

**CITATION:** Royal Bank of Canada v. Trans Emerge Transport Inc., 2026 ONSC 3550  
**COURT FILE NO.:** CV-24-712328-00CL  
**DATE:** 20260625

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** ROYAL BANK OF CANADA

Applicant

**AND:**

TRANS EMERGE TRANSPORT INC.

Respondent

**BEFORE:** Justice Dunphy

**COUNSEL:** *Tim Hogan and Thomas Masterson*, for the Receiver msi Spergel Inc.

*Fraser MacKinnon Blair, Sora-Ann Wilson & Elaine Gray*, for Daimler Truck Financial Services Canada Inc.

*Patrick Dimonte*, for the Respondent Trans Emerge Transport Inc.

*Mork Klaiman*, for 3242628 Ontario HUB

**HEARD:** June 16, 2026

**REASONS FOR DECISION: RSLA CLAIMS MOTIONS**

[1] This is a motion from msi Spergel Inc., the court-appointed Receiver of Trans Emerge Transport Inc. (“TET”), and from an equipment lessor of the debtor (Daimler Truck Financial Services Canada Corporation or “Daimler”) seeking (in the case of the Receiver) approval of its Third Report and (in the case of both) declarations that the respondent 2352628 Ontario Inc. o/a “Hub Truck Centre” (“Hub”) does not have the benefit of claimed liens under the *Repair and Storage Liens Act*, RSO 1990, c R.25, (the “RSLA”) on certain trucks formerly operated by TET. The issue to be determined is whether any of the RSLA liens claimed by Hub were valid and enforceable liens at the time of the commencement of the receivership when Hub was ordered to

deliver possession of the vehicles<sup>1</sup> in question to the Receiver or at the time when Hub eventually complied with the Court's order and surrendered possession of them.

[2] For the reasons that follow, I find that both motions should succeed. While in form motions of the Receiver and Daimler to declare the absence of valid liens, the onus is nevertheless upon Hub to satisfy the Court on a balance of probabilities that any of the liens which it has claimed were valid and subsisting liens under the RSLA at the time the Receiver was appointed or at the time Hub finally complied with a second court order to surrender possession of the vehicles. I find that Hub has failed to demonstrate that its possession of the units in question was in the capacity of a repairer or storer under the RSLA. Hub has admitted that the units were frequently in and out of its yard. Since possessory liens cannot be re-established once relinquished and since there is no convincing evidence of compliance with the requirements of the RSLA for a non-possessory lien, Hub's lien claim must fail in its entirety. Hub has inflicted an enormous level of cost and delay upon the normal functioning of this receivership to pursue claims that it has utterly failed to justify. This is a proper case for substantial indemnity costs.

### **Background facts**

(i) *TET financial difficulties, the Letter of Intent and the Receivership Order*

[3] The receivership order appointing the Receiver over the assets of TET was made by this Court on January 22, 2024 following a contested hearing. The receivership order itself closely adhered to the model order and required in paragraph 4 that all persons with notice of it deliver all of the property acquired by the debtor for use in its business in that other person's possession or control to be delivered to the Receiver. The principal of Hub and its sister companies had filed an affidavit in support of the application shortly before the hearing and was certainly well aware of the initial order and the fact of a receivership having been ordered over TET.

[4] The evidence before the court indicated that TET had a fleet of 125 vehicles<sup>2</sup>, 150 drivers and specialized in heavy haul and refrigerated transportation services across North America. The applicant creditor Royal Bank of Canada ("RBC") held general security as well as lease agreements and conditional sales agreements as security for obligations amounting to approximately \$10.6 million. The evidence also indicated that TET appeared to have ceased independent operations many weeks before the hearing and transferred its fleet and operations – such as they were – to be managed by Mr. Mander or companies controlled by him in circumstances I shall describe further below.

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<sup>1</sup> There are of course many different types of "trucks" – tractors that pull trailers, trailers able to be hooked up to tractors, vans where the two are combined in a single vehicle, etc. The distinction between types of "trucks" are not material for the purposes of this motion and I shall confine myself to the vernacular for the sake of simplicity, referring to them all indifferently as either "trucks" or "units".

<sup>2</sup> Subsequent information assembled by the Receiver indicates a fleet somewhat larger than the original estimate – nothing turns on that.

[5] The RBC receivership application of January 4, 2024 did not emerge as a bolt from the blue. TET was clearly in difficult if not desperate financial straits for several months by that time. RBC had made its formal demand on October 10, 2023 after numerous events of default.

[6] On November 17, 2023 the controlling mind of TET, Mr. Binapal, entered into a letter of intent (the “LOI”) with a newly-incorporated company - 1000711945 Ontario Inc. (“1000”) acting as bare trustee to purchase all of the shares of TET for nominal consideration. RBC had deferred action while TET pursued the LOI transaction until December 29, 2023 when its counsel learned that the LOI was not going to be proceeded with.

[7] The directing mind of 1000 was Mr. Mander. Mr. Mander was also the directing mind of Hub which operated as the logistical, repair and maintenance arm of its sister company 2264236 Ontario Inc. operating as “Ameri-Can Systems” which operated a trucking company.

[8] As a trucking company, TET’s financing included a significant number of equipment lessors. RBC had registered financing statements in respect of 16 units in addition to its general security. All of these were eventually turned over to the Receiver following the events summarized below.

