



Marvin Huberman

Storage liens—Part two

A primer on what they are and how they function

Last issue, in Part One of this article (<http://tinyurl.com/storage liens>), I highlighted some of the key provisions of the Ontario Repair and Storage Liens Act (RSLA). Those included the definitions of “article” and “storer”, the basics of a storer’s lien, and the statutory standard of care imposed on a lien claimant that has possession of the goods.

In this Part, I examined how lien claimants can dispose of property obtained via a lien, and how an application can be made to a court to resolve differences among parties in respect of the subject article. Now I’ll look at how to dispose of property obtained in a lien.

Sales in the ordinary course

A buyer of an article from a seller who sells such article in the ordinary course of the seller’s business, takes the article free and clear of any non-possessory lien which arose from a repair or storage done at the request of the seller or seller’s agent, unless such buyer signs an acknowledgment of the debt that is owing on the invoice or other statement of account in accordance with the provisions of the Act.

Even where the buyer has signed such acknowledgment, a third party purchaser buying the article in the ordinary course of such buyer’s business takes it free and clear of any lien claimant’s lien.

Seizure of the article

A non-possessory lien claimant seizes the article by directing the sheriff to seize the article in accordance with the Act or as otherwise permissible by law.

Sale of the article

A possessory storer lien claimant has a right to sell the article in accordance with the Act upon expiration of the 60th day following the date on which the amount required to be paid for the storage or storage and repair became due.

After the article has been seized the Act provides the code of conduct for the proper sale under the RSLA.

The article cannot be sold until the lien claimant has given the notice of its intention to sell to the parties described in the Act. The form and content of such notice is specified in the Act.

The article may be sold in whole or in part at a private or public sale at any time, place or terms, provided that every aspect of the sale is in a “commercially reasonable manner”.

The lien claimant itself may only purchase the article at a public sale.

A statutory scheme for distribution of the proceeds from the sale is stipulated by the Act and any question concerning the entitlement to such proceeds may be resolved by paying the funds into court by the lien claimant and resolved by the court on an application to it.

Retention of the article

The lien claimant may retain the article in satisfaction of the lien and, if it proposes to do so, it must give a notice of such intention to every person entitled to a notice of sale under the Act. If a person entitled to receive such notice of retention makes an objection to the proposed retention within 30 days of receipt of the notice, the lien claimant must proceed to sell the article under the Act.

If no effective objection is made at the end of the 30-day period, the lien claimant is deemed to have irrevocably elected to retain the article in satisfaction of the debt and is therefore entitled to dispose of it or hold it free from the rights and interests of every person to whom the required written notice was given.

Dispute resolution

The RSLA provides for two applications to a court to resolve differences among parties relative to the subject article. Under Section 23, any person may apply to the court for a determination of the rights of the parties where a question arises with respect to seizure of an article, the sale of an article, the distribution of the proceeds of the sale of an article, the amount of a lien, or the right of any person to a lien, and any other matter arising out of the application of the RSLA. The court may make such order as it considers necessary to give effect to those rights.

Where a possessory lien is being exercised and the lien claimant refuses to surrender possession of the article to its owner or any other person entitled to it, or where there is a dispute concerning the amount or the quality of the repair or storage, then Section 24 of the Act provides a mechanism to resolve the issue.

The applicant pays a settlement to court and the storer may accept it, release the goods and end it, or begin an action in the court with the appropriate monetary jurisdiction (including small claims court) to determine the issue.

MM&D

Marvin J. Huberman, LLM, is a Toronto lawyer, mediator and arbitrator.
www.marvinhuberman.com