So Ordered.

Signed this 13 day of March, 2025.

Wendy A. Kinsella

Wendy A. Kinsella
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re: Joshua P. Doxstader, Debtor.	Case No. 24-60502 Chapter 12 Judge Wendy A. Kinsella
M-Tech Consulting, Inc., Plaintiff, v. Joshua P. Doxstader, Defendant.	Adv. Pro. No. 24-80013

DECISION AND ORDER ON COMPLAINT BY M-TECH CONSULTING, INC. AGAINST JOSHUA P. DOXSTADER

Before the Court is the *Verified Complaint in Adversary Proceeding* by M-Tech Consulting, Inc. (the "Complaint" at AP Doc. 1), *Defendant's Answer and Counterclaims* by Joshua P. Doxstader (the "Answer" at AP Doc. 11), *Plaintiff's Reply to Counterclaims* (the

"Reply" at AP Doc. 38) and related filings.[1] At issue is Equipment[2] undisputedly owned by M-Tech ("Plaintiff") that is in the possession of Joshua P. Doxstader ("Defendant"), which Plaintiff is seeking to recover. Defendant asserts counterclaims for breach of contract, claiming a statutory lien for unpaid transportation, storage and equipment improvement charges, and has refused to turn over the Equipment, resulting in the current action.

I. Procedural Posture

Debtor filed two previous bankruptcy cases in the prior years. The first case was filed in 2018 and was dismissed in 2021 due to Defendant's failure to abide by a conditional order directing him to make a series of payments to compensate for missed plan payments. *See* Order of Dismissal, *In re Joshua P. Doxstader,* No. 18-61645 (Bankr. N.D.N.Y. 2021), ECF No. 87. The second petition was filed by Defendant in 2022 and was dismissed in 2024, once again due to a failure to abide by a conditional order directing him to make a series of payments to accommodate for plan payment arrears. *See* Order of Dismissal, *In re Joshua P. Doxstader*, No. 22-60120-6 (Bankr. N.D.N.Y 2024), ECF No. 71.

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[1] The relevant filings are as follows: *Voluntary Petition and Schedules* (the "Petition" at Doc. 1); *Declaration of David G. Goldbas, Esq. in Support of Motion for Injunction and for Return of Personal Equipment* (the "Injunction Motion" at AP Doc. 8); *Defendant's Response to Plaintiff's Replevin Motion* (the "Defendant's Response to Injunction Motion" at AP Doc. 12); *Motion for Default Judgment Pursuant to Federal Rule of Civil Procedure 55; Federal Rule of Bankruptcy Procedure 7055 and Local Rule 7055-1* (the "Default Judgment Motion" at AP Doc. 15); *Order to Show Cause in Adversary Proceeding* (AP Doc. 18); *Order Denying in Part Motion for Injunction and for Return of Personal Equipment* (the "Order Denying In Part Order to Show Cause" at AP Doc. 22); *Declaration of David G. Goldbas in Opposition to Motion for Default Judgment* (the "Response to Default Judgment Motion" at AP Doc. 20); *Plaintiff's Witness List* (AP Doc. 31); *Plaintiff's Exhibit List* (AP Doc. 32); *Plaintiff's Letter Regarding Compliance with Scheduling Order dated January 3, 2025* (AP Doc. 34); *Defendant's Proposed Trial Exhibits* (AP Doc. 35); *Defendant's Proposed Witnesses* (AP Doc. 36); *Plaintiff's Pretrial Memorandum* (AP Doc. 37); *Transcript Adversary Trial Before The Honorable Wendy A. Kinsella United States Bankruptcy Court Judge* (the "Trial Transcript" at AP Doc. 45); *Defendant's Post Trial Brief* (the "Defendant's Brief" at AP Doc. 46); *Plaintiff's Post-Trial Memorandum* (the "Plaintiff's Memorandum" at AP Doc. 47).

[2] The Equipment at issue is: (1) a 2018 Kubota Tractor; (2) a 2017 Kubota Tractor; (3) Computerized Controllers for Four Loxton Miscanthus Planters (the "Planter Controllers"); (4) DH Farm Equipment Mobile Fuel Tank Trailer; (5) a 1000 Gallon Single Wall Fuel Tank with Fuel Transfer Pump; (6) One set of Rollers; (7) One set of Chisel Plows; (8) a Rotary Forklift Attachment; (9) a Gaylord Box; (10) Two Wagons; (11) One Lifter; (12) a Ramp; (13) and a Rock Bucket (collectively the "Equipment"). The Equipment excludes the Gooseneck Trailer with title in dispute as discussed herein.

Before the current bankruptcy petition was filed, Plaintiff began a replevin action against Defendant in the New York Supreme Court of Oneida County. In June 2024, Defendant filed the current chapter 12 bankruptcy case, staying the action. Listed in Schedule A/B was a claim against Plaintiff for "monies owed on 2 year contract." Petition, at 14-15. Defendant further stated in the Statement of Financial Affairs for Individuals Filing for Bankruptcy that he had property stored in New York owned by M Tech Consulting. *Id.* at 52.

Shortly after the bankruptcy filing, this Adversary Proceeding was initiated by Plaintiff to recover the Equipment, and Defendant timely answered and asserted counterclaims. Plaintiff moved in the Adversary Proceeding for an order, *inter alia*, vacating the stay as to the Equipment, directing immediate return of the Equipment to Plaintiff, overruling and vacating Defendant's lien for storage of the Equipment, granting an injunction to prevent the sale of the Equipment by Defendant, and awarding damages. *See* Injunction Motion, at 4.[3] Defendant timely objected. *See* Defendant's Response to Injunction Motion. Ultimately the Court granted in part and denied in part the Injunction Motion, enjoining Defendant from secreting, transferring, selling, or using the Equipment but denying the replevin request. *See* Order Denying In Part Order to Show Cause, at 2.

During the same time frame, Defendant filed the Default Judgment Motion seeking a judgment on the counterclaims asserted in the Answer, to which Plaintiff failed to timely reply. *See* Default Judgment Motion, at 1–2. In Response to the Default Judgment Motion, Plaintiff requested relief pursuant to Federal Rule of Bankruptcy Procedure 7055, which adopts Federal Rule of Civil Procedure 55, asking the Court to set aside the default judgment for good cause. *See* Response to Default Judgment Motion, at 2–3. After hearing argument, the Court denied the

[3] Accompanying the application was an Order to Show Cause, which could not be initially heard as it was not properly noticed pursuant to Local Bankruptcy Rule 9014-5.

