

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICES OF INTENTION TO
MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD
GP INC., CORPORATIONS INCORPORATED UNDER THE
ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD
LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP
FORMED UNDER THE ONTARIO *LIMITED
PARTNERSHIPS ACT***

**RESPONDING FACTUM OF 33 LAIRD INC., 33 LAIRD GP INC.,
AND 33 LAIRD LIMITED PARTNERSHIP
(cross-motion returnable July 6, 2021)**

June 29, 2021

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I. OVERVIEW

1. The responding parties 33 Laird Inc., 33 Laird GP Inc., and 33 Laird Limited Partnership (together, the “**Laird Entities**”) oppose the relief sought on this motion by Schindler Elevator Corporation (“**Schindler**”). As will be seen, the entire matter is stayed under s. 69.1 of the *Bankruptcy and Insolvency Act*¹ (the “**BIA**”), and for completeness only, (i) the alleged “title reservation clause” is too uncertain to be enforceable, (ii) this is a purely contractual matter among third parties which the court may decline jurisdiction to hear and determine, (iii) the CJA s. 104 remedy relied upon by Schindler is strictly provisional in nature and necessitates an underlying action for recovery of property which is absent, and (iv) the record provided is incomplete and insufficient to grant any relief.

II. FACTS

A. The transaction and Laird Entities’ proposal

4. The Laird Entities were set up into a limited partnership structure to pursue a real estate development project at 33 Laird Drive in Toronto. They each filed a notice of intention to make a proposal (“**NOI**”) on November 28, 2020. MNP Ltd. acts as proposal trustee (in such capacity, the “**Proposal Trustee**”) in each NOI proceeding, which were administratively consolidated in this court file by order dated December 16, 2020.² The main asset is the real property and unfinished commercial development project at 33 Laird Drive in Toronto (the “**Property**”).
5. Following a sale process, the court made an approval and vesting order dated June 15, 2021 (the “**Approval and Vesting Order**”) in respect of a sale agreement (the “**Sale Agreement**”) among the Laird Entities and 33 Laird Development Inc. *qua* general partner

¹ [R.S.C., 1985, c. B-3.](#)

² A copy of the order is at tab 1 (page 1) of the Laird Entities’ responding motion record dated June 29, 2021 (the “**RMR**”).

of 33 Laird Development Limited Partnership (in such capacity, the “**Purchaser**”).³ The Sale Agreement is for the Laird Entities’ title and interest in the Property and substantially all related assets⁴ (the “**Transaction**”).

6. Each of the Laird Entities filed a proposal to creditors on May 28, 2021 (together, the “**Proposals**”).⁵ At the time of writing this factum, a meeting of creditors was held on June 18, 2021 and adjourned to July 2, 2021 to allow time for the sale approval motion. The only unaffected creditors under the Proposals are those having an interest ranking in priority to the Second Mortgage (as defined). Any other person that holds a “**Claim**” (defined as including any right of any person against any of the Laird Entities in connection with any obligation of any kind, whether secured or unsecured) is deemed an “**Unsecured Creditor**”. This would include any person with chattel security. Schindler claims no security in the Property. Based on the materials filed on this motion, Schindler is therefore deemed an Unsecured Creditor under the Proposals, subject to the filing and approval of a proof of claim by the Proposal Trustee, as the case may be.⁶

B. Schindler

7. As appears from its materials, Schindler was a subcontractor on the Project. It has no contract with the Laird Entities. Its only contract is with the general contractor, Aztec Structural Restoration Inc. (“**Aztec**”).⁷ Under that contract (the “**Schindler-Aztec Agreement**”), Aztec contracted for Schindler’s provision of elevator and related

³ Despite similar names, the Purchaser is not a related party. A copy of the Approval and Vesting order is at tab 2 (page 11) of the RMR.

⁴ The full copy of the sale agreement remains subject to a vesting order. A redacted copy is included at tab 3 (page 25) of the RMR. See sections 3 and 14.

⁵ Copies of the proposals are included at tab 4 (page 112) of the RMR.

⁶ See sections 2.2 and 2.3, as well as the relevant definitions in s. 1.1, of the Proposals (tab 4 (page 112) of the RMR).

⁷ A copy of the contract is at tab 2A (p. 11) of Schindler’s motion record (the “**MPMR**”).

equipment (the “**Elevating Equipment**”) to Aztec. The Elevating Equipment has not been installed on or incorporated to the Property.

