IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Last v. Reliable Towing Mission Ltd.,* 2025 BCSC 2224

Date: 20251110
Docket: S254743
Registry: Vancouver

Between:

Geoffrey Last and Last Motorcar Co.

Plaintiffs

And

Reliable Towing Mission Ltd., Dave Rahberger, Suki Manj, Paul Parhar, the City of Chilliwack, Liam Brennan, 0696787 B.C. Ltd. and Brad Letkeman

Defendants

Before: The Honourable Justice Hoffman

Reasons for Judgment

Counsel for the Plaintiffs:	D.M. Palaschuk
Counsel for the Defendants Reliable Towing Mission Ltd., Dave Rahberger, Paul Parhar, and Suki Manj:	L.Y. Babbitt
Counsel for Liam Brennan, 0696787 B.C. Ltd., and Brad Letkeman:	R. Carter
Place and Date of Trial/Hearing:	Vancouver, B.C. October 27–28, 2025
Place and Date of Judgment:	Vancouver, B.C. November 10, 2025

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[1] Lying at the centre of this dispute is a 2014 Tiffin Allegro recreational vehicle (the "RV"), registered in the name of the plaintiff, Mr. Last, that the defendant Reliable Towing Mission Ltd. impounded as an abandoned vehicle and eventually sold to recover unpaid accumulated towing and storage fees under the *Warehouse Lien Act*, R.S.B.C. 1996, c. 480 [*WLA*]. A key issue for resolution is whether this sale complied with the statutory requirements of the *WLA*.

[2] Mr. Last and Reliable Towing each have brought summary trial applications under Rule 9-7 of the *Supreme Court Civil Rules* that respectively seek to invalidate or validate the sale of the RV. In addition to arguing that the sale should be invalidated, Mr. Last seeks findings that Reliable Towing committed the torts of conspiracy, fraudulent misrepresentation, and conversion. However, he takes the position that if these torts are made out on this summary trial, the assessment of damages should occur at the trial which is currently scheduled for April 2026.

[3] Mr. Last also brings an urgent application under Rule 10-1 to have the RV transferred into his name so that he can arrange for it to be taken to a dealership to be stored in an indoor location and have repairs initiated so that its value is not further diminished pending the final resolution of this proceeding. He also seeks conduct of sale and to pay any proceeds into court.

[4] For the reasons that follow, I find that the sale pursuant to the *WLA* was not valid, the tort claims advanced by the plaintiffs are not appropriate to be resolved by way of summary trial and that the RV should be transferred into the plaintiffs' possession pursuant to Rule 10-1(4) subject to the posting of $30,000 in security in respect of Reliable Towing's lien.

Factual Background

[5] Based on the evidence before me, I find the following facts that have either been admitted by the defendants or are not in serious dispute.

[6] Mr. Last is in the business of buying and selling vehicles for clients. One such client, Mr. Jamieson, retained Mr. Last in April 2024 to purchase an RV on his behalf

that he could drive to the United States and Mexico and live in for six months of the year.

[7] In furtherance of this retainer, Mr. Last located the RV in Weyburn, Saskatchewan. On June 11, 2024, he purchased it in his own name on Mr. Jamieson's behalf, for $225,000. Mr. Last travelled to Saskatchewan to take possession of the RV. Mr. Last had the RV registered in his name in Saskatchewan using his mother's address in Saskatoon on Assiniboine Drive to register the RV.

[8] Shortly after June 11, 2024, Mr. Last sold the RV to Mr. Jamieson.

[9] Mr. Last returned to Vancouver with two sets of keys for the RV and gave them both to Mr. Jamieson who later travelled to Saskatchewan to pick up the RV and drive it back to the Lower Mainland. On the trip back, Mr. Jamieson did some damage to the passenger side of the RV while making a turn.

[10] Mr. Jamieson drove the RV to Chilliwack where his girlfriend resided. When Mr. Last took steps to have the RV transferred into Mr. Jamieson's name in early July 2024, Mr. Jamieson refused to take possession and abandoned it on the side of the road in Chilliwack. Mr. Last did not recover the keys. He assumed that they were either given to the RCMP or to Reliable Towing.

[11] Mr. Last and Mr. Jamieson are involved in a separate legal proceeding regarding the purchase agreement.