Default Judgment Motion, and on October 22, 2024 directed Plaintiff to file its reply to the counterclaims. The Reply was filed on January 10, 2025.

The parties engaged in discovery and a trial was held on January 15, 2025. At the conclusion of the trial, the Court directed the parties to file post-trial memoranda, and once fully submitted, took the matter under advisement.[4]

II. Factual Background

The relevant facts are derived from the Complaint, Answer and Reply, as well as testimony and documentary evidence presented during the trial. At the trial, the Court first heard extensive testimony from Matthew Griswold ("Mr. Griswold"), Plaintiff's representative, and then from Mr. Doxstader.

Mr. Griswold testified he is handling the winding up of Plaintiff's business after his father and Plaintiff's sole member, Jon Griswold ("Jon") passed away in October 2023. Prior to his death, Mr. Griswold was actively involved with his father in planting, cultivating and harvesting miscanthus crops throughout the country, including the Tennessee crop at issue here (the "Crop"). Defendant is a custom harvester that contracted with Plaintiff to provide planting and harvesting services for the Crop.

The undisputed testimony confirmed that sometime during 2015 or 2016, Defendant began doing business with a predecessor of Plaintiff, whereby he planted miscanthus in exchange for compensation. In 2022, Plaintiff was newly formed, and Defendant continued his planting and harvesting services for the new company. According to Defendant's testimony, invoices were routinely sent by Defendant to Plaintiff for work performed and for equipment repair and

[4] While writing this Decision, the Court issued a text order directing a post-trial conference to address the sale of the Equipment and wind up of Plaintiff's business, which was to be held on March 20, 2025. Plaintiff objected by letter dated March 11, 2025 (AP Doc. 51) as this decision had not been issued yet.

transportation services. From January 17, 2023 to August 9, 2023, invoices totaling $341,385.52 were sent by Defendant to Plaintiff for this work, the vast majority of which were paid. *See* Plaintiff's Exhibit J; Trial Transcript, 21:9–23; *id.* 72:5–14.

The events leading to this Adversary Proceeding arose in 2023 in connection with Defendant's services rendered to Plaintiff in Spencer, Tennessee regarding the Crop (the "Tennessee Project"). A third-party, Genera, contracted with Plaintiff for Plaintiff to grow and harvest miscanthus. Plaintiff hired Defendant to plant it. However, for reasons that were not determined, the Crop was not successful. *See* Trial Transcript, 25:21–26:15. This failure contributed to Plaintiff's decision to cease operations and liquidate the Equipment to pay remaining debts.[5] *See id*. 27:21–28:9. The testimony was conflicting regarding when Defendant was informed that Plaintiff was ceasing operations, but it occurred sometime between July and September of 2023. The parties' communications show that Plaintiff asked Defendant to assist with the Equipment liquidation by transporting at least two of the large tractors to Clinton Tractor in Oneida County, New York so they could be sold. *See id*. 28:13–18.

Mr. Griswold discussed Plaintiff's acquisition of the Equipment that was used by Defendant to carry out the planting and other related farming services. He reviewed the various titles and bills of sale confirming Plaintiff was the owner of the Equipment (excluding the Gooseneck Trailer).[6] *See id.* 21:1–25:18, 34:1–36:5; Plaintiff's Exhibits A, B, C and D. Mr. Griswold admitted that after the Crop failed, he instructed Defendant to transport the Equipment to Oneida County and list two of the large tractors for sale with Clinton Tractor, which occurred. *See* Trial Transcript 38:7–39:22; Plaintiff's Exhibits E, F, and G. At some point near the end of

[5] Plaintiff has further alleged that Defendant played a role in Plaintiff's failure to meet the threshold for plants per acre, and posited the failure was either malicious or negligent acts by Defendant. The Court finds that there is no merit to this allegation based on the evidence on the record.
[6] Title to the Gooseneck Trailer was not produced nor do the parties agree as to ownership.

2023, Defendant removed the two tractors from Clinton Tractor and he has been storing them, together with other pieces of the Equipment, to secure payment for his unpaid work and costs incurred, as itemized on certain invoices from July 2023 to November 2023, which Defendant claims exceed $189,000.00. *See* Defendant's Brief, at 6.

Mr. Griswold acknowledged he received invoices from Defendant related to Equipment transportation from Tennessee in the amount of $159,404.73, (Plaintiff's Exhibit K, the "Transportation Invoice") and storage in the amount of $177,050.00 ("Storage Invoice")[7] that have not been paid, which serve as the basis for Defendant's counterclaims and asserted liens. Mr. Griswold further testified the invoices seemed high and he asked for backup from Defendant, which was never provided. *See* Trial Transcript, 49:1–50:13.

Defendant's testimony supported many of the statements made by Mr. Griswold. He confirmed an extended business relationship with Plaintiff and Plaintiff's predecessor through Jon Griswold that also flowed into a personal relationship, which included dinner with Jon and his wife Margaret at their home. *See, e.g., id.* 16:1–13, 96:7–18. Over the many years they conducted business, they never formally memorialized their business dealings in written contracts, and communicated primarily by telephone and text, including the invoicing transactions. They never had any problems with this informal arrangement before the current situation. *See, e.g.,* Trial Transcript, 49:20–24, 90:24–91:4, 91:24–25, 100:3–10.

With respect to the Tennessee Project, Defendant stated he received very specific directions on the Crop planting process from Jon and Mr. Griswold. *Id.* 69:24–70:5. Defendant was originally charging $8,000 per month for his services but that increased to $10,000 pursuant to an agreement with Jon. *Id.* 67:14–16. He was also charging for labor of other workers and expenses,

[7] There was testimony regarding Plaintiff's Exhibit O, the "Storage Invoice," but it was never admitted into evidence.

including $10,000 per month for a lease with Clinton Tractor for discs that were being used on the job, which needed to be fixed before they could be returned to Clinton Tractor. Trial Transcript, 68:12–23 75:20–77:11. He acknowledged he was paid on the Tennessee Project for work from January 2023 to August of 2023, with the exception of expenses incurred of $2,326.73 as identified on Invoice 1501 dated August 9, 2023, and $15,200.00 on Invoice 1502 dated August 9, 2023. *Id.* 109:6–110:25; *see* Plaintiff's Exhibit J, at 26–27.