[9] The moving party Daimler had 58 units under lease to TET of which 38 are the subject of this motion by reason of liens claimed by Hub. Of those Daimler units, 24 were returned to the Receiver pursuant to the court orders I shall describe below, 1 remains unsold. Five others were repossessed directly by Daimler and 9 remain unaccounted for. The amount owing to Daimler by TET is over \$8 million and climbing.

[10] As against the Daimler vehicles formerly in its possession, Hub has asserted repair liens of \$432,207.60 and storage liens of a further \$947,166.00. Needless to say, these are figures emerging from Daimler’s sworn evidence – there is no detailed claim from Hub to be found. There is not a single bit of sworn evidence *from Hub* to establish that any of that amount claimed was ever subject to a valid lien of any kind in favour of Hub. Hub has confined its own evidence to sweeping generalizations commenting upon the evidence of others but without specifics. Rather extraordinarily, virtually *all* of the substantive evidence of the existence of these claims comes from the Receiver or Daimler in the form of affidavits and Receiver’s reports outlining the correspondence received from Hub or its lawyers or copies of invoices and work orders provided to them in unsworn form. I shall review the tortuous route undertaken by Daimler to get this far over the obstacle course set by Hub below.

[11] Hub has also asserted repair claims totaling \$559,906.38 in respect of units ultimately released to the Receiver and \$1,224,244 in storage charges in respect of the units delivered to the Receiver for sale and auction after the events described below. The same bizarre state of affairs applies to those claims – other than high level generalities asserted in general affidavits, Hub itself filed no actual detailed evidence to establish a single element of its claim, relying for all intents and purposes entirely upon the record assembled by the Receiver (even though the source of much of the Receiver’s documentation was documents requested from Hub in the first place).

[12] These observations are not mere form over substance. The documentation supplied by Hub to the Receiver and Daimler is seriously deficient and in some cases highly suspicious. The lack of a formally attested claim is a material lacuna.

(ii) *Receiver efforts to recover vehicles*

[13] Following the appointment of the Receiver, efforts were immediately begun to locate the assets of the debtor. The Receiver found that there were no assets of the debtor or business operations being conducted at its listed Millcreek Drive address in Mississauga and the landlord had a posted notice of termination of the lease. This was consistent with Mr. Binapal's uncontradicted affidavit that operations had effectively been transferred to Hub pending completion of the LOI. The Receiver immediately began efforts to locate the books and records of the debtor and its assets, including its fleet of trucks. Counsel for the purchaser under the LOI (i.e. 1000) was able to deliver an incomplete accounts receivable and payable listing, a list of drivers and some payroll information. In the aggregate and over the weeks that followed, the Receiver was still only able to assemble a very incomplete set of business records respecting TET.

[14] On February 5, 2024, counsel for Hub sent the Receiver a list of equipment over which a repair or storage lien was asserted for equipment in Hub's possession. That version of Hub's claim was considerably smaller than the claim now asserted. The Receiver demanded compliance with the initial order to turn over all of the property of the debtor on February 12, 2024 and confirmed that any lien claims found valid would not be disqualified by reason of having surrendered possession. In response to this the Receiver was directed to another lawyer for Hub, which counsel responded on February 16 that Hub was still in the process of verifying the trailers in its possession and that prior to returning them, the repair and storage claims under the RSLA would first have to be satisfied. The Receiver immediately replied that valid liens would be honoured but prior payment into court was not a condition of the Court's order. Further correspondence in a similar vein ensued, the upshot of which was the refusal of Hub to comply with the Court's order of January 21, 2024 except on its own terms.

[15] Further correspondence back and forth achieving no results, The Receiver was compelled to bring a motion to enforce compliance with the Initial Order. On April 4, 2024, Black J. did just that. The equipment, including the 16 listed units subject to RBC's security, was ordered to be surrendered to the Receiver without prejudice to the lien claims of Hub.

[16] The Receiver initially recovered 42 trucks from Hub and delivered these to the Ritchie Bros. ("Ritchie"), the auctioneer whom the Receiver was intending to use to conduct a sale of the recovered units. Three other units were located elsewhere. Of these released units, 25 were subject to registrations in favour of Daimler, 16 were subject to Royal Banks security, 1 to Bank of Montreal. Eight further units were later turned over to the Receiver by Hub for a total of 50 units.

[17] The Receiver and Hub continued to correspond regarding 135 other units at the Hub yard, the Receiver being handicapped by the dearth of books and records of TET. The Receiver also received claim information from 39 lessors (including Daimler) with interests in 213 units.

[18] After reviewing the claims, the Receiver issued notices to 30 creditors found to have validly perfected purchase money security interests in respect of equipment that the Receiver had not taken possession of that the Receiver released any claim to take possession of such assets. Those creditors were thereby freed to take possession of their own collateral at their own expense. The Receiver negotiated cost sharing arrangements with some of the lessors, including Daimler, to assist in efforts to recover trucks over which they had security interests and to include their trucks in the planned auction to be conducted by Ritchie.

[19] On August 12, 2025, Conway J. approved those plans and the auctions were subsequently conducted at which 33 of the units recovered from Hub were sold, 17 further units not having been sold pending resolution of technical issues regarding United States plates.

