Neutral Citation No: [2021] NICh 7	*Ref:*	**HUM11523**
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:*	**20/05/2021**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

CHANCERY DIVISION

_____

Between:

AXA INSURANCE DAC

Plaintiff

and

BELLS OF CROSSGAR ACCIDENT REPAIR CENTRE LIMITED

Defendant

_____

Stephen Ham (instructed by Johnsons) for the Plaintiff
Alana Harty (instructed by Granite Legal Services) for the Defendant

_____

HUMPHREYS J

Introduction

[1] This is an application by the plaintiff for an order requiring the defendant to deliver up to it possession of a Jaguar XF R-Sport vehicle, registration number SGZ 1217. The application is brought on an interlocutory basis pursuant to section 4 of the Torts (Interference with Goods) Act 1977 ('the 1977 Act') and Order 29 rule 3 of the Rules of the Court of Judicature (Northern Ireland) 1980. In the alternative, the plaintiff seeks injunctive relief to like effect.

[2] The defendant does not deny the plaintiff's title to the said vehicle but asserts that it has a lien, arising either in contract or at common law, which entitles it to retain possession of the vehicle until monies which are due to it are discharged.

Background

[3] On 7 January 2021 Mr Deividas Budginas was driving the vehicle in question when he lost control in icy conditions, left the road and struck a tree. Mr Budginas held a policy of insurance with the plaintiff company. The vehicle was recovered

from the scene by Maghaberry Auto Repairs and Mr Budginas was put in contact with the defendant company in relation to the carrying out of repairs.

[4] The defendant was formerly one of the plaintiff's 'approved repairers' but this relationship had come to an end in November 2020. It was a term of the policy of insurance that in the event of a policyholder choosing to repair a vehicle using the services of a non-approved repairer, the insurer would only pay what it would have cost to have the repairs effected by an approved repairer.

[5] In the instant case, the vehicle was recovered from Maghaberry Auto Repairs to the defendant's premises where a repair estimate was prepared. The plaintiff was unable to agree the figures suggested by the defendant and Mr Budginas was informed that he would be liable for the shortfall. As a result, steps were taken to have the car uplifted and removed to Wrights' Accident Repair Centre, an approved repairer. At that juncture, the defendant asserted that it had a lien and its charges would have to be defrayed before the vehicle could be removed from its premises.

[6] The charges claimed by the defendant total £800 plus VAT, made up as follows:

Recovery charge	£250
Storage charges	£280
Loan Car 9 days	£90
Admin/estimate cost	£75
Covid clean (x2)	£40
Delivery loan car	£60
Car care protection kit	£5
TOTAL	£800 + VAT

[7] The plaintiff has paid the sum of £450 (inclusive of VAT) which it says is the full extent of its liability to the defendant. This has been accepted by the defendant as a part payment. There remains therefore a disputed outstanding balance of £510 (inclusive of VAT).

[8] In the event, Mr Budginas accepted a cash settlement from the plaintiff in the sum of £12,995 which enabled him to clear the outstanding finance on the vehicle. As a result, it is not in dispute that title to the vehicle has passed to the plaintiff.

[9] Upon being informed of the change of ownership, the defendant declined to release the vehicle and continued to assert its lien. It is not in dispute between the parties that if the defendant enjoyed a valid lien as against Mr Budginas it would continue to be able to assert same against the plaintiff. The key issue for determination is whether such a lien exists.

The Legal Principles

[10] Section 4(2) of the 1977 Act provides:

> *"On the application of any person in accordance with rules of court, the High Court shall, in such circumstances as may be specified in the rules, have power to make an order providing for the delivery up of any goods which are or may become the subject matter of subsequent proceedings in the court, or as to which any question may arise in proceedings."*

[11] Order 29 rule 3 of the 1980 Rules states:

> *"The Court may, on the application of any party to a cause or matter, make an order under section 4 of the Torts (Interference with Goods) Act 1977 for the delivery up of any goods which are the subject matter of the cause or matter or as to which any question may arise therein."*

[12] The court therefore has a discretion to order delivery up of goods on an interlocutory application and such a discretion should be exercised in line with the principles in *American Cyanamid v Ethicon* [1975] AC 396 – see, for example, the judgment of Lewison J in *Trad Hire & Sales v Holbrook Investments* [2010] EWHC 90 (Ch.). These principles were well summarised by Deeny J in *McLaughlin & Harvey v Department of Finance and Personnel* [2008] NIQB 122:

> *"It can be seen that the test laid down by the House of Lords, is sequential.*
>
> *(i) Has the plaintiff shown there is at least a serious issue to be tried?*
>
> *(ii) If it has, has it shown the damages would not be an adequate remedy for the plaintiff and would be an adequate remedy for the defendant if an injunction were granted and it ultimately succeeded?*
>
> *(iii) If there is doubt about the issue of damages the court will then address the balance of convenience between the parties.*

(iv) *Where other factors are evenly balanced it is prudent to preserve the status quo.*

(v) *If the relative strength of one party's case is significantly greater than the other that may legitimately be taken into account.*

(vi) *There may be special factors in individual cases."*

[13] The first question which the court must therefore seek to determine is whether there is a serious issue to be tried. Given the admission that the plaintiff is now the legal owner of the vehicle, this will turn on whether the defendant has established an arguable case in relation to its claimed lien.