Defendant further testified about receiving direction from Mr. Griswold to transport the Equipment from Tennessee to Clinton Tractor, which was confirmed by text messages in late September 2023. *See* Trial Transcript, 106:8–107:24; Plaintiff's Exhibit E. He detailed some of the expenses incurred in preparing and loading the Equipment for transport. While Defendant admitted the Equipment belonged to Plaintiff, Defendant's counsel claimed a gooseneck trailer (the "Gooseneck Trailer") was purchased for Defendant.[8] Trial Transcript, 54:9–23.

Defendant stated Jon asked him to get insurance on the Equipment, and he maintained a blanket policy of insurance to cover his liability when using it and transporting it. Trial Transcript, 74:12–75:14. When cross-examined, he reviewed insurance binders that supported the assertion that insurance existed on two pieces of equipment leased for the Tennessee Project. *See, e.g.*, *id.* 93:14–95:18, 114:2–115:25. Defendant provided the insurance as Plaintiff was a new company and did not have insurance for certain equipment. *Id.* 93:18–94:5. Defendant's invoice issued to Plaintiff requesting $6,000 for reimbursement was the only evidence presented to the Court regarding the cost of that insurance. *See* Plaintiff's Exhibit K.

[8] Plaintiff made an oral motion to amend the Complaint pursuant to Federal Rule of Bankruptcy Procedure 7015 to include the Gooseneck Trailer in the list of Equipment to be returned. The Court granted that motion without ruling on the ownership of it.

Defendant testified the Equipment is currently being stored in a farmer's barn, as he believed that storage was required to maintain its value while seeking to enforce his transportation lien. Trial Transcript, 86:17–87:10. He had performed chopping services worth around $20,000 in exchange for that storage. *Id.* 87:11–13. He admitted the inflated Storage Invoice was a negotiation tactic used to push Plaintiff to pay the Transportation Invoice and he never expected to get paid on it. *Id.* 121:15–125:8.

III. Legal Analysis

a. Plaintiff's Complaint

i. Turnover of Equipment

As noted above, Plaintiff's Complaint sought an order enjoining Defendant from using the Equipment and directing turnover of the Equipment belonging to Plaintiff in the form of a replevin cause of action. The Court issued an Order enjoining Defendant from secreting, transferring, selling or using the Equipment pending further order of the Court or upon joint agreement of the parties. *See* Order Denying In Part Order to Show Cause.

As to the state law replevin claim, Plaintiff seeks relief from the automatic stay to proceed with recovery of the Equipment. Several courts have found that a debtor's mere possession of property or mere possessory interest in property is protected by section 362(a) of the Bankruptcy Code. *See, e.g., Cuffee v. Atlantic Bus. Community Dev. Corp.* (*In re Atlantic Bus. Community Dev. Corp.*), 901 F.2d 325, 328 (3d Cir. 1990) ("[A] possessory interest in real property is within the ambit of the estate in bankruptcy under Section 541, and thus the protection of the automatic stay of Section 362."); *48th St. Steakhouse, Inc. v. Rockefeller Group* (*In re 48th St. Steakhouse, Inc.*), 835 F.2d 427, 430 (2d Cir. 1987) ("[M]ere possessory interest in real property, without any accompanying legal interest, is sufficient to trigger protection of the automatic stay."); *In re*

Lankford, 305 B.R. 297, 301–02 (Bankr. N.D. Iowa 2004) ("All recognizable interests of the debtors or the estate are afforded the protection of § 362(a);. This includes a mere possessory interest in real property without any accompanying legal interest. . . . The automatic stay covers eviction actions.") (citing *In re Williams*, 144 F.3d 544, 546 (7th Cir. 1998); *In re Reinhardt*, 209 B.R. at 185; *In re Kilby*, 100 B.R. 579, 580 (Bankr. M.D. Fla. 1989)); *In re Reinhardt*, 209 B.R. 183, 187 (Bankr. S.D.N.Y. 1997) ("[A]ny recognizable interest of the estate will be afforded the protection of section 362(a)."); *Turbowind, Inc. v. Post St. Mgmt., Inc. (In re Turbowind, Inc.),* 42 B.R. 579, 585 (Bankr. S.D. Cal. 1984) ("The language of § 362 is clear that mere possession of property is sufficient to invoke the protections of the automatic stay."); *Farmers Bank & Trust Co. v Wells* (*In re Wells*), 536 BR 264, 269 (Bankr. E.D. Ark. 2015).

In explaining the scope of § 541(a)(1)'s definition of property, Congress used the term "possessory interest," not "possession." *See* S. REP. No. 989, 95th Cong., 2d Sess. 82 (1978), 1978 U.S.C.C.A.N. 5787, 5868. A possessory interest is a "[r]ight to possess property by virtue of an interest created in the property though it need not be accompanied by title . . . ." BLACK'S LAW DICTIONARY 607 (5th ed. 1983).[9] This Court finds an interest and right to possess was created in the Equipment through the statutory lien claims, and interprets the language that retention of "property in [the trucker's] possession" is a possessory lien. *See Angelika Films, Inc. v. Urb. Ent. Assocs., Inc*., 530 N.Y.S.2d 979, 980 (Sup. Ct. 1988). To the extent that Defendant's liens are valid and possessory interests created, they are property of the estate. *In re TMT, Inc.*, Case No. 13-30346, 2013 Bankr. LEXIS 1083, at *5–6 (Bankr. N.D. Ohio March 20, 2013). As a result, relief from the stay is not available unless and until the validity, priority and extent of the liens are

[9] In addition to the equity arising from the possessory interest of the Equipment, Defendant's counterclaims are property of the estate under section 541(a). *See In re TMT, Inc.*, Case No. 13-30346, 2013 Bankr. LEXIS 1083, at *5–6 (Bankr. N.D. Ohio March 20, 2013).

established. *Id.* at *5–6.

