

# In the Court of Appeal of Alberta

Citation: 1832067 Alberta Ltd v Dowcar Metals Inc, 2025 ABCA 264

Date: 20250725  
Docket: 2403-0105AC  
Registry: Edmonton

Between:

1832067 Alberta Ltd. carrying on business under  
the firm name and style of "AB Logistics"

Appellant

- and -

Dowcar Metals Inc.

Respondent

- and -

Alliance Steel Distributors LLC

Not a Party to the Appeal

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The Court:

The Honourable Justice Frans Slatter  
The Honourable Justice Anne Kirker  
The Honourable Justice April Grosse

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Memorandum of Judgment of the Honourable Justice Slatter  
and the Honourable Justice Kirker

Dissenting Memorandum of Judgment of the Honourable Justice Grosse

Appeal from the Order by  
The Honourable Justice R.A. Jerke  
Dated the 10th day of April, 2024  
Filed the 1st day of August, 2024  
(Docket: 1503-17177)

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## Memorandum of Judgment

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### The Majority:

#### Introduction

[1] This appeal is about the enforceability of a possessory lien in unusual circumstances.

[2] The appellant, carrying on business as “AB Logistics”, stored pipe for Dowcar Metals Inc. at two storage facilities leased from Arrow Reload Systems Inc. in Scotford, Alberta and from Environmental Rescue Equipment Inc. in Claresholm, Alberta. A dispute between the parties arose in 2015 when AB Logistics claimed Dowcar had not paid all the agreed upon storage fees. AB Logistics asserted a right to retain possession of the pipe until its outstanding invoices were paid. This caused Dowcar to commence replevin proceedings to recover possession of its pipe. It also sought damages for the pipe’s wrongful detention. AB Logistics defended the replevin action and commenced a separate action against Dowcar seeking judgment for the amount alleged owing under the parties’ “storage and handling arrangements”, a priority claim based on a possessory lien, and the sale of the pipe to satisfy the debt. Various interlocutory steps were taken but both actions languished after 2018. All proceedings were ultimately dismissed for long delay pursuant to rule 4.33 of the *Alberta Rules of Court*, Alta Reg 124/2010, without the merits of the underlying dispute being addressed. The parties were left barred from seeking any remedial orders by operation of the *Limitations Act*, RSA 2000, c L-12. The question after this was whether any right to enforce a possessory lien survived. The chambers judge decided it did not because of the “effect of the *Limitations Act* on [AB Logistics’] claim for debt and power of sale.”

[3] Apart from challenging the dismissal of its debt action under rule 4.33, AB Logistics maintains it is entitled to retain possession of the pipe because the expiration of the limitation period governing its right to sue for judgment on the debt did not extinguish the debt itself.

#### Background

##### *Litigation Leading to the Decision Under Appeal*

[4] On July 17, 2015, Dowcar commenced its action seeking to recover over \$3 million worth of pipe stored at Scotford and claiming damages of \$250,000. The same day, an *ex parte* replevin order was granted, permitting an agent of Dowcar to enter the Scotford yard and take possession of the pipe. The order directed, and Dowcar undertook, “to conclude the within action for recovery of the [pipe] without delay”. The order also required Dowcar to pay damages, costs and expenses incurred by the defendants as a result of the replevin order if Dowcar was not successful in the action for recovery of the pipe and the court so ordered. The initial replevin order was varied at

the request of the defendants on July 29, 2015, requiring that pipe with a value of not less than \$250,000 be maintained at Scotford until further order of the court.

[5] AB Logistics filed a statement of defence in the replevin action on November 6, 2015, asserting that “substantial outstanding storage charges” were “due and owing” to it and that consequently, it had not “improperly withheld” the pipe. The same day, AB Logistics also commenced a debt action seeking judgment for the amounts alleged to be outstanding for the storage services provided to Dowcar. AB Logistics claimed a priority for payment “by way of a possessory lien” and requested the sale of the pipe to pay the debt alleged owing. The possessory lien over the remaining pipe was said to secure a claim of \$115,250 USD.

[6] A number of interlocutory steps were taken by both sides. Of relevance in this appeal is an order granted in both actions on July 18, 2018, following several applications by the parties. Dowcar had applied in the replevin action to set aside the requirement that \$250,000 worth of pipe be maintained at Scotford and in the debt action for security for costs. AB Logistics had applied in the replevin action for an order requiring Dowcar to post cash until the matter was resolved and in the debt action for an attachment order affecting the pipe stored at Scotford. AB Logistics also applied for summary dismissal of Dowcar’s damages claim.