8. Schindler alleges Aztec defaulted under the Schindler-Aztec Agreement and that as a result, Schindler is entitled to the remedy sought on this motion, being an *in rem* declaration that Schindler is “the owner of all right, title and interest in the Elevating Equipment”, and orders to seize the Elevating Equipment under s. 104 of the *Courts of Justice Act*⁸ (the “**CJA**”).

III. ISSUES AND LAW

9. The relief sought is not available to Schindler. As will be seen, the matter is stayed under BIA s. 69.1; and only for completeness and in the alternative, **(i)** the alleged “title reservation clause” is too uncertain to be enforceable, **(ii)** this is a purely contractual matter among third parties which the court may decline jurisdiction to hear and determine, **(iii)** the CJA s. 104 remedy relied upon by Schindler is strictly provisional in nature and necessitates an underlying action which is absent, and **(iv)** the record provided is incomplete and insufficient to grant any relief.

A. Schindler is an “Unsecured Creditor” under the Proposals and as such this motion is stayed

10. As seen above, based on the materials filed on this motion, Schindler is deemed an Unsecured Creditor under the Proposals, subject to the filing and approval of a proof of claim by the Proposal Trustee, as the case may be.
11. BIA s. 69.1(1)(a) provides that upon the filing of the Proposals, “no creditor has any remedy against the [Laird Entities] or [their] property” (emphasis added). BIA s. 69.1 is

⁸ [R.S.O. 1990, c. C.43](#).

designed to protect the orderly and fair operation of proposals and operates to prevent proceedings by a creditor that might give the creditor an advantage over other creditors.⁹

Schindler claims rights and remedies against the Laird Entities in respect of alleged obligations predating the Proposals. Those alleged rights are captured by the Proposals and by s. 69.1(1).¹⁰

12. BIA s. 69.1(5) provides that the stay does not apply to secured creditors to whom the Proposals are not made. Even if Schindler was considered to have a security interest in the Elevating Equipment,¹¹ which is neither admitted nor denied,¹² the Proposals would still be made to Schindler. Under the Proposals, the claims of “Unsecured Creditors”, defined as any creditors who hold an interest that does not rank in priority to the Second Mortgage, are to be prorated and partially paid from the “Unsecured Creditor Cash Pool” as provided in s. 2.7. Schindler would fall within the definition of “Unsecured Creditor” because any security in chattel could not possibly be an interest that ranks in priority to the Second Mortgage.

⁹ See Lloyd W. HOULDEN, Geoffrey B. MORAWETZ and Janis P. SARRA, *The 2020 Annotated Bankruptcy and Insolvency Act*, Toronto, Thomson Reuters (“**HOULDEN MORAWETZ & SARRA**”), at F114.

¹⁰ Given this and the disjunctive conjunction “or” in BIA s. 69.1(1)(a), whether or not the Elevating Equipment is part of the Laird Entities’ property is not relevant. See *Textiles Tri-Star Ltée v Dominion Novelty Inc.* and *Leslie MacIntyre Maritime Associates Inc. v Zutphen Bros Construction Ltd.*, respectively referenced and discussed in HOULDEN MORAWETZ & SARRA at F124 and F146. In any event, the Laird Entities would argue that title and property have been held to be distinct notions in the context of title reservation clauses (see, e.g., the landmark case of *Hendrickson v Mid-City Motors Limited*, [1951 CanLII 241 \(AB QB\)](#), consistently cited with approval by courts throughout Canada), and the title reservation alleged by Schindler refers to “title” only, leaving “property” to lie with Aztec and/or the Laird Entities.

¹¹ Such as by the alleged “title preservation clause” being found to constitute a “security interest” within the meaning of the *Personal Property Security Act*, [R.S.O. 1990, c. P.10](#) (the “**PPSA**”). See PPSA s. 2(a)(i).

¹² It is important to note that regardless of its existence, a security interest within the meaning of the PPSA is subject to the PPSA for enforcement and rank. Schindler has perfected no security interest against the Laird Entities. Perfection by possession has obviously not occurred. There are also no registrations by Schindler against any of the Laird Entities as more fully appears from certified PPSA reports included at tab 5 (page 149) of the RMR. The only PPSA registrations are by DUCA Financial Services Credit Union Ltd. See s. 20 and 30 of the PPSA, and *Newcourt Credit Group Inc. v G.A. Finance Inc.*, [1998 CarswellOnt 1866 \(ON SC \(Comm. List\)\)](#), paras. 11-18.