With respect to the Gooseneck Trailer, the record is devoid of any evidence regarding the identity of the titled owner. However, Invoice 1471 dated March 1, 2023 issued by Defendant charges Plaintiff $11,000 for a Gooseneck trailer. *See* Plaintiff's Exhibit J, at 7. The testimony of Mr. Griswold was undisputed and confirmed said invoice was paid in full. Trial Transcript, 54:2–12. Subsequent invoices dated July 5, 2023 and August 9, 2023 show charges of $529.98 and $565.92 for "Tires for gooseneck trailer." *See* Plaintiff's Exhibit J, at 24, 26. It is reasonable to conclude that the purchase of the gooseneck trailer, and tire expenses would not be charged to Plaintiff if Defendant believed he was the owner of the Gooseneck Trailer. Taking the evidence as a whole, the Court concludes the Gooseneck Trailer is not owned by Defendant but belongs to Plaintiff; however, the Gooseneck Trailer is subject to Defendant's asserted liens.

Plaintiff's Complaint also seeks damages for the improper theft of the Planter Controllers. The testimony confirmed Defendant was not entitled to possess or retain the controllers, and Plaintiff did not authorize Defendant to move them out of Tennessee. Trial Transcript, 47:23–49:6. However, no evidence was introduced at trial to establish the amount of any such damages. Nevertheless, Defendant's actions were considered by the Court when assessing the balance of his counterclaims discussed below.

b. Defendant's Counterclaims

i. Breach of Contract

Defendant asserts counterclaims for breach of contract by Plaintiff. It is notable that Plaintiff acknowledged a contract existed with Defendant. *Id.* 16:16–21. Even in the absence of that admission, the Court would conclude that a contract existed between Plaintiff and Defendant. "To form a valid contract under New York law, there must be an offer, acceptance, consideration,

mutual assent and intent to be bound." *Van Bortel v Ford Motor Co.*, 621 F Supp 3d 380, 386 (W.D.N.Y. 2022) (quoting *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 427 (2d Cir. 2004)).

The testimony of the parties and text communications between Jon, Mr. Griswold and Defendant confirmed the existence of an agreement to perform farming, equipment repair and transportation services. There were numerous text messages wherein Jon and Mr. Griswold instructed Defendant on planting requirements and they communicated about repair and trucking issues. Defendant provided those services and testified he routinely invoiced Plaintiff by text and was paid on those bills. This evidence and pattern of conduct demonstrates an offer and acceptance, consideration, meeting of the minds and intent to be bound. As a result, the Court finds a valid contract existed.

Even without a written contract, the Court may still conclude there is an oral or implied contract. "An oral contract is formed when the parties agree to terms through what was said despite the absence of a written agreement." *Qiyuan Shi v. Gyamera*, 401 F. Supp. 3d 452, 461 (S.D.N.Y. 2018). "Courts will also find a contract 'implied in fact' based on 'inference from the facts and circumstances of the case [. . .] derived from the presumed intention of the parties as indicated by their conduct.'" *Ancile Inv. Co. v. Archer Daniels Midland Co*., 784 F. Supp. 2d 296, 303 (S.D.N.Y. 2011).

The Court finds that an oral and implied contract existed in this case. The parties' agreement was the quintessential "handshake deal" that had served them well for nearly ten years. The conduct of the parties demonstrated a clear intention for Defendant to provide the requested services to Plaintiff. Plaintiff and its predecessor regularly paid Defendant for those services, including for several months of work when the Tennessee Project began. As a result, the Court

shall consider the merits of Defendant's counterclaims for breach of contract and enforcement of his statutory liens.

Having concluded a contract existed between the parties, the Court must consider whether that contract was breached. To prove a successful breach of contract claim, a party must show (1) the formation of an agreement, (2) performance by one party, (3) breach of the agreement by the other party, and (4) damages. *See Berman v. Sugo LLC*, 580 F. Supp. 2d 191, 202 (S.D.N.Y. 2008). A breach of contract showing must sufficiently plead "at a minimum [] the terms of the contract, each element of the alleged breach and the resultant damages in a plain and simple fashion." *Warren v. John Wiley & Sons, Inc*., 952 F. Supp. 2d 610, 624 (S.D.N.Y. 2013) (quoting *Zaro Licensing, Inc. v. Cinmar, Inc*., 779 F. Supp. 276, 286 (S.D.N.Y. 1991)). Courts in New York require plaintiffs to "plead the provisions of the contract upon which the claim is based." *Window Headquarters, Inc. v. MAI Basic Four, Inc*., No. 91 Civ. 1816 (MBM), 1993 U.S. Dist. LEXIS 11245, 1993 WL 312899, at *3 (S.D.N.Y. Aug. 12, 1993) (internal quotation marks omitted); *see also Chrysler Capital Corp. v. Hilltop Egg Farms, Inc*., 514 N.Y.S.2d 1002, 1003 (3d Dep't 1987) ("In an action to recover damages for breach of contract, the complaint must . . . set forth the terms of the agreement upon which liability is predicated, either by express reference or by attaching a copy of the contract."). Further, oral contracts are "as enforceable as . . . written one[s]." *Charles Hyman, Inc. v. Olsen Indus., Inc*., 642 N.Y.S.2d 306, 309 (1st Dep't 1996); *see also Deutsch v. JPMorgan Chase & Co*., No. 18-CV-11655 (VSB), 2019 WL 4805689, at *7 (S.D.N.Y. Sept. 30, 2019).

Here, the evidence supports that the contract was formed and Defendant performed services under it for which he was not paid, thereby resulting in a breach by Plaintiff. Accordingly, Defendant is entitled to an award of damages.

The Court must now quantify that award. The Court has carefully reviewed the testimony and exhibits, including the invoices, and detailed its analysis in the attached ruling chart (the "Ruling Chart"). In several instances, the Court declined to award any amount requested by Defendant, as the record was insufficient to support those requests. In other circumstances, the Court compared the amounts previously charged by Defendant and paid by Plaintiff as reflected in Exhibit J for the same services and reduced the award accordingly. The Court considered Defendant's past practices of submitting unsupported invoices that were routinely paid by Plaintiff and balanced that informal established ordinary course of conduct with the record before it.

