

## **COURT OF KING'S BENCH OF MANITOBA**

### **B E T W E E N:**

|                                               |                                                |
|-----------------------------------------------|------------------------------------------------|
| MITSUBISHI HC CAPITAL CANADA<br>LEASING INC., | ) <u>Ian Duncan Jr.</u><br>) for the plaintiff |
|                                               | )                                              |
| - and -                                       | )                                              |
|                                               | ) <u>Sukh Brar</u>                             |
| A TO Z TRUCK PARTS INC.,                      | ) for the defendant                            |
|                                               | )                                              |
| defendant.                                    | )                                              |
|                                               | )                                              |
|                                               | ) <u>Judgment Delivered:</u>                   |
|                                               | ) August 19, 2026                              |

### **MONNIN J.**

#### **INTRODUCTION**

[1] The plaintiff, Mitsubishi HC Capital Canada Leasing Inc. ("Mitsubishi"), seeks a determination of its rights under ***The Garage Keepers Act***, C.C.S.M. c. G10 (the "***GKA***"), in relation to a 2022 International LT625 semi-truck ("Semi-Truck").

[2] The defendant, A to Z Truck Parts Inc. ("A to Z"), has been in possession of the Semi-Truck since approximately January 19, 2023. It claims a statutory lien and corresponding right of detention under the ***GKA*** for towing, repair, and storage charges (the "services").

[3] Mitsubishi submits that no lien or right of detention arose because the services were not authorized by the owner of the Semi-Truck or by anyone with lawful authority to bind the owner. Alternatively, Mitsubishi submits that even if a lien and right of detention initially arose, they are no longer enforceable because A to Z failed to comply with the requirements of the **GKA**.

[4] A to Z disputes both positions. It maintains that it acquired a valid lien and right of detention and submits that Mitsubishi itself failed to comply with the **GKA** and is therefore not entitled to the relief sought.

#### **BRIEF CONCLUSION**

[5] For the reasons that follow, I find that A to Z has not established that a statutory lien or right of detention arose under the **GKA**. In the alternative, even if those rights initially arose, they are no longer enforceable.

#### **EVIDENCE**

[6] This motion was heard on a written evidentiary record consisting of competing affidavits and briefs. Neither party sought to cross-examine on the affidavits.

[7] Mitsubishi filed the following materials:

- Affidavit of Zainab Fatima, sworn February 6, 2025;
- Affidavit of Robert MacFarlane, sworn February 10, 2025;
- Affidavit of Julia Dryhach, affirmed February 26, 2025;
- Affidavit of Zainab Fatima, sworn March 19, 2025;
- Affidavit of Eliane Mansour, sworn March 26, 2025;
- Supplemental Affidavit of Saheed Kareem, sworn August 28, 2025;

- Motion Brief, filed April 10, 2025; and,
- Supplemental Motion Brief, filed September 2, 2025.

[8] A to Z filed the following materials:

- Affidavit of Frank Laba, affirmed March 14, 2025;
- Affidavit of David Trylinski, affirmed March 14, 2025;
- Motion Brief, filed April 25, 2025; and,
- Supplemental Motion Brief, filed September 16, 2025.

### **BACKGROUND**

[9] Mitsubishi is a commercial financing entity specializing in the leasing of commercial trucks.

[10] A to Z is a Manitoba corporation engaged in the salvage, repair, and storage of heavy-duty trucks.

#### **OWNERSHIP OF THE SEMI-TRUCK**

[11] Mitsubishi asserts ownership of the Semi-Truck. In support of that position, it relies, *inter alia*, on the following:

- an Equipment Lease Agreement (the "Lease Agreement") between Mitsubishi and Albaurak Logistics Inc. ("Albaurak"); and
- Personal Property Registry registrations relating to the Semi-Truck, including a Manitoba registration of a security interest dated May 14, 2024 (Affidavit of Zainab Fatima, Ex. "A"), as well as PPSA registrations in Nova Scotia and Ontario (Supplemental Affidavit of Saheed Kareem, Ex. "C").

[12] Albaurak is not a party to these proceedings and, on the evidence before me, appears no longer to be operating. For the purposes of these proceedings, A to Z does not dispute Mitsubishi's entitlement to assert its rights as an "owner" of the Semi-Truck.

**A TO Z'S POSSESSION OF THE SEMI-TRUCK**

[13] A to Z's evidence on this issue is contained in the affidavit of Frank Laba, a part-time operations employee with A to Z.

[14] Mr. Laba affirms that, in or around January 2023, he received a telephone call from Don Hodgson. According to Mr. Laba, Mr. Hodgson stated that he was dispatching on behalf of Albaurak and requested that A to Z retrieve and repair the Semi-Truck following an accident.

[15] Mr. Laba further affirms that he knew Mr. Hodgson as an operations manager for Albaurak and that A to Z had previously performed work at his request. In support of that evidence, Mr. Laba attaches an email exchange dated between December 13, 2019 and February 13, 2020 (Affidavit of Frank Laba, Ex. "A"). The email exchange, however, concerns unrelated motor vehicle services. It makes no reference to Albaurak or the Semi-Truck and identifies Mr. Hodgson as President and C.E.O. of Greenback Business Solutions Inc. and Greenback Motors Inc. No other correspondence between Mr. Laba and Mr. Hodgson is in evidence.

