, as of May 29, 2018.
- [66] On the facts, one might consider Premier to have been the repudiator of the agreement. Because Tricor did not put this point in issue, perhaps because it was not required, I need not determine it.

2. PREMIER'S CLAIM FOR BREACH OF PROPRIETARY RIGHTS

- [67] On July 29, 2021, Premier obtained summary judgment against Allegiance in the U.S. District Court in Ohio for breach of copyright of its Loyalty Powertrain certificates. These were not warranties sold to vehicle purchasers. Rather, Tricor dealers would offer them to their customers gratis. If the customers accepted the agreement, the dealers would pay Premier a fee, for which Tricor would receive a commission. Under the 2014 agreement, these certificates were nevertheless Tricor Program Contracts. Tricor had previously entered an agreement with Premier to licence the Loyalty Certificates.
- [68] After the Premier portal went dark on May 29, 2018, and remained inoperative for new business, Tricor member dealers used a backdating feature of the continuing site to obtain rates for underwriting new contracts. The dealers would then use the rates to issue hard copy warranty registrations to Tricor. Tricor would then process the warranties once Allegiance was activated ahead of schedule. During this hacking process, Allegiance issued facsimiles of the Loyalty Certificates previously issued by Premier. Apart from minor

changes such as references to Premier, Allegiance had copied the previous certificates. The Ohio court found Allegiance had infringed Premier's copyright and awarded damages.

- [69] Premier did not sue Tricor for copyright infringement in the case before me. Nor did it ground any legal remedy on the hacking by Tricor dealers. Rather, it claimed disgorgement of Tricor's commission income from Allegiance based on breach of a 2011 "Private Label Marketing Agreement." Art. 5.2 of that agreement deemed various process elements including forms and methods as

the exclusive property of Premier or its insurer and may not be shared, sold, disclosed in any manner either during the term of this Agreement or at any other time thereafter.

- [70] This aspect of Premier's case was, without real explanation, rather confusing. Unlike the Ohio copyright litigation, Premier did not introduce into evidence the Loyalty Certificate form that Tricor or Allegiance employed, for comparison with the one developed by Premier. If Premier was advancing some theory of copying of the proprietary work under the Canadian *Copyright Act*, R.S.C. 1985, c. C-42, it was not disclosed in the pleadings. Because the Premier Loyalty Certificate had been provided to every subscribing vehicle purchaser, it could not have been confidential for the purpose of Art. 5.2 above.

- [71] The clearest articulation of the claim was that Tricor had been unjustly enriching itself with commissions earned from dealer fees paid to Allegiance. The claim for disgorgement of profits earned in this manner was derivative of the judgment for Allegiance's infringement. Tricor was not party to the Ohio litigation. Premier gave no explanation why it had elected to sue only Allegiance and not Tricor for this profits disgorgement claim. While I understood Premier's argument that the claim was not duplicative of the damage award for Allegiance's copyright infringement, the claim alone cannot create liability. Statutory intellectual property rights such as copyright, trademarks, and patents, occupy the field. There is no common-law property in an idea, even if the idea is reduced to writing or other form of work.

- [72] The profits disgorgement claim was also an inchoate theory in terms of Tricor's alleged profits. Even if equity came to Premier's assistance, the Loyalty Certificate Program generated no outside revenue. Tricor's member dealers paid the administration fees, not the vehicle purchasers. The benefit to dealers came in the form of service visits for oil changes and other standard service visits. If customers came back to the dealership for this work, the work would be provided an additional extended warranty. Tricor's commission was really a form of administrative contribution to dealers' common expenses of Tricor, including the cost of Tricor's captive insurer in underwriting potential warranty claims arising from the vehicle maintenance service. The closest analogy to the Loyalty Certificate Program was that the certificates operated like store coupons encouraging customers to return to make repeat purchases. Despite Premier's valuator's evidence placing a value on the commissions as profits, I was not convinced the value to Tricor was anything more than a monetized administration cost paid ultimately by Tricor shareholders.

- [73] In the absence of proof of the extent to which Allegiance and/or Tricor were continuing to offer Loyalty Certificates modelled after Premier's idea, there was no evidentiary basis even to begin a search for a legal or equitable basis for awarding relief to Premier. This claim is therefore dismissed.

