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Docket: CI 26-01-55706
(Winnipeg Centre)
Indexed as: ATB Financial v. Proud Transport Ltd
Cited as: 2026 MBKB 149

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

ATB FINANCIAL,	)	Richard Schwartz
plaintiff,	)	for the plaintiff
- and -	)	
	)	
PROUD TRANSPORT LTD,	)	Harvinder Sandhu and Jaswant Sandhu
defendant.	)	self-represented
	)	
	)	Judgment Delivered:
	)	October 28, 2026

McCarthy J.

INTRODUCTION

[1] On December 15, 2023, ATB Financial (the Plaintiff) and Light Speed Logistics Inc (Light Speed) entered into an equipment loan and security agreement as security for a loan advanced by the Plaintiff to enable Light Speed to purchase a fleet of utility trailers.

[2] The description and serial numbers of the specific trailers comprising collateral for the loan were listed and attached as a Schedule to the security agreement.

[3] The Plaintiff's security interest was then registered in the Personal Property Security Registry (PPSR) pursuant to the provisions of ***The Personal Property Security Act***, C.C.S.M. c. P35 (***PPSA***).

[4] At some point after the trailers were purchased, Light Speed began to utilize the services of Proud Transport Ltd (the Defendant) for the purposes of storage and maintenance of the trailers.

[5] On August 1, 2025, Light Speed entered into a Partner Carrier Service Agreement (CSA) with the Defendant, with respect to the storage and maintenance services the Defendant was providing.

[6] On December 5, 2025, Light Speed was placed into receivership by one of its creditors.

[7] The evidence suggests that the Plaintiff was not aware of the location of the trailers in which they held a security interest, or the existence or terms of the CSA between Light Speed and the Defendant until after the receivership when they engaged a company to locate and repossess the trailers on their behalf.

[8] Three of the trailers included on Schedule A to the security agreement between the Plaintiff and Light Speed were subsequently located in the possession of the Defendant. Initially, with the knowledge of the Receiver for Light Speed, the Plaintiff attempted to have the trailers in which they held a security interest seized from the Defendant. That seizure was opposed by the Defendant and at that point the Plaintiff obtained a Court Order on February 24, 2026 allowing the trailers to be seized and sold and security in the minimum amount of $151,000 to be held in trust by counsel for the plaintiff pending determination of whose interest had priority to the proceeds. The Order was granted without prejudice to determination of the priority rights of the Plaintiff and the Defendant to the trailers or the proceeds of their sale.

[9] The Court is advised that following the sale of the trailers the sum of $151,000 was paid into and remains in trust at Tapper Cuddy LLP as counsel for the Plaintiff. The

purpose of this hearing is to determine the interests of the plaintiff and defendant herein with respect to distribution of the proceeds currently held in trust.

[10] It was the Defendant's position that it holds a valid priority lien over the trailers pursuant to:

1. the CSA with Light Speed;
2. a possessory lien at common law;
3. ***The Warehousemen's Liens Act***, R.S.M. 1987, c. W20 (***WLA***) for storage charges; and
4. ***The Garage Keepers Act***, C.C.S.M. c. G10 (***GKA***) for repairs and maintenance.

[11] On the motion before the Court, the Plaintiff initially argued that it had a perfected security interest by virtue of registration of its security agreement with Light Speed, which takes priority over any interest of the Defendant in the trailers. However, at the outset of the contested hearing the Plaintiff conceded that the Defendant's claim, to the extent that it relates to repairs and maintenance of the three trailers, has priority to the Plaintiff's security interest by virtue of the ***GKA***.

[12] In all other respects, the Plaintiff maintained that it had the first charge against the trailers. It argued that the Defendant had failed to provide any evidence that it also held a perfected security interest which would take priority to the Plaintiff's interest under section 35 of the ***PPSA***.

[13] With respect to any carrier's lien, or any other rights that the Defendant may have arising out of the CSA, the Plaintiff argued that any lien arising out of a consensual agreement between the Defendant and Light Speed for the purpose of securing present and future indebtedness falls squarely within the definition of a security interest under

section 3, and is governed by the priority regime under section 35, of the ***PPSA***. On that basis, they argued that any rights arising out of the CSA stand behind the Plaintiff's registered security interest.