[12] As the RV was abandoned, a City of Chilliwack by-law officer instructed Reliable Towing to tow the RV. Reliable Towing first took the RV to its lot in Agassiz, and then, a few days later, to its lot in Mission. Approximately four days after the RV was towed to the Mission lot, Jace Summers, an employee of Reliable Towing, received a call from Mr. Last who related to Mr. Summers how he had purchased the RV in Saskatchewan for a client who had damaged it driving back and then abandoned it in Chilliwack.

[13] Suki Manj is an officer and Paul Parhar is a director of Reliable Towing. Dave Rahberger is the manager of Reliable Towing. I will refer to these defendants collectively as the Reliable Towing defendants.

[14] Reliable Towing admits that Mr. Last attended the Chilliwack office of Reliable Towing on July 9, 2024, to discuss the storage of the RV. As what was said during this meeting and in subsequent exchanges between the parties is in dispute, I will make findings of fact in this regard below in my analysis of the issues to be resolved on this application.

[15] On October 14, 2024, the vehicle that was being stored next to the RV in the Reliable Towing impound lot caught fire and the passenger side of the RV was damaged as a result. Reliable Towing did not report this fire damage to its insurance company or make any claim for compensation.

[16] On January 17, 2025, Reliable Towing made inquiries of Saskatchewan Government Insurance ("SGI") to obtain the name and address of the registered owner of the RV. Reliable Towing was given the name of Mr. Last with an address in Saskatoon. The SGI representative also provided information that was on the Bill of Sale which included the business address of Last Motorcar Co. on West Pender, in Vancouver, as well as two telephone numbers and an email address for the company.

[17] Using the Saskatoon address information, Reliable Towing sent a registered letter to Mr. Last dated January 17, 2025, providing notice under the *WLA* of their intention to sell the RV to the address provided by the SGI. The notice letter provided a statement of the outstanding storage charges totalling $34,210 and contained the following passages:

> This registered letter is to inform you that Reliable Towing Mission Ltd. is in possession of the above noted vehicle. The vehicle was ordered impounded by police at our yard at the address listed above on 7/10/2024 @ 1:49 pm. Reliable Towing Mission Ltd. is claiming a lien on the vehicle through the Warehouse Lien Act.
>
> …

> Charges will continue to accrue after this date for (a) all lawful charges for storage and preservation of the goods; (b) all lawful claims for money advanced, any allowable administration, interest, insurance, transportation, labour, weighing, and other expenses in relation to the goods; (c) all reasonable charges for any notice required to be given under this Act, and for notice and advertisement of sale, and for sale of the goods if default is made in satisfying the warehouse lien.
>
> All charges due at the date of this letter, as well as future charges which may accrue must be paid by you to Reliable Towing Mission Ltd. within no more than 21 days of your receipt of this letter. Failure by you to pay all outstanding charges and to collect your vehicle within 21 days of your receipt of this letter will result in your vehicle being advertised and sold, and any left over balance will be put Into collections against you.

[18] In or around February 2025, Mr. Last became aware through his brother that a registered letter had been sent to his mother's address. At the time the letter was sent, his mother was no longer living at this address. On February 7, 2025, Mr. Last sent an email to Reliable Towing as follows:

> I was just notified by my brother that registered mail from Reliable was sent to my mother's home in Saskatoon. When I was at your Chilliwack office I left my telephone number and email and let them know that I lived in Vancouver.
>
> I have been dealing with health issues and apologize for not being in touch. I do not know the contents of the letter. Please email to me asap. This has been on my mind every day for months and haven't had the strength to address it. I appreciate your understanding. I am sure that the registered mail is about the accruing bill.
>
> I appreciate any consideration on the amount and will have a plan to settle asap as well as having the motorhome removed upon payment.
>
> If for any reason something happens to me in the interim, this shall serve as my legal intent to will the above vehicle (RV) to my brother Gavin Last ...

[19] I will make findings below regarding the communications between the parties after this email. After Mr. Last learned about the notice letter, he had difficulties getting in touch with anyone at Reliable Towing. He followed up by email on February 20, 2025, to advise that his earlier email had gone unanswered, and his other attempts to leave messages with Reliable Towing had not been successful.

[20] On February 28 and March 7, 2025, Reliable Towing advertised in the Agassiz-Harrison Observer that the RV would be publicly auctioned on March 14, 2025. The auction was held on that date but no one showed up to bid on the RV.

