ONTARIO

JUSTICIA

ONTARIO SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT

Oshawa SCJ

ORDER OF THE COURT

Claim No. SC-24-00001300-0000

BETWEEN

NATIONAL BANK OF CANADA

Plaintiff(s)

and

CLEVER TRUCKERS INCORPORATED ; ANDREW SO; BRANDON DASRATH

Defendants(s)

BEFORE: Deputy Judge DUSOME

HELD BY: ☐ In person ☒ Videoconference ☐ Teleconference ☐ In writing ☐ Hybrid

DATE: December 19, 2024 at 10:30am

EVENT TYPE: Motion on notice

APPEARING: (Names, emails, and phone numbers)

Plaintiff(s): NATIONAL BANK OF CANADA (james@phmlaw.com) Present ☐

Representative: MICHELLE JAMES (james@phmlaw.com) (416-669-2110) Present ☒

Defendant(s): CLEVER TRUCKERS INCORPORATED Present ☐

Representative: Carlton Clark, owner Present ☒

Defendant(s): ANDREW SO Present ☐

Representative: Present ☐

Defendant(s): BRANDON DASRATH Present ☐

Representative: Present ☐

Claim No. SC-24-00001300-0000

ORDER OF THE COURT

On *December 19, 2024* a hearing was held in the above matter and the following order was made:

See Appendix attached.

December 24, 2024
Date

Paul Dusome
Signature of Judicial Official

Paul Dusome, Deputy Judge

Appendix to order dated December 24, 2024.

National Bank of Canada v Clever Truckers Incorporated et al., SC-24-1300-00,

For the reasons set out below, the application by the National Bank of Canada (NBC) is allowed. The Respondent, Clever Truckers Incorporated (CTI), did not have entitlement to the lien it registered, so that the lien is not valid and is to be cancelled, as set out at the end of this order.

This is an application by NBC seeking a ruling against CTI under s. 23 of the *Repair and Storage Liens Act* (RSLA). NBC seeks a determination of the validity of a registered non-possessory lien by CTI, and CTI's entitlement to the lien.

NBC has a security interest registered under the *Personal Property Security Act* (PPSA). That gives NBC a lien against a BMW automobile owned by an individual BD, who has not participated in this proceeding. That lien was registered on September 7, 2022, and expires on September 7, 2026. The BMW is in the possession of NBC.

CTI has a registered non-possessory lien under the *Repair and Storage Liens Act* (RSLA) against the same BMW automobile for $25,000.00. That lien was registered on November 2, 2023, and expires on November 2, 2028.

CTI claims its lien on the basis of work performed on the BMW. Whether there was work performed on the BMW by CTI, or whether there was storage of the BMW by CTI, is not clear. The search result of government records does not show the basis on which the lien is claimed, just that the security for the lien was the BMW.

CTI's claim for repair work done on the BMW rests on an undated document labelled "Bill for B...D..." The document is not signed by BD. It is signed by CTI. The document lists three items that involve towing and repairs to an automobile. It does not identify the automobile. The document lists two loans and a jackhammer rental as part of the total claimed. The total amount is $15,850.00. The document concludes with a statement that other matters/bills will be taken to small claims court, as some of the matters are personal to BD, who "would rather prefer his personal to be handle in the court."

Prior to this RSLA matter being commenced in court, on January 17, 2024, NBC asked CTI for a statement in writing of the amount of the indebtedness and terms of payment under CTI's lien, and a true copy of the security agreement with BD. On April 29, 2024, NBC asked CTI to provide information on the items claimed by CTI in its "Bill for B...D..." document. These were a true copy of the security agreement(s) with BD, a true copy of BD's signed acknowledgement of indebtedness for each item on the "Bill for B...D..." document; a true copy of the signed authorization for each repair item; details of the personal matters at the end of the "Bill for B...D..." document, as the claim that the items are personal does not show that CTI had a right to register a lien for those items.

The only response BNC received to these two letters was the "Bill to B...D..." undated document, which is referred to in the second letter. On May 24, 2024, NBC filed its application under s. 23 of the RSLA.

At the hearing, CTI stated that it was not concerned about the money. CTI had placed the lien to protect the interest of BD, the owner of the BMW, from collection by NBC. The purpose of a lien is to secure payment of the debt owed, either by direct payment by the debtor, or by available enforcement processes. The purpose is not to protect a debtor against another creditor's collection efforts.

That raises a valid question about the validity of CTI's lien. The existence of the lien is supported by the registration of the lien on November 3, 2023. But the validity of that lien rests on a number of factors. One is the purpose of the lien, payment of money owing to the creditor (in this case CTI) based on repair or storage matters. CTI is not concerned about the money it claims BD owes it. It registered the lien to protect BD's interest in the BMW from NBC's interest in its lien. That is not a proper purpose supporting a RSLA lien. Despite the registration of CTI's lien, CTI has failed to provide evidence supporting the validity of it lien claim: a written acknowledgment from BD of the indebtedness; a proper bill or invoice signed by BD; or a security agreement signed by BD. The evidence CTI did provide is an undated document signed by CTI but not by BD. Some of the items on that document are not related to RSLA matters, that is, repair or storage.