[14] Applying the principles set out by the Alberta Court of Queen's Bench (as it then was) in ***Cansearch Resources Ltd v. Regent Resources Ltd (Receiver of)***, 2017 ABQB 535, the Plaintiff argued that contractual liens, such as those created by the CSA in this case, are subject to the general priority regime set out in section 35 of the ***PPSA*** and are governed by the "first in time" rule. It is the Plaintiff's position that section 32 of the ***PPSA***, which provides for certain types of liens to have priority over perfected security interests, does not apply to consensual contractual liens such as those set out in the CSA. As such, it is the Plaintiff's position that the security agreement registered by the Plaintiff, having been registered and perfected first, maintains priority over any security interest arising out of the CSA with respect to the trailers.

[15] The Defendant, on the other hand, argued that their claim is not based solely on the existence of a contractual lien. They argued that the Defendant also has valid possessory, statutory and/or service-based lien rights which must be considered, and if established to the satisfaction of the Court, would take priority.

[16] The Defendant argued that in ***Royal Bank of Canada v. JI Case Canada Inc***, [1983] M.J. No. 439 (MBQB); [1983] M.J. No. 77 (MBCA), the Manitoba Court of Queen's Bench (as it then was) and the Court of Appeal found that a statutory lien under a specialized Manitoba regime could stand outside the usual ***PPSA*** priority structure. It was their position that in the event that any such lien can be established, it would take priority under section 32 of the ***PPSA***, rather than based upon the "first in time" rule set out in section 35.

[17] The Defendant argued that the terms of the CSA must not be considered in isolation but rather in conjunction with other lien rights which are reflected in the CSA, but which exist independently.

[18] With respect to the Defendant's lien claims first it argued that they maintained continuous possession of the trailers while furnishing ongoing commercial services in relation to them for which they had not been paid. It was their position that the situation gives rise to possessory lien rights. It asserts that the provisions of the ***WLA*** support its position that detention, storage, preservation, and related charges, can create a lien.

[19] The Defendant's evidence was that the services it provided went well beyond passive storage services. A representative for the Defendant deposed that the services provided included yard management, reefer temperature monitoring and fuel management, repair related coordination, staffing, labour and other operational functions carried out while the trailers were in its possession. The Defendant argued that these services were more extensive and should be distinguished from those provided in ***Agricredit Acceptance Canada Ltd v. Muskowekan Band***, 2001 SKQB 428, where the Court held that warehousing or storage alone did not give rise to a lien.

[20] Similarly, the Defendant argued that pursuant to the ***GKA*** and the decision in ***Continental Bank of Canada v. Henry Mogensen Transport Ltd***, [1984] A.J. No. 2583 (ABQB), a repairer or garage keeper who retains possession of the vehicle or equipment may have a claim that takes priority over a secured creditor.

[21] The Defendant also urged the Court to read the CSA in combination with its common law and statutory possessory rights to find that <u>all</u> indebtedness owed to the Defendant by Light Speed is secured in priority to the Plaintiff's claim. They argued that in all of the circumstances, the CSA in this case should not be treated as a consensual

contract for the purposes of the application of the ***PPSA***, but rather as a document confirming, preserving and broadening the Defendant's otherwise existing lien rights.

ANALYSIS

[22] By way of a general overview, creditors are permitted to register any security interest which meets the criteria in section 3 of the ***PPSA*** and such registered security interest then has priority as set out in section 35 of that Act. The legislative scheme is intended to give notice to potential creditors of other secured interests in assets of a debtor, and to give priority to prior registered security holders in the event of a debtor entering into subsequent, or conflicting, security agreements, or pledging the same collateral to different creditors. The ***PPSA*** does, however, provide for some very limited circumstances where subsequent creditors may have a claim that takes priority over a prior security interest. For instance, section 32 of the ***PPSA*** gives priority over perfected security interests to possessory liens arising with respect to goods in the possession of a creditor, and for which it has provided materials and/or services, unless the lien results from an Act that expressly states that the lien does not have priority.

