



Marvin Huberman

Storage Liens [Part One]

A primer on what they are and how they function

I am often asked by my commercial clients, be they landlords, property managers, or carriers—when they are owed money by someone who leaves personal property with them—how can or should they deal with that property, legally and practically. Should they dispose of the property? Store or sell it? Can they invoke storage lien legislation? Or should they apply to the court for a judicial determination of their rights and remedies?

The answers depend on the specifics of each situation. But here are some highlights of an important Ontario statute that can greatly help in the collection of debt in certain circumstances.

The RSLA

The Ontario Repair and Storage Liens Act (RSLA), which was enacted in 1989, and since amended, consolidated the law of repair and storage of articles or personal property and codified in a comprehensive fashion the rights and remedies of repairers and storer, who are entitled to claim a lien for the repair, storage, or storage and repair of an article.

My comments below will be confined to storer's liens and will not address the provisions of the RSLA that deal with repairer's liens.

Article

The RSLA applies to an article which is defined in section 1 to mean "an article of tangible personal property other than a fixture".

Storer

Under the Act a storer means a person who receives an article for storage or storage and repair on the understanding that the person will be paid for the storage or storage and repair, as the case may be.

Storer's Possessory Lien

Subject to certain limits and compliance with applicable provisions of the Consumer Protection Act, 2002, a storer has a lien against an article that it stored (or stored and repaired) for the amount agreed on or the fair value of the storage (and repair) and other expenses incurred, and the storer can retain possession of the article until the amount is paid.

The storer's lien arises and takes effect when the storer receives possession of the article for storage or for storage and repair.

The storer may sell the article that is subject to the lien in accordance with the applicable provisions of the RSLA after 60 days following the date on which

the amount required to be paid comes due.

The storer will lose the lien which will be discharged—and cannot be revived—if possession of the lien article is surrendered to, or lawfully comes into possession of, the owner or certain other persons described in the Act.

But if valid, a storer's lien under the Act has priority over the interests of all other persons in the article. This means that a properly obtained storer's lien under the RSLA has priority ahead of a perfected security interest in the same article.

Storer's Non-Possessory Lien

Under the RSLA, an unpaid storer who is entitled to a possessory lien, and who gives up possession of the article without having been paid the full amount of the lien, has, in place of the possessory lien, a non-possessory lien against the article for the amount of the lien claimed that remains unpaid.

The non-possessory lien takes effect from the time the lien claimant gives up possession of the article.

For the non-possessory lien to be enforceable, the lien claimant obtains a signed "acknowledgment of the indebtedness" which may be on the invoice or other statement of account. This acknowledgment of indebtedness is without prejudice to the right of the owner or any other person to dispute in a proceeding the amount of such lien.

Standard of Care

Under section 28 of the RSLA, a lien claimant that has possession of the goods shall use reasonable care in their custody and preservation, unless the law imposes a higher standard. The lien claimant is entitled to recover the commercially reasonable expenses incurred in the custody, preservation and preparation for sale of the article, including the cost of insurance and taxes and those expenses are properly chargeable and secured by the lien on the article.

The lien claimant may also use the article for the purpose of preserving it or its value, demonstrating its qualities or properties in order to effect a sale in accordance with a court order or in accordance with any agreement with the owner.

In Part Two I'll examine how they can dispose of property obtained via a lien. MM&D

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