



**Superior Court of Justice - Toronto Region**  
393 University Avenue, 6<sup>th</sup> Floor  
Toronto, Ontario M5G 1E6

## ENDORSEMENT

May 21,  
2024

(heard May  
6, 2024)

**Caraid Auto Collision Centre Inc. v. Royal Sun and Alliance Insurance et al., CV-21-00661459-0000**

*H. Sarros, counsel, for the moving party, the plaintiff*

*K. McNerney, counsel, for the responding parties, the defendants*

This is a motion brought by the plaintiff for an order permitting the plaintiff to obtain temporary possession of a vehicle described in the notice of motion for the purposes of an inspection.

At the return of the motion, counsel confirmed that the only issue for determination is the location of the inspection. I am advised that the parties have resolved the other terms of the inspection. Costs of the motion are also at issue.

The plaintiff seeks to have the inspection conducted at the plaintiff's premises. The plaintiff argues that there is a binding agreement in that regard and, in any event, Maranello BMW does not permit independent inspections.

The defendants seek to have the inspection conducted at Maranello BMW. The defendants argue that Maranello BMW is a neutral location. The defendants submit that Maranello BMW does permit independent inspections.

The only case before me on this motion is the unreported decision of Justice Mills in *Royal Bank of Canada v. Lu* dated October 21, 2021. At para. 6, Justice Mills ordered the inspection to take place "... in a facility that is in no way associated with the issues raised in these proceedings" to avoid any conflict of interest.

The location requested by the plaintiff is the location where the repairs at issue in this action were carried out. Maranello BMW is an independent location. Having regard to the matters at issue in this proceeding including allegations in the statement of defence of fraudulent replacement of components (para. 12 of the statement of defence) and exaggerated repair (paras. 13 and 16), I am satisfied that it is reasonable and just to order that the inspection be conducted at Maranello BMW.

With respect to the plaintiff's position that there was a binding agreement that the inspection be conducted at the plaintiff's premises, conducting the inspection the plaintiff's premises was dependent on terms with respect to the length of the inspection that were not agreed to or not complied with. I am not satisfied that there is an enforceable agreement that the inspection be conducted at the plaintiff's premises.

With respect to the plaintiff's position that Maranello BMW does not permit independent inspections, the plaintiff relies on an affidavit from the manager of the plaintiff, S. Abdo who deposes at para. 25 of his affidavit that on November 27, 2023, a representative of the plaintiff called Maranello BMW to confirm whether it was possible to use Maranello

BMW's facility to conduct an independent inspection of a vehicle and that Maranello BMW confirmed that they do not permit their facility to be used for independent inspections.

S. Elliston, an employee of the defendant Royal and Sun Alliance, deposes at paras. 16 and 23 of her affidavit that representatives of Maranello BMW, including the Assistant Service Manager A. Biafore, have confirmed that they would permit an inspection of the vehicle at their premises.

It is unclear who the plaintiff representative spoke with at Maranello BMW, and it appears to have been a general inquiry. The defendants' evidence is that the Assistant Service Manager has confirmed that an inspection of the vehicle permitted. Two previous inspections of the vehicle occurred at Maranello BMW. I am satisfied that an independent inspection of the vehicle at issue in this case is permitted at Maranello BMW.

The location of the inspection shall be Maranello BMW, 55 Auto Park Circle, Woodbridge ON L4L 8R1.

With respect to costs of the motion, I am satisfied that the defendants are entitled to some costs, but not costs in the amount sought in the all-inclusive amount of \$2,176.44. The parties have agreed to all terms of the inspection save for the place of inspection. The defendants were successful on the contested term argued. There was one case before me on this motion. No cross-examinations took place. In my view, the all-inclusive sum of \$1,000.00 is a fair and reasonable amount that the plaintiff could expect to pay for costs. The costs are payable to the defendants in the cause.

Order accordingly.

A handwritten signature in black ink, appearing to read "B. McAfee". The signature is fluid and cursive, with the first name "B." and the last name "McAfee" clearly distinguishable.

Associate Justice B. McAfee