[20] The Receiver engaged in lengthy exchanges with Mr. Binapal and with the Company's accountants in what proved a futile attempt to produce any useful information about the debtor's books and records. The accountants' efforts to complete T4 slips had been stymied by records indicating payment to employees by cheque that had either not been cashed or not been honoured.

[21] On November 3, 2025, Conway J. ordered Hub to provide to the Receiver and to Daimler full particulars of its repair and storage lien claims within ten days.

(iii) *Authenticity of Hub records regarding TET "services"*

[22] The Receiver's position on this motion is that Hub was neither a "storer" nor a "repairer" of the subject units over which it was asserting lien claims. However, the Receiver needed to understand the basis of Hub's claim should that position not prevail. The Receiver requested Ritchie to perform an inspection of the vehicles which the Receiver had arranged to deliver to them for the intended auction. In that connection, Ritchie was supplied with the work orders and invoices supplied to the Receiver by Hub relating to the vehicles in question.

[23] The Receiver reported on the results of that inspection in its Third Report. The invoices supplied by Hub for work performed on the inspected units totaled \$569,906.38. In most cases, the mechanical inspection - to put it delicately - cast considerable doubt on whether the claimed work had been done at all in the majority of cases. New parts allegedly installed were simply not found in some cases. In many cases there was no sign of any work at all corresponding to the claims on the work orders or invoices. The inspection suggested that perhaps \$85,584.44 of the work detailed on the supplied invoices *may* have been performed: about 15%. That concession is not a finding that the 15% of the claimed work was actually performed as indicated. It is no more than a concession that it *may* have been.

[24] Hub took exception to the Receiver's reliance upon that Ritchie inspection report as an unsworn and inadmissible expert report. That characterization is simply inaccurate.

[25] Ritchie is of course a very large industrial auctioneer whose services are regularly used by receivers appointed by this Court. The inspections were performed by licensed mechanics. The report is not before me to be relied upon as opinion evidence. Rather, what is relevant from an evidentiary point of view is (i) that the inspection work was performed at the request of the

Receiver and in a manner reasonably satisfactory to the Receiver; (ii) the Receiver was clearly acting within the scope of this Court's appointment order in requesting the inspection; (iii) it was perfectly reasonable for the Receiver in the exercise of that authority to rely on the advice sought and received in this manner to assist in validating a claim received; and (iv) in consequence of what was learned from Ritchie, the Receiver concluded that it was entirely unsatisfied that the great majority of the claimed work had been done on a very significant number of the units contrary to the claims reflected on the documents Hub provided to the Receiver.

[26] The point here is that the Receiver is not required to establish what repairs Hub did not do, Hub is required to establish what work it did do. The work orders and invoices supplied to the Receiver – none of which were attested to in any detail by any person with actual knowledge of their contents – were Hub's to prove not the Receiver's to disprove. The Court is not asked to infer that the inspection reports are admissible or accurate. Rather, inspection reports form the foundation of the Receiver's recommendation to the Court. The onus was and remains upon Hub to prove what it did, when and on what authority.

[27] Hub has manifestly failed to discharge that onus. I have no basis to infer that any particular work recorded on any of the invoices reflects anything at all. The questions regarding the authenticity and reliability of the work orders and invoices that the Receiver has legitimately raised based on information it is perfectly entitled to rely upon remain entirely unaddressed.

[28] First, as noted, the Ritchie analysis raised serious questions as to what work if any was actually performed. That report is not evidence that the work was not done nor that the invoices are not authentic – it is however hearsay evidence that the Receiver was entitled to assess and act upon in deciding not to take Hub at its word and to urge the Court to look into the question to ensure the Court is satisfied as to the authenticity of the documents. Ritchie's report is simply a foundational element in the Receiver's recommendation and is relied upon to no greater extent than, in effect, to require Hub to prove its case with *admissible* evidence of its own. This it has utterly failed to do.

[29] Second, the receiver found 24 instances where two materially different versions of the "same" invoice had been supplied by Hub to Daimler or to the Receiver. That is light years beyond something that could reasonably be attributed to an innocent clerical error. Once may be an accident, twenty-four times appears systematic. Close inspection of the list prepared by the Receiver's counsel indicates the invoices for the same unit in the same amount bearing the same date and invoice numbers nevertheless indicated materially different quantities of parts, different services performed or different rates or prices (or all of these) purportedly for the same repairs to the same unit on the same day. The very strong inference from an inspection of the 24 "duplicate" invoices is that some or all of the invoices presented by Hub to the Receiver or Daimler were "reverse engineered" to produce a desired result and not an honest reflection of what was done and at what price.

[30] Like the thirteenth chime of a clock, these unexplained similar but different "duplicate" invoices call into grave question the accuracy and thus legitimacy of *all* of the invoices provided by Hub to the Receiver or Daimler to substantiate its claim. The lack of a sworn affidavit attesting

to the legitimacy of the great bulk<sup>3</sup> of these invoices by Hub acquires considerably more importance in light of this.

[31] All of the invoices rendered by Hub in respect of the subject units have been in the record before me for months prior to the hearing of this motion which itself was scheduled under a timetable for a very long time. They were all originally given to either the Receiver or Daimler by Hub in an effort to make its case for an enforceable lien.