[21] Findings regarding the circumstances of the sale will be made below, but there is no dispute that on June 2, 2025, Reliable Towing sold the RV for $40,000 to Liam Brennan who, in turn, registered it with ICBC to 0696787 B.C. Ltd. Mr. Brennan intended to take on the project of repairing and selling the RV as a joint venture with his partner, Brad Letkeman. I will refer to these three defendants collectively as the "787 BC Ltd." defendants.

[22] Reliable Towing's account for towing and storage charges on June 3, 2025, amounted to $56,312.82. This includes storage for 329 days, charged at $150 per day. It is not disputed that Mr. Last was not provided this invoice until sometime after June 30, 2025.

[23] The RV is currently in the possession of the 787 BC Ltd. defendants and is subject to an interim injunction granted by Justice Veenstra on July 3, 2025, which prevents those defendants from further repairing, moving or selling the RV. It is currently being stored outside, and, prior to the injunction, the 787 BC Ltd. defendants had initiated repair work and, most notably, had removed the side panels of the RV that were damaged in the fire.

[24] Mr. Brennan and Mr. Letkeman are in the business of refurbishing vehicles. Mr. Brennan's evidence is that he and Mr. Letkeman are highly experienced in buying, selling, and refurbishing vehicles and that Mr. Letkeman's company has annual revenues of tens of millions and holds a vehicle inventory worth several million.

[25] It is not disputed that Liam Brennan and Mr. Rahberger, the Reliable Towing employee who organized the sale to Mr. Brennan, had a long-standing work relationship and friendship, having known each other for more than 10 years. Mr. Brennan also admits that he has some familiarity with the sale process under the *WLA* as he has, in the past, purchased vehicles through this process.

Procedural Background

[26] The plaintiffs commenced this action on June 23, 2025.

[27] On June 25, 2025, the plaintiffs filed an application to obtain the name of the buyer and to regain possession of the RV. The application was scheduled for July 3, 2025.

[28] On July 2, 2025, the plaintiff filed a further application to add the 787 BC Ltd. parties as defendants which was also set to be heard on July 3, 2025.

[29] As noted above, these applications came on before Justice Veenstra who granted the interim injunction but adjourned the application to add the defendants to July 14, 2025, and the application seeking possession of the RV to July 18, 2025.

[30] The 787 BC Ltd. defendants were added as parties on July 14, 2025. However, the application for the return of the RV was not heard on July 18, 2025, due to a lack of court time in chambers. Before me is a new Rule 10-1 application that was filed on October 10, 2025. As this application requires me to consider which of the parties has a better claim to the RV, I will address the Rule 10-1 application following my consideration of the parties' Rule 9-7 summary trial applications.

[31] The 787 BC Ltd. defendants have filed a counterclaim against the plaintiffs on the basis that since taking possession of the RV, they have invested $97,400 to purchase, transfer, and repair the RV and that they have a claim for unjust enrichment.

Statutory Regime

[32] Section 188 of the *Motor Vehicle Act,* R.S.B.C. 1998, c. 318, which was in force at the time that the RV was towed*,* provides authority for a peace officer to tow vehicles which have been abandoned on or near a highway and provides that*:*

> (4) All costs and charges for the removal, care or storage of a motor vehicle removed under this section must be paid by the owner of the motor vehicle, and constitute a lien on it in favour of the keeper of any repair shop, garage or storage place in which that motor vehicle is stored.
>
> (5) A lien under subsection (4) may be enforced by a person entitled to the lien in the manner provided by the Repairers Lien Act or the Warehouse Lien Act.

[33] The parties dispute whether section 3 of the *WLA* applies to a lien which arises pursuant to s. 188 of the *Motor Vehicle Act.* Section 3 of the *WLA* provides that:

> 3(1) If the goods on which a lien exists were deposited, not by the owner or by the owner's authority, but by a person entrusted by the owner or by the owner's authority with the possession of the goods, the warehouser must, within 2 months after the date of the deposit, give notice of the lien to
>
> (a) the owner of the goods, and
>
> (b) a person who has a security interest in the goods if a financing statement with respect to the security interest is registered at the date of the deposit of the goods.
>
> (2) The notice must be in writing and contain the following:
>
> (a) a brief description of the goods;
>
> (b) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouser, and the name of the person by whom they were deposited;
>
> (c) a statement that a lien is claimed by the warehouser in respect of the goods under this Act.

