



In the finance industry bankruptcy is nothing new. And in vehicle finance this holds the same. The biggest problem, however, that vehicle finance companies face when presented with a consumer's bankruptcy is what to do with the vehicle. In almost all cases we have seen, the consumer tends to surrender the vehicle to the trustee who releases it to the finance company if there is a legitimate legal interest at stake. Yet there is lag time in that the trustee, once the vehicle is surrendered, has to store the vehicle and hold it safe from harm until it is released back to -in this case -the finance company.

The problem in the case I am about to present -if you can believe -is not the bankruptcy, the trustee, or even the vehicle. It is the storage rates.

We had a customer go bankrupt, surrender the car to the trustee, who in turn rightly told us where the vehicle was and gave us authorization to pick it up as we had a valid security interest (PPSA). We telephoned the so-called 'storage facility' just to find out that the storage rate for the vehicle was amazingly enough \$100.00 a day. What made matters worse was that when we contested what we perceived as an egregious rate for storage, the company who was storing our vehicle shot back with the fact that Toronto had no fixed rate for storage and that they were entitled to charge this rate.

And in many ways they were right.

That said, we were not prepared to pay such an exorbitant rate, and they weren't going to budge. And with the passage of time our bill out and out ballooned. For example, in the case described above, the storage rate at \$100.00 after two months had increased to roughly \$6500.00! Moreover, when you add to this number to Canada's much loved goods and services tax (G.S.T.) it was close to \$7000.00 for two months of storage!

It could be argued that the reason the rate was allowed to get so high was because we stalled in picking up the vehicle due to the high rate of daily storage fees we were unwilling to pay. And this is correct. But consider this, when a consumer files for bankruptcy and the vehicle is surrendered, the trustee has 30 days to inform the respective lien holders of the assets. And in this case, the finance company was not told of the consumer's bankruptcy until a month after he filed. So that meant we were already on the hook for approximately \$3000.00!

In order to mount a case against the storage facility, research was required. We contacted Mr. Norris, and various police service organizations and other storage facilities located outside the Toronto area. From what we found, their storage rates were a far cry from the City of Toronto's unregulated storage rates:

- A storage facility based In Courtice Ontario provided daily storage for \$5.00 a day.
- A storage facility in Putnam Ontario charged \$15.00 a day for storage.
- A Staff Report from the City of Toronto specifying that the storage rate for the Toronto Police Service Accident Tow Procedures at \$20.00 per day.
- A Hamilton Police contract dealing storage fees specifying that the daily rate was \$25.00 for light duty vehicles.



- A copy of the by-law of the City of Brampton. Section 10 provides that a storage facility that does not operate 24 hours a day shall charge up to \$35.00 a day for storage. Facilities that operate 24 hours a day may charge up to \$65.00 a day for storage.

We complimented our findings with pictures of the storage facility in question. These pictures showed the so-called storage facility without an enclosed fence, which was accessible from the street from three different entry points. Then we set into motion a court case in line with the Repair and Storage Lien Act (RSLA). In order to do this we had to make an application to the court disputing the lien, pay the full amount of the lien to the court and indicate in our application what rate we believed was fair to pay the storage facility. (In fact, earlier we had made an offer to settle the matter for a particular sum. In retrospect this worked to our favor.)

When the case finally went to court the storage facility argued that the rate of storage was indeed fair and that they were not gouging. At the same time, we stated that the rate of storage was exorbitant and that the court had to consider the rates government organizations and even a city located outside the Toronto area deemed 'acceptable' rates. Well the courts considered said and agreed with the City of Brampton's by-law in that the proper rate of storage for a vehicle was \$37.00. And so we had marked the first precedent for storage rates in the City of Toronto. That means, going forward, should a company dispute storage rates, the precedent set by us will be relied upon by the courts. Moreover, such a precedent creates fertile ground for Toronto's city council to enact a by-law outlining acceptable storage rates.

If there is any moral to this story it is that the courts can work to your favor. However, the costs associated with challenging such business practices from a legal point of view are often taxing and outrageous. Thus, it is advisable that in order to mount a proper challenge to disputable business practices when they arise it is suggested that you do the legwork yourself and brief yourself on the intricacies of the law, then consult counsel. And regardless of the case, never miss the opportunity to fight back when you believe you are in the right.

For information on how to get the RSLA to work for you, please go to:
http://www.cbs.gov.on.ca/mcbs/english/2502_3ea2.htm