[32] Hub asked for an adjournment of the hearing upon learning of the analysis of the 24 duplicate invoices performed by Receiver's counsel the morning of the hearing which I declined to grant. None of this was new *evidence*. The Receiver's counsel had done no more than examine the documents provided by Hub itself and discovered on the eve of the hearing inconsistencies *in Hub's own documents* that were hiding in plain sight. Further, Hub's counsel had adequate opportunity to consult his client to determine whether there *was* any explanation to be offered that was not already in evidence. An adjournment to see *if* there is responding evidence is not the same as an adjournment to present responding evidence the nature of which can be described but which had not been expected to be needed. At no point did counsel advise the court that there was a response in fact, the nature of the response or what would be required to present it. Mr. Mander was present in court throughout. The request for time to respond could have been repeated later in the day on the basis of new information learned. It was not.

[33] Third, the evidence of Mr. Mander's degree of control over the operations of TET during the relevant time frame described in further detail below raises legitimate concerns about the reliability and authenticity of the invoices supplied to the Receiver by Hub (and never actually attested to in any detailed or proper way). Given the degree of influence that was clearly present, the inference that Hub instructed itself to perform in the matter of whatever maintenance or repairs may actually have been performed (if any) is a reasonable one.

[34] Fourth, Mr. Mander's own affidavit evidence indicated that the TET invoices had been prepared after the fact by unnamed staff using work orders and scrawled notes on paper from the unnamed mechanics who did the work. The notes from which the invoices were allegedly prepared were subsequently destroyed and no record was kept of the name of the maker of the notes. There is no evidence that any of these invoices were actually ever delivered to TET since the address on the invoices was the former address of TET that had been closed after the LOI and it appears that few if any of the invoices were located among the very limited books and records of the company that the Receiver was able to retrieve. Further, Mr. Mander's affidavit explained that Hub's repair business was limited to performing work for its sister company before TET and the LOI. As such, he indicated that Hub "does not have a formal system for identifying work done and parts used".

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<sup>3</sup> Mr. Mander did swear an affidavit in respect of invoices covering a very small number of units in reply to specific allegations made by Daimler

Hub clearly did not routinely produce the invoices presented to the Receiver or Daimler in respect of TET trucks in the usual and ordinary course of business for Hub.

[35] As evidence of what work was done and what the value of that work may have been on the units that are the subject of these motions, the invoices are functionally valueless. It is not as if Hub has had no notice of what was required. Conway J. ordered Hub to produce full particulars of its claims to Daimler and the Receiver within 10 days on November 3, 2025. Daimler's factum that takes clear and unambiguous issue with the adequacy of the evidence presented by Hub was filed on April 17, 2026. The Receiver's factum was similarly blunt and was filed the same day.

[36] The invoices produced are clearly not ordinary course business records prepared in the usual and ordinary course. In all of the circumstances, I cannot find that any of them may be relied upon as authentic records of anything.

[37] Mr. Mander did not perform any of the repair work and has identified nobody who did. He has done no more than make sweeping statements about invoices being prepared without even confirming their amounts or the source of his information and the fact of his belief. If any of the work was performed, there is simply no evidence from Hub as to what was actually done, by whom, who authorized what was done nor any other information to substantiate the amounts recorded.

[38] The Receiver is an officer of the court. It is not the Receiver's normal function to put creditors through the third degree to verify every penny and paperclip of a claim made. The Receiver verifies claims using practical business judgment. The appointment order vests a great deal of discretion in receivers to act reasonably and a receiver's duty is to all creditors at the end of the day. Where, as here, the Receiver has reasonable grounds to suspect the *bona fides* of a claim made by one creditor after a diligent investigation, it is perfectly proper and indeed incumbent upon the Receiver to ask for sufficient additional evidence to allay those concerns failing which the claim will be rejected and an adverse recommendation can be expected to be relayed to the Court. No such evidence was forthcoming in this case and the Receiver has made its recommendation to the Court to reject the claim. It is for me to assess the claim on the evidence before me, but the Receiver does not bear the onus of proving the claim of Hub.

[39] I find that none of the invoices in evidence before me purporting to evidence work performed by Hub on any of the TET units at issue on this motion are authentic or reliable records of any such work. Hub has failed to demonstrate what work was done and under what authorization or to substantiate any of the repair claims made.

(iv) *LOI and degree of control of TET by Mr. Mander*

[40] I referred above to the question of the degree of control exercised by companies controlled by Mr. Mander over the operations of TET. I shall examine here the reasons for my conclusions which begin with the LOI.

[41] The LOI can only be described as confusing if not internally contradictory. While providing for a purchase of the *shares* of TET for a nominal purchase price of \$1.00, it also refers

to an interim loan of up to \$2 million the timing of advance and the use of which is left entirely undescribed. While a share purchase, it described the purchase as being “free and clear of all claims and encumbrance” arising from what appear to be corporate loans and contains an extensive list of included assets such as cash, customers, lease agreements etc all of which would appear to have been assets of the company whose shares were being conveyed and not anything that could be described as “included assets”. Mr. Binapal was to receive only \$1.00 for his shares but also a nebulous “consulting contract” of \$1 million but only payable at or after closing. The purchaser was described as a bare trustee who could effectively back out at any time without liability. The \$2 million working capital facility is described in the vaguest possible terms without any actual commitment but clearly described in the future tense as contrasted with Mr. Mander’s affidavit of January 19, 2024 which described it as something that *preceded* the LOI. The Closing was said to be required by 30 days post-signing of the LOI (i.e. December 17, 2023) but the LOI itself provided for termination of the LOI after 150 days unless extended. The LOI is a document full of internal inconsistencies of highly uncertain legal effect.