Defendant seeks recovery for his monthly services and reimbursement of certain expenses incurred on behalf of Plaintiff for the Tennessee Project. Specifically, Defendant seeks recovery of five monthly fees of $10,000 each ("pay from July – November (as agreed upon for first year monthly payment"), along with 3 charges for $10,000 each for discs rented from Clinton Tractor and $6,000 for insurance that Defendant obtained because Plaintiff was a new company and unable to obtain insurance. Trial Transcript, 74:12–24; *see* Plaintiff's Exhibit K.

The evidence introduced showed Defendant was recently paid a total of $10,000 per month as compensation, an increase from $8,0000 originally agreed upon. *See* Plaintiff's Exhibit J; Trial Transcript, 67:10–16. However, after the two tractors were listed for sale at Clinton Tractor in early October, the record does not reflect any additional services rendered by Defendant. It is undisputed that Defendant was well aware by that time that the Tennessee Project was over and no record of services beyond early October was established. *See* Plaintiff's Exhibit E. Therefore the Court finds Defendant is entitled to recover his compensation for three full months from July – September 2023 and the first week in October 2023.

With respect to the disc rental charges, Defendant stated the introduction between Jon and Clinton Tractor took place at the end of December, 2022 or beginning of January 2023. Trial Transcript, 104:11–105:2. Defendant further testified about the introduction as the reason "why we got the disc." Trial Transcript, 104:11–19. While neither a rental agreement nor evidence of disc lease payments made to Clinton Tractor was admitted into evidence, the Court finds Defendant's testimony that he paid $30,000 to lease the discs from Clinton Tractor on behalf of Plaintiff, and for which Defendant has not yet been paid, to be credible. *See* Trial Transcript, 75:24–76:14, 80:16–81:10. This testimony is also supported by the admission that Plaintiff fully paid Invoice 1469 that reflects a $10,000 "down payment for high speed disc," and miscellaneous other disc related charges that were paid. *See* Plaintiff's Exhibit J, at 5. The Court therefore finds those disc lease payments to be recoverable.

However, the expenses requested for disc parts and repairs that were not yet incurred when that invoice was issued, and were merely an estimate as allegedly requested by Jon, are not recoverable. Trial Transcript, 87:23–88:5.[10] Defendant's testimony stated the discs were not transported back to New York and fixed until November 2024, but no evidence of the actual cost of those repairs, or the trip to Tennessee to recover the discs, was introduced. *See* Trial Transcript, 76:15–77:11. Without any record before it, the Court finds those charges are not recoverable.

Turning to the insurance expenses requested, Defendant testified that he was asked to secure coverage and he would be reimbursed at the end of the year. *See* Trial Transcript, 93:18–19 ("He asked me to insure it, and I would be reimbursed at the end of the year."). Defendant

[10] "Court: . . . [Y]ou discussed the parts to repair the disc and labor to fix them, $21,000 in parts. But was that work completed?
Defendant: No. That was to be completed to get the disc turned back in, so I don't have to keep making lease payments."
Trial Transcript, 87:23–88:5.

testified, "[t]his was a new company. And Jon did not have insurance for equipment. That's why he asked me to do it." *Id*. 94:4–5; *see id.* 94:18 ("[Y]ou can't lease something without insurance."). The Court notes the Effective Date on the insurance binders of February 10, 2023 generally corresponds with the Tennessee Project time frames and such coverage would be necessary to provide to the leasing company in order to lease equipment. Moreover, Mr. Griswold testified there was insurance but did not discredit Defendant's testimony nor produce any proof of coverage in spite of knowing that expense was going to be vetted at trial.

Defendant also testified that Invoice 1502 dated August 9, 2023 was unpaid. Trial Transcript 72:5-10. Line Items One and Three of Invoice 1502 will be addressed below in connection with the truckmen's lien; with respect to Line Item Two, the cost of $2,200 to transport one m7-171 tractor to Kentucky remains unpaid and Defendant is entitled to be paid for the transportation cost.

With respect to the storage charges, Defendant testified he exchanged approximately $20,000 of chopping services for that space. Defendant further testified that the Storage Invoice submitted to the Court was fabricated by Defendant to be used as leverage to recover on the other amounts owed to him. As noted above, the Court does not condone this misrepresentation and will not reward Defendant for those actions. In addition, Defendant's improper removal and retention of the Planter Controllers for over a year prevented Plaintiff from realizing any value from that equipment in negotiating a settlement of the Crop contract with Genera. Trial Transcript, 49:3-12. In light of these circumstances, the Court finds no award of damages for storage is appropriate.

ii. **Truckmen's Lien**

In addition to the breach of contract claims, Defendant claims he possesses truckmen's and artisan's liens on the Equipment, and which warrants compensation or setoff. NY Lien Law § 187 grants a lien to individuals or businesses engaged in "carting or trucking . . . upon such property and [the lien holder] may retain such portion of the property in his possession as will insure to the said truckman . . . at the sale of such property . . . a fair and reasonable compensation for the material and labor furnished . . . . " N.Y. Lien Law § 187(1). The lien holder may also recover expense for storage, and insurance. *Id.* at 187(2).

To enforce a lien, party must (1) make a demand for payment and allow 30 days for nonpayment; (2) provide the owner with a 15-day written notice and specifying the amount due and the opportunity to redeem the Equipment; and (3) if the Equipment is not redeemed, the defendant can conduct a public sale to satisfy the unpaid charges, including expenses for storage or protection upon. *Id.* "Such notice shall be served by registered mail directed to the owner's last known post office address and by posting in three public places in the town, village or city where the property is located. Nothing herein contained shall preclude the remedy of enforcing such a lien by action as provided in article nine of this chapter." *Id.*[11]

Defendant's testimony regarding the Transportation Invoice and the text message conversation on November 30, 2023 shows an effective demand made upon Plaintiff. While Defendant did not yet take the additional steps to enforce the lien so he could sell the Equipment, he still has possession of it and the lien remains attached to it.

In addition to the truckmen's lien under section 187, Defendant also claims an artisan's lien on the Equipment. New York Lien Law § 180 provides:

[11] Article 9 of NY Lien Law includes a provision authorizing redemption before a sale. *See* Lien Law § 203.

> A person who makes, alters, repairs or performs work or services of any nature and description upon, or in any way enhances the value of an article of personal property, at the request or with the consent of the owner, has a lien on such article, while lawfully in possession thereof, for his reasonable charges for the work done and materials furnished, and may retain possession thereof until such charges are paid.

NY Lien Law § 180.

