

## Owner's Assertion of a Lien over Property in Possession in Defence of Multiple Acts of Trespass with Conversion

### APPLICABLE LAW

### Halsbury's Laws of England Volume 4 on the Nature of Legal Lien

The concept of lien is in the simple sense of a legal right to keep possession of property until a claim has been met and has been extended to cover a number of analogous rights. Liens are now variously described as legal, non-possessory, equitable, general, particular, statutory, contractual, judicial and subrogatory. Some of these may exist concurrently.

A lien arising by operation of law or equity and not contractual in its nature does not seem to fall within the definition of 'security' in the Consumer Credit Act 1974 but is included for the purposes of the Insolvency Act 1986.

**Legal Lien.** In its primary or legal sense 'lien' means a right at common law for a man to retain that which is rightfully and continuously in his possession belonging to another until the present and accrued claims of the person in possession are satisfied, but this is given by law and not by contract.

**Non-possessory Lien.** In its secondary sense, 'lien' may be applied to a right subsisting in a person who has no possession of the property concerned but who nevertheless has a right against the owner analogous to a legal lien. Such a **right may arise in equity, by statute or under a court order.** Thus, a trustee has an equitable lien on the estate or fund for money properly expensed on it and a solicitor, in addition to his legal lien on the client's documents in his possession, has a statutory lien right to ask the court to direct that property recovered is to stand security for his costs.

**A legal lien in its true sense arises by operation of law**, whereas a mortgage is contractual in origin.

A legal lien is a right of defence to an action in respect of the chattel, an action in conversion, brought by the owner to recover the chattel, and is not a right of action in itself *Tappenden (t/a English and American Autos) v Artus* [1964] 2 QB 185 at 194-195, [1963 3 All ER 213 at 215-216, CA, per Diplock LJ, **holding further that lien is a self-help remedy**, triggered by the performance of work which improves a chattel of which the performer has lawful possession, and does not depend on any implied contractual term. But a lien, depending necessarily on possession of the subject chattel, normally **entitles the holder to sue any third party who commits a wrong** (such as trespass or conversion) against the chattel during the period of that possession: *The Winkfield* [1902] P 42, CA. See also para 745 text and note 2 post; and BAILMENT vol 2 (Reissue) para 1889.

### Bouvier's Maxims of Law

***Contra veritatem lex numquam aliquid permittit.*** The law never suffers anything contrary to truth. 2 Co. Inst. 252. But sometimes it allows a conclusive presumption in opposition to truth. See 3 Bouv. Inst. n. 3061.

***Contractus ex turpi causa, vel contra bonos mores nullus est.*** A contract founded on a base and unlawful consideration, or against good morals, is null. Hob. 167; Dig. 2, 14, 27, 4.

***Culpa lata aequiparatur dolo.*** A concealed fault is equal to a deceit.

***Ei incumbit probatio qui dicit, non qui negat.*** The burden of the proof lies upon him who affirms, not he who denies. Dig. 22, 3, 2; Tait on Ev. 1; 1 Phil. Ev. 194; 1 Greenl. Ev. Sec. 74; 3 Louis. R. 83; 2 Dan. Pr. 408; 4 Bouv Inst. n. 4411.

***Ex facto jus oritur.*** Law arises out of fact; that is, its application must be to facts. The affidavit procedure within the Lien process provides various opportunities for the defendant to rebut the claims and obtain lawful remedy.

**Notice of Conditional Acceptance:** This is a 3-notice lawful Discovery Process which affords the defendant multiple opportunities to negate the claims made against them by the Lien claimant and terminate any further process.

**The Lien Process:** This is a 5-notice lawful Process which includes two lawfully notarised affidavits setting out the claims or the Lien claimant. It affords further opportunities for the defendant to submit evidence, in lawfully notarised affidavits, by way of rebuttal point for point, the allegations made in the claimant's affidavit. A successful rebuttal by affidavit will cease the Lien process. Failure to rebut with material evidence the lien claimants affidavits will lead to the perfection of the lien in favour of the Lien claimant. A perfected Lien eventually becomes an account receivable in law.