[42] An unusual feature of the LOI was the reference to a “Working Capital Facility”. The LOI describes the facility in terms that clearly granted a very considerable degree of control to the Purchaser over the operations of TET and not merely because of the state of financial distress of TET at the time. The facility was described in the LOI as being “approximately” \$2 million in the Purchaser’s discretion for interim working capital and provision was made for a larger facility in the discretion of the Purchaser. The Working Capital Facility was not stipulated to be available for use generally, or even subject to listed and described purposes but was to be used “solely for purposes approved by the purchaser, in writing”.

[43] Unfortunately, the record is entirely bare of any particulars of this alleged \$2 million (or \$6 million) working capital injection by Mr. Mander or one of his companies. Mr. Mander’s affidavit of February 27, 2026 - which I shall refer to below in explaining why it is essentially entirely inadmissible save and except for admissions against interest – promised to attach a breakdown of what was paid and when. Unfortunately the promised exhibit was not attached. Mr. Binapal appears to concede that some money was advanced but when it was advanced, how much preceded and how much followed the LOI, what role if any TET played in requesting any of the advances and other relevant questions remain entirely a matter of conjecture.

[44] The evidence at the hearing of the application included evidence from the principal of TET (Mr. Binapal) in an affidavit of January 17, 2024 that indicated that under the LOI, 1000 had begun operating the business of TET and in so doing had disclaimed the lease of its business premises, opened and operated accounts to collect receivables and pay payables, relocated substantially all of TET’s fleet to the Brampton premises of Hub shut down the operation of most of TET’s drivers and injected approximately \$6 million into the operating capital. Following the appointment of the Receiver, Mr. Binapal provided a further affidavit of April 1, 2024 confirming that the principal of the purchaser under the LOI, Mr. Mander, had moved TET’s fleet to his own yard and even after the announcement that the LOI would not close continued to direct Hub to perform repairs. Mr. Binapal denied that he had authorized Hub to perform any such repairs.

[45] Mr. Binapal also described the transfer of three companies owning significant real estate assets to Mr. Mander for nominal consideration as part of the LOI consideration. Mr. Mander admitted to having received the shares of the three companies holding the properties from Mr. Binapal and his wife as “investment properties” and to having paid more than \$1 million to buy 50% of the shares of one of them not owned by Mr. Binapal or his spouse, while receiving Mr. Binapal and his spouse’s shares for only \$1,00. Nominal consideration of apparently valuable properties gives rise to certain presumptions under the laws of equity which are not material to this motion but may be of interest to Mr. Binapal’s creditors. However, Mr. Mander alleged without a shred of explanation that these contemporary transactions transferring apparently valuable property from Mr. Binapal or his spouse to himself for nominal consideration were unrelated to the LOI. Mr. Mander’s statement appears on its face highly questionable, entirely unexplained and frankly ludicrous.

[46] Whether Mr. Mander received these “investment properties” as consideration for the LOI, to shield assets from Mr. Binapal’s creditors or for some other undisclosed motive does not matter. The transaction itself is a highly suspicious circumstance which raises significant questions about the degree of control over the business and affairs of TET exerted by him in the weeks prior to the appointment of the Receiver.

[47] Mr. Mander’s January 19, 2024 affidavit in support of the receivership application disputed few if any of these allegations beyond the amount of working capital injected (described as \$2 million and not \$6 million). Otherwise, his affidavit largely confined itself to explaining why the LOI transaction was not proceeded with.

[48] In the context of the present motion, Mr. Mander provided an affidavit of February 27, 2026. I shall review my reasons for ruling that this affidavit – such as it is – is admissible solely as to admissions against interest. I consider his statement therein that the value of the LOI to him was that “if we acquired their equipment, drivers and business that [TET] did still have, it would supplement and expand a logistics business that I was operating, Ameri-Can Systems” to be such a statement.

[49] The evidence on this motion strongly suggests that Mr. Mander achieved all of the objectives of the LOI he listed without the bother of actually completing it. Substantially all of TET’s fleet was found to be located in the premises of Hub. The evidence of RBC on the receivership application was that TET’s accounts had stopped revolving, offering some confirmation of Mr. Binapal’s assertion – never directly contradicted by Mr. Mander – that Mr. Mander had caused new accounts to be opened to collect receivables and make payables and is consistent with Mr. Mander’s evidence (even if devoid of particulars) that he made available more than \$2 million in working capital available as well as the terms of the LOI that subjected all uses of the working capital facility described therein to the approval of 1000.

[50] The Receiver was unable to locate anything like a complete set of books and records of TET and found its premises abandoned and in the possession of the landlord at the time of its appointment – also consistent with Mr. Binapal’s evidence.

[51] Mr. Mander's explanation of the LOI raised more questions than it answered and cast a strong pall of suspicion over the true nature of the LOI and the degree of control over TET's business and affairs exerted by Mr. Mander and his companies in the two months preceding the receivership order. His affidavits did little to contradict the specific allegations of Mr. Binapal the bulk of which are corroborated in numerous respects by very significant additional evidence including that of Mr. Mander and contradicted by little more than generalities offered by Mr. Mander.