[7] The July 18, 2018, order directed:

1. AB Logistics is a bailee for reward and can maintain a possessory lien over [Dowcar’s] pipe stored at ... Scotford, Alberta to the extent of \$150,000 in Canadian currency.
2. The value of the steel pipe required to be held on the basis of a possessory lien or on the basis of an undertaking collateral to the Replevin Order is hereby reduced to \$150,000 Canadian currency.
3. The balance of the pipe over \$150,000 Canadian should be released. If the parties cannot agree as to the appropriate method of valuation, they are to return to Court to have that issue determined.
4. The security for costs application filed by Dowcar Metals Inc. in Action 1503 17177 is hereby further adjourned.
5. Whether pipe, money or an undertaking will suffice on a go-forward basis shall be subject to a further application to be heard with the security for costs application brought by Dowcar Metals Inc.
6. If necessary, a procedural order can be applied for relating to the conclusion of the competing debt and damages claims.

The litigation then stalled.

[8] On February 17, 2022, Dowcar filed an application to dismiss AB Logistics' debt action for long delay under rule 4.33. As part of that application, Dowcar sought an order releasing the pipe to it on grounds that AB Logistics had secured an interim order requiring \$150,000 of pipe to remain at Scotford as security for AB Logistics' claim. The long delay application was heard on April 22, 2022, by an applications judge (then known as a master). AB Logistics resisted the dismissal of its debt action for long delay arguing, among other things, that Dowcar's request for the release of the pipe upon dismissal of the debt action was participation in the action that justified its continuation under rule 4.33(2)(b). The applications judge disagreed. She found nothing had been done to significantly advance the debt action for more than three years and that Dowcar's request for an order releasing the pipe did not amount to participation in the action for a purpose or to an extent warranting the action continuing. The applications judge dismissed the debt action for long delay and granted an order releasing the pipe as a "natural consequence" of the dismissal. She noted that AB Logistics still had Dowcar's undertaking in the replevin action, backed up by the collateral of the pipe, pending the determination of outstanding applications brought by AB Logistics returnable in justice chambers. The applications judge agreed to stay the order requiring AB Logistics to release the pipe until May 31, 2022, to allow "whatever happens [to] happen."

[9] AB Logistics' outstanding applications included one filed in both actions which sought to have Dowcar held in contempt for failing to prosecute the replevin action "without delay" and the dismissal of that action as a remedy for Dowcar's contempt. Alternatively, and independently of any contempt, AB Logistics filed an application in the replevin action to have it dismissed for long delay.

[10] AB Logistics appealed the applications judge's order dismissing its debt action for long delay. The appeal was ordered to be heard together with AB Logistics' other applications in a two-day special justice chambers hearing. The stay granted by the applications judge was extended until the appeal and other applications were heard.

#### *The Special Chambers Judge's Decision and AB Logistics' Further Appeal*

[11] The chambers judge addressed AB Logistics' appeal of the applications judge's order first. He agreed that three years had passed without any significant advance in the debt action and that Dowcar's request for an order releasing the pipe did not warrant the action continuing. Like the applications judge, the chambers judge determined that the release of the pipe was a natural consequence of the dismissal of the debt action. He also decided that no ability to retain the pipe under section 8 of the *Possessory Liens Act*, RSA 2000, c P-19<sup>1</sup> survived. AB Logistics' application to dismiss the replevin action for long delay was granted and its contempt application was dismissed after AB Logistics' counsel argued it was "probably easier for the Court to get to where I want to go through the dismissal for long delay application" as opposed to a finding of contempt.

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<sup>1</sup> The parties argued this appeal under the *Possessory Liens Act*, not the *Warehousemen's Lien Act*, RSA 2000, c W-2. See section 14(b) of the *Possessory Liens Act*.

[12] Before this Court, AB Logistics argues the chambers judge erred in concluding that Dowcar’s “post delay application” for release of the pipe did not warrant the debt action continuing and in failing to accept that it was an abuse of process for Dowcar to apply for release of the pipe in the debt action while its replevin action was still outstanding. AB Logistics also submits the applications judge lacked jurisdiction to order the release of the pipe in the debt action after its contempt application was filed and ultimately, that the chambers judge erred in finding that its possessory lien was extinguished by the dismissal of the debt action and the effect of the *Limitations Act*. In asserting this position, which depends at least in part on the contention that a “possessory lien is principally a defence, not a cause of action”, AB Logistics overlooks its tactical decision to have the replevin action dismissed.