[23] In this case I am satisfied that the Plaintiff has a perfected security interest by virtue of registration of its security agreement which included itemized and specifically identified collateral. That security interest was perfected in 2023 and generally has priority pursuant to section 35 of the ***PPSA*** over subsequently registered and unregistered security interests and creditors.

[24] Subject to the Defendant establishing any possessory lien right which takes priority under section 32 the Plaintiff's security interest would be the first charge against the trailer sale proceeds.

Does the CSA Give the Defendant Priority Over the Plaintiff's Security Interest?

[25] The starting point for deciding whether the CSA gives the Defendant's interest in the trailers priority over the Plaintiff's interest is to determine whether the CSA is a consensual contractual arrangement as argued by the Plaintiff, or a document which simply reflects already existing possessory lien rights as argued by the Defendant.

[26] With respect to this determination, I am not persuaded by the Defendant's argument that the CSA is not a consensual contract for the purposes of application of the ***PPSA***.

[27] The CSA in this case grants the Defendant a general and continuing possessory carrier's lien on all equipment, cargo and other property of Light Speed to secure all present and future amounts owing or to become owing by Light Speed to the Defendant. In my view the CSA is a consensual contract intended to pledge the same collateral to secure existing and future debt that had previously been pledged as collateral to the Plaintiff. This was done by agreement between the Defendant and Light Speed, and without the knowledge or agreement of the Plaintiff.

[28] In addition, the Defendant seeks to rely upon terms of the CSA which go well beyond any recognized possessory or statutory lien rights. For instance, the Defendant is seeking to collect default storage fees in an amount agreed upon between Light Speed and the Defendant in the CSA, but which do not arise out of any common law or statutory lien right independent of that agreement.

[29] This situation is very similar to that in ***Cansearch Resources*** where the Court found that an operator's lien, which arose out of an operating agreement and intended to secure potential future indebtedness, created a security interest for the purposes of

the ***PPSA***. The Court ruled that the lien in that case, having been found to arise from a consensual agreement between the parties, was governed by section 35 and was not afforded priority under section 32.

[30] I therefore find that the terms of the CSA are consensual and contractual in nature and as such create a security interest which is subject to the general priority regime set out in section 35 of the ***PPSA*** and do not have priority under section 32 by virtue of the CSA.

[31] I will go on to consider whether any possessory liens have been established independent of the CSA, which take priority over the Plaintiff's security interest.

Do the Facts Give Rise to a Common Law Possessory Lien?

[32] The Defendant argued that the facts in this case give rise to the existence of a possessory lien at common law on the basis that the Defendant maintained continuous possession of the trailers while furnishing ongoing commercial services in relation to them.

[33] The Plaintiff on the other hand, argued that common law possessory liens are limited in scope and arise only where an artisan or similar party bestows skill, labour, materials, or money upon a chattel thereby enhancing the value.

[34] As stated by the Saskatchewan Court of Queen's Bench in ***Agricredit*** at paragraph 29, "a distinction exists at common law between a person providing skill, labour, money or materials to a chattel and a person providing the services of warehousing or storage. The former were recognized to have a common law possessory right of lien while the latter have not".

[35] The Defendant argued that the services provided in this case were more extensive and should be distinguished from those provided in ***Agricredit***. The Plaintiff disagreed.

[36] With respect to this issue, I am of the view that while there were some services provided in the form of maintenance and repair to the trailers, the other services provided were comprised largely of storage services which did not enhance the value of the trailers. This situation is similar to that in ***Agricredit*** where the Court declined to find the existence of a lien for storage of equipment over a period of two years in a heated facility.

[37] I do not find that the nature of the services provided in this case gave rise to a possessory lien at common law, except to the extent that they encompassed services covered by the ***GKA*** as set out below.