[52] The evidence viewed as a whole is more than sufficient to permit me to find a considerable degree of operational control having been exercised by Mr. Mander and companies controlled by him over TET at the relevant times. I find that from and after no later than November 17, 2023, until the Receiver was appointed neither Mr. Mander nor any of the corporations controlled by him (including Hub and 100) were operating at arm's length from TET which itself was operating substantially under the control and direction of Mr. Mander or his companies.

[53] These findings must be placed in the context of the purpose to which they are being applied. The question before me is whether Hub – one of three relevant entities controlled by Mr. Mander – has established on the balance of probabilities that it is entitled to any of the liens that it has asserted to the Receiver or to Daimler and for which it has pressed a claim to be entitled to a priority distribution from certain realized proceeds. There is plenty of smoke as to the propriety or lack thereof of the dealings between Mr. Mander and Mr. Binapal, but this case does not require me to ascertain with certainty the existence of fire. It is enough to find, as I have, that the Hub as claimant has failed to satisfy me that it is entitled to any of the claims it has asserted as against the Receiver or Daimler. To the extent it needs saying, my findings here are in that context and for the purpose of assessing that claim and no other.

### **Issues to be decided**

[54] This motion raises the following issues to be decided:

- a. Was Hub a “repairer” in relation to the TET vehicles?
- b. Was Hub a “storer” in relation to the TET vehicles?
- c. If Hub had a possessory lien over any of the vehicles, did it lose it?
- d. Did Hub comply with the RSLA to perfect a non-possessory lien?
- e. What disposition should be made of costs?

### **Analysis**

#### ***Was Hub a “repairer”?***

[55] Under s. 1(1) of the RSLA, a “repairer” is “a person who makes a repair on the understanding that the person will be paid for the repair”. For there to be “an understanding” there

must be an agreement of some kind - whether that agreement encompasses all of the formal elements of a contract or not, it must encompass *some* of them. Even if the parties have not agreed how much will be paid for a repair, they must have agreed that a repair will be done and that payment for the repair will be made.

[56] It is axiomatic that one cannot make an agreement with oneself. The extensive degree of operational control over the operations of TET exercised by Mr. Mander and his companies over TET from and after the LOI casts considerable doubt that any “understanding” emerging in those circumstances would be capable of meeting this statutory definition.

[57] What evidence is there of an “understanding” in relation to any particular repairs?

[58] Mr. Mander’s evidence refers to no more than a verbal agreement in the vaguest possible terms:

“In or about October 2023, a verbal agreement was entered into between myself and the principal of [TET], wherein Hub agreed to repair a number of tractors and trailers...owned and/or operated by [TET]...as a consequence, [TET] units were brought to Hub for repair either a the request of [TET]’s Dispatcher and/or its drivers”.

[59] Mr. Mander has recounted the origins of the LOI in different ways at different times in different proceedings. On the eve of this hearing and long after the time for filing material under the court-ordered timetable had passed, Mr. Mander uploaded to Case Center an affidavit dated February 27, 2026 that was never served on the Receiver, arose from a different legal proceeding and referred to attached exhibits which were not attached.

[60] I do not consider that this February 27 affidavit be relied upon by Hub in this proceeding. In addition to being incompletely served, late-filed and being an obviously incomplete copy of an affidavit from a different proceeding, Mr. Mander’s evidence in the affidavit clearly contains significant information from unnamed and unidentified sources related without neither attribution nor an attestation of belief. Agreements are alleged but without any of their relevant terms being described.

[61] Admissions against interest, however, are always admissible and aspects of this incomplete affidavit can be so-described. Mr. Mander described the TET fleet as entering and leaving the yard on a daily basis. That admission on its face precludes a possessory lien being claimed and is discussed further below.

[62] Mr. Binapal’s affidavit of April 1, 2024 alleged that Mr. Mander had taken “possession of all of the trucks and trailers and closed the yard” of TET “in anticipation of specific performance of the” LOI and specifically that “Mr. Mander was directing” Hub to do repairs on the units that he was commenting upon in that affidavit (apparently the RBC secured units).

[63] Mr. Mander’s evidence taken at its highest does not satisfy the requirement for “an understanding” that there would be payment following. It does not provide any evidence of the duration of the understanding, particularly in light of the LOI then being negotiated which

contemplated only nominal consideration and Mr. Mander's expressed hope that it would enable his own companies to expand their business through the LOI. It provides no indication of which vehicles were the subject of that alleged oral agreement and for what period of time or whether there was any expectation of payment for the repairs themselves as opposed to an expectation of absorbing the entire business of TET (for which there *is* evidence).

[64] Hub also produced affidavit evidence from five former TET employees who were subsequently employed by Hub or one of its sister companies. Some of these attribute instructions to bring repairs to Hub to the Dispatcher of TET are unable to explain who so instructed the Dispatcher – a lacuna that is of some significance given the evidence of Mr. Binapal that Mr. Mander and his companies were actually directing operations.

[65] There is evidence of work orders – as far as can be told each of the invoices appears to have a matching “work order”. The work order contains scrawled details that may or may not conform to some or all of the work performed on a particular unit. There is no evidence from the person who prepared the work order as to the circumstance in which it was prepared or the understanding if any governing the relationship. In most cases there is something that I am assured is the signature of a driver on the face of the work order. In some cases, the “signature” is printed. In others it is illegible. In none of them is the driver identified nor is the mechanic who apparently prepared the work order. There is no sworn evidence to establish any of these basic facts from which the admissibility of evidence might be established. In short, the work orders are simply pieces of paper that may or may not be evidence of anything. They are certainly not admissible as is as evidence of what was done, at whose instructions and under what arrangement if any.