## Decision

### *Steps in the Debt Action after Delay*

[13] AB Logistics accepts that three years passed without any significant advance in its debt action, which was therefore subject to mandatory dismissal for long delay unless one of the two exceptions applied: *Alberta Rules of Court*, rule 4.33(2); *Danis-Sim v Sim*, 2024 ABCA 297 at para 18. However, it maintains that by requesting an order releasing the pipe, Dowcar participated in the debt action after the period of delay for a purpose and to an extent that justifies the continuation of that action under rule 4.33(2)(b). We disagree.

[14] The chambers judge’s determination that Dowcar’s application for an order releasing the pipe did not warrant the debt action continuing is owed deference: *CWC Well Services Corp v Option Industries Inc*, 2019 ABCA 331 at para 11; see also, *Ro-Dar Contracting Ltd v Verbeek Sand & Gravel Inc*, 2016 ABCA 123 at para 11. The dismissal of the debt action eliminated AB Logistics’ pleaded claims for judgment on the debt, priority payment based on a possessory lien, and an order for the sale of the pipe. It also eliminated the need for the pipe to be held as a form of security as the July 18, 2018, order required. Consequently, and as the applications judge and chambers judge both reasonably concluded, an order releasing the pipe was collateral to, or the natural consequence of, the dismissal of the debt action for long delay. Dowcar’s request for an order releasing the pipe cannot reasonably be characterized as participation in the action warranting the action continuing because it could not possibly have led AB Logistics to fairly assume Dowcar had waived the delay: *CWC Well Services Corp* at para 8, citing *Flock v Flock Estate*, 2017 ABCA 67 at para 17.

### *Abuse of Process*

[15] AB Logistics alternatively argues that it was an abuse of process for Dowcar to seek the return of the pipe through its application to dismiss the debt action for long delay because seeking the return of the pipe in the debt action was duplicative of the relief sought in the replevin action and because it amounted to an improper attempt by Dowcar to avoid the consequences of its own delay in prosecuting the replevin claim. On this basis, AB Logistics argues, the chambers judge’s order should be set aside. Again, we disagree.

[16] First, the two overlapping actions have run in parallel since they were commenced in 2015. A multiplicity of proceedings is not always an abuse of process: *Saskatchewan (Environment) v Métis Nation-Saskatchewan*, 2025 SCC 4 at para 39. If there was anything abusive in having two overlapping actions, the time for objection had long since passed: *Alberta Rules of Court*, rule 1.5(2).

[17] Further, because AB Logistics claimed a possessory lien over the pipe in the debt action and because an interim order was in place in both actions requiring \$150,000 of pipe to be held at Scotford, an order addressing what was to happen to the pipe upon the dismissal of the debt action was properly part of Dowcar’s long delay dismissal application. The notice of application requesting an order releasing the pipe cannot therefore be characterized as an abuse of process. It was not a misuse of court proceedings in a manner that was manifestly unfair to a party or that would bring the administration of justice into disrepute: *Métis Nation-Saskatchewan* at para 33, citing *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 37, among other cases.

[18] Before the chambers judge, Dowcar argued that the expiration of the limitation period for seeking judgment on the debt eliminated any right AB Logistics had to assert a possessory lien, and we note the order under appeal states the “possessory lien of [AB Logistics] is terminated in all respects.” AB Logistics submits that in granting this relief, the chambers judge failed to recognize that both actions should have been placed before the court, particularly because AB Logistics “plead[ed] its defence of a possessory lien within Dowcar’s Replevin Action.” Arguably, Dowcar could have commenced two applications (to be heard together), one in the debt action to have it dismissed for long delay, and another in the replevin action for release of the pipe. But the procedure adopted of seeking both forms of relief in the debt action cannot be described as “abusive” because it effectively led to the same place; the parties’ competing applications in both actions and the core issue about the continuance of a possessory lien after the expiration of the limitation period to sue on the debt were clearly before the chambers judge. It is evident reading the chambers judge’s reasons in the context of the record, the live issues, and the submissions of counsel that he was aware of the position AB Logistics was taking across both actions. AB Logistics’ preferred outcome was to have its debt action restored and Dowcar’s replevin action dismissed. However, it also argued that Dowcar should not be able to walk away with the pipe in the event both actions were dismissed.

