

**Dated: June 26, 2025**  
**The following is ORDERED:**



**Denise E. Barnett**  
**UNITED STATES BANKRUPTCY JUDGE**

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**UNITED STATES BANKRUPTCY COURT  
WESTER DISTRICT OF TENNESSEE  
WESTERN DIVISION**

In re:  
**Kisha Cherida Cole,**  
Debtor.

Case No. 25-21597  
Chapter 13

**MEMOMRANDUM OPINION AND ORDER**  
**GRANTING, IN PART, DEBTOR'S MOTION FOR TURNOVER**

This case came before the Court on May 13, 2025, at 1:30 p.m., on Kisha Cherida Cole's ("Ms. Cole's") *Expedited Motion for Turnover of Tangible Personal Property Under Section 542(a)* ("Motion for Turnover")<sup>1</sup>; On Time Diesel Repair, LLC's, ("On Time's") *Response to Debtor's Expedited Motion for Turnover of Tangible Personal Property Under Section 542(a)* ("Response")<sup>2</sup>; Ms. Cole's *Memorandum in Support of Debtor's Expedited Motion for Turnover of Tangible Personal Property Under Section 542(a)* ("Memorandum")<sup>3</sup>; Ms. Cole's *Notice of*

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<sup>1</sup> Debtor's Mot. for Turnover (ECF No. 18).

<sup>2</sup> Creditor's Resp. (ECF No. 23).

<sup>3</sup> Ms. Cole's Mem. (ECF No. 29).

*Documents Filed*<sup>4</sup>; and On Time’s *Notice of Filing*.<sup>5</sup> Ms. Cole sought to recover a 2012 Hino 268 Truck from On Time.<sup>6</sup> After reviewing the record and filed documents, and considering the parties’ arguments and relevant law, the Court grants Ms. Cole’s Motion for Turnover, in part.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Factual Background**

On July 12, 2024, Ms. Cole bought a 2012 Hino 268 Truck (“Truck”) from her former employer.<sup>7</sup> On December 19, 2024, Ms. Cole had the Truck towed and delivered to On Time for repairs.<sup>8</sup> On Time, a diesel mechanic shop, is a limited liability company whose business is registered and operated in the State of Mississippi.<sup>9</sup> First, On Time quoted Ms. Cole \$500 and then \$800.<sup>10</sup> After Ms. Cole failed to pay On Time, Ms. Cole and On Time’s owner had a falling out.<sup>11</sup> The owner told Ms. Cole to come pay and pick up the Truck or he would charge her for storage fees.<sup>12</sup> Ms. Cole did not pay On Time and did not pick up the truck.<sup>13</sup> On Time began charging Ms. Cole storage fees.<sup>14</sup> On Time charged Ms. Cole \$50 per day for 58 days, totaling

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<sup>4</sup> Ms. Cole’s Notice of Doc. Filed (ECF No. 30).

<sup>5</sup> On Time’s Notice of Filing (ECF No. 31).

<sup>6</sup> Ms. Cole’s Mot. for Turnover, ¶ 2 (ECF No. 18).

<sup>7</sup> Hr’g on May 13, 2025, at 1:06 p.m.

<sup>8</sup> *Id.* at 1:14 p.m.

<sup>9</sup> On Time’s Resp., ¶ 1 (ECF No. 23).

<sup>10</sup> Hr’g on May 13, 2025, at 1:18 p.m.

<sup>11</sup> *Id.* at 1:18 p.m. and 1:49 p.m.

<sup>12</sup> *Id.* at 1:49 p.m.

<sup>13</sup> *Id.* at 1:49 p.m.

<sup>14</sup> *Id.* at 1:18 p.m.

\$2,900 in storage fees.<sup>15</sup> In its Notice of Filing, On Time did not attach its invoice but did attach an affidavit of abandonment.<sup>16</sup> The affidavit (and proof of claim) show On Time charged Ms. Cole \$797.50 for labor and \$0 for parts.<sup>17</sup>

On February 27, 2025, On Time mailed notice that it would sell the Truck to satisfy its claim.<sup>18</sup> Because Ms. Cole did not register the Truck in her name until March 19, 2025, On Time sent the notice to her former employer.<sup>19</sup> Before On Time could sell the Truck, Ms. Cole filed for bankruptcy on March 28, 2025.<sup>20</sup>

### **B. Procedural Background**

On April 9, 2025, Ms. Cole filed an expedited motion for turnover of the Truck under 11 U.S.C. § 542(a).<sup>21</sup> On April 18, 2025, On Time filed its Response, arguing it would lose its possessory lien if it voluntarily turned over the Truck and was not violating the automatic stay.<sup>22</sup>

In her Memorandum, Ms. Cole argued On Time never perfected its mechanic's lien under Mississippi Code Annotated § 85-7-107.<sup>23</sup> Specifically, Ms. Cole argued the second sentence in the statute requires the mechanic to send notice of the lien by certified mail.<sup>24</sup> Because On Time

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<sup>15</sup> Claim No. 22-1; On Time's Notice of Filing shows that it charged Ms. Cole \$50 for 71 days, totaling 3,550. But because the proof of claim was filed after On Time's Notice of Filing, the Court will use the numbers from Claim No. 22-1. Ultimately, On Time will be able to file an amended proof of claim for any unsecured claim it is owed.