[66] In many cases, ordinary course business records such as work orders would be readily conceded by both sides as admissible business records. This is not such a case since none of the evidentiary prerequisites for admitting business records of this sort are satisfied.

[67] It is Hub's burden to prove that is qualified as a “repairer”, to discharge that burden for each and every repair for which it claims a lien and to do so with clarity: *National Bank of Canada v. CJC Bottling Ltd.*, 2006 CanLII 13774 (ON SC) at para. 16. Hub has entirely failed to discharge that basic burden of proof.

[68] I cannot find that Hub acted as a “repairer” with an operative “understanding” that it would be paid for any alleged repairs on any of the subject trucks. While that finding is sufficient to dispose of all of the claims for a repairer's lien at issue on this motion, it must be added that Hub has *also* failed to establish what repairs were *actually* performed. There being no evidence whatsoever of any agreement as to the price to be charged for repairs, the only amount for which a lien might be alleged to arise is the “the fair value of the repair, determined in accordance with any applicable regulation” in accordance with s. 3(1) of the RSLA. The record does not equip me with any admissible evidence to establish fair value either since the essential elements of what work was done and what understanding governed the performance of that work is missing.

[69] I find that Hub was not a “repairer” as defined by the RSLA. It follows that Hub can assert no lien under s. 3 of the RSLA.

***Was Hub a “storer”?***

[70] Under s. 1(1) of the RSLA, a “storer” is “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”.

[71] The reasons above in relation to the existence of an “understanding that the person will be paid” apply to the question of whether Hub had an “understanding” to store any vehicles. The oral agreement Mr. Mander referred to in relation to repairs made no mention of storage. His inadmissible affidavit of February 27, 2026 makes only the most sweeping of statements on this subject entirely lacking any particulars.

[72] The mention of storage charges in “boilerplate” provisions printed on the invoices is probative of nothing at all. There is no evidence that any of the invoices were ever delivered to TET still less that there was ever any kind of understanding regarding payment for storage. From and after January 22, 2024, all of the subject trucks had been ordered to be handed over to the Receiver and Hub cannot claim a lien for storage charges incurred while it defied a court order.

[73] Hub was not a storer and has established no basis for a claim to any storage lien.

***If Hub had a possessory lien, did it lose it?***

[74] Mr. Mander admitted in an affidavit from a different proceeding dated February 27, 2026 filed by Hub on this motion that the TET units were constantly moving out of the yard or returning to it. Based on that clear admission, I cannot conclude that Hub had continuous possession of any unit over which it has asserted a repair or a storage lien. Hub has produced no records establishing the comings and goings of any of the subject units. Indeed, there is no evidence that Hub ever kept any such records – for its own fleet or that of TET.

[75] Since a possessory lien cannot be re-asserted once possession is lost, it stands to reason that if a possessory lien had ever arisen in respect of any truck (and I have found that this did not occur), then the possessory lien would have been lost when the unit first left the yard at any point after the repair work alleged was completed.

[76] Mr. Mander’s admission leads to the conclusion that this was very likely the case with all of the TET units at some point. Hub has led no evidence to establish continuous possession of any of the units.

***Did Hub comply with the RSLA to perfect a non-possessory lien?***

[77] The RSLA provides in s. 7(5) that a “non-possessory lien is enforceable only if the lien claimant obtains a signed acknowledgment of the indebtedness which acknowledgment may be on an invoice or other statement of account”. The work orders are the only document capable of beginning to meet that requirement. The difficulties in trying to shoe-horn those documents into the kind of acknowledgement needed to establish a non-possessory lien under s. 7(5) are legion including:

- a. There is no evidence of who any of the signatories was, the authenticity of the signatures or whether any of the alleged signatures are in fact signatures of anyone actually or even apparently authorized to do so on behalf of TET.
- b. At their highest, the signatures on a random portion of a work order cannot be construed as any acknowledgement of any actual claim of indebtedness.

[78] In light of my prior findings, it appears superfluous to exclude the existence of a non-possessory lien but there can be no doubt that the requirements for such a lien are not made out here and I so find.

### ***Costs***

[79] Hub has inflicted a huge amount of distraction and cost into this already challenging receivership process. Hub defied the Court's initial order requiring a further application to be brought to compel delivery to the Receiver of TET vehicles being held without authority. Hub failed to comply with timetables for the preparation of this motion for a hearing. Hub's actions have accomplished little more than to contribute to increased costs. Hub has barely lifted a finger to establish the *bona fides* of any of the very substantial claims it has advanced. It has utterly failed to discharge any elements of the burden of proof it faced while knowing for a very long time the position that Daimler and the Receiver would be taking on this hearing. I am satisfied that, viewed as a whole, substantial indemnity costs ought appropriately to be imposed in this case and in favour of both moving parties.

[80] Daimler came with an Outline of Costs to court as did the Receiver. Hub did not.