3. PREMIER'S DAMAGES

- [74] Premier retained an expert business valuator, Brendan Cape, to calculate Premier's damages.
- [75] Mr. Cape calculated Premier's loss of profit for 12 months of revenue, totalling \$2,100,325. From this, he subtracted \$603,342 in Tricor commissions that Premier has withheld after Premier terminated the contract for Premier's breach. He also estimated the commissions Tricor would have earned from the Loyalty Certificate Program, in the amount of \$2,324,252.
- [76] Tricor retained its own valuator, Errol Soriano, both to critique Mr. Cape's valuation of Premier's loss and to estimate Tricor's loss, advanced in the countersuit. Mr. Soriano opined that Premier's loss of fee revenue exclusive of the Loyalty Certificates should be reduced to approximately \$1,497,000. The rationale for the reduction was his assumption that the 12-month period would entail a substantial period during which Allegiance's share of Tricor business would increase in relation to a decline in Premier's. While this approach arguably made good business sense, neither side's versions of events supported the counterfactual assumption. Tricor intended to have Allegiance operation by mid-2018, but the process could have taken up to a year. Premier insisted that it was the exclusive subcontractor for the duration of the 12-month period.
- [77] I am not insensitive to the logic that, if Tricor had given the 12-months' notice and transferred the business halfway into 2018, the putative breach by Tricor would have resulted in a figure akin to Mr. Soriano's. Having regard to the two components of Premier's theory of the case, that Tricor made an anticipatory breach of its 12-month notice obligation and that the 2014 agreement ought to be read as exclusive, Premier would have been required to mitigate its damages by backfilling the economic impact during the second half of 2018 with replacement business or through shedding capacity. I cannot accept that Premier should be allowed to maintain capacity to earn fees that were not forthcoming from Tricor. I therefore assess Premier's damages based on loss of fee revenue exclusive of the Loyalty Certificates using Mr. Soriano's figure of \$1,497,000. In doing so, I do not accept the logical or legal premise of Mr. Soriano's valuation. Rather, it appears to be a reliable assessment of Premier's damages at the halfway point of the 12-month interval. (Because of my findings on liability, these damages turned out to be self-inflicted.)
- [78] The claim for disgorgement of commissions for the Loyalty Certificates is somewhat more problematic. I do not accept Mr. Soriano's opinion that the Ohio judgment amount should be deducted from the estimated profits earned by Tricor on the Loyalty Certificates.

Tricor's commissions from the Loyalty Certificates would have been separate from profits earned by Allegiance. I do accept Mr. Soriano's logic that Mr. Cape's assumption that Tricor continued to earn commissions from Allegiance was not based on actual documentation or other information in evidence. The whole point of setting up Allegiance was to provide Tricor and its member dealers an equity stake in all relevant lines of business.

- [79] If Tricor's continued offering of a version of the Loyalty Certificate has violated a proprietary interest belonging to Premier, Premier would have been required to remit the commission to Tricor. The economic and legal liability issues seem to involve a degree of circular logic that would deprive Premier of any entitlement. Assuming that Tricor would be required to disgorge all commissions, \$2,324,252 appears to be as valid a figure as any. As Premier's counsel stated during the closing submissions, in theory the disgorgement remedy might continue in perpetuity. Subject to the obvious difficulties of this cause of action, I assess the value at trial of Tricor's commissions, had they been earned, at \$2,324,252. That is simply a product of arithmetic.

4. TRICOR'S DAMAGES

- [80] Tricor's valuator, Mr. Soriano, provided an estimate of Tricor's business losses. After the withdrawal of certain losses that could only be claimed by the Bermuda captive insurer, he adjusted his reported calculations down to \$1,390,067. This consisted of lost commissions of \$452,845, dealer incentives of \$359,450 to process contracts despite the inconvenience caused by Premier, and \$575,772 of commissions earned by Tricor prior to May 29, 2018, and withheld by Premier. (This was admittedly lower than the higher figure cited by Mr. Cape. Mr. Soriano did not fault Mr. Cape but stated that Mr. Cape did not have some additional data about cancelled contracts for which no commissions would be owed.)
- [81] The major points of contention were the lost commissions and the payment of dealer incentives. Premier argued that, after considering the processing lag during the aftermath of the May 29, 2018, shutdown, there would have been a negligible loss of commissions. Mr. Soriano conceded that his projections could be adjusted by data later acquired and produced. However, as Tricor argued, these adjustments only brought the global measure of Tricor's losses to \$1,265,274. Tricor did not accept the argument that dealer bonuses were improvident.
- [82] Tricor's evidence of the measures it took after the May 29 event to stop dealers from opting for the more convenient process of using manufacturers' service contract portals prevented further loss of business income. Included in these measures were the dealer bonuses paid to incentivize dealerships to continue with the Tricor product line, even if much of it entailed processing hard copy documents and manual rate quotation. Indeed, the practice

of backdating processing through the Premier portal for pre-May 29 business was part of these efforts in the aftermath of the shutdown. On the evidence at trial, I concluded that the shutdown must have caused some loss of business. The chaos caused by the May 29 portal outage affected dealers during one of the busiest sales periods. In a highly competitive sales market, it was understandable to stem the loss by paying the bonuses.

- [83] Tricor and its member dealers suffered loss of underwriting business for the programs resulting from Premier's unilateral withdrawal of the portal privileges. Premier knew that Tricor's business would suffer a loss because of this act. The nature of that breach does not, however, justify awarding damages for loss based on economic projection, when actual loss figures demonstrated a lower amount. I therefore assess Tricor's business loss arising from Premier's breaches in the amount of \$1,265,274.

CONCLUSION AND COSTS

- [84] Premier's action against Tricor is dismissed. Tricor's action against Premier is partially successful. Judgment will issue in favour of Tricor for damages in the amount of \$1,265,274 payable by Premier.
- [85] I encourage the parties to resolve the costs of these actions. If they are unable to do so, I will entertain costs submissions and a bill of costs from Tricor within 14 days hereof. Premier may then respond with its submissions, 14 days thereafter. All material delivered in respect of costs shall be both filed with the court and forwarded to my judicial assistant.

Akazaki J.

Released: June 10, 2026

CITATION: Tricor Automotive Group, Inc. v. Premier Dealer Services, Inc., 2026 ONSC 3326
COURT FILE NO.: CV-18-00598848-0000 and CV-18-00598795-0000
DATE: 20260610

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

TRICOR AUTOMOTIVE GROUP, INC.

– and –

PREMIER DEALER SERVICES, INC.

REASONS FOR JUDGMENT

AKAZAKI J.

Released: June 10, 2026