**TOWING AND REPAIR SERVICES**

[16] Mr. Laba arranged for Hisar Towing to recover the Semi-Truck and deliver it to A to Z for inspection. He affirms that he later advised Mr. Hodgson of the damage and was instructed to proceed with repairs to the front axle, with additional repairs to be

completed elsewhere in Ontario. Mr. Laba states that he relied on his prior dealings with Mr. Hodgson and expected A to Z to be paid, as it had been in the past.

[17] Mr. Laba further affirms that after several telephone discussions, Mr. Hodgson stopped responding to calls and voicemails. He also states that his efforts to contact Albaurak were unsuccessful. In or around February 2023, Mr. Laba searched the Semi-Truck for ownership documentation but found none.

[18] Mr. Laba affirms that, over many months, A to Z attempted to determine ownership of the Semi-Truck and obtain payment. At some point, he arranged for his credit union to conduct a search and thereby learned that Mitsubishi had registered a Manitoba PPR interest in the Semi-Truck on May 14, 2024.

#### **COMMUNICATIONS BETWEEN A TO Z AND MITSUBISHI**

[19] In January 2024, Bruce Godbehere, an Ontario bailiff acting on behalf of Mitsubishi, contacted A to Z regarding the Semi-Truck. Mr. Laba's affidavit includes portions of an email exchange with Mr. Godbehere between January 23 and April 11, 2024. The correspondence addresses, *inter alia*, the condition of the Semi-Truck, the work performed by A to Z, the charges claimed, and efforts to resolve the dispute (Affidavit of Frank Laba, Ex. "B").

[20] On or about February 8, 2024, Mr. Laba provided Mr. Godbehere with an invoice seeking the amount of \$42,601 (the "First Invoice"). However, a review of the line items in the First Invoice (exclusive of taxes) consists of the following:

- \$3,700 for towing by Hisar Towing;
- \$4,200 for repairs performed by A to Z; and,

- \$37,700 for storage, calculated at \$100 per day.

[21] The First Invoice states that storage charges “may accumulate as time passes” (Affidavit of Frank Laba, Exhibit “E”).

[22] On February 26, 2024, Mr. Godbehere advised that Mitsubishi would not pay the First Invoice, particularly the storage charges.

[23] On February 29, 2024, Steve Care, Mitsubishi’s Asset Remarketing Manager, advised Mr. Laba that Mitsubishi was the owner of the Semi-Truck and requested information concerning, *inter alia*, the following:

- how A to Z obtained possession of the Semi-Truck;
- the nature of the repairs performed and the remaining repairs;
- whether the repairs performed had been authorized by Albaurak;
- the mileage and operating condition of the Semi-Truck;
- confirming the \$37,700 claimed storage charges; and,
- the daily storage rate.

(Affidavit of Frank Laba, Exhibit “C”)

[24] Mr. Laba’s affidavit includes a partial undated email response in which he advised that A to Z could arrange for the remaining repairs to be completed and expressed a desire to resolve payment for the services (Affidavit of Frank Laba, Exhibit “C”).

[25] On March 21, 2024, Mr. Laba advised Mr. Godbehere that if the First Invoice remained unpaid, A to Z intended to proceed under the **GKA** to sell the Semi-Truck by auction (Affidavit of Frank Laba, Exhibit “B”).

[26] On April 4, 2024, Mr. Laba advised Mr. Godbehere that A to Z had commenced seizure proceedings under the **GKA**, and that it required ownership information for notification purposes. Mr. Laba further noted that “the last bill did not include interest or any other legal fees” regarding the release of the Semi-Truck and “if requested I can provide upon request a new bill for the now costs owed” (Affidavit of Frank Laba, Exhibit “D”).

[27] On April 12, 2024, Mr. Care requested the amount then claimed by A to Z. No revised invoice or updated amount was provided (Affidavit of Frank Laba, Exhibit “D”).

[28] On April 18, 2024, Mr. Care advised that Mitsubishi was investigating whether insurance coverage existed under Albaurak’s policy.

[29] On April 29, 2024, Mr. Care advised that Albaurak had cancelled its insurance before the accident (Affidavit of Frank Laba, Exhibit “D”).

[30] On June 19, 2024, Mitsubishi’s legal counsel sent a letter to A to Z, and asserted that it had failed to comply with the **GKA** on several fronts. In addition, legal counsel proposed a settlement and advised that, failing resolution by June 24, 2024, Mitsubishi would pay the amount owing into court and commence legal proceedings (Affidavit of Zainab Fatima, sworn February 6, 2025, Exhibit “B”).

[31] There is no evidence that A to Z responded to that letter.

#### **PAYMENT INTO COURT AND SUBSEQUENT EVENTS**

[32] On July 29, 2024, Mitsubishi filed a Notice of Payment into court under s. 13 of the **GKA** and paid into court the amount set out in the First Invoice (\$42,601), together with \$50 (Affidavit of Zainab Fatima, sworn February 6, 2025, Exhibit “C”).

[33] On August 1, 2024, Robert MacFarlane, a bailiff acting for Mitsubishi, attended at A to Z's premises with the RCMP to recover the Semi-Truck. A to Z refused to release the Semi-Truck and asserted additional storage charges in the amount of \$19,775. In that connection, A to Z issued another invoice dated August 1, 2024, addressed to Mr. Godbehere (the "Second Invoice") (Affidavit of Zainab Fatima, sworn March 6, 2025, Exhibit "D" and Affidavit of Robert MacFarlane, sworn February 10, 2025).