Another factor is the requirements of the RSLA. Once a creditor with a possessory lien has given up possession of the property, he can claim a non-possessory lien: RSLA s. 7(1). A non-possessory lien is enforceable only if the lien claimant has a signed acknowledgement of the indebtedness, which can be on an invoice or other statement of account (RSLA, s. 7(5)). There is no evidence of an acknowledgement of the indebtedness to CTI signed by BD in favour of CTI. This despite requests from NBC to provide such evidence prior to bringing this application, and not filing such evidence with the court after the application was brought and served.

Based on these reasons, the CTI lien is not valid, and CTI does not have entitlement to that lien. However, there remains the jurisdiction of the small claims court to make an order.

The RSLA sets out the following:

> **23** (1) Any person may apply to a court for a determination of the rights of the parties where a question arises with respect to,
>
> (d) the amount of a lien or the right of any person to a lien;
>
> and the court may make such order as it considers necessary to give effect to those rights. R.S.O. 1990, c. R.25, s. 23 (1); 2006, c. 34, s. 23 (3).
>
> (3) An application under subsection (1) to the Small Claims Court shall be in the prescribed form.

Section 23(3) clearly gives the small claims court jurisdiction with respect to the matters listed in s. 23. Those matters include the amount of a lien, or the right of any person to a lien. It is the right of CTI to a lien that is in issue here.

A problem arises from s. 97 of the *Courts of Justice Act* (CJA). That section states:

> The Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may make binding declarations of right, whether or not any consequential relief is or could be claimed.

So, is the determination of a right to a lien under s. 23(1)(d) of the RSLA by the small claims court a binding declaration of right with or without consequential relief, and therefore prohibited by s. 97 of the CJA? The answer is "no", for the following reasons.

A declaration of right, also referred to as declaratory relief, is a statement by a court as to the rights and duties between parties and does not itself grant a remedy. That earlier understanding has been modified by s. 97, which covers binding declarations of right whether consequential relief is or could be claimed. Consequential relief refers to a remedy.

A declaration of right is distinguished from declarations of fact supporting a finding of the parties' legal rights, then ordering a party to act in a certain way. In the review above of the facts in this case, I concluded that CTI was not entitled to register a non-possessory lien under the RSLA. That was because it had failed to prove that it had met the preconditions to establishing a valid lien claim. Based on that CTI has no right to its lien on the BMW. Under section 23(1), the small claims court has jurisdiction to "make such order as it considers necessary to give effect to those rights." Since CTI has no right to a lien on the BMW, the only way to give effect to those non-existent rights is to require CTI to cancel its registered lien. This also protects the interests of NBC, as the existence of the CTI lien interferes with NBC's enforcement of its lien.

An additional argument in favour of the small claims court having jurisdiction to deal with the issue in this case, despite s. 97 of the CJA, is the following. Section 64(1) of the *Legislation Act, 2006* states,

> An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects. 2006, c. 21, Sched. F, s. 64 (1).

The purpose of the small claims court is to provide an accessible forum for disputes involving smaller amounts of money. The procedure is simplified. Court documents are simplified compared to higher courts' documents. Information brochures for litigants explain the process and completion of the documents. The court is to decide in a summary manner all questions of law and fact and make "such order as is considered just and agreeable to good conscience." (CJA, s. 22).

Section 23 of the RSLA and s. 97 of the CJA are to be interpreted as remedial and given a fair, large and liberal interpretation as best ensures the attainment of its objects. Section 23(3) expressly gives the small claims court jurisdiction to deal with "the right of any person to a lien". Many, if not most, repair and storage lien claims fall within the court's current $35,000.00 monetary jurisdiction. If issues of a person's right to an RSLA lien whatever the amount claimed must, under s. 97 of the CJA, be taken to the Superior Court that impairs the attainment of the small claims court's purpose of providing an accessible forum for disputes of smaller dollar value. That supports an interpretation of s. 23(1)(d) and (3) as enacting an exception to the general rule in s. 97 of the CJA. To find otherwise would defeat the legislative intent embodied in s. 23 of the RSLA to permit lien matters under s. 23 to proceed in the small claims court, so long as the matter fell within the $35,000.00 monetary limit of this court's jurisdiction.

The outcome of this order is the following:

1. CTI did not prove that it met the preconditions to filing a lien under the RSLA. Specifically, it provided no proof that it had a written acknowledgement from BD of his indebtedness to CTI that would support the creation of a lien in favour of CTI. Some of CTI's evidence relied on matters that would not support the creation of a lien in its favour: non-repair and non-storage items; and using the lien for the purpose of protecting the interest of BD against the prior lien held by NBC.
2. CTI was not entitled to the lien it registered, so that the lien it did register is not valid and is to be cancelled.
3. If CTI does not cancel its lien on the BMW by the end of the 30 day period to appeal from this order, NBC is authorized to request the registrar under the PPSA to cancel the lien on the basis of the ruling in this order.

Paul Dusome

December 24, 2024

Paul Dusome, Deputy Judge