[34] The process for enforcing a lien under the *WLA* by sale of goods is set out in s. 4. Under this process, the holder of the lien must provide notice of its intention to sell to the owner of the goods. The content of the notice is prescribed in this section and must include:

> a) a brief description of the goods;
>
> b) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouser and the name of the person by whom they were deposited;
>
> c) an itemized statement of the warehouser's charges showing the sum due at the time of the notice;
>
> d) a demand that the amount of the charges as stated in the notice and further charges as may accrue must be paid on or before a day mentioned, not less than 21 days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination according to the due course of mail if it is sent by mail;
>
> e) a statement that, unless the charges are paid within the time mentioned, the goods will be advertised for sale and sold by public auction at a time and place specified in the notice.

[35] Section 4 further provides that if the amount is not paid within the time set out in the notice, then an advertisement must be published in a BC newspaper circulating in the locality where the sale is held, describing the goods, and setting out the time and place of the sale. The advertisement must be published once a week for two consecutive weeks. Thereafter, the sale must be held not less than 14 days from the date of the first publication of the advertisement.

[36] Section 5 of the *WLA* provides that where the procedural requirements in s. 4 are not strictly complied with, the court has discretion to find either that there has been "substantial compliance" or that it would be inequitable to void either the lien or the sale because of that non-compliance.

[37] Section 8 of the *WLA* provides that any notice required to be given must be given by registered letter to the person's last known address.

[38] From a plain reading of s. 3 and its application to the facts before me, I conclude that this provision of the *WLA* does not apply to the case at bar. Section 3 deals with a situation where the goods in question were deposited with the warehouser not by the owner of the goods but by "a person entrusted by the owner or the owner's authority." There is no such person in the facts before me. While Mr. Jamieson had been entrusted with the possession of the RV, he abandoned it. Thereafter, the Chilliwack By-Law department exercised its authority under s. 188 of the *Motor Vehicle Act* to have the RV moved to Reliable Towing's impound lot. There is no evidence that Mr. Last entrusted the City of Chilliwack with possession of the RV; a requirement for the s. 3 notice to be triggered: *Hurn v. A & B Moving & Storage,* 2001 BCSC 1195 at para. 11. Indeed, Mr. Last was not even aware that the RV had been impounded until after it had occurred. Reliable Towing's lien arises under s. 188, and while it must be enforced under the *WLA,* I conclude that this refers only to the enforcement provisions in ss. 4–8 of the *WLA.*

Issues

[39] The issues on this application are as follows:

1) Are the issues raised in the Rule 9-7 applications suitable to be heard by way of summary trial?

2) Was the sale of the RV in compliance with the *WLA*?

3) If the sale is void, what impact does this have on Reliable Towing's lien?

4) Should the plaintiffs be given possession of the RV under Rule 10-1 pending the final resolution of this matter?

Issue #1 - Suitability

[40] All parties agree that the issue of whether the sale was valid under the *WLA* is an issue that is suitable for summary trial. All submit that the amount at stake in this matter, as compared to the costs of taking this matter to a conventional trial, weigh heavily in favour of a summary disposition.

[41] There are some conflicts in the affidavit evidence before me. However, applying the guidance from *Gichuru v. Pallai,* 2013 BCCA 60 at para 30, I am satisfied that I am able to find the facts necessary to determine whether the sale complied with the *WLA* and that it would not be unjust for me to do so for three reasons. First, the factual and legal issues to be resolved are straightforward. Second, the cost of a conventional trial is disproportionate to the amount at stake. The value of the RV in its current state is a matter of dispute. However, even if I were to assume that the RV is worth what Mr. Last originally paid, the cost of a conventional trial would be disproportionate to the amount at issue. Finally, there is urgency to get this matter resolved as the RV may continue to decline in value if it continues to be stored outside without protection given its current condition.

[42] The tort claims advanced by Mr. Last are not suitable for summary determination because I am unable on the affidavit evidence before me to find the facts necessary to resolve these claims. The claims in conversion, conspiracy, and fraudulent misrepresentation require me to make findings about the extent to which the defendants understood their actions or statements to be unlawful or false and whether they intended to harm Mr. Last. I am satisfied that I could only make these findings after the defendants have given *viva voce* evidence which would allow me

to assess their credibility and reliability. While the claim based on negligent misrepresentation may be more suited to be decided on the basis of the affidavit evidence, given that this claim is based largely on the same factual matrix, in my view, it would be unjust as well as an inefficient use of court time to have this claim heard separately from the other tort claims.