#### *AB Logistics’ Contempt Application*

[19] AB Logistics relatedly suggests that its contempt application “brought the issue of the release of the subject pipe solely within the jurisdiction of a Justice” because Dowcar’s contempt in the replevin action had to be addressed for the court to properly consider its application to dismiss AB Logistics’ debt action for long delay. This argument has no merit. AB Logistics asked the applications judge to adjourn Dowcar’s long delay application so that AB Logistics’ other applications could be heard at the same time. She denied that request and dismissed AB Logistics’ debt action for long delay. She also granted a stay of her order for the release of the pipe to allow AB Logistics to make its arguments in the other applications. Proceeding this way did not exceed the applications judge’s jurisdiction or involve any reviewable procedural error. Denying the adjournment request was within the applications judge’s discretion and was not unreasonable in

the circumstances: *Mulholland v Rensonnet*, 2023 ABCA 175 at para 7, citing *Nammo v Canada (Justice and Attorney General)*, 2021 ABCA 245 at para 38, leave to appeal to SCC refused, 40013 (7 April 2022). In any event and at AB Logistics’ urging, the chambers judge subsequently dismissed the contempt application.

### *Does the Possessory Lien Survive?*

[20] This brings us to AB Logistics’ central contention: with the litigation ended, it retains the right to “hold the pipe on condition of payment of the debt.”

[21] AB Logistics first suggests the July 18, 2018, order confirms it “can maintain a possessory lien” over the pipe. We cannot accept this argument. The 2018 order merely meant AB Logistics, as a bailee for reward, could assert such a lien subject to further order of the court. The order does not amount to a summary judgment that AB Logistics had proven the validity or quantum of its lien, or a determination that its right to assert a possessory lien would continue no matter the circumstances. On the contrary, the order specifically contemplated that whether pipe, money, or an undertaking would suffice on a go forward basis would be the subject of a further application, and it anticipated that a procedural order may be required to conclude the competing debt and damages claims.

[22] AB Logistics otherwise argues that the chambers judge erred in law in finding that the dismissal of its debt action extinguished “its continuing right of possession of the pipe, including under section 8 of the *Possessory Lien[s] Act*.”<sup>2</sup> AB Logistics submits the chambers judge’s analysis was premised on the false supposition that the *Possessory Liens Act* created AB Logistics’ lien and its right to retain possession of the pipe until the condition of payment was satisfied. It argues the *Possessory Liens Act* does not create liens or take away any rights a possessory lienholder enjoys at common law and that the “common law has long recognized that a lienholder’s right of possession of lien property survives the expiration of the limitation period on the right to sue on the debt for which the lien property is held.” Quoting *Re Hepburn: Ex Parte Smith* (1884), 14 QBD 394 at 399-400, AB Logistics argues the chambers judge ought to have concluded that “the debt continues to exist so far as is necessary for the enforcement of this right of lien but not for enforcing the remedy by action” and that the pipe should therefore have been left in AB Logistics’ possession.

[23] First, we see no error in the chambers judge’s determination that AB Logistics’ possessory lien was a product of statute. The common law did not recognize a lien for storage of goods because the services merely preserved the goods and did not result in an enhancement of them. Section 4(1) of the *Possessory Liens Act* gave AB Logistics the right to assert a possessory lien by its provision of a particular lien on property bailed by the owner of it for charges that are due to the bailee under the terms of the contract of bailment. This was considered a “major change to the

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<sup>2</sup> Section 8 of the *Possessory Liens Act* states: “A person entitled to a lien on any property pursuant to this Act may detain the property in the person’s possession until the amount of the person’s debt has been paid.”

common law”: Alberta Law Reform Institute, *Report on Liens*, Report for Discussion No. 13 (Edmonton: Alberta Law Reform Institute, 1992) at 20.