13. Thus the matter is stayed under BIA s. 69.1 and this court should stay or dismiss the motion.
14. The following is submitted for completeness and in the alternative only.

B. The alleged “title reservation clause” is uncertain and unenforceable

15. Schindler relies on the following provision of the Aztec-Schindler Agreement to assert having title to the Elevating Equipment: “*Title to materials and equipment shall pass to purchaser upon payment by purchaser to Schindler*”. This provision and its effects are ambiguous and uncertain, including for the following reasons:

- a. the Schindler-Aztec Agreement is for the provision of goods (the Elevating Equipment) and services (installation, clean up, etc.). One possible interpretation of the clause is that title passes to Aztec upon it having paid for all goods and services under the contract. However, several clauses provide for Schindler’s reserving the unilateral right to “adjust the contract price” and/or bill for certain additional amounts, such as changes in “labor rates”, storage costs, and any increase in cost “resulting from delays in construction”.¹³ All the invoices included in Schindler’s materials provide that “*This invoice is subject to revision based on final contract price.*”¹⁴ That interpretation would prevent title from passing until all such unforeseeable revisions and increases are paid for, which would allow Schindler to indefinitely maintain title to all the Elevating Equipment by claiming increases in costs.
- b. the Elevating Equipment consists in numerous pieces that may not be delivered at the same time per the contract terms. Another possible interpretation of the alleged

¹³ See the Schindler-Aztec Agreement, paras. 9-12, at p. 17 of the MPMR.

¹⁴ MPMR, p. 28, 32, 36.

title reservation clause is that title to an element of the Elevating Equipment would pass upon “payment” of *that* item. Indeed, it is not in dispute that Aztec paid Schindler a \$30,300 invoice for a “down payment”.¹⁵ This amount can cover the scheduled value of the majority of the Elevating Equipment as noted in the invoice. In fact, even after payment of the entire scheduled value for labor (which includes engineering costs), the balance can still cover the scheduled value for numerous items of the Elevated Equipment. That interpretation could mean that title to the majority of the Elevating Equipment has, in fact, passed, which is diametrically opposed to the prior interpretation.

- c. the Schindler-Aztec Agreement provides that “*Payment to 90% of the contract value is a requirement precedent to turnover of the equipment.*” Each invoice included in Schindler’s materials, including the invoice for the “down payment”, include a mention that 90% payment of the invoice is “*required for equipment turnover*”. That is yet more ambiguous and conflicting language as “turnover” could, in its ordinary sense, include possession, property and/or title.¹⁶ But there is more: does that occur for all the Elevated Equipment upon payment of 90% of the “contract value”, or does it occur for that portion of the Elevated Equipment referenced in an invoice upon payment of 90% of that invoice? Both positions could be possible based on the record provided, leading to more conflicting results.

16. The Laird Entities are not the general contractor, Aztec. They are not a party to the Schindler-Aztec Agreement. They are having to assess the intention of the parties from a

¹⁵ A copy of that invoice is at page 26 of the MPMR.

¹⁶ The only comment on this in Schindler’s materials is the brief comment at para. 16 of Schindler’s factum, which unfortunately does little to answer the ambiguity.

third-party perspective on the basis of the record provided, just like the court.¹⁷ The ambiguities and conflicts of language noted above do not allow conclusiveness as to the parameters and conditions of the alleged “title reservation clause”. As a result the Laird Entities submit that this provision is too uncertain to be enforced as a title reservation clause.¹⁸

C. This is a purely contractual matter among third parties which the court may decline jurisdiction to hear and determine

17. Whether Schindler owns the Elevating Equipment is a purely contractual matter among Schindler and Aztec. Save special circumstances, NOI proceedings are not the proper forum to make legal determinations among third parties, such as Schindler and Aztec.¹⁹ It is not even clear that the matter raised on this motion falls within Commercial List jurisdiction, as it may more properly involve jurisdiction under the *Construction Act*.²⁰ As such this court may, and it is the Laird Entities’ respectful contention that it should, decline to determine such a matter finally.