[34] On January 7, 2025, A to Z served a Notice to Owner(s) – Auction on Mitsubishi and Albaurak (now identified as Bluewater Logistics Services Inc.), asserting a lien and a right to sell the Semi-Truck. At that time, A to Z claimed that \$90,490 was now owing (Affidavit of Zainab Fatima, sworn February 6, 2025, Exhibit "F").

[35] At no time did A to Z obtain an acknowledgment of indebtedness from Mitsubishi or Albaurak in accordance with the **GKA**. Also, A to Z did not register a financing statement in accordance with the **GKA**.

[36] On February 11, 2025, Mitsubishi filed this motion.

### **ISSUES**

[37] This motion raises two issues:

- **Issue No. 1:** Did A to Z acquire a valid statutory lien and a right of detention?
- **Issue No. 2:** If a valid statutory lien and right of detention arose, are they still enforceable?

## **POSITIONS OF THE PARTIES**

### **MITSUBISHI**

#### **A TO Z DID NOT ACQUIRE A RIGHT TO A STATUTORY LIEN AND A RIGHT OF DETENTION**

[38] Mitsubishi submits that A to Z bears the burden of establishing that the services were authorized by the “owner” or by a person lawfully in possession of the Semi-Truck with authority to bind the owner. It argues that such authority would ordinarily be evidenced by a signed work order, invoice, or similar documentation. Mitsubishi submits that A to Z has produced no satisfactory evidence of such authorization and, as a result, has failed to establish a valid statutory lien and right of detention.

#### **ALTERNATIVELY, THE LIEN AND RIGHT OF DETENTION ARE NO LONGER ENFORCEABLE**

[39] Alternatively, Mitsubishi submits that even if a valid statutory lien and right of detention initially arose, they are no longer enforceable on the basis that A to Z has failed to comply with the **GKA**. As a result, the monies paid into court and the Semi-Truck must be returned to Mitsubishi. Here, Mitsubishi advances three main arguments in support:

- A to Z failed to obtain an acknowledgment of indebtedness as required by s. 5(1) of the **GKA**;
- A to Z failed to provide proper notice as required by s. 12 of the **GKA**; and,
- Mitsubishi has complied with s. 13 of the **GKA** and A to Z has failed to do so.

## **A TO Z**

### **A TO Z ACQUIRED A RIGHT TO A STATUTORY LIEN AND A RIGHT OF DETENTION**

[40] A to Z submits that it has satisfied the statutory requirements necessary to establish a lien and right of detention under the **GKA**.

[41] First, A to Z argues that the Lease Agreement is properly characterized as a financing lease rather than a true lease. On that basis, it submits that Albaurak was the effective “owner” of the Semi-Truck when the services were authorized, while Mitsubishi retained legal title as security. A to Z further submits that Mr. Hodgson, acting on behalf of Albaurak, authorized the services. It therefore argues that the statutory requirements for the creation of a valid lien and right of detention were satisfied.

[42] Alternatively, A to Z submits that the **GKA** does not require the services to have been authorized by the “owner.” It relies on ss. 2 and 3 of the **GKA**, which confer a statutory lien and right of detention where a garage keeper has custody or possession of a motor vehicle belonging to a person indebted to the garage keeper for services provided.

[43] Finally, A to Z submits that the **GKA** is remedial legislation intended to protect garage keepers who provide services with the expectation of payment. It argues that requiring direct authorization from the registered owner would undermine that purpose and lead to commercially impractical results.

### **A TO Z’S LIEN AND RIGHT OF DETENTION REMAIN ENFORCEABLE**

[44] A to Z submits that the payment-into-court provisions of s. 13 of the **GKA** require strict compliance. It argues that Mitsubishi failed to comply with the **GKA** because it did

not pay into court the full amount then owing. In A to Z's submission, compliance required payment of both the amount set out in the First Invoice and the additional amount claimed in the Second Invoice.

[45] A to Z further argues that Mitsubishi paid less than the amount owing despite knowing that additional charges had accrued. It submits that permitting an owner to pay less than the full amount claimed and thereby rendering a garage keeper's statutory lien and right of detention unenforceable, would undermine the protection afforded by the **GKA**.

## **THE LAW**

### **THE STATUTORY FRAMEWORK**

[46] The relevant provisions of the **GKA** are reproduced at Schedule "A".

### **APPROACH TO STATUTORY INTERPRETATION**

[47] In ***Rizzo & Rizzo Shoes Ltd. (Re)***, [1998] 1 S.C.R. 27, 1998 CanLII 837 (SCC),

Iacobucci J. discussed the principles of statutory interpretation as follows:

21 ... Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[48] In ***Benchwood Builders, Inc. v. Prescott***, 2025 ONCA 171, Lauwers J.A. wrote:

[15] The governing principle of statutory interpretation is this: "Those who draft and enact statutes expect that questions about their meaning will be resolved by an analysis that has regard to the text, context and purpose". ...

