

CANADA / JUDGMENT

## Thornton v. Desbiens

2024 BCSC 540

COURT

Supreme Court of British Columbia

DECIDED

26 February 2024

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2024 BCSC 540 Thornton v. Desbiens

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Thornton v. Desbiens,

2024 BCSC 540

Date: 20240226

Docket: S15379

Registry: Campbell River

Between:

Deborah Thornton and Nathan Poirier

Appellants

And

Yves Desbiens and Island Thunder Towing

Respondents

**Before: The Honourable Justice Thompson**

On appeal from: An order of the Provincial Court of British Columbia, dated November 2, 2023  
(Thornton v. Desbiens, Port Hardy Registry, Docket No. 101061)

Oral Reasons for Judgment

Counsel for the Appellants:

R. Oluka

Counsel for the Respondents:

H. Wenngatz

Place and Date of Hearing:

Campbell River, B.C.

February 26, 2024

Place and Date of Judgment:

Campbell River, B.C.

### February 26, 2024

- [1] This is an appeal from a trial order relating to possession of a 2011 GMC Sierra pickup truck, and storage fees and related charges in connection with this truck.
- [2] Pursuant to s. 12 of the Small Claims Act, an appeal may be brought on questions of fact or questions of law. I have concluded, with respect, that the trial judge clearly erred in law regarding the warehouse lien asserted by the respondents, and the appeal must be allowed.
- [3] By way of background, Lance Norman died without a will on 1 December 2021. He was the registered owner of the truck. In January 2022, the vehicle was moved to the property where the appellants reside. The RCMP then seized the truck, and delivered it to the respondents' storage yard. RCMP correspondence to the respondent Island Thunder Towing on 31 August 2022 was received in evidence, and it explains:

This vehicle was the registered property of Lance Norman, who died in October [sic] of 2021. Fred Poirier, in spite of being told to proceed through legal channels to access the estate, removed the vehicle to the Poirier/Thornton property in January 2022. The truck was seized by police January 22 and secured at Island Thunder as there was no identifiable owner.

On March 8, 2022, Deborah Thornton was advised that The Office of the Public Trustee advised that Deborah Thornton could assume to [sic] estate. Thornton was advised to contact an estate lawyer regarding the property. Island Thunder was advised that the registered vehicle could be released when fees were paid. The vehicle was still registered in the name of Lance Thornton.

A query of the vehicle this date revealed that the vehicle was not registered in Thornton's name until August 11, 2022.

- [4] The appellant Nathan Poirier received a grant of administration of the estate. His mother, the appellant Deborah Thornton, is the niece of the deceased and the beneficiary of his estate. (Fred Poirier, referred to in the RCMP correspondence, is Nathan Poirier's father.) On 11 August 2022, the appellant Thornton became the registered owner of the truck whereupon the appellants went to the respondents' storage yard and demanded possession of the truck. They were told that the respondents would release the truck to them if they paid a certain sum for storage costs. The appellants refused to pay, and left without the

truck.

- [5] On 22 August 2022, the respondents wrote to the appellant Thornton advising that the truck would be "sold under the warehouseman lien act to recover the cost of the storage and all related costs that will occur due to the legal process." The same letter indicated that the sale would occur at the respondents' storage yard on 22 September 2022.
- [6] The respondents published an advertisement in a local newspaper entitled "Notice of Sale under the Warehouseman Lien Act." It indicated that the truck was for sale and the "amount to recover" was stated as \$10,280 plus expenses. In the event, there were no offers to purchase the truck.
- [7] On 23 September 2022, the respondent Desbiens swore a "Declaration of Seizure and Sale of a Vehicle Under the Warehouse Lien Act." This statutory declaration alleged storage charges of \$12,222.50. The last three paragraphs of the statutory declaration were struck out, including the paragraph which states: "I have complied with the provisions of the Warehouse Lien Act."
- [8] The appellants commenced an action in Provincial Court seeking recovery of the truck or proceeds of its sale. The respondents made no counterclaim. The trial judge's reasons for judgment indicate that a pre-trial case management order gave the appellants the option of adding the RCMP as a party defendant (para. 32). The appellants elected not to do so.
- [9] The trial judge ordered that if the appellants wanted the truck, they were required to pay \$4650 into court within 30 days. Upon proof of payment of this sum into court, the respondents would then have 30 days to prepare documents effecting the transfer to the appellant Thornton. The \$4650 was comprised of storage fees, expenses related to the attempted sale of the truck and its transfer to the respondent Desbien's wife, three months' insurance after this transfer, and the \$50 filing fee disbursement.
- [10] The appellants' statement of argument advances three grounds of appeal:
1. It was an error of law to apply the Warehouse Lien Act, R.S.B.C. 1996, c. 480;
  2. It was an error of law to relieve the respondents from compliance with the notice provisions of ss. 3 and 4 of the Warehouse Lien Act; and
  3. The trial judge erred by neglecting crucial facts when fixing the respondents' compensation.
- [11] For the reasons that follow, I conclude that the first ground of appeal is sound. It will be unnecessary to address the latter two grounds.