[43] The 787 BC Ltd. defendants take the position that their counterclaim for unjust enrichment is not suitable for hearing by way of summary judgment. The plaintiffs seek an order that the counterclaim be determined at trial along with its claims for damages.

Issue #2 – Was the Sale under the WLA Valid?

[44] In considering whether the sale under the *WLA* is valid, it is necessary to make findings of fact regarding the communications between Mr. Last and Reliable Towing.

[45] Mr. Last first attended the Chilliwack office of Reliable Towing on July 9, 2024, and met with Mr. Summers. Based on the affidavit evidence before me, I find as a fact that Mr. Last wrote down his name, telephone number, and email address and gave it to Mr. Summers. I also find that Mr. Last told Mr. Summers that he lived in Vancouver. Mr. Summers does not contest these facts in his affidavit. I also find based on Mr. Summers' evidence that he informed Mr. Last of the storage charges that had accrued up to the date of this meeting and that if these charges were paid, Mr. Last could take possession of the RV. Mr. Summers had the impression that Mr. Last was going to return the following week to deal with the RV. However, as Mr. Last did not have the keys to the RV, it is reasonable to infer that this would have been an impediment to him doing so. As a result, I am unable to find that Mr. Last communicated that he would be returning the following week to pick up the vehicle.

[46] Mr. Summers left Reliable Towing in November 2024. There is no dispute that Mr. Last called Mr. Summers in February 2025 after he heard about the letter sent by Reliable Towing to get some assistance because he had been trying unsuccessfully to speak to the person at Reliable Towing handling his account. After

Mr. Summers inquired with Reliable Towing, he called Mr. Last back and gave him Mr. Rahberger's contact information.

[47] Mr. Rahberger admits that he spoke several times to Mr. Last by phone between March 3 and 5, 2025. Mr. Rahberger admits that, during these calls, he told Mr. Last about the fire damage and that he could come and collect the RV any time. Texts between Mr. Rahberger and Mr. Last between March 5, 2025, and April 18, 2025, show that Mr. Last expressed his intent to visit the lot to do work on the RV, confirmed that he did not have keys for the RV, and asked Mr. Rahberger to confirm whether he had the keys. In a text dated April 18, 2025, Mr. Rahberger advised that they possibly had the keys but that he was not sure. There is also no dispute that on May 26, 2025, Mr. Last came to the Reliable Towing Mission lot to inspect the RV and spoke to Emma Dyck, a Reliable Towing employee, who confirmed that she did not have keys.

[48] I find that, based on these conversations, Mr. Last contacted the manufacturer of the RV in Alabama to order a new set of keys which did not arrive until June 5, 2025.

[49] It is also admitted by the Reliable Towing defendants that when Mr. Last attended the Mission lot on May 26, 2025, Mr. Last advised Ms. Dyck that Reliable Towing would be responsible for the fire damage to the RV. On that same day, Mr. Rahberger says that he called Mr. Last to advise that they had received a bid on the RV from an interested buyer and that Reliable would sell the RV by the end of the week if he did not come and pay the towing and storage charges owing. Mr. Rahberger says that Mr. Last called him back that day. During this call, Mr. Rahberger says that he advised Mr. Last that the amount owing was close to $60,000 and that he was going to sell the RV if Mr. Last did not pick it up by the end of that week.

[50] There is no evidence before me that Mr. Rahberger told Mr. Last in any of these communications that a public auction date had been advertised to take place on March 14, 2025.

[51] On June 14, 2025. Mr. Last sent a text to Mr. Rahberger once again to seek to access to the Mission lot to do work on the RV. Mr. Rahberger responded saying the RV had been sold. In the exchange that followed, Mr. Last said that Mr. Rahberger had told him that there was a bid but that was not the same as selling the RV. Based on this, I find as a fact that Mr. Rahberger did previously verbally communicate to Mr. Last on May 26, 2025, that he had received a bid for the RV.

[52] Based on my findings of fact, I conclude that the notice issued and the sale conducted under the *WLA* did not comply with the statutory requirements in three important respects.

[53] First, there is no time and place specified in the notice for the public auction. This is a significant omission in that the purpose of such a notice is to communicate clearly that the item is at risk of being sold by a certain date if no action is taken and to allow the person receiving the notice to attend the auction if they wish. Although a public auction was held on March 14, 2025, no bids were received. For reasons I will elaborate on below, I find that the subsequent sale to Mr. Brennan was not a public auction. In *Sutton v. Bowes,* 70 A.C.W.S. (3d) 554, 1997 CanLII 718 (B.C.S.C.), a sale of goods under the *WLA* was voided, in part, on the basis that a public auction was not held.