D. The CJA s. 104 remedy relied upon by Schindler is strictly provisional in nature and necessitates an underlying action which is absent

18. Section 104 of the CJA, relied upon by Schindler, is expressly for an “interim order” and is only available “in an action in which the recovery of possession of personal property is claimed”. This motion is not such an action. In any event, such an action would likely be stayed and could likely not be brought in the Laird Entities’ restructuring proceeding, as seen above. Furthermore, rule 44 of the *Rules of Civil Procedure*, which provides for the

¹⁷ See, for an example of a landmark case on the intention of the parties in similar circumstances involving a claim for title and return of equipment, *Re Speedrack Limited*, [1980] O.J. No. 414 (ON SC), spec. paras. 10 and 15.

¹⁸ See above, notes 11 and 12, as to its possible characterization as a security interest.

¹⁹ See the landmark Ontario Court of Appeal case of *Re Morris Lofsky*, 1947 CanLII 71 (ON CA), which involved a reservation of title and is cited with approval in many cases including by the Supreme Court of Canada in *Sam Lévy & Associés v Azco Mining Inc.*, [2001] 3 SC.R. 978, at para. 48.

²⁰ R.S.O. 1990, c. C.30; see Part VIII.

procedure in respect of CJA s. 104, expressly confirms the “interim” nature of the s. 104 remedy. This is reinforced by numerous checks and balances, including the court’s power to order one of the parties to the action to post security as a condition of making the order to cover costs and damages in case the provisional determination is found to be incorrect at the conclusion of the action. For all those reasons, an order under CJA s. 104 is not available to Schindler in this case.

E. The record provided incomplete and insufficient to support any relief

19. Schindler seeks an *in rem* declaration, enforceable against any third party, including the Laird Entities, the stakeholders in the Laird Entities’ estate, the Purchaser, the Proposal Trustee, and Aztec. The sought declaration, as worded in the draft order provided, would constitute Schindler as “the owner of all right, title and interest in the Elevating Equipment” (emphasis added).
20. Such a declaration would remove a potential asset from the Laird Entities’ insolvent estate, would affect the Proposals in respect of which the voting process is underway, and could require revisiting the terms of the Transaction, the whole despite the Approval and Vesting Order and the stay of proceedings. The declaration could also alter third party rights. It is not dissimilar in substance to a vesting order.
21. The court is therefore entitled to expect a thorough, balanced record, which Schindler failed to provide including for the following reasons:
 - a. Schindler’s position is based on alleged Aztec defaults under the Schindler-Aztec Agreement. The only evidence in this regard is Schindler’s evidence, and it consists in Schindler’s own internal documents and an affidavit of a Schindler representative. The record is silent, *inter alia*, as to whether Aztec was put in

demand and how Aztec responded to such demand. It is also silent as to Aztec's position on the alleged default and whether Aztec has any defence, such as any statutory defence, errors in the invoices, Schindler's own defaults under the contract, or Aztec's differing interpretation of its obligations under the contract and invoices, which as seen above are conflicting and ambiguous.

- b. had Schindler made Aztec a defendant to an independent action as is proper, rather than improperly bringing a motion at large in the restructuring proceeding, either Aztec would have responded and completed the record, or Schindler could have petitioned for a default judgment. This is the normal process which accords with the requirements of procedural fairness that proper procedure is meant to protect. Schindler is attempting to bypass that proper process by improperly bringing this motion in the restructuring proceeding. Mere service of this motion to Aztec's counsel is insufficient considering among other things the inappropriateness of forum, as seen above.

22. Therefore, the court does not have an appropriate record before it to grant the relief sought.

F. Conclusion

23. Assuming there is no valid defense, it is unfortunate if Schindler has not been paid. However, this is a matter between Schindler and Aztec. Any Schindler's rights have been protected to the fullest extent possible in these restructuring proceedings, with the support of the Laird Entities.

24. Nothing in the Approval and Vesting Order or the Sale Agreement prejudiced any Schindler right or title in the Elevating Equipment. The Approval and Vesting Order is expressly for "the Debtor's right, title and interest" in the "Purchased Assets", a term itself

defined in the Sale Agreement as “the Vendor’s right title and interest” in the Property and attendant assets (emphasis added). The Laird Entities cannot sell more than they own. This has been pointed out and explained on calls among counsel.