[49] Section 6 of ***The Interpretation Act***, C.C.S.M. c. I80, also provides:

**Rule of liberal interpretation**

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

**STATUTORY LIENS — RELEVANT PRINCIPLES**

[50] In ***Kobi's Auto Ltd. v. 5174245 Manitoba Ltd. et al.***, 2018 MBCA 134, the Manitoba Court of Appeal addressed the need for compliance with statutory conditions under the ***GKA***. At paras. 41, 43 and 54, the court stated:

[41] ... 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 (see *Clarkson Co Ltd v. Ace Lumber Ltd*, [1963] SCR 110 at 114; and section 6 of *The Interpretation Act*).

. . .

[43] ... the power of a lienholder to sell a chattel to satisfy a debt is extraordinary. Absent meeting the requirements of the *GKA*, a lienholder cannot sell a detained vehicle to satisfy the debt owed without the permission of the Court. A wrongful sale of a chattel makes the lienholder liable for conversion.

. . . . .

[54] ... there must be rigorous compliance with any condition set by the Legislature that extends or enlarges what the common law would otherwise permit (see *Mountain School District No 28 v. General Brake & Clutch Service Ltd*, 1979 CarswellMan 62, at paras. 7-8).

(Also see ***Ed Miller Sales & Rental Ltd. v. Canadian Imperial Bank of Commerce***, 37 D.L.R. (4th) 179, 1987 ABCA 56, at para. 7).

### **AUTHORITY TO REQUEST SERVICES**

[51] The decision of ***Mullin v. 897634 Ontario Inc. (Lloyd's Bailiff Services)***, 27 OR (3d) 145, 1996 CanLII 10241 (ON CTGDDC), provides a helpful overview of the applicable principles at pp. 7–8:

In the case of *Stone v. Lingwood* (1725), 1 Stra. 651, 93 E.R. 759, the court held:

In some cases a creditor may claim to be entitled to retain an article under a right of lien even though the owner of that article was not the person who requested the making of the repair. In general, a lien may not be claimed against the owner or another person having an interest in the article unless that person requested that the work be done.

In the case of *Castellain v. Thompson* (1862), 13 C.B.N.S. 105, 143 E.R. 41, the court held:

Where work is done at the request of a person who has no title to the property, a lien will only arise against the owner where it can be shown that the person who requested the repair had the authority of the owner to subject the property to a lien.

And in *Hussey v. Christie* (1808), 9 East. 426, 103 E.R. 636, the court held:

A lien may be acquired through the performance of work at the request of an agent or servant of a person who has an interest in the article, where it can be shown that the servant or agent acted within the scope of his apparent authority in requesting that the work be done.

(Also see ***Security Loan Company v. Hewlett***, [1951] M.J. No. 23, 1951 CanLII 581 (MB CA) at p. 162).

### **TRUE LEASE VERSUS FINANCING LEASE**

[52] Canadian courts have distinguished between a “true lease” and a “financing lease.” In a true lease, the lessor retains ownership. In a financing lease, the lessor retains title primarily as security for the lessee’s payment obligations, while the lessee assumes the incidents of ownership. (***HOJ Franchise Systems Inc. v. Municipal Savings & Loan Corp.***, 110 D.L.R. (4th) 645, 1994 CanLII 7480 (ON CTGD), at p. 309; ***Winnipeg Motor***

***Express Inc. et al.***, 2009 MBQB 204 at paras. 35-40; and ***Smith Brothers Contracting Ltd., Re***, [1998] CarswellBC 678, 1998 CanLII 3844 (BC SC).

## **ANALYSIS**

### **ISSUE ONE: DID A TO Z ACQUIRE A VALID STATUTORY LIEN AND A RIGHT OF DETENTION?**

[53] This issue raises two components: (i) Was Albaurak the “owner” of the Semi-Truck when the services were provided; and (ii) Did Mr. Hodgson have the authority to request the services thereby creating a valid statutory lien and a right of detention?

#### **(i) Was Albaurak the Owner of the Semi-Truck?**

[54] I have no hesitation in concluding that the Lease Agreement at issue is a financing lease. I rely on the following provisions of the Lease Agreement:

- Section 5 requires Albaurak to maintain and repair the Semi-Truck, authorize repairs, and pay for any liens arising from repairs or storage;
- Section 9 places responsibility upon Albaurak for damage to the Semi-Truck and maintaining adequate insurance;
- Section 10 requires Albaurak to notify Mitsubishi of any damage and pay any shortfall between insurance proceeds and the cost of repairs; and,
- Section 16 grants Albaurak an option to purchase the Semi-Truck for its residual value at the conclusion of the lease term.

(Supplemental Affidavit of Saheed Kareem, sworn August 28, 2025, Exhibit “A”, ss. 5, 9, 10 and 16 of the Lease Agreement)

[55] Therefore, under the Lease Agreement, Albaurak was an “owner” and it could authorize the services. However, I find that there has been no evidence provided to support the suggestion that Albaurak authorized the services.

**(ii) Did Mr. Hodgson Have the Authority to Request the Services?**

[56] A similar scenario was addressed by the Manitoba Court of Appeal decision in *Security Loan Company*. In that matter, the court considered a conditional sales agreement that required the purchaser to maintain and repair the motor vehicle. The court held that the purchaser’s authority to retain a garage keeper and subject the motor vehicle to a lien was implied by that agreement. Therefore, the purchaser, acting through her husband as her agent, possessed the authority to subject the motor vehicle to a garage keeper’s lien notwithstanding that title remained elsewhere. By contrast, in the present matter the existence of Mr. Hodgson’s authority is the very issue in dispute.