<sup>16</sup> On Time's Notice of Filing, p. 2 (ECF No. 31).

<sup>17</sup> *Id.*; Claim No. 22-1.

<sup>18</sup> Ms. Cole's Mem., p. 2 (ECF No. 29).

<sup>19</sup> *Id.*

<sup>20</sup> Chapter 13 Voluntary Pet. (ECF No. 1).

<sup>21</sup> Mot. for Turnover (ECF No. 18).

<sup>22</sup> On Time's Resp., ¶¶ 4-5 (ECF No. 23).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

sent notice to Ms. Cole’s former employer, and not Ms. Cole, On Time never perfected its mechanic’s lien, Ms. Cole argued.<sup>25</sup>

On May 13, 2025, the Court held a hearing. During the hearing, Ms. Cole reiterated her argument.<sup>26</sup> On Time argued the second sentence of section 85-7-107 of the Mississippi Code did not require notice by certified mail to perfect the lien.<sup>27</sup> Instead, the second sentence required the mechanic to send notice to the owner to give the owner an opportunity to redeem the property before it is liquidated.<sup>28</sup>

Next, the Court asked to what extent the lien was secured.<sup>29</sup> On Time argued its lien was secured for the full amount—labor, materials, and storage.<sup>30</sup> The Court agreed labor and materials were included but asked where in the statute it covered storage fees.<sup>31</sup> In response, On Time’s lawyer contended that, in practice, the storage fees are always included with the lien.<sup>32</sup>

To adequately protect On Time, the Court suggested Ms. Cole grant a lien on the Truck to On Time on the Truck’s certificate of title.<sup>33</sup> On Time argued that a lien on the title would not adequately protect its interest.<sup>34</sup> If it voluntarily turned over the Truck to Ms. Cole, it would lose its possessory lien.<sup>35</sup> Further, the Truck still needed repairs, so the next mechanic would acquire

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<sup>25</sup> *Id.*

<sup>26</sup> Hr’g on May 13, 2025, at 1:23 p.m.

<sup>27</sup> *Id.* at 1:24 p.m.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 1:27 p.m.

<sup>30</sup> *Id.* at 1:28 p.m.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 1:33 p.m.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

a mechanic's lien and have a higher priority.<sup>36</sup> Ms. Cole said she would be willing to pay \$800 to On Time before it turned over the Truck.<sup>37</sup>

## **II. ISSUES PRESENTED**

The issues before the Court are (1) whether On Time has a valid lien under Miss. Code Ann. § 85-7-107, (2) what portion of On Time's debt is secured, and (3) whether Ms. Cole should pay On Time's secured debt before On Time turns over the Truck to Ms. Cole.

## **III. DISCUSSION**<sup>38</sup>

When a federal court decides an issue governed by state law, it “must apply the law of the state's highest court.”<sup>39</sup> If the state's highest court has not ruled on the issue, then the federal court must “ascertain from all available data what the state law is and apply it.”<sup>40</sup> Further, the federal court may consider “decisions from other jurisdictions or the “majority” rule.”<sup>41</sup>

### **A. On Time perfected its possessory lien.**

Mississippi law differentiates between possessory liens, security interests, and agricultural liens.<sup>42</sup> Mississippi defines a possessory lien as a lien that— (1) secures payment for services or materials furnished in the ordinary course of business; (2) is created by statute; and

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 1:44 p.m.

<sup>38</sup> The Court has subject-matter jurisdiction under 28 U.S.C. § 1334(b). Venue is proper in this District. 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(E) and (K). The following shall constitute the court's findings of fact and conclusions of the law in accordance with Rule 7052, Federal Rules of Bankruptcy Procedure.

<sup>39</sup> *Ray Industries, Inc. v. Liberty Mut. Ins. Co.*, 974 F.2d 754, 758 (6th Cir. 1992) (citing *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938)).

<sup>40</sup> *Id.* (citing *Bailey v. V & O Press Co.*, 770 F.2d 601, 604 (6th Cir. 1985)).

<sup>41</sup> *Id.* (citing *Bailey*, 770 F.2d at 604).

<sup>42</sup> Miss. Code Ann. § 75-9-333 (2025).