[81] The Receiver's costs outline is straightforward. The Receiver claims \$46,204.47 inclusive of HST for its costs of the motion on a substantial indemnity basis. Hub's counsel had no particular comment about the amount of this claim which was within a small gap of the estimate I asked Hub's own counsel to give me of Hub's costs calculated on the same basis. I find the Receiver's claim to be reasonable in all the circumstances and am therefore awarding the Receiver its costs fixed at \$46,204.47 all inclusive.

[82] Daimler's costs outline was orders of magnitude higher: \$264,701.35 all inclusive.

[83] Some of this is explainable by the division of labour between the two moving parties who were working in tandem cooperatively. Daimler and its counsel clearly bore the lion's share of the organization side of these two motions. The record - and it was a voluminous one comprising five volumes and thousands of pages from Daimler alone - was compiled primarily by Daimler. Daimler also produced the Compendium relied upon by all of the parties at the hearing. In fact, Hub relied primarily upon the materials filed by Daimler to establish its claim to the extent that it did so. The same can be said of the legal arguments. The bulk of the legal research deployed (and, while I don't typically refer to large numbers of cited cases, most of them were read in this case and the reasoning in them is reflected in my own reasons) was from Daimler.

[84] This was a complex case not least because Hub's diligence in establishing its own claim was almost entirely lacking. After having refused to follow the Court's initial order and required a motion to compel it to do so on April 4, 2024, Hub had to be ordered by Conway J. to produce full particulars of its claim 18 months later in November 2025 rather than the salami-style production it had been employing to dribble in documents and cause its opponents to jump through an obstacle course instead of a prepared record. A motion timetable established long in advance was treated by Hub as more of a guideline and it did not produce a factum (along with an incomplete and unserved affidavit from a different proceeding) until almost the eve of the hearing. The "duplicate" invoices issue discussed above arose because Hub produced one set of invoices to Daimler (17 of the 24 "duplicate" invoices were in respect of Daimler units) but both sets to the Receiver who eventually noticed the problem. I have found that the Hub evidentiary record was so utterly lacking as to be incapable of supporting a claim. The successful arguments in this case were made early and often by both moving parties but led to no narrowing of the issues still less abandonment of extravagant claims. The storage claim was perhaps the most egregious because the random, entirely unsupported \$200 per unit per day rate was clearly unsupported by even the barest glimmer of legitimacy, never having been raised with the debtor as far as the record reveals and appearing only in the fine print of invoices that there is no evidence the debtor ever saw.

[85] While the aggregate figure is a high one, it is not out of proportion to the amounts at issue and the conduct of Hub which did much to increase costs as outlined above.

[86] I am also aware that Daimler has been subject to claims of Hub litigated in other jurisdictions. While costs of those proceedings are neither before me nor mine to allocate, I do observe that costs awards made elsewhere have not been paid by Hub which is a factor among others bearing upon my overall assessment of the conduct of Hub *vis à vis* Daimler and the scale of costs that may properly be awarded.

[87] In the circumstances, I am awarding Daimler the amount of substantial indemnity costs as claimed - \$264,701.35 all inclusive.

### **Disposition**

[88] Accordingly, I order and declare as follows:

- a. The Third Report of the Receiver (including the Supplement to the Third Report dated April 27, 2026) and the activities of the Receiver reported upon therein are hereby approved provided that only the Receiver in its personal capacity with respect to its personal liability shall be entitled to rely upon such approval;
- b. In relation to all of the "Property" of TET as defined in the initial Receivership Order of January 22, 2024:
  - i. Hub is not and was not at any relevant time a "repairer" or "storer" of any such Property as defined in the RSLA;

- ii. Hub has failed to establish that it had continual possession of any such Property from the time it first came into possession of it;
  - iii. Hub has failed to establish any acknowledgement of debt in respect of any such Property; and
  - iv. Hub neither has nor had as at the date of the appointment of the Receiver any liens under the RSLA of any kind in relation to the Property as so defined, all liens claimed by Hub in respect of such Property being hereby declared to be invalid and unenforceable.
- c. For greater certainty, the declaration in (b) above applies to all of Property of TET subject to security interests of the moving party Daimler including the “Daimler Vehicles” as defined in the Fresh as Amended Notice of Motion of Daimler and all of the Property ordered to be delivered to the Receiver pursuant to the Order of Black J. of April 4, 2024 herein.
  - d. The Receiver is entitled to substantial indemnity costs of this motion which are fixed at \$46,204.47 payable by Hub within thirty days of this order.
  - e. Daimler is entitled to substantial indemnity costs of this motion in the amount of \$264,701.35 payable by Hub within thirty days of this order.
  - f. In the event costs are not paid by Hub to either or both of the Receiver and Daimler within the time prescribed, I shall, if requested to do so by either Daimler or the Receiver, schedule a hearing to consider whether any related party ought to bear joint responsibility for paying them in the circumstances of this case.

[89] If the parties are unable to agree on the form of the order to be issued, they shall each forward a Word copy of a draft order to my assistant along with a maximum of two pages of explanation of the reason for any disagreement among them and I shall settle and issue the form of order myself. Daimler and the Receiver shall forward their draft of the formal order and any explanatory comments not exceeding three pages by July 17, 2026 to my assistant and Hub shall forward its own draft and explanatory comments by July 31, 2026. In that event, I will finalize the order as soon as possible thereafter.



Digitally signed by  
Sean Dunphy  
Date: 2026.06.25  
17:21:33 -04'00'

Justice Dunphy

**Date:** June 25, 2026