[54] Secondly, I find that sending the notice to the Saskatchewan address on the RV's registration was not in compliance with s. 8 of the *WLA.* Reliable Towing was aware that Mr. Last lived in Vancouver as he had provided his Vancouver contact details when he first attended Reliable Towing's office. Further, the SGI had provided Reliable Towing with Mr. Last's business address in Vancouver in response to its queries regarding the registered owner. I find that Reliable Towing was aware, through Mr. Summers, of the circumstances that Mr. Last had purchased the RV for a client in Saskatchewan and that it had been abandoned by that client in the course of driving it back to the Lower Mainland. This is further supported by Reliable Towing's internal notes of a call on August 1, 2024, from Reliable Towing to Mr. Last to obtain the key code for the RV so that they could do a better job of

protecting the window that Mr. Last's client had broken. Reliable Towing had ample notice that Mr. Last did not live in Saskatchewan and that his last known address was in Vancouver. If they did not have the street address, they had the ability to call Mr. Last to confirm to what address the notice should be sent.

[55] Thirdly, the sale that ultimately occurred was not an arm's-length sale to a member of the public. Mr. Rahberger and Mr. Brennan were on very familiar terms, and Mr. Rahberger told him about the opportunity to purchase the RV during a social weekend visit when Mr. Rahberger and his family stayed overnight at Mr. Brennan's home. I have in evidence before me a text exchange between Mr. Brennan and Mr. Rahberger from the time period after the weekend social visit until the sale was completed on May 26, 2025. This exchange demonstrates that Mr. Rahberger was motivated to sell the RV to Mr. Brennan. While Mr. Rahberger felt the need to give Mr. Last one last opportunity to come and settle his bill before he could complete the sale to Mr. Brennan, the only communication he gave to Mr. Last was by phone. There is no evidence that he provided a written account detailing $60,000 in storage and towing charges he told Mr. Last was owing. I find that Mr. Rahberger did only the bare minimum to notify Mr. Last of the bid and the charges owing in the hope that Mr. Last would not pay the bill so that Reliable Towing could sell the RV to Mr. Brennan.

[56] The purpose of a public auction is to ensure that the item subject to the lien is sold for a price that is subjected to open competition amongst arm's-length buyers. The sale to Mr. Brennan did not fulfill this purpose.

[57] As the requirements of the *WLA* have not been strictly complied with, the next question to consider whether there has been substantial compliance or whether it would be inequitable to void the sale by reason of this non-compliance as provided for in s. 5.

[58] I am not persuaded in the circumstances before me that, despite the deficiencies set out above, Reliable Towing substantially complied with the *WLA.* The Reliable Towing defendants submit that Mr. Last had ample notice of the need

to pay the towing and storage charges to prevent the RV from being sold and failed to do so despite saying he would do so on multiple occasions. I do not accept this submission. While Mr. Last did eventually get a copy of the notice letter through his brother, it contained no time and place for the auction. Further, despite there being a number of communications between Mr. Last and Mr. Rahberger, there is no evidence before me that Mr. Last was informed that a public auction was going to take place on March 14, 2025. This is a substantial deficiency, one that prevented Mr. Last from either attending at the auction himself or taking steps to settle his account prior to the auction. This is particularly significant in the circumstances because the ongoing communications in April and May 2025 about Mr. Last's desire to access the RV to conduct repairs would have reasonably given Mr. Last the impression that the RV was not in imminent danger of being sold. While Reliable Towing maintains that Mr. Rahberger told Mr. Last about the bid received orally on May 26, 2025, in the circumstances where it was not clearly communicated to Mr. Last the date on which the RV was to be sold, this is not sufficient to comply with the requirement in s. 4 for written notice.

[59] It is also significant that despite their communications between March 3, 2025, and June 14, 2025, Mr. Rahberger did not give Mr. Last a detailed accounting of the charges being claimed by Reliable Towing. Accordingly, Mr. Last was not aware of the full amount he was required to pay to re-gain possession of the RV. In this regard, I also accept Mr. Last's evidence that he told Mr. Rahberger that the damage caused by the fire would need to be considered when he settled Reliable Towing's account. In these circumstances there was a lack of clarity between the parties as to the final quantum of the charges to be settled.