[24] As to AB Logistics’ asserted right to maintain possession of the pipe pursuant to section 8 of the *Possessory Liens Act*, we recognize that under limitations statutes a distinction was traditionally drawn between limitations which extinguished the underlying right and those that merely barred the remedy.<sup>3</sup> The Alberta Legislature chose not to include words of “extinguishment” in the *Limitations Act* to clarify whether the expiry of the limitation period eliminates all rights based on the underlying debt: *HOOPP Realty Inc v Guarantee Company of North America*, 2019 ABCA 443 at paras 14 and 17, leave to appeal to SCC refused, 39020 (16 April 2020), cited in *Wesley v Alberta*, 2024 ABCA 276 at para 32 (per Slatter JA), leave to appeal to SCC refused, 41515 (15 May 2025). This contrasts with what the legislatures of some other provinces have done: see for e.g., *Limitations Act*, SNL 1995, c L-16.1, s. 17; *Limitations of Actions Act*, SNB 2009, c L-8.5, s. 23(2); *Limitations Act*, SBC 2012, c 13, s. 27. Therefore, while a right without a legal remedy is usually sterile in the sense that a bar to claiming a “remedial order”, being “a judgment or an order made by a court in a civil proceeding requiring a defendant to comply with a duty or to pay damages for the violation of a right” (*Limitations Act*, s. 1(i)), is, for practical purposes, the same as if all underlying rights were extinguished in most cases, that is not necessarily the case in Alberta where the remedy of a possessory lien is involved. The significance of an unextinguished right in “the case of a creditor who has in his possession a security which he can realize without action” was specifically highlighted by the Institute of Law Research and Reform in its Report for Discussion No. 4, *Limitations* (Edmonton: Institute of Law Research and Reform, 1986) at 361. It concluded a general extinguishment provision was not necessary because the circumstances in which extinguishment is relevant rarely arise, nor would it be helpful because the infrequent cases involve “complex and technical points of law”: *Limitations* at 325-328 and Appendix B. It has been left to the courts to determine whether an asserted right to enforce a possessory lien is terminated by the expiration of applicable limitation periods in specific circumstances.

[25] This is a case of a bailee for reward under section 4 of the *Possessory Liens Act*. As the chambers judge noted, the right to detain property under section 8 of the *Act* only applies if there are “charges that are due to” the bailee for reward who seeks to rely on the statutory remedy, and it is difficult to see how any charges can be “due to” AB Logistics when Dowcar is entitled to “immunity from liability in respect of the claim”, meaning, in this case, the debt that gave rise to AB Logistics’ debt action. The older UK case, *Re Hepburn*, upon which AB Logistics primarily relies dealt with a common law possessory lien and did not address the “immunity” wording of the *Limitations Act*.

[26] There is a compelling argument that the statutory lien made available by section 4 of the *Possessory Liens Act* should generally become unenforceable under section 8 once a claim on the underlying debt is limitations barred because the *Act* as a whole aims to avoid stalemates. But we

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<sup>3</sup> A distinction clearly established in the case law, but which was described in *Michalski v Olson*, [1998] 3 WWR 37 at para 24, 123 Man R (2d) 101 (CA), leave to appeal to SCC refused, 26432 (14 May 1998), as “an exercise of semantic gymnastics that would baffle any rational observer outside the legal profession”.

need not decide that here. The parties in this case opted into the court process to decide their contest about the underlying debt and the validity of the possessory lien. They both failed to comply with the foundational rules and engaged in tactics to avoid dealing with the merits of their dispute. As the anomalous situation now stands, there is little the courts can do to break an unnecessary stalemate of the parties' own making. It is evident this context informed the chambers judge's reasoning.

[27] AB Logistics' pleaded claims for a possessory lien in the debt action, and the related remedy of sale of the pipe to satisfy it, were indisputably barred by the *Limitations Act* once the action was dismissed under rule 4.33. Its contention that it should retain the right to enforce a possessory lien was premised on the argument that the lien survived because it was "principally a defence." AB Logistics argued that as long as the defence was maintained, Dowcar could not replevy its pipe. But AB Logistics simultaneously applied to dismiss the replevin action, relying on rule 4.33 which mandated the dismissal of the action for long delay. Contrary to what the July 18, 2018, order anticipated, AB Logistics asked the court to end the replevin action and allow it to gain what it viewed as an incontestable advantage instead of seeking a procedural order so that the merits of its position in the replevin action could be adjudicated.