- [12] The appellants brought the action to recover the truck. It was incumbent on them to show prima facie entitlement to possession. This was accomplished by introducing into evidence the Owner's Certificate, dated 11 August 2022, showing the appellant Thornton as the registered owner. At trial, the respondents did not dispute her ownership. As I understand it, their position was that the owner's right of possession was at all material times subject to their claim of lien under the Warehouse Lien Act.
- [13] I think the trial judge was correct to conclude, as he did at para. 26 of his reasons, that the onus was on the respondents to establish their claim of lien. The trial judge found that the respondents' claim of warehouse lien was valid, and that they were entitled to maintain possession of the truck until their storage charges were paid notwithstanding their failure to comply with certain notice conditions of the Warehouse Lien Act.
- [14] Section 2 of the Warehouse Lien Act provides:
- 2 (1) Subject to section 3, every warehouser has a lien on goods deposited with the warehouser for storage, whether deposited by the owner of the goods or by the owner's authority, or by any person entrusted with the possession of the goods by the owner or by the owner's authority.
- (2) The lien is for the amount of the warehouser's charges for all of the following:
- (a) all lawful charges for storage and preservation of the goods;
  - (b) all lawful claims for money advanced, interest, insurance, transportation, labour, weighing, coopering 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.
- [15] I agree with the appellants that the trial judge erred in concluding that the respondents were entitled to possess the truck until the appellants paid the asserted warehouse lien charges. A lien arises under s. 2(1) of the Warehouse Lien Act once the warehouser establishes that the goods were deposited for storage (a) by their owner or with their owner's authority, or (b) by any person entrusted with possession of the goods by their owner or their owner's authority.
- [16] Therefore, it was necessary for the trial judge to determine whether the respondents established that the truck was deposited with them by the truck's owner or with the owner's authority, or by a person entrusted with possession of the truck by its owner. The truck was deposited for storage by the RCMP. Whatever their authority for doing so might have been, there was no evidence that the RCMP were the truck's owner or entrusted with possession by the truck's owner. The RCMP's correspondence, quoted above, makes neither claim.
- [17] The respondents appeared at trial without counsel, and through counsel on the appeal they advance an argument that was not made to the trial judge. They submit that at the time the truck was deposited for storage, the owner of this truck was the Court. They rely on s. 102(1) (a) of the Wills, Estates and Succession Act, which provides that "on the death of a person,

the deceased person's estate vests in the court if the estate is an intestate estate." The truck's owner died intestate, and no grant of administration had been issued at the time of deposit of the truck for storage.