[57] As the party asserting the right to a statutory lien and a right of detention, A to Z bears the onus of establishing that the person who requested the services possessed authority to bind Albaurak. On the record before me, it has failed to do so. Specifically, in his affidavit Mr. Laba’s asserts that:

- Mr. Hodgson contacted him regarding the Semi-Truck;
- Mr. Hodgson was dispatching or acting as an Operations Manager for Albaurak;
- Mr. Hodgson instructed A to Z to provide the services; and,
- Mr. Hodgson had previously instructed A to Z to perform other services on other motor vehicles for Albaurak and A to Z had always been paid.

[58] These assertions are unsupported by contemporaneous evidence and amount, in substance, to bare assertions. There are no work orders, repair authorizations, invoices, emails, text messages, telephone records, or other documents evidencing the alleged instructions concerning the Semi-Truck. Nor is there documentary evidence establishing Mr. Hodgson's position with Albaurak or any express or implied authority to act on its behalf. Although Mr. Laba refers to numerous communications, and attempted communications, with Mr. Hodgson and Albaurak, his affidavit provides few dates and little detail concerning them.

[59] The only documentary evidence attached to Mr. Laba's affidavit concerning his prior dealings with Mr. Hodgson is a brief email exchange between December 13, 2019 and February 13, 2020 (Affidavit of Frank Laba, Ex. "A"). That correspondence makes no reference to Albaurak or the Semi-Truck. Rather, it relates to services provided in relation to a different vehicle belonging to another entity. Moreover, it identifies Mr. Hodgson as President and C.E.O. of Greenback Business Solutions Inc. and Greenback Motors Inc. It does not establish that Mr. Hodgson was acting on behalf of Albaurak or had authority to bind Albaurak in relation to the services at issue. There is also no evidence from Mr. Hodgson or any representative of Albaurak addressing his authority. The court is left with Mr. Laba's bare assertions alone.

[60] While the **GKA** may warrant a liberal interpretation in relation to the protection it affords garage keepers, the statutory requirements giving rise to a lien and right of detention must be strictly construed. On the evidence before me, A to Z has not established that Mr. Hodgson possessed either express or implied authority to authorize

the services on Albaurak's behalf. I therefore find that A to Z has failed to establish a valid statutory lien and right of detention on the basis that Albaurak authorized the services via Mr. Hodgson.

[61] A to Z alternatively argues that ss. 2 and 3 of the **GKA** confer a statutory lien and right of detention whenever a garage keeper has custody or possession of a motor vehicle belonging to a person indebted to it for services.

[62] The words of the **GKA** must be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme and object of the legislation and the intention of the Legislature. I accept that s. 3 does not expressly require the "owner" to be indebted to the garage keeper. However, the reference to a motor vehicle "belonging to a person" who is indebted to the garage keeper necessarily presupposes a legal basis for that indebtedness and the authority to incur it in relation to the vehicle.

[63] The **GKA** protects garage keepers who provide services at the request of persons legally entitled to authorize those services. It cannot reasonably be interpreted as transferring the financial consequences of unauthorized services to an innocent or unknowing owner. Such an interpretation would permit a third party, acting without authority, to impose a statutory encumbrance and right of detention upon another person's motor vehicle merely by requesting that services be performed.

[64] I therefore reject A to Z's argument on this point.

**ISSUE TWO: IF A VALID STATUTORY LIEN AND RIGHT OF DETENTION EXISTED, ARE THEY STILL ENFORCEABLE?**

[65] Having concluded that A to Z has not established a valid statutory lien and right of detention, it is unnecessary to determine the parties' remaining submissions concerning

compliance with the **GKA**. However, as those issues were fully argued and may become relevant if my conclusion on the validity of the lien and right of detention is incorrect, I will address them in the alternative.

[66] In my view, neither s. 5(1) nor s. 12 of the **GKA** is determinative. The central issue is the interpretation and application of s. 13 of the **GKA**. I will nevertheless briefly address s. 5(1) and s. 12 of the **GKA**.

#### **SECTION 5(1) OF THE GKA**

[67] Section 5(1) of the **GKA** applies where a garage keeper elects to surrender possession of the motor vehicle to its owner. That circumstance never arose in the present matter. A to Z has maintained possession of the Semi-Truck throughout.

#### **SECTION 12 OF THE GKA**

[68] Section 12 of the **GKA** also has a limited effect. It provides that a garage keeper who fails to comply with the provision is not entitled to sell the motor vehicle under the **GKA**. On the facts of this matter, it does not assist in determining whether an otherwise valid lien and right of detention remains enforceable.

[69] In any event, while A to Z ultimately did serve a Notice to Owner(s) on January 7, 2025, neither party advanced submissions on whether it was given “within a reasonable time following the detention” of the Semi-Truck as contemplated by s. 12 of the **GKA**; such that A to Z no longer had the right to sell it (Affidavit of Zainab Fatima, sworn February 6, 2025, Exhibit “F”).