25. Schindler served its cross-motion, appeared through counsel at the approval hearing and was given an opportunity to voice its concerns. The presiding judge dismissed those concerns and made the Approval and Vesting Order. His Honour’s endorsement states “*The order is, however, being made on a without prejudice basis to Schindler Elevator Corporation’s right to pursue its cross motion and the approval of this order does not, in any way, determine its rights to the equipment in dispute and Schindler reserves all rights in this regard.*”²¹
26. Schindler could have pursued, and can still pursue, remedies against Aztec, among other things. It chose to bring this motion, which for all the above reasons, the Laird Entities respectfully submit ought to be stayed or dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of June, 2021.

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²¹ The endorsement is included on the back page of the Approval and Vesting Order (tab 2 (page 11) of the RMR).

SCHEDULE A – LIST OF AUTHORITIES

1. *Hendrickson v Mid-City Motors Limited*, [1951 CanLII 241 \(AB QB\)](#)
2. *Newcourt Credit Group Inc. v G.A. Finance Inc.*, [1998 CarswellOnt 1866 \(ON SC \(Comm. List\)\)](#)
3. *Re Speedrack Limited*, [\[1980\] O.J. No. 414 \(ON SC\)](#)
4. *Re Morris Lofsky*, [1947 CanLII 71 \(ON CA\)](#)
5. *Sam Lévy & Associés v Azco Mining Inc.*, [\[2001\] 3 SC.R. 978](#)

SCHEDULE B – RELEVANT STATUTORY REFERENCES

- *Bankruptcy and Insolvency Act*, [R.S.C., 1985, c. B-3](#)

Stay of proceedings — Division I proposals

69.1 (1) Subject to subsections (2) to (6) and sections 69.4, 69.5 and 69.6, on the filing of a proposal under subsection 62(1) in respect of an insolvent person,

(a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the trustee has been discharged or the insolvent person becomes bankrupt;

Limitation

(2) The stays provided by subsection (1) do not apply

(a) to prevent a secured creditor who took possession of secured assets of the insolvent person for the purpose of realization before the proposal was filed from dealing with those assets;

(b) unless the secured creditor otherwise agrees, to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security against the insolvent person more than ten days before

(i) a notice of intention was filed in respect of the insolvent person under section 50.4, or

(ii) the proposal was filed, if no notice of intention under section 50.4 was filed from enforcing that security;

(c) to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security from enforcing the security if the insolvent person has, under subsection 244(2), consented to the enforcement action; or

(d) [Repealed]

Limitation

(3) A stay provided by paragraph (1)(c) or (d) does not apply, or terminates, in respect of Her Majesty in right of Canada and every province if [...].

Limitation

(4) If, by virtue of subsection 69(3), the stay provided by paragraph 69(1)(c) or (d) does not apply or terminates, the stay provided by paragraph (1)(c) or (d) of this section does not apply.

Secured creditors to whom proposal not made

(5) Subject to sections 79 and 127 to 135 and subsection 248(1), the filing of a proposal under subsection 62(1) does not prevent a secured creditor to whom the proposal has not been made in respect of a particular security from realizing or otherwise dealing with that security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

Where secured creditors vote against proposal

(6) Subject to sections 79 and 127 to 135 and subsection 248(1), where secured creditors holding a particular class of secured claim vote for the refusal of a proposal, a secured creditor holding a secured claim of that class may henceforth realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

➤ *Personal Property Security Act, [R.S.O. 1990, c. P.10](#)*

Unperfected security interests

20 (1) Except as provided in subsection (3) [*with respect to PMSIs*], until perfected, a security interest,

(a) in collateral is subordinate to the interest of,

(i) a person who has a perfected security interest in the same collateral or who has a lien given under any other Act or by a rule of law or who has a priority under any other Act, or

(ii) a person who causes the collateral to be seized through execution, attachment, garnishment, charging order, equitable execution or other legal process, or

(iii) all persons entitled by the *Creditors' Relief Act, 2010* or otherwise to participate in the distribution of the property over which a person described in subclause (ii) has caused seizure of the collateral, or the proceeds of such property;

(b) in collateral is not effective against a person who represents the creditors of the debtor, including an assignee for the benefit of creditors and a trustee in bankruptcy;

(c) in chattel paper, documents of title, instruments or goods is not effective against a transferee thereof who takes under a transaction that does not secure payment or performance of an obligation and who gives value and receives delivery thereof without knowledge of the security interest;

(d) in intangibles other than accounts is not effective against a transferee thereof who takes under a transaction that does not secure payment or performance of an obligation and who gives value without knowledge of the security interest.