[60] I further find that it is not inequitable to render the sale void as a result of the substantial non-compliance. There was communication between Mr. Last and Mr. Rahberger about the RV in early March and throughout April and May. While Mr. Last was not as prompt as he should have been in dealing with the storage charges, there were complications which made this situation different from a typical impound situation. First, Mr. Last did not have keys to the RV, and Mr. Rahberger was aware

of this. Secondly, the fire damage reasonably gave rise to a belief by Mr. Last that this damage had to be accounted for in the final settlement of his account with Reliable Towing.

[61] I further find that it is not inequitable to invalidate the sale in light of Mr. Brennan's knowledge of sales under the *WLA.* Mr. Brennan was well aware of the risk of the sale being found to be invalid if the requirements were not complied with. In so finding, I reject Mr. Brennan's evidence that he had no knowledge of Mr. Last or any legal claim to the RV in advance of the purchase. The text messages between Mr. Brennan and Mr. Rahberger prior to the sale establish that Mr. Brennan was given Mr. Last's contact information. Further, Mr. Brennan alludes in the text exchanges to taking certain actions to strengthen his legal position in respect of the RV, such as paying out the storage invoice.

[62] I declare that the sale of the RV to Mr. Brennan is void, and Reliable Towing must return to Mr. Brennan the $40,000 paid for the RV.

Issue #3 - Validity of Reliable Towing's Lien

[63] Given my finding that s. 3 of the *WLA* does not apply, voiding the sale of the RV does not invalidate Reliable Towing's lien for the warehouse storage charges. The lien, however, remains subject to Mr. Last's claim for damages caused by the fire that occurred while it was in possession of Reliable Towing.

[64] I do not accept Mr. Last's argument that the charges claimed by Reliable Towing are in excess of the amount prescribed in the *Lien on Impounded Motor Vehicle Regulation,* B.C. Reg. 25/2015. This regulation applies to the impoundment of vehicles due to the issuance of roadside driving prohibitions. Counsel for the plaintiffs was unable to draw to my attention to any regulation prescribing the storage rates in respect of liens arising under s. 188 of the *Motor Vehicle Act.*

[65] Nonetheless, I do not have sufficient evidence before me to determine either the liability of Reliable Towing for the fire damage or the quantum of any damages that would flow from a finding of liability. As the plaintiffs wish to defer the

assessment of damages to trial, the liability for and assessment of the fire damage to the RV can be heard along with the plaintiffs' claims in tort and the 787 BC Ltd. defendants' counterclaim.

Issue #4 – Should the Plaintiff's Rule 10-1(4) Application be Granted?

Position of the Parties

[66] The plaintiffs seek an order under Rule 10-1 to have the RV placed in their possession and transferred into their names pending the final outcome of this action. These orders are sought to facilitate the completion of an open ICBC claim to repair the damage caused by Mr. Jamieson and to have control of the other repairs as a result of the fire damage.

[67] The plaintiffs also seek an order under Rule 10-1 for conduct of sale of the RV following its repair and to pay the proceeds into court.

[68] The Reliable Towing defendants oppose the granting of the Rule 10-1 application, but in the alternative, if the *WLA* sale is invalidated, they seek an order requiring the plaintiffs to post security for the full amount of the lien as was ordered in *Viking Air Limited v. Cascade Aerospace Inc*., 2024 BCSC 841.

[69] The 787 BC Ltd. defendants opposed the Rule 10-1 application, largely on the grounds that the sale under the *WLA* was valid. They did not provide an alternative argument in the event that the sale was invalidated.

Legal Framework

[70] The overarching consideration in granting an order under Rule 10-1(4) is weighing, balancing, and protecting the interests of the parties to achieve what is just and equitable in the circumstances. As set out by the Court of Appeal in *Viking Air Limited* at para. 77, the test for granting such an order has two steps. First, the court must consider which party as the better claim to the property. This is a fact-specific inquiry based on the evidence and rooted in legal principle. Second, the court must balance the interests of the parties and assess whether and how the

defendant's interests can be secured if the property is returned either permanently or pending trial.

Balancing the Interests of the Parties

[71] The evidence before me is that the RV is currently being stored outside on Mr. Brennan's property. Mr. Brennan removed some of fiberglass panels on the passenger side where they were damaged in the fire. This area is currently open to the elements but is covered with a tarp. Mr. Brennan expressed concerns that the RV will deteriorate over time if it is left outside in this condition. As such, I am satisfied that there is some risk that the RV will deteriorate if steps are not taken to protect it.