[28] In these circumstances, the possessory lien cannot fairly survive because there was an element of tactical gamesmanship that cannot be condoned; the situation is not just contrary to the policy behind limitations statutes but is more pointedly inconsistent with the foundational rules, the July 18, 2018, order, and the scheme of the *Possessory Liens Act* which promotes finality with court assistance where necessary. With the possessory lien in a defensive sense no longer credibly in issue and with AB Logistics' pleaded claims for both the debt and a possessory lien dismissed and statute barred, the chambers judge determined it should not be entitled to enforce either. We see no basis to interfere with his decision.

### **Disposition**

[29] The appeal is dismissed.

Appeal heard on March 5, 2025

Memorandum filed at Edmonton, Alberta  
this 25th day of July, 2025

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Slatter J.A.

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Kirker J.A.

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## Dissenting Memorandum of Judgment

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### Grosse, J.A. (dissenting):

[30] I accept my colleagues' recitation of the background in this matter and I am in substantial agreement with their conclusions on the grounds of appeal discussed at paragraphs 13-19. I respectfully part ways with their analysis as it relates to the survival of the possessory lien.

[31] From the outset of the dispute between AB Logistics and Dowcar, AB Logistics has asserted a lien on the pipe in issue pursuant to the *Possessory Liens Act*, RSA 2000, c P-19. Section 4 of the *Possessory Liens Act* provides that “[a] bailee, whether gratuitous or for reward, has a particular lien on a chattel bailed to the bailee by the owner of it for any charges that are due to the bailee under the terms of the contract of bailment”. AB Logistics claims that Dowcar has not paid AB Logistics for charges due for storage of the pipe.

[32] A person entitled to a lien pursuant to the *Possessory Liens Act* “may detain the property in the person’s possession until the amount of the person’s debt has been paid”: s 8. While Dowcar has always denied owing money to AB Logistics in respect of the pipe, there is no suggestion that the amount of the alleged debt has been paid.

[33] Section 10 of the *Possessory Liens Act* permits, but does not require, the lienholder to apply to the Court of King’s Bench for an order for sale of the detained chattel. In the course of such an application, the court may direct an action be brought: *Possessory Liens Act*, s 10(6). The statute does not otherwise expressly require the party asserting the lien to bring an action. In other words, on the face of the *Possessory Liens Act*, if the party asserting the lien chooses to sit back, hold the chattel, and hope for payment, they may do so. One might question the wisdom of such a strategy over the long term, given that the party asserting the lien has no right to otherwise deal with the chattel.<sup>4</sup> However, the legislature appears to have left the strategy available. Of course, if the bailor disputes the obligation to pay or the bailee’s right to assert the lien, the bailor may bring an action for recovery of the property, as Dowcar did in this case.

[34] What impact does the *Limitations Act*, RSA 2000, c L-12 have on the rights of AB Logistics as the party asserting the possessory lien? There is no dispute that both AB Logistics’ claim for judgment on the alleged debt and its claim for a sale order pursuant to section 10 of the *Possessory Liens Act* are “claims” seeking a “remedial order” as those terms are defined in the *Limitations Act*, or that Dowcar was entitled to immunity from liability in respect of those claims after the passage of the applicable limitation period under section 3 of the *Limitations Act*. However, the

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<sup>4</sup> Section 12 of the *Possessory Liens Act* speaks to disposition of chattels with a market value believed to be less than \$300, but there is otherwise no right of disposition, subject to the court application contemplated by section 10. This distinguishes the *Possessory Liens Act* from some other lien legislation where there is a right of sale without court intervention.

lien referenced in section 4 of the *Possessory Liens Act* does not depend upon court intervention or a remedial order for its existence. I see nothing on the face of the *Limitations Act* that would grant the bailor immunity from the possessory lien per se.

[35] I agree with my colleagues that there are reasonable policy arguments in favour of the possessory lien expiring when the alleged underlying debt is no longer enforceable by remedial order: see para 26. In effect, the chambers justice found that the legislature has already accepted those policy arguments by using the phrase “charges that are due” in section 4 of the *Possessory Liens Act*. He said:

I find that there are no charges that are due to AB under the terms of the contract. If there were any charges, which has never been formally determined, Dowcar is immune from liability. When I say no charges that are due to AB, that does not mean that the debt in the amount in which it could be established is extinguished. It means the debt is not due.

Accordingly, I find, because of that, that there are no charges that are due to AB under the terms of the contract. Accordingly, I find that AB’s possessory lien is extinguished by virtue of dismissal of its action and the effect of the *Limitations Act* on the claim for debt and power of sale.