The Garage Keepers Act

[38] As indicated above there were some services provided by the Defendant in the form of maintenance and repair which would meet the test for both a common law possessory lien as defined above, and a lien under the ***GKA***.

[39] This conclusion was conceded by the Plaintiff at the hearing. The Plaintiff also conceded that pursuant to section 3 of the ***GKA,*** and section 32 of the ***PPSA***, a lien for unpaid repair and maintenance services is expressly granted priority over the Plaintiff's secured position with respect to the trailers.

[40] I am satisfied on the evidence before the Court that the invoiced amounts for repair and maintenance services related to the trailers remains unpaid in the amount of $16,235. That sum is therefore payable to the Defendant out of the funds currently held in trust by the Plaintiff's counsel.

The Warehousemen's Liens Act

[41] In addition to its claim for a possessory lien at common law, the Defendant also argued that the commercial services it provided with respect to storing, servicing and

maintaining the trailers created a possessory lien under the ***WLA***, which has priority over the Plaintiff's security pursuant to section 32 of the ***PPSA***.

[42] It was the Plaintiff's position that, because the ***WLA*** does not expressly state that a lien created by virtue of that Act takes priority over a prior security interest, any lien arising under the ***WLA*** in this case falls under the priority regime in section 35 of the ***PPSA***, and is subordinate to the Plaintiff's perfected security interest.

[43] With respect to those arguments, the ***WLA*** states at section 2 that "every warehouseman has a lien on goods deposited with him for storage". Section 4 sets out an additional requirement in the event that the goods were not deposited by the owner or by his authority, that the owner of the goods and any secured party with a valid registration under the ***PPSA*** must be given notice of the lien. Failure to provide notice in that specific circumstance renders the lien void.

[44] In this case, the section 4 proviso does not apply because the trailers were deposited with the Defendant by Light Speed, who was the owner of the goods.

[45] There is an additional requirement for notice to secured creditors under section 5(2), but only in the event that the warehouseman or bailee is seeking to sell the chattels. That does not apply here.

[46] On my reading of the ***WLA***, while a secured creditor may be entitled to notice in the limited circumstances as set out above, none of the provisions expressly or even impliedly give priority to a claim by a secured creditor over the lien of the warehouseman created by the Act. The ***WLA*** not only recognizes the existence of a lien, but allows for the warehouseman to sell the chattels, pay itself all lawful fees and reasonable expenses to which it is entitled, and then pay out any surplus to any person entitled to same. The scheme of the ***WLA*** is such that it creates a statutory priority in favour of anyone

providing storage services and retaining possession of property for which payment for services has not been made.

[47] This interpretation of the ***WLA*** is consistent with section 32 of the ***PPSA***, which gives priority to any possessory lien as follows:

> Where a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to a security interest, any lien the person has in respect of such materials or services has priority over a perfected or unperfected security interest unless the lien is given by an Act that provides that the lien does not have such priority.

[48] That provision recognizes the priority given under the ***WLA*** and the ***GKA*** to any party who is in possession of chattels and furnishes materials or services in the ordinary course of business. Any such lien is recognized as having priority over a perfected security interest *unless* the Act under which the lien arises expressly says that it does not have priority. In this case the ***WLA*** does not say that the lien recognized by that Act does not have priority.

[49] The Plaintiff argued that a lien created under the ***WLA*** does not have priority in this case because priority is not expressly given under the ***WLA*** like it is under the ***GKA***. However, section 32 of the ***PPSA*** is clear that any possessory lien has priority over all other security interests unless the Act creating the lien says it does not. On that basis, I find that the Defendant has a lien pursuant to the ***WLA*** which has priority over the Plaintiff's security interest.

[50] In addition to creating a lien in favour of warehousemen or bailees for hire, the ***WLA*** also sets out what amounts are secured by the lien. Section 3 of the ***WLA*** states that:

> The lien is for the amount of the warehouseman's charges, that is to say,
>
> (a) all lawful charges for storage and preservation of goods; and

> (b) all lawful claims for money advanced, interest, insurance, transportation, labour, weighing, coopering, and other expenses in relation to the goods; and
>
> (c) all reasonable charges for any notice required to be given under this Act, and for notice and advertisement of sale, and for sale of the goods where default is made in satisfying the warehouseman's lien.