**SECTION 13 OF THE *GKA***

[70] Although neither party acted with diligence nor dispatch in seeking to exercise their rights under the ***GKA***, that does not alter my conclusion that, assuming a right to a statutory lien and a right of detention arose, they are no longer enforceable.

[71] The relevant chronology is largely undisputed:

- On or about February 8, 2024, Mr. Laba provided Mr. Godbehere, who advised that he was acting on behalf of Mitsubishi, with the First Invoice seeking the amount of \$42,601;
- On February 26, 2024, Mr. Godbehere advised Mr. Laba that Mitsubishi disputed the First Invoice, particularly the storage charges;
- On April 12, 2024, Mr. Care requested that A to Z advise Mitsubishi of the full amount it then claimed to be owing. No revised invoice or updated amount was provided; and,
- On June 19, 2024, legal counsel for Mitsubishi advised A to Z that Mitsubishi disputed the amount claimed, particularly the storage charges as reflected in the First Invoice. Counsel further advised that, failing resolution by June 24, 2024, Mitsubishi intended to invoke s. 13 of the ***GKA*** while contesting the amount claimed. A to Z neither responded nor provided a revised invoice or updated amount.

[72] A to Z submits that s. 13 of the ***GKA*** is intended to preserve a garage keeper's security while permitting an owner to recover possession of the motor vehicle pending resolution of the parties' dispute. I agree.

[73] However, the **GKA** must be considered from the perspective of both the garage keeper and the owner. As observed in *Prairie Mack Sales (1990) Ltd. v. Dueck Builder Mart*, 80 Man.R. (2d) 51, 1992 CanLII 12852 (MB QB), at para. 11:

The *Garage Keepers Act* was designed primarily to protect the garage repairman. Pay your account and take your vehicle. But later the legislature in its wisdom decided that this was a bit harsh, and provided in the Act a way to permit a debtor to get possession of his, her or its vehicle, perhaps to carry on business or whatever. ... No question, this was done not to accommodate garage keepers, but rather the public or commercial users of a garage. ...

#### **THE AMOUNT PAID INTO COURT**

[74] I am satisfied that Mitsubishi complied with s. 13(4) of the **GKA** when it paid into court the amount sought in the First Invoice. Here, Mitsubishi relied on the only statement of charges A to Z had provided - the First Invoice. Before invoking s. 13 of the **GKA**, Mitsubishi asked A to Z to identify the full amount then claimed. A to Z did not provide an updated invoice or otherwise quantify any additional amount owing. It was only after Mitsubishi filed its Notice of Payment into Court, paid into court the amount claimed in the First Invoice, and sought the release of the Semi-Truck that A to Z issued the Second Invoice claiming additional charges. Mitsubishi cannot reasonably be faulted for failing to pay an amount that A to Z had neither disclosed nor quantified.

[75] There is some force to A to Z's general proposition that an owner should not be permitted to defeat a garage keeper's statutory lien by deliberately paying less than an amount known to be owing. That, however, is not what occurred here. I do not accept A to Z's submission that the First Invoice put Mitsubishi on notice that a greater amount was necessarily owing. The notation that storage charges "may accumulate as time passes" indicated only that further charges might accrue. It did not quantify them or

establish that they had in fact been claimed. More importantly, Mitsubishi did not ignore an identified debt or knowingly pay less than an amount claimed by A to Z. Before invoking s. 13 of the **GKA**, it sought to ascertain the full amount A to Z then claimed. A to Z did not provide that information.

#### **COMMENCING AN ACTION WITHIN 30 DAYS AND SURRENDERING POSSESSION**

[76] A to Z further submits that s. 13(7) of the **GKA** does not require a garage keeper to commence an action within 30 days after being served with a Notice of Payment into Court. I agree that the language is permissive rather than mandatory and that a garage keeper is not compelled to commence an action. That, however, does not end the analysis. Although a garage keeper may elect to commence an action disputing the sufficiency of the amount paid into court, the **GKA** also sets out the consequences of not doing so.

[77] Section 13(7) of the **GKA** provides that, if no action is commenced within the prescribed period, the money paid into court is to be paid out in accordance with an order of a judge. More importantly, s. 13(9) of the **GKA** requires the garage keeper, upon being served with a Notice of Payment into Court, to surrender possession of the motor vehicle forthwith. A to Z did not commence an action within the prescribed period and refused to surrender possession of the Semi-Truck.

[78] In my view, A to Z's interpretation of s. 13 of the **GKA** is inconsistent with both the language and purpose of the **GKA**. The legislation must be read in its entire context and in its grammatical and ordinary sense, harmoniously with its scheme and the intention of the Legislature. While the **GKA** protects garage keepers who provide services

at the request of persons legally entitled to authorize them, it also creates a practical mechanism by which an owner may recover possession of a motor vehicle while preserving the garage keeper's security pending judicial determination of any dispute concerning the validity or amount of the lien.

[79] Section 13 of the **GKA** accomplishes this by substituting the money paid into court for the garage keeper's possessory security in the motor vehicle. Once the required payment is made and the Notice of Payment into Court is served, the garage keeper must surrender possession. If it disputes the sufficiency of the amount paid, it may commence an action within the prescribed period.

[80] What it cannot do is retain possession indefinitely while declining to invoke the statutory process available to resolve that dispute. Such an interpretation would undermine the balance struck by the Legislature between protecting the garage keeper's financial interest and permitting an owner to recover possession of its motor vehicle.