To reiterate, the debt is not extinguished in whatever amount it may have been, but Dowcar is immune from liability and, accordingly, it is immune from liability for any debt under the contract. Therefore, on my reading, there are no charges that are due to AB under the terms of the contract because of that immunity. Accordingly, I find that AB’s possessory lien is extinguished by virtue of dismissal of its action and the effect of the *Limitations Act* on the claim for debt and power of sale.

[36] The chambers justice did not cite any authority for the proposition that to be “due”, the charges referenced in section 4 of the *Possessory Liens Act* must be recoverable by remedial order. The respondent has not provided any such authority on appeal. I do not share the difficulty expressed by my colleagues at paragraph 25 with respect to reconciling Dowcar’s limitations immunity with charges remaining due. There is a fair argument that the debt remaining “due” is the natural result of the legislature’s policy choice to grant defendants immunity from claims under the Alberta *Limitations Act*, instead of extinguishing the underlying right of the claimant. For my part, I have more difficulty seeing how a debt that is not extinguished by the passage of the limitation period somehow ceases to be “due”. Arguably, the debt could continue to exist and remain “due” in the sense of “owing” or “payable”, although the claimant is unable to enforce payment by way of a “remedial order”.

[37] In any event, my colleagues conclude that we need not decide in this case whether the lien established by section 4 of the *Possessory Liens Act*, and the resulting right of a bailee to hold a

chattel under section 8, should cease to exist once a claim on the underlying debt is limitations barred. In light of that conclusion, the matter is best left for another day.

[38] Absent a finding that a lien under section 4 of the *Possessory Liens Act* ceases to exist as a matter of law when the limitation period for an action for judgment on the underlying debt expires, whether through interpretation of the word “due” or otherwise, I am not convinced the court has a discretion to simply declare the lien at an end in the circumstances of this appeal. AB Logistics squandered its opportunity to obtain assistance from the court in obtaining payment of the money it claims to be owed. It is no longer able to obtain a money judgment or an order for sale. Also, through its application to have Dowcar’s replevin action dismissed for long delay, AB Logistics lost the opportunity to have the merits of the underlying dispute adjudged in the replevin action. Even setting aside limitations issues, if AB Logistics were seeking further assistance from the court in respect of its lien, the court might well decline to exercise any discretion in AB Logistics’ favour. However, AB Logistics did not need the court’s assistance to assert a lien under section 4 of the *Possessory Liens Act* or to hold the pipe under section 8, nor did it ask for such assistance in the context of the applications that led to the decision now under appeal.

[39] By contrast, it was Dowcar that asked for relief beyond simply dismissing AB Logistics’ claim. Dowcar asked for the court’s assistance in getting its pipe back. With no finding that Dowcar’s pipe must be returned by operation of law upon the dismissal of AB Logistics’ debt claim, I respectfully disagree that the pipe should be ordered returned because of AB Logistics’ litigation delay or because AB Logistics applied to dismiss the Dowcar replevin action instead of taking other procedural steps. As my colleagues note, both parties were guilty of excessive delay. Both used valuable public resources to no ultimate avail. Both failed to comply with the foundational rules and engaged in tactics to avoid dealing with the merits of the dispute. Dowcar had as much opportunity as AB Logistics to advance the litigation and obtain a ruling on the merits of AB Logistics’ debt claim and AB Logistics’ right to assert the lien. In fact, it was Dowcar that gave a written undertaking to the court to conclude its action for recovery of the pipe without delay. AB Logistics may have made poor choices in the litigation, but I see no legal basis for those choices to disqualify AB Logistics from exercising a statutory right that it held independently of the litigation. The result does not involve AB Logistics obtaining the remedies that it sought from the court in its now-dismissed claim. Returning the pipe to Dowcar grants Dowcar a substantial part of the claim it failed to pursue.

[40] I accept that my colleagues’ approach leads to a more practical result and ends the stalemate between the parties. However, in this case, the law leaving the parties in an impractical and unbusinesslike stalemate of their own making would not trouble me.

[41] For the foregoing reasons, I would allow the appeal only as it relates to the order for return of the pipe to Dowcar.

Appeal heard on March 5, 2025

Memorandum filed at Edmonton, Alberta  
this 25th day of July, 2025

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Grosse J.A.

Appearances:

M.D. Bullock  
for the Appellant

M.A. Pruski  
for the Respondent