[51] As I noted earlier, the scheme of this Act is such that a warehouseman can exercise its lien and sell the goods and is entitled to amounts due to it in exchange for its services as a first charge against the chattels. However, the word "lawful" in sections 3(a) and (b) with respect to the charges and claims makes it clear that there must be a lawful basis for the amount received. The services for which the warehouseman is receiving payment would have already been provided, or expenses already incurred, and likely in most cases already invoiced and known to the owner of the chattels. The expectation is that the amounts must reflect what would normally be charged for the services provided, or be reimbursement for the actual expenses incurred in providing the services. This requirement is important because the Act gives such broad power to a storage facility to lien and sell assets without any court approval in advance.

[52] In this case, the Defendant is seeking reimbursement for the cost of maintenance and repairs as invoiced, and also for the daily storage fee of $250 pursuant to the default provisions in clause 6.4 of the CSA.

[53] The Plaintiff agreed with the repair and maintenance amounts sought, but argued that the daily storage fee was excessive and entirely unreasonable. It took the position that such a rate is well beyond an allowable regulatory rate, however, the regulation being relied upon was not specified or provided to the Court.

[54] In light of my earlier ruling that the Defendant's rights under the CSA do not have priority over the Plaintiff's security interest in the trailers, I am not prepared to award the

amount sought by the Defendant on the basis of the terms of the CSA. Without relying upon the terms of the contract there is no evidence to suggest that a daily rate of $250 is a lawful amount or consistent with what Light Speed would have been charged for the services provided.

[55] The only other evidence on this issue is the Plaintiff's submission that $17.87 plus GST per day is a regulatory maximum. However, no statutory basis was provided in support of that position. The Plaintiff also indicated during its submission that the Defendant had previously been charging $12,000 per month for storage of up to 12 trailers. That evidence was not disputed by the Defendant, but such evidence is not included in the affidavit materials before the Court.

[56] In my view, the evidence on this issue is insufficient to allow me to set the storage rate to which the Defendant should be entitled. Therefore, unless the parties are able to agree upon the expenses actually incurred for the storage of the three trailers, or what constitutes a lawful amount for those services, additional evidence will be required on that point.

[57] With respect to the Defendant's argument that it has a possessory lien which secures all amounts owing to it by Light Speed, in my view the specific security interests recognized and liens created by the ***GKA*** and ***WLA*** only form a charge against specific chattels with respect to services provided in relation to those chattels.

[58] While I accept that the CSA could be read to provide a broader security interest in the assets of Light Speed, I have found that the CSA does not give the Defendant's interest priority over that of the Plaintiff. Therefore, any claim under the CSA is subordinate to the Plaintiff's interest in the proceeds from the trailer sale.

CONCLUSION

[59] The Plaintiff is entitled to the balance of the sale proceeds after the Defendant has received $16,235 for repairs and maintenance of the trailers while in its possession, plus storage costs related to the three trailers for the time they were in possession of the Defendant between November 16 and 17, 2025; and between November 23 and December 18, 2025.

[60] As such, the $151,000 currently held in trust by the Plaintiff's lawyers shall be distributed as follows:

(a) $16,235 to Proud Transport for repairs and maintenance;

(b) an amount equivalent to all lawful fees and expenses as set out in sections 3(a) and (b) of the ***WLA***, and related to the three trailers which are the subject of this motion, to Proud Transport. If those amounts cannot be agreed upon this matter should be set back before me for a further hearing, and additional affidavit evidence and briefs must be filed no later than two weeks in advance of the hearing date; and

(c) the balance of the $151,000 payable to ATB Financial.

[61] Any interest accrued on the funds shall be divided between ATB Financial and Proud Transport on a basis prorated to each parties' share of the trust funds as set out above.

[62] The issue of costs is adjourned and may be spoken to if the parties are unable to resolve same.

Original signed by Justice McCarthy

McCarthy J.