[72] In his affidavit, Mr. Last gives evidence that potential buyers may be prepared to pay more if any repairs to the RV are carried out by an authorized dealer. Mr. Last also deposes that, based on his conversations with ICBC, if he is granted possession of the RV, ICBC may honour a previous claim for the repairs caused by Mr. Jamieson.

[73] The parties do not agree on the value of the RV, and it is unnecessary for me to resolve that issue for the purposes of the Rule 10-1 application. However, for present purposes, I accept that the RV, once repaired, could be sold for in excess of $200,000. Mr. Last has provided evidence that he has received a cost estimate of $26,000 to repair the fire damage.

[74] I turn to a consideration of which party has a better claim to the RV. Mr. Last's claim arises from his ownership of the RV while the claim of Reliable Towing arises from its statutory lien under s. 188 of the *Motor Vehicle Act.* As held in *Viking Air Limited* at para. 48, "commonly, a right of ownership trumps the maintenance of a lien if appropriate security is given." Accordingly, I find that Mr. Last, as the registered owner, has a superior claim to the RV over that of Reliable Towing.

[75] In balancing the interests of the parties, I find that Mr. Last should be required to post security for $30,000. In arriving at this amount, I have considered that Mr.

Last will be required to outlay funds to repair the fire damage which, at the conclusion of the proceeding, may be found to be the responsibility of Reliable Towing. This security is without prejudice to either party's position regarding the liability for and quantum of the fire damage as a potential set-off against the storage and towing charges owed. This is also without prejudice to the ability of Reliable Towing to argue at trial that further amounts are owing from the plaintiffs in respect to the storage and towing charges.

[76] As a term of the order, the plaintiff are required to provide an undertaking to pay any damages that may be found to be owing to the Reliable Towing of 787 BC Ltd. defendants.

[77] I am not prepared to make an order that Mr. Last be given conduct of sale of the RV under Rule 10-1 in advance of the final resolution of this matter. Counsel for the plaintiffs was unable to provide me with any authority that Rule 10-1, which is concerned with the detention, recovery, and preservation of property pending the outcome of a proceeding, permits an order for sale to be made.

Disposition

[78] Accordingly, I order as follows:

a) The sale of the RV to Liam Brennan and subsequent transfer of the RV to 787 BC Ltd. is void as the sale failed to comply with the requirements of the *WLA*;

b) The Reliable Towing defendants must return $40,000 to Mr. Brennan;

c) The plaintiffs shall pay into court as security $30,000 towards the lien claim of Reliable Towing;

d) The RV shall be placed in the custody of Mr. Last, and the plaintiffs are authorized to execute any documents necessary to arrange insurance and registration for the RV and to arrange for ICBC to process any repairs covered by insurance;

e) The 787 BC Ltd. defendants are ordered to execute any documents necessary to transfer the RV into the name of the plaintiffs;

f) The costs of transporting the RV to a dealership chosen by the plaintiffs to receive the RV shall be borne Reliable Towing;

g) The plaintiffs are authorized to carry out any repairs necessary to preserve and repair the RV, and the plaintiffs are to bear the cost of doing so subject to their ability to prove at trial what costs may be payable by Reliable Towing;

h) Before the RV is released to the plaintiffs, they are required to provide an undertaking to pay any damages that may be found to be owing to the Reliable Towing of 787 BC Ltd. defendants.

[79] The above orders are also without prejudice to the ability of the Reliable Towing defendants to prove at trial that it is not responsible for the damages resulting from the fire or that, if found to be responsible, to argue that the quantum of damages is less than any amounts the plaintiffs incurred to repair it.

[80] Given my conclusion that the tort claims were not suitable to be resolved by way of summary trial, it is unnecessary for me to address the Reliable Towing defendants' application for special costs as this was based primarily on Mr. Last over-complicating this matter with allegations of misconduct. In any event, this conduct falls well short of the reprehensible conduct that special costs are intended to rebuke.

[81] As the plaintiffs are successful on both its application to void the sale under the *WLA* and on the defendants application, my preliminary view is that the plaintiffs are entitled to recover their costs.

[82] If the parties are unable to agree to the cost flowing from judgment, they are at liberty to request a costs hearing before me.

[83] Any such requests to appear should be addressed to Trial Scheduling and made within 30 days of this judgment.

"Hoffman J."