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- *Courts of Justice Act*, [R.S.O. 1990, c. C.43](#)

Interim order for recovery of personal property

104 (1) In an action in which the recovery of possession of personal property is claimed and it is alleged that the property,

- (a) was unlawfully taken from the possession of the plaintiff; or
- (b) is unlawfully detained by the defendant,

the court, on motion, may make an interim order for recovery of possession of the property.

Damages

(2) A person who obtains possession of personal property by obtaining or setting aside an interim order under subsection (1) is liable for any loss suffered by the person ultimately found to be entitled to possession of the property.

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- *Rules of Civil Procedure*, [R.R.O. 1990, Reg. 194](#)

Motion for interim order

44.01 (1) An interim order under section 104 of the *Courts of Justice Act* for recovery of possession of personal property may be obtained on motion by the plaintiff, supported by an affidavit setting out,

- (a) a description of the property sufficient to make it readily identifiable;
- (b) the value of the property;
- (c) that the plaintiff is the owner or lawfully entitled to possession of the property;
- (d) that the property was unlawfully taken from the possession of the plaintiff or is unlawfully detained by the defendant; and
- (e) the facts and circumstances giving rise to the unlawful taking or detention.

(2) The notice of motion shall be served on the defendant unless the court is satisfied that there is reason to believe that the defendant may improperly attempt to prevent recovery of possession of the property or that, for any other sufficient reason, the order should be made without notice.

Order to contain description and value of property

44.02 An interim order for recovery of possession of personal property shall contain a description of the property sufficient to make it readily identifiable and shall state the value of the property.

Disposition of motion

44.03 (1) On a motion for an interim order for recovery of possession of personal property made on notice to the defendant, the court may,

(a) order the plaintiff to pay into court as security twice the value of the property as stated in the order, or such other amount as the court directs, or to give the appropriate sheriff security in such form and amount as the court approves, and direct the sheriff to take the property from the defendant and give it to the plaintiff;

(b) order the defendant to pay into court as security twice the value of the property as stated in the order, or such other amount as the court directs, or to give the plaintiff security in such form and amount as the court approves, and direct that the property remain in the possession of the defendant; or

(c) make such other order as is just.

(2) On a motion for an interim order for the recovery of possession of personal property made without notice to the defendant, the court may,

(a) order the plaintiff to pay into court as security twice the value of the property as stated in the order, or such other amount as the court directs, or to give the appropriate sheriff security in such form and amount as the court approves, and direct the sheriff to take and detain the property for a period of ten days after service of the interim order on the defendant before giving it to the plaintiff; or

(b) make such other order as is just.

Condition and form of security

44.04 (1) Where an interim order for the recovery of possession of personal property requires either party to give security, the condition of the security shall be that the party providing the security will return the property to the opposite party without delay when ordered to do so, and pay any damages and costs the opposite party has sustained by reason of the interim order.

(2) Where the security is by bond, the bond shall be in Form 44A and shall remain in force until the security is released under rule 44.06.

(3) Where the bond is to be given by a person other than an insurer licensed under the Insurance Act to write surety and fidelity insurance, the person giving the bond shall first be approved by the court.

Setting aside order

44.05 The court on motion may set aside or vary an interim order for the recovery of possession of personal property or stay enforcement of the order.

Release of security

44.06 Any security furnished pursuant to an order made under rule 44.03 may be released on the filing of the written consent of the parties or by order of the court.

Duty of sheriff

44.07 (1) Before proceeding to enforce an interim order for the recovery of possession of personal property, the sheriff shall ascertain that any security required by the order has been given.

(2) The sheriff shall serve the order on the defendant when the property or any part of it is recovered or as soon thereafter as is possible.

(3) Where the sheriff is unable to comply with the order, or it is dangerous to do so, the sheriff may move for directions from the court.

(4) The sheriff shall, without delay after attempting to enforce the order and in any event within ten days after service of the order, report to the plaintiff on what property has been recovered and, where the sheriff has failed to recover possession of all or part of the property, on what property has not been recovered and the reason for his or her failure to recover it.

Where defendant prevents recovery

44.08 Where the sheriff reports that the defendant has prevented the recovery of all or part of the property, the court may make an order,

(a) directing the sheriff to take any other personal property of the defendant, to the value of the property that the sheriff was prevented from recovering, and give it to the plaintiff; and

(b) directing the plaintiff to hold the substituted property until the defendant surrenders to the plaintiff the property that the sheriff was prevented from recovering.

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