(3) depends on the person's possession of the goods.<sup>43</sup> Section 85-7-107 falls under this definition because it grants a mechanic the right to retain possession of the vehicle until the mechanic is paid for labor and materials.<sup>44</sup>

Miss. Code Ann. § 85-7-107 also outlines that the mechanic must give the owner and any lienholder an opportunity to redeem the property.<sup>45</sup> After 30 days have passed, if the mechanic “intends to commence suit,” the mechanic must “notify, by certified mail, the legal owner and the holder of any lien” of the amount owed to provide an opportunity for redemption.<sup>46</sup>

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<sup>43</sup> (a) In this section, “possessory lien” means an interest, other than a security interest or an agricultural lien:

- (1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;
- (2) Which is created by statute or rule of law in favor of the person; and
- (3) Whose effectiveness depends on the person's possession of the goods.

Miss. Code Ann. § 75-9-333 (2025).

<sup>44</sup> [(1)] All motor vehicles repaired for any person, and at his instance, shall be liable for the price of the labor and material employed in constructing, manufacturing or repairing the same; and the mechanic to whom the price of said labor and material may be due shall have *the right to retain possession of such motor vehicles so repaired until the price be paid*. [(2)] If such price shall not be paid within thirty (30) days, and the person to whom such charges are payable and owing intends to commence suit as provided in this section, such person shall notify, by certified mail, the legal owner and the holder of any lien of the amount of charges due thereon and provide an opportunity for redemption. If such property has not been redeemed within five (5) days after the mailing of such certified letter, the person to whom such charges are payable and owing may commence suit in any court of competent jurisdiction, and upon proof of the value of the labor and materials employed in such repairs, manufacture or construction, and that such labor and materials furnished were reasonably necessary to prevent deterioration, permit operation and preserve the property, shall be entitled to judgment against the party for whom such labor was done or materials furnished, with costs, as in other cases, and to a special order for the sale of the property retained in his possession for the payment thereof, with costs, and to an execution, as in other cases, for the residue of what remains unpaid after sale of the property. [(3)] The proceeds of the sale of such property in excess of the amount needed to pay the judgment and necessary expenses of the procedure required by this section shall be held by the person for a period of six (6) months, and if not reclaimed by the owner thereof within that time shall become the property of the county and be paid over to the chancery clerk of the county in which the sale was held to be deposited into the county general fund, subject however to any rights of recorded lienholders. Miss. Code Ann. § 85-7-107 (2025) (emphasis and enumeration added).

The Court reads this statute in three parts. First, the granting of a possessory lien until payment is made for labor and material. Next, the procedure for liquidating the collateral as a means of collecting on the underlying debt. Finally, procedure for disbursing excess proceeds from the sale of the underlying collateral.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

On Time billed Ms. Cole \$797.50 for labor. Following the statute, On Time exercised its right to retain possession of the Truck until Ms. Cole paid it. Because Ms. Cole had failed to update the registration with the state, On Time mailed notice to Ms. Cole’s former employer that it would seek to liquidate the Truck to satisfy its claim. Ms. Cole argued that because On Time failed to notify her by certified mail, On Time’s lien was invalid. Specifically, Ms. Cole argued the second sentence of section 85-7-107 governed perfection of On Time’s possessory lien.

This Court disagrees with Ms. Cole’s reading. Ms. Cole likely misread the phrase “shall notify, by certified mail, the legal owner and the *holder of any lien* of the amount of charges due.”<sup>47</sup> The statute does not require the mechanic to notify the legal owner of the lien. Instead, the statute requires the mechanic to notify the legal owner and *any lienholder* of the amount owed to give the parties an opportunity to redeem the motor vehicle. Further, a possessory lien is perfected by possession.<sup>48</sup> Because On Time possesses the Truck, it has a valid possessory lien under section 85-7-107.

**B. On Time’s possessory lien is only secured for the cost of parts and labor.**

On Time argues it is secured up to the value of its labor, parts, and storage fees. Section 85-7-107 lists “labor and material employed in constructing, manufacturing or repairing,” and does not mention storage fees.<sup>49</sup> Further, the Mississippi Supreme Court has explicitly held that section 85-7-107 only secures a mechanic for parts and labor and not storage fees.<sup>50</sup> Accordingly,

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<sup>47</sup> Miss. Code Ann. § 85-7-107 (2025).

<sup>48</sup> See *Thorp Com. Corp. v. Mississippi Road Supply Co.*, 348 So. 2d 1016, 1018 (Miss. 1977) (holding that when a mechanic retains possession of the property it takes priority over parties with secured interest).

<sup>49</sup> Miss. Code Ann. § 85-7-107 (2025).

<sup>50</sup> *Allstate Ins. Co. v. Green*, 794 So. 2d 170, 176 (Miss. 2001) (denying a mechanic recovery of storage fees under section 85-7-107 because the statute “limits recovery to the costs of labor and materials”).