The Contractual Lien

[14] A general lien which would entitle a person in possession of a chattel to refuse to deliver up possession until its claim for payment is satisfied can arise in law either by custom and usage or express agreement – see *United States Steel Products Co v Great Western Railway* [1916] 1 AC 189. In this case, the defendant submits that a general lien arises by virtue of the contract which it entered into with Mr Budginas. It is necessary therefore to consider the evidence relied upon by the defendant in this regard. Its deponent, Mr Beckett, states:

> *"At 1.21 pm on 8 January 2021 I telephoned Mr Budginas and explained all of the elements of the repair service that Bells could provide to him. I asked him to forward to me his driving licence and insurance details which he duly did. I advised him to contact his insurer, the Plaintiff, and inform it about the road traffic accident…Mr Budginas confirmed that he was happy with the service that Bells could provide and he indicated that he wanted to proceed with having his vehicle recovered to Bells for it to undertake the necessary repairs forthwith. At all times material to this action, Bells believed that it was contracted to provide Mr Budginas with its services to include the carrying out of repairs to his vehicle."*

[15] There is no suggestion in the affidavit evidence that Mr Budginas was ever provided with written terms and conditions by the defendant. There is nothing to indicate that a contractual lien, of the nature explained above, was ever discussed or agreed. There is therefore no arguable case that such a contractual lien existed in these circumstances.

The Particular Lien

[16] The alternative case presented by the defendant is that it was entitled to rely upon a particular lien. Such a lien arises in circumstances described by Halsbury:

> *"The right of particular lien has been extended to agency and to all cases where a person has expended labour and skill in the improvement or repair, as distinct from mere maintenance, of a chattel bailed to him for that purpose."*[1]

[17] Recently, in *Sheianov v Sarner International* [2020] EWHC 1214 (QB), Griffiths J conducted a review of many of the older authorities and from these he distilled the following principles:

> *"(i) A particular lien can only operate on something physical, a chattel. It cannot operate on something incorporeal, such as an idea, or intellectual property.*
>
> *(ii) Work must be done "on" the chattel being detained and not merely "with" it or "using" it or "in relation to" it.*
>
> *(iii) The work must improve or give additional value to the chattel in question. Whether it does so is a question of fact.*
>
> *(iv) The improvement need not be physical, but it must be inherent to the chattel itself.*
>
> *(v) If the agreed work is of a hybrid nature, some of which is apt to create a particular lien and some of which is not, and the work cannot be severed into those two constituent parts, no particular lien is created."*[2]

[18] I gratefully adopt both the reasoning and the conclusions of Griffiths J. In order to establish a particular lien, the party in possession of the chattel must show that it carried out work on the item in question which improved or gave additional value to it.

[19] The charges claimed by the defendant in this case are set out at paragraph [6] above. It cannot be said that the recovery of the vehicle, its storage, the production of an estimate or the provision of a loan car constitute work done 'on' the chattel in question. Equally, there is no evidence that any of these actions either improved or gave additional value to the vehicle.

[20] This leaves the 'Covid cleans' and the provision of a car care kit. The affidavit of Mr Beckett describes this cleaning process as involving extensive sanitising of the car with an aerosol. Whilst this may be work done on the vehicle, it is not suggested

---

[1] **Vol 68 (2016) para 841**
[2] **Para 80**

that this gave rise to any improvement or enhancement in value. I have no evidence as to the car care kit but, at a cost of £5, it is difficult to see how this could have improved the vehicle in such a manner as to give rise to a particular lien.

[21] On this analysis, there is no arguable case that the defendant can assert a particular lien over the vehicle. This conclusion means that there is no serious issue to be tried. In that event, the questions of the adequacy of damages and the balance of convenience simply do not arise for consideration – see *Trad Hire & Sales* [supra] and *Fitzpatrick v Ligoniel Developments* [2020] NICh 16.

[22] As the legal owner of the vehicle, and in the absence of any arguable case in relation to a lien, the plaintiff is entitled to an order for delivery up of its property. It was contended by the defendant that the plaintiff should be disentitled to relief as it had not come to equity with clean hands. The remedy of delivery up for wrongful interference with goods under the 1977 Act is the successor to old action in detinue. This was not a creation of the Courts of Equity, but rather was a common law remedy, and therefore the 'clean hands' doctrine is of no application. Even if it were, I do not accept that any act of the plaintiff in this case could be so classified.

Conclusion

[23] I therefore make an Order, pursuant to section 4 of the 1977 Act, that the defendant do forthwith deliver up possession of the Jaguar XF-R Sport, registration SGZ 1217, to the plaintiff.

[24] I will hear the parties on the question of costs and any consequential relief.