[81] Accordingly, even if A to Z initially acquired a statutory lien and right of detention, those rights are no longer enforceable.

## **CONCLUSION**

[82] In summary, I conclude as follows:

- A to Z has failed to establish a valid statutory lien and right of detention under the **GKA**.
- Alternatively, even if a statutory lien and right of detention arose, those rights are no longer enforceable.

- The monies paid into court by Mitsubishi pursuant to s. 13 of the **GKA** shall be paid out to Mitsubishi. A to Z shall forthwith release and deliver the Semi-Truck to Mitsubishi and shall take all reasonable steps necessary to facilitate Mitsubishi's recovery of possession.
- If necessary, Mitsubishi may take such further steps as are authorized by law to recover possession of the Semi-Truck.
- Mitsubishi also seeks the monetary relief prescribed by s. 13(9) of the **GKA** arising from A to Z's continued detention of the Semi-Truck. I decline to grant that relief. This proceeding raised issues of first impression concerning the interpretation and application of the **GKA**. In those circumstances, I am not satisfied that it is appropriate to impose the statutory monetary consequences sought by Mitsubishi.
- These reasons determine only the existence and enforceability of the statutory lien and right of detention asserted under the **GKA**. They do not determine or extinguish any contractual or other common law rights that A to Z may have in respect of the services provided.
- Mitsubishi has been successful on this motion and is entitled to costs in accordance with the applicable Tariff. If the parties are unable to agree on costs, they may arrange to appear before me for that issue to be determined.

\_\_\_\_\_ J.