- [18] The next and especially problematic step in this argument is that the lien arises under s. 2(1) of the Warehouse Lien Act because the RCMP left the truck at the storage yard with the implied authority of the Court or, alternatively, that the Court entrusted the RCMP with possession of the truck. The respondents submit that the RCMP are presumed to be acting within the law, and when exercising their powers, they do so as agents of the Court. I was provided with no statutory or other authority for what I regard as propositions that are novel and, from a constitutional perspective, doubtful. I am not persuaded.
- [19] On this fundamental issue of the respondents' right to possess the truck until the appellants paid their charges, the trial judge referred to *G. Mann Trucking Ltd. v. Aggressive Auto Towing Ltd.*, 2003 BCSC 113. In that case, one of the plaintiff's dump trucks with attached trailer went into a highway ditch west of Abbotsford. Without consulting the plaintiff, the RCMP dispatcher asked the defendant to send equipment to remove the truck and trailer. The truck and trailer were towed to the defendant's storage yard, and the defendant sought to collect from the plaintiff towing and storage charges that exceeded the rates paid by ICBC.
- [20] Justice Joyce referred to provisions of the Highway Act, R.S.B.C. 1996, c. 188, and the Motor Vehicle Act, R.S.B.C. 1996, c. 318, and held that there was statutory authority for the police to remove and store vehicles that were interfering with the normal flow of traffic. The legislation also made the vehicle owner liable for the removal and storage charges, and provided that these charges constitute a lien enforceable in the manner provided by the Repairers Lien Act or the Warehouse Lien Act. In the case at bar, the respondents do not rely on a lien under road traffic legislation or any other statute or bylaw. Their case is that their right of possession arose directly under the Warehouse Lien Act. With respect, I conclude that the trial judge erred in law when he found the Act applied in these circumstances.
- [21] The judge was correct to identify the issue at para. 9 of his reasons as whether there was a lien associated with the storage of the truck. The appellant Thornton was the registered owner of the truck before commencement of the proceeding, and she was clearly an appropriate claimant in the action. It may or may not have been necessary for the respondent Poirier as estate administrator to join the fray as a claimant, but it is understandable in the unusual circumstances of this case that he did so.
- [22] I agree with the appellants that it was not incumbent on the appellants to name the RCMP as a party defendant. The appellant Thornton was the registered owner of the truck and she was presumptively entitled to possession. The onus was on the respondents to establish their competing right to possess the truck, and this they failed to do. The right of possession asserted by the respondents - i.e. the claim of lien under the Warehouse Lien Act - was not made out at trial and this ought to have been the end of the matter.

- [23] The trial judge rightly observed that when the RCMP deliver a vehicle to a storage yard, the yard operator is entitled to be paid storage fees by someone. However, the respondents filed no counterclaim or third party claim. They defended their right to possess the truck (and ultimately their attempt to sell it) on one basis: their rights under the Warehouse Lien Act. Their defence was fundamentally flawed and there was no proper basis to make an order against the appellants for storage fees or any other charges as a condition of the delivery of the truck to its owner, the appellant Thornton.
- [24] At para. 13 of his reasons, the trial judge asserts that when a demand is made for payment of fees for goods stored, it is no answer for a new owner to say that it was a previous owner who owes the money. It is true that if goods are received from an owner or a person entrusted with their possession by an owner, a lien arises (provided that the notice provisions of s. 3 of the Warehouse Lien Act are complied with), and the lien would not be defeated by the acquisition of the goods by a new owner. If the deceased had deposited the truck with the respondents, and his estate or beneficiary wanted to gain possession of the truck without paying fees, the judge's observation would be apt. However, at the time of deposit of goods, the depositor must be an owner or a person entrusted with their possession by an owner or by definition there is no warehouse lien.
- [25] At para. 41 of his reasons, the judge referred to his finding that the respondent Desbiens was justified in refusing to release the vehicle unless and until his fees were paid, and said: "I find that the claimant has not established any basis to demand the release of the vehicle without payment of the fees." The trial judge evidently found that the respondents had established their claim of lien, and I interpret what the judge says in light of that finding. That is, on the premise that the lien claimant has established the validity of the lien, the onus would revert to the appellants to establish a basis upon which the truck should be delivered to them without payment of the fees associated with the lien. However, in the absence of proof of a lien, the respondents failed to establish any basis to defeat the appellant Thornton's claim for recovery of her property.
- [26] As I indicated earlier, it is unnecessary to address the other two grounds of appeal - the judge's findings and conclusions regarding storage fees and other charges payable depend on the erroneous threshold finding that the Warehouse Lien Act applies. The appeal is allowed, and the order of the Provincial Court is set aside. I understand the appellant Thornton is in possession of the truck. I order that the monies paid to the respondents to achieve delivery of the truck, i.e. \$4650, shall be repaid to the appellants' counsel in trust within 14 days, and the \$200 paid into court by the appellants as security for appeal costs be paid out to the appellants' counsel in trust.

[Submissions on costs]

- [27] There is no reason not to make the usual order that costs follow the event of the appeal on Scale B.

"Thompson J."

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