On Time's claim is only secured for \$797.50 for labor.<sup>51</sup> Its charges for storage fees remain an unsecured debt.

**C. On Time must turn over the Truck after Ms. Cole pays for its services.**

During the hearing on May 13, 2025, Ms. Cole said she was willing to pay On Time up to \$800 for its labor. A possessory lienholder has priority over prior secured interests.<sup>52</sup> To retain its priority status, the possessory lienholder must possess the collateral.<sup>53</sup>

If On Time turned over the Truck to Ms. Cole before it is paid, it would lose its possessory lien status. Further, Ms. Cole will likely take the Truck (that remained inoperable at the time of the hearing) to another mechanic. The new mechanic would then acquire a possessory lien for work performed and would have priority over On Time's claim. Accordingly, Ms. Cole needs to pay On Time for its services (labor and parts), satisfying On Time's possessory lien, for the vehicle to be returned to Ms. Cole.

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<sup>51</sup> The Court notes that On Time's proof of claim included an amount for \$300, described as "filing fee," and this amount is not secured. Miss. Code Ann. § 85-7-107, in relevant part reads, "all motor vehicles repaired for any person, and at his instance, shall be liable for the price of *labor and materials* employed ... the mechanic shall have the right to retain possession of such motor vehicles ... until the price be paid." This language suggests that the possessory lien that attaches to the property is only for labor and materials. Further, Miss. Code Ann. § 85-7-107, in part, reads the mechanic "shall be entitled to judgment against the party for whom such labor was done or materials furnished, with *costs* ... and to a special order for the sale of the property retained in his possession for the payment thereof, with *costs* ... for the residue of what remains unpaid after sale of the property." The judgment is what entitles the mechanic to the costs of liquidating the vehicle to be paid. Because the mechanic never received a judgment, the mechanic has no lien for the costs incurred. Put another way, the costs never attached to the collateral. See Miss. Code Ann. § 85-7-107 (2025) (emphasis added).

<sup>52</sup> Miss. Code Ann. § 75-9-333(b) (2025) ("A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise").

<sup>53</sup> See *Thorp Com. Corp. v. Mississippi Road Supply Co.*, 348 So. 2d at 1018 (because the mechanic had possession of the collateral, it had priority over other creditors); *Burns v. Miller*, 107 Wn.2d 778, 782 (Wash. 1987) ("Under common law, the lien is maintained so long as possession is maintained"); *Air Ruidoso, Ltd., Inc. v. Exec. Aviation Ctr., Inc.*, 122 N.M. 71, 78 n. 1 (N.M. 1996) ("a lien that is dependent upon possession is only valid as long as there is possession; it can be waived by the voluntary relinquishment of possession") (dictum).

#### **IV. CONCLUSION AND ORDER**

For the reasons stated above, the Court finds and concludes Ms. Cole's Motion for Turnover is granted, in part. On Time has a valid possessory lien secured for the labor and parts furnished. Because On Time would lose its possessory lien status without possession of the Truck, Ms. Cole must pay On Time for its labor before On Time turns over the Truck to Ms. Cole. Accordingly, it is **ORDERED**:

1. Ms. Cole's *Motion for Turnover* is **GRANTED, IN PART**.
2. Before On Time Diesel Repair, LLC, turns over the 2012 Hino 268 Truck to Ms. Cole, she must pay On Time Diesel Repair, LLC, \$797.50.
3. After Ms. Cole pays On Time \$797.50, On Time Diesel Repair, LLC, no longer has a possessory lien under Miss. Code Ann. § 85-7-107.
4. Upon receipt of the \$797.50, On Time Diesel Repair, LLC, is directed to turn over the 2012 Hino 268 Truck to Ms. Cole.
5. On Time Diesel Repair, LLC, may file an amended proof of claim in Ms. Cole's Chapter 13 case to reflect the unsecured amount of its claim within 35 days from the entry of this Memorandum and Order.

**Copies to be served on:**

**Debtor:** Kisha Cherida Cole, 11319 Doublegate Ln, Eads, TN 38028.

**Debtor's Attorney:** Ronnie Huggins, Reaves Law Firm, PLLC, 2650 Thousand Oaks Blvd, Ste. 3100, Memphis, TN 38118; Email: [ronnie.huggins@beyourvoice.com](mailto:ronnie.huggins@beyourvoice.com).

**Creditor:** On Time Diesel, LLC, 1320A Sunset Drive, Grenada, MS 38901.

**Creditor's Attorney:** Roger Adam Kirk, Daly Kirk, PLLC, 1320 A Sunset Drive, Grenada, MS 38901; Email: [akirk@dalykirk.com](mailto:akirk@dalykirk.com).