To establish such lien, the party must have performed work or services on the property with the owner's consent or at their request, and lawfully kept and retained possession of the property. *Sharrock v. Dell Buick-Cadillac, Inc.*, 45 N.Y.2d 152, 170-71 (1978). The amount of the lien is for reasonable charges for the work done and materials furnished. *Id*.

Here, Defendant performed certain work on the Equipment with Plaintiff's consent and has retained possession of the Equipment. *See, e.g.*, Plaintiff's Exhibits E and K. Thus, the artisan's lien also attaches to certain pieces of the Equipment.

The issue now is to quantify the amount of these statutory liens based on the record before the Court. Notably, not all of the damages awarded to Defendant for breach of contract become liens. Although Defendant asks the Court to assess a truckmen's lien in the full amount of $49,380.00 on the Equipment, the testimony surrounding the Transportation Invoice was sparse. *See* Defendant's Brief, at 3. The Court must balance this deficiency with the undisputed facts that the Equipment was used in Tennessee, Plaintiff requested Defendant to transport the Equipment and Defendant is now in possession of the Equipment in New York. *See* Trial Transcript 30:22–31:11, Plaintiff's Exhibit L.

The rational conclusion is that Defendant transported the Equipment to New York and did so with the approval of Plaintiff.[12] Although Plaintiff attempts to cast doubt upon such approval, the testimony and exhibits in evidence show that approval was expressly given, and the Court finds no evidentiary support for a contrary position. As a result, the Court finds that a truckmen's lien exists on the Equipment,[13] as calculated on the attached Ruling Chart.

Similarly, with respect to the artisan's lien, the evidence demonstrates Defendant repaired and performed work on certain Equipment with Plaintiff's consent. The value of that work and amount of the lien is also calculated on the Ruling Chart.

iii. Account Stated

Defendant argues further that his work performed for Plaintiff should be compensated because he issued invoices to Plaintiff that became an account stated. *See, e.g.*, Answer, at 4–5; Defendant's Brief, at 3–4. Under New York law, an account stated is "an 'agreement between the parties to an account based upon prior transactions between them with respect to the correctness of the separate items composing the account and the balance due, if any, in favor of one party or another.'" *Kramer, Levin, Nessen, Kamin & Frankel v. Aronoff*, 638 F. Supp. 714, 719 (S.D.N.Y. 1986) (quoting *Chisholm–Ryder Co. v. Sommer & Sommer*, 421 N.Y.S.2d 455, 457 (N.Y. App. Div. 1979)).

"Under this doctrine, a party who receives an account is bound to examine it, and if that party admits that the account is correct, it becomes a stated account and is binding on both parties." *In re Rockefeller Ctr. Properties*, 241 B.R. 804, 819 (Bankr. S.D.N.Y. 1999), *aff'd*, 266 B.R. 52

[12] Plaintiff's question: It was your idea, and you convinced Jon to take that – to send all the equipment to New York to be sold there? Defendant's answer: Only the tractors. Everything else was to be moved already. Trial Transcript, 126:12–15.

[13] The Court excludes from Defendant's claimed lien on the Planter Controllers. Per the Court's direction, it is the Court's understanding they are being returned to Plaintiff immediately. *See* AP Doc. 51.

(S.D.N.Y. 2001), *aff'd*, 46 F. App'x 40 (2d Cir. 2002), *and aff'd*, 46 F. App'x 47 (2d Cir. 2002). An agreement may be implied if "a party receiving a statement of account keeps it without objecting to it within a reasonable time" or "if the debtor makes partial payment." *Chisholm–Ryder Co.*, 421 N.Y.S.2d at 457. If an account stated is established, the agreement is binding on both parties and is enforceable, although an account stated "can always be opened upon proof of mistake or fraud." *American Home Assurance Co. v. Instituto Nacional De Reaseguros,* 1991 WL 4461, *3 (S.D.N.Y. 1991). Moreover, a claim for an account stated cannot be used to create liability where none otherwise exists nor may it be utilized simply as another means to attempt to collect under a disputed contract. *See, e.g., M. Paladino, Inc. v. J. Lucchese & Son Contracting Corp.*, 669 N.Y.S.2d 318 (1998); *Simplex Grinnell v. Ultimate Realty, LLC*, 832 N.Y.S.2d 244, 245 (2007).

Here, Mr. Griswold testified he received Defendant's invoices but requested back up from Defendant as the charges seemed high to him. *See* Trial Transcript, 49:1–50:13. He stated Defendant did not provide any support or explanation regarding several of the charges. Trial Transcript, 50:9–13. As Defendant did not contradict these assertions and stated he did not provide any such supporting documents, the Court finds Mr. Griswold's inquiry to be a timely dispute. Trial Transcript, 135:3–5. The Court therefore concludes the claim for an account stated must fail.

c. Plaintiff's Affirmative Defenses to Counterclaims

1. Statute of Frauds

Plaintiff asserts as an affirmative defense that Defendant's counterclaims must fail because a contract, if one existed, was never valid as it failed to meet the requirements set out by the New

York statute of frauds.[14] *See* Reply, ¶ 23; Plaintiff's Pretrial Memorandum, at 2–3.

New York General Obligations Law section 5-701(a) states, in pertinent part, "Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement . . . [b]y its terms is not to be performed within one year from the making thereof or the performance of which is not to be completed before the end of a lifetime." N.Y. Gen. Oblig. Law § 5-701(1). If performance can be completed within a year, then such a contract need not be written. *See, e.g.*, *Stevens v. Perrigo*, 997 N.Y.S.2d 209, 211 (2014).

In this case, Plaintiff attempts to characterize the work that Defendant performed as "indefinite," and "necessarily continued from year to year and from season to season, and would not by its terms be performable within one year." *See* Plaintiff's Pretrial Memorandum, at 3 (citing *City of Yonkers v. Otis Elevator Co.*, 649 F. Supp. 716, 727 (S.D.N.Y. 1986)).