**Schedule "A"*****The Garages Keeper's Act, C.C.S.M. c. G10***

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| <p><b>Garage keeper's lien</b></p> <p><b>2</b> 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.</p> | <p><b>Privilège du garagiste</b></p> <p><b>2</b> 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.</p> |
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| <p><b>Right of detention and priority</b></p> <p><b>3</b> Where a garage keeper has in their custody or possession a motor vehicle or farm vehicle, or any part thereof, or accessory or equipment pertaining thereto that belongs to a person who is indebted to them for any service, and, subject to subsection 5(1), the garage keeper has had such custody or possession since the time the service was rendered, the garage keeper may detain it in their custody or possession; and, subject to section 8, the right of detention provided by this section has priority over, and is not subject to, any lien, security interest, as defined in <i>The Personal Property Security Act</i>, bill of sale, or other charge or encumbrance of whatever nature or</p> | <p><b>Droit de rétention</b></p> <p><b>3</b> Le garagiste qui a sous sa garde ou en sa possession un véhicule automobile ou un véhicule agricole, ou une pièce, un accessoire ou un équipement s'y rapportant, qui appartient à une personne endettée envers lui en raison d'un service peut, sous réserve du paragraphe 5(1), le retenir sous sa garde ou en sa possession s'il ne s'en est pas défait depuis le moment où le service a été fourni. Sous réserve de l'article 8, le droit de rétention visé au présent article a priorité sur tout privilège, sûreté, au sens de la <i>Loi sur les sûretés relatives aux biens personnels</i>, acte de vente ou autre charge de quelque nature qu'elle soit, portant sur le véhicule automobile ou le véhicule agricole,</p> |
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| kind, upon or in respect of the motor vehicle, farm vehicle, or part, accessory, or equipment, pertaining thereto, existing at the time of the detention except a lien under this Act with respect to which a financing statement has been registered as provided herein | ou une pièce, un accessoire ou un équipement s'y rapportant, et existant au moment de la rétention à l'exception d'un privilège prévu à la présente loi à l'égard duquel une déclaration de financement a été enregistrée conformément aux dispositions qui suivent. |
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| <p><b>Surrender of possession of vehicle, etc.</b></p> <p><b>5(1)</b> Where a garage keeper has a lien on a motor vehicle or a farm vehicle or any part, accessory or equipment pertaining thereto, the garage keeper may surrender possession of the motor vehicle or farm vehicle, or the part, accessory or equipment pertaining thereto, to the owner without losing the garage keeper's lien if</p> <p>(a) before surrendering possession to the owner, the garage keeper obtains from the owner an acknowledgment of the indebtedness with respect to which the lien arose, by requiring the owner to sign an invoice or other statement of account for the service rendered; and</p> <p>(b) either before surrendering possession to the owner or within 15 days thereafter, the garage keeper registers in the Personal Property Registry established under <i>The Personal Property Security Act</i> a financing statement in</p> | <p><b>Remise de possession du véhicule</b></p> <p><b>5(1)</b> Le garagiste qui est titulaire d'un privilège sur un véhicule automobile ou un véhicule agricole, ou une pièce, un accessoire ou un équipement s'y rapportant, peut remettre la possession du véhicule automobile ou du véhicule agricole, ou de la pièce, de l'accessoire ou de l'équipement s'y rapportant, au propriétaire sans perdre son privilège si :</p> <p>a) d'une part, avant d'en remettre la possession, il obtient du propriétaire une reconnaissance de dette à l'égard de laquelle le privilège a pris naissance, en exigeant du propriétaire qu'il signe une facture ou autre relevé de compte pour le service fourni;</p> <p>b) d'autre part, avant d'en remettre la possession au propriétaire, ou dans les 15 jours qui suivent, il enregistre au bureau d'enregistrement des sûretés relatives aux biens personnels établi en vertu de la <i>Loi sur les sûretés relatives</i></p> |
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| accordance with the regulations made under that Act. | <i>aux biens personnels</i> une déclaration de financement en conformité avec les règlements pris sous le régime de cette loi. |
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| <p><b>Notice to debtor</b></p> <p><b>12(1)</b> Unless, at the time of, or within a reasonable time after</p> <p>(a) the detention of the motor vehicle, farm vehicle, accessory or equipment under section 3; or</p> <p>(b) the seizure of the motor vehicle, farm vehicle, accessory or equipment under section 7;</p> <p>the garage keeper gives the owner of the vehicle a notice in Form 3 of the Schedule, or a notice to like effect, the garage keeper is not entitled to sell the motor vehicle, farm vehicle, accessory or equipment, as the case may be, in accordance with the provisions of this Act.</p> | <p><b>Avis au débiteur</b></p> <p><b>12(1)</b> Le garagiste n'a pas le droit de vendre un véhicule automobile, un véhicule agricole, un accessoire ou un équipement sous le régime de la présente loi à moins qu'il ne donne au propriétaire du véhicule un avis fait selon la formule 3 de l'annexe ou un avis au même effet au moment :</p> <p>a) de la rétention du véhicule automobile, du véhicule agricole, de l'accessoire ou de l'équipement en vertu de l'article 3 ou dans un délai raisonnable après cette rétention;</p> <p>b) de la saisie du véhicule automobile, du véhicule agricole, de l'accessoire ou de l'équipement en vertu de l'article 7 ou dans un délai raisonnable après cette saisie.</p> |
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| <p><b>Payment into court</b></p> <p><b>13(2)</b> Notwithstanding any other provision of this Act, where a garage keeper has a lien on a vehicle and</p> <ul style="list-style-type: none"> <li>(a) has detained the vehicle under section 3; or</li> <li>(b) has seized the vehicle under section 7; or</li> <li>(c) has the right to seize the vehicle under section 7;</li> </ul> <p>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.</p> | <p><b>Consignation au tribunal</b></p> <p><b>13(2)</b> Malgré toute autre disposition de la présente loi, lorsqu'un garagiste est titulaire d'un privilège sur un véhicule, et qu'il :</p> <ul style="list-style-type: none"> <li>a) a retenu le véhicule en application de l'article 3;</li> <li>b) a saisi le véhicule en application de l'article 7;</li> <li>c) a droit de saisir le véhicule en application de l'article 7,</li> </ul> <p>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.</p> |
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| <p><b>Form of notice of payment</b></p> <p><b>13(3)</b> The notice of payment may be in Form 2 of the Schedule, and shall state</p> <ul style="list-style-type: none"> <li>(a) the name and address of the garage keeper claiming the lien;</li> </ul> | <p><b>Forme de l'avis de consignation</b></p> <p><b>13(3)</b> L'avis de consignation peut être fait selon la formule 2 de l'annexe et il doit contenir :</p> <ul style="list-style-type: none"> <li>a) le nom et l'adresse du garagiste qui revendique le privilège;</li> </ul> |
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| <p>(b) the name and address of the owner of the detained vehicle;</p> <p>(c) a description of the detained vehicle, sufficient for its identification;</p> <p>(d) the amount paid into court;</p> <p>(e) that the owner disputes the amount claimed and the grounds of the dispute; and</p> <p>(f) that the garage keeper is ordered to deliver the vehicle to the owner;</p> <p>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 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.</p> | <p>b) le nom et l'adresse du propriétaire du véhicule retenu;</p> <p>c) une description du véhicule retenu qui permette de le reconnaître;</p> <p>d) le montant consigné au tribunal;</p> <p>e) une mention selon laquelle le propriétaire conteste le montant réclamé ainsi que les motifs de la contestation;</p> <p>f) une mention selon laquelle il est enjoint au garagiste de remettre le véhicule au propriétaire.</p> <p>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 n'a pas remis un tel relevé, un affidavit du propriétaire indiquant le montant réclamé par le garagiste accompagne l'avis.</p> |
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| <p><b>Statement of charges</b></p> <p><b>13(4)</b> The statement of charges required under subsection (3) shall be furnished by the garage keeper upon completion of the service to the vehicle.</p> | <p><b>Relevé des frais</b></p> <p><b>13(4)</b> 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.</p> |
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| <p><b>Action within 30 days</b></p> <p><b>13(7)</b> 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 accordance with the order of a judge.</p>                                          | <p><b>Action intentée dans les 30 jours</b></p> <p><b>13(7)</b> 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 l'ordonnance d'un juge.</p>                                                |
| <p><b>Failure to commence action</b></p> <p><b>13(8)</b> 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.</p>                                                                                                                                                                                | <p><b>Omission d'intenter l'action</b></p> <p><b>13(8)</b> 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).</p>                                                                                                                                                                                                                    |
| <p><b>Garage keeper to give up possession</b></p> <p><b>13(9)</b> 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</p> | <p><b>Remise de possession</b></p> <p><b>13(9)</b> 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</p> |

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| 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. | maximale de 100 \$ pour chacun des jours au cours desquels l'infraction se continue. |
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