This is an incorrect interpretation of the statute of frauds. New York courts state "[e]ven when the parties expect that the contract will go on after the year's end, and it is improbable that the contract work will be completed before that period, the statute of frauds is inapplicable, unless the contract, according to its terms' reasonable interpretation, mandates that it not be performed within a year." *Richter + Ratner Contracting Corp. v. Estate 4 Capital, LLP*, No. 112469/2011, 2014 WL 4715639, at *10 (N.Y. Sup. Ct. Sep. 16, 2014) (citing *D & N Boening v Kirsch Beverages*, 63 N.Y.2d 449, 455 (1984); *Freedman v Chemical Constr. Corp.*, 43 N.Y.2d 260, 265, (1977); *North Shore Bottling Co. v Schmidt & Sons*, 22 N.Y.2d 171, 175–176 (1968); *Gural v Drasner*, 977 N.Y.S.2d 218 (1st Dept. 2013)).

[14] The Court notes that although a question arises as to which state's statute of frauds applies, Defendant did not contest the application of New York's statute of frauds. Further, the facts at hand suggest a New York statute of frauds is applicable, so the Court finds no need for further analysis.

Further, Courts have "construed the [New York General Obligations Law § 5-701(a)(1) and the] Statute of Frauds warily, fearing that strict application may cause more fraud than it prevents" and typically reject arguments that a contract is "indefinite [in] duration," and therefore falls afoul of the statute of frauds. *See Waziry v. Fnu*, No. 23-CV-6395-FPG, 2024 WL 4607729, at *2 (W.D.N.Y. Oct. 29, 2024) ("[T]he 'one year' provision of the Statute of Frauds has been interpreted to encompass only those contracts which, by their terms, have absolutely no possibility in fact and law of full performance within one year") (quoting *Darby Trading Inc. v. Shell Int'l Trading & Shipping Co.*, 568 F. Supp. 2d 329, 339 (S.D.N.Y. 2008)).

"As long as an agreement may be 'fairly and reasonably interpreted' such that it may be performed within a year, the statute of frauds will not act as a bar to enforcing it however unexpected, unlikely, or even improbable that such performance will occur during that time frame." *Stevens v. Perrigo*, 997 N.Y.S.2d 209, 211 (2014) (quoting *Cron v. Hargro Fabrics*, 91 N.Y.2d 362, 366). "The critical test, instead, is whether 'by its terms' the agreement is not to be performed within a year." *Freedman v Chem. Constr. Corp.*, 43 N.Y.2d 260, 265 (1977) (citing *North Shore Bottling Co. v Schmidt & Sons*, 22 N.Y.2d 171, 175–176; *Nat Nal Serv. Stas. v Wolf*, 304 NY 332, 335(1952)).

Here, Defendant testified that the duration of the contract "was to be over several years." Trial Transcript, 67:10–12. Notwithstanding this expectation, the work could be, and in fact was, completed within a year. Accordingly, the affirmative defense that the statute of frauds bars enforcement of the contract between the parties fails.

2. Plaintiff's Assertion of Bad Faith

Plaintiff argues the prior bankruptcy filings by Defendant, the failure of Defendant to list income from employment from Plaintiff, the fact that Defendant allegedly did not tell Jon about

the current bankruptcy case, and Defendant's testimony regarding the billing of services are all indicative of Defendant's bad faith, which warrants relief from the stay. *See, e.g.*, Trial Transcript, at 137:1–145:3.

"[T]he concept of bad faith filing should be used sparingly to avoid denying bankruptcy relief to statutorily eligible debtors except in extraordinary circumstances." *In re Syndicom Corp*., 268 B.R. 26, 49 (Bankr. S.D.N.Y. 2001). Defendant indicated he had informed Jon of the previous bankruptcy case, Trial Transcript, 96:7-15, and the income was listed in his schedules. *Id*. 97:16:19.[15] While the invoicing process may have been informal, the Court does not believe it was done in bad faith. Moreover, it is undisputed that Defendant filed for bankruptcy protection twice before the current case, but there is no other evidence on the record besides those filings to demonstrate Defendant is a bad faith serial filer. *See In re Worden*, No. 22-60094-6, 2023 WL 4480358, at *9 (Bankr. N.D.N.Y. July 11, 2023).[16]

Although the Court does not infer bad faith as a result of his serial filings, it does find that certain of Defendant's actions in this Adversary Proceeding strained Defendant's credibility with the Court. Specifically, Defendant stated that the Storage Invoice was not the true value of storage expense. *See* Trial Transcript, at 121:6–24. Instead, he used the fabricated Storage Invoice as leverage to get paid on the Transportation Invoice. *Id*. Regardless of the motivation, Defendant's Answer and Counterclaims, signed by his counsel and verified by Defendant, states the storage claim is over $177,000.00, and is a sworn representation to this Court that the statements contained therein are true and accurate. *See* Answer, ¶¶ 19-23. Although Defendant readily admitted that misrepresentation on the stand and now seeks only $20,000 - 25,000.00 based on the barter value

[15] The Court also takes judicial notice of Debtor's Schedule A/B reflecting an account receivable from M-Tech. *See* Petition, 14-15.

[16] Plaintiff's counsel attempted to argue that serial bankruptcy filers are inherently untrustworthy. Such arguments lack merit, are unsupported by evidence, and perpetuate myths about bankruptcy that are simply untrue.

of the chopping services he exchanged for the storage, these blatant misrepresentations are not condoned by the Court and are considered by the Court when assessing the relief that should be awarded on Defendant's counterclaims. *See* Defendant's Brief, at 5. Defendant's improper removal and retention of the Planter Controllers was also taken into consideration as to Defendant's entitlement to damages.

Plaintiff has raised additional affirmative defenses that Defendant has failed to state a cause of action upon which relief can be granted, and the claims are barred by the statute of limitations and the doctrine of laches. To the extent not otherwise addressed herein, the Court finds these affirmative defenses to be without merit. In addition, Plaintiff argues that as the statute of frauds applies, Defendant's supposed assertion of the doctrine of part performance is not applicable. However, Plaintiff's argument relies on an implication that the contract here would fall under the statute of frauds, as it would necessarily take more than one year to complete. As the Court has ruled the contract here does not run afoul of the statute of frauds, the doctrine of part performance is not applicable. *See Menche v. CDx Diagnostics, Inc*., 199 A.D.3d 678, 157 N.Y.S.3d 61, 66 (2021) ("[T]he "part performance doctrine" provides that the statute of frauds does not apply to an oral agreement when one party partially performs, detrimentally relying on the agreement, and that performance is unequivocally referable to the agreement.").

3. Liquidation of Equipment

Plaintiff asks the Court to terminate the automatic stay so it can liquidate the Equipment. Pursuant to 11 U.S.C. § 362(d)(1): "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . such as by terminating, annulling, modifying, or conditioning such stay—for cause, including the lack of adequate protection of an interest in Equipment of such party in interest." 11 U.S.C. § 362(d)(1). "The decision of whether to lift the

stay is committed to the discretion of the bankruptcy judge." *In re Syndicom Corp*., 268 B.R. 26, 43 (Bankr. S.D.N.Y. 2001).

If the Court were to terminate the automatic stay and direct the turnover of the Equipment to Plaintiff, the truckmen and artisan liens that require possession to be perfected would be extinguished. Such an inequitable result undermines the purpose of those statutory liens and potentially leaves Defendant with no recovery on his secured claims. The Court therefore vacates that portion of the Order to Show Cause that enjoins Defendant from transferring or selling the Equipment to allow Defendant to complete the statutory notice process and enforce his lien rights through a sale of the Equipment. To the extent the sale proceeds exceed the Lien Award herein, the Court directs the excess proceeds to be paid to Plaintiff.

Defendant shall be awarded a judgment against Plaintiff for the balance of the counterclaim award that are not part of the lien.

IV. Conclusion

It is hereby Ordered:

(1) Defendant is awarded against Plaintiff, damages of $99,524.73 for breach of contract, and $0 on the Storage Invoice (the "Total Counterclaim Award");

(2) Out of the Total Counterclaim Award, the amount of $20,398.00 (the "Lien Award") is due on the truckmen and artisans liens;

(3) Defendant may exercise his statutory rights with respect to the Equipment in accordance with Lien Law §§ 187 and 180, and with proceeds after payment of the costs of sale and Lien Award to be paid to Plaintiff within 10 days from receipt by Defendant;

(4) the balance of Total Counterclaim Award owed from Plaintiff to Defendant of $79,126.73 is an unsecured debt;

(5) the Court will enter a Judgment in favor of Defendant and against Plaintiff consistent with the findings herein; and

(6) a post-trial conference is scheduled for March 20. 2025 at 10:05 a.m. which will be held either in-person at the James M. Hanley U.S. Courthouse and Federal Building, 100 South Clinton Street, Syracuse, New York, or can be accessed telephonically by dialing (518) 217-2288 and entering Conference ID: 557621352#. Counsel for Plaintiff, Counsel for Defendant and Counsel for Trustee are directed to appear.

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RULING CHART

Invoice 1502			
	Line Item One	**Line Item Two**	**Line Item Three**
Description	"Move t8-390 to [New York]"	"Move one m7-171 to Kentucky"	"Move two remaining m7-171 to [New York]"
Quantity	1	1	1
Rate	$6,500.00.	$2,200.00.	$6,500.00.
Amount Requested	$6,500.00.	$2,200.00.	$6,500.00.
Lien Attached	Yes.	No.	Yes.
Amount Awarded	$5,000.00	$2,200.00	$6,500.00
Basis	NY Lien Law § 187; amount charged by Debtor and paid by Plaintiff on Plaintiff's Exhibit J, Invoice 1471 (pg. 7) for same services from NY to TN. Trial Transcript 72:6-14.	Trial Transcript 72:6-14. No lien as this equipment not in Defendant's possession.	NY Lien Law § 187; amount charged by Debtor is less than what was paid by Plaintiff on Plaintiff's Exhibit J, Invoice 1471 (pg. 7) for same services from NY to TN (two tractors moved at $5000 each). Trial Transcript 72:6-14.

Invoice 1519 Line Items One to Five					
	Line Item One	**Line Item Two**	**Line Item Three**	**Line Item Four**	**Line Item Five**
Description	"Pay from July to November as agreed upon for first year monthly payments"	"Trucking Kabota [sic] tractors plus interest included"	"Insurance on equipment, Still paying for this"	"Second half of payment for disc"	"Have been charged another payment because disc are not yet back and the agreement was to back in June or rent for another year."
Quantity	6 [sic]	1	1	1	1
Rate	$10,000.00.	$16,180.00.	$6,000.00.	$10,000.00.	$10,000.00.
Amount Requested	$60,000.00. (reduced to $50,000)	$16,180.00.	$6,000.00.	$10,000.00.	$10,000.00.
Lien Attached	No	No	No.	No.	No.
Amount Awarded	$32,500.00	$0	$6,000.00	$10,000.00	$10,000.00
Basis	Testimony reflects services provided to M-Tech in the winding up TN project; work ended after 1st week in Oct. *See also* Plaintiff's Exhibit E.	Duplicate of Invoice 1502 with added interest. *See, e.g.*, Trial Transcript, 51:2–6; *id.* at 75:16–19.	Testimony it was incurred and was to be billed at end of year. *See* Plaintiff's Exhibit K. Trial Transcript, 110:4–8; *see also id.* 114:2-115:25.	Leased on behalf of Plaintiff. *See* Trial Transcript, 76:10–14; *see also id.* 80:16– 81:10.	Leased on behalf of Plaintiff. *See* Trial Transcript, 76:10–14; *see also id.* 80:16 - 81:10.

Invoice 1519 Line Items Six to Ten					
	Line Item Six	**Line Item Seven**	**Line Item Eight**	**Line Item Nine**	**Line Item Ten**
Description	"Parts to repair disc and labor to fix them $21,000.00 for parts $2,500.00 for labor Includes two back frame pieces, Rolling baskets for back, Bearings, Two hydraulic cylinders, and a few discs and blades"	"Washed and detailed Kabota [sic] tractors and drove to dealership"	"Fix one Kabota [sic] battery terminal, Part and shipping $98.00"	"Trip to Tennessee to move one Kubota back to Spenser and get them ready for trucking and pick up rotator and dump box"	"Price to get disc trucked home"
Quantity	1	2	1	1	1
Rate	$23,500.00.	$400.00.	$98.00.	$2,326.73	$10,000.00.
Amount Requested	$23,500.00.	$800.00.	$98.00.	$2,326.73	$10,000.00.
Lien Attached	No.	Yes.	Yes.	No.	No.
Amount Awarded	$0	$800.00	$98.00	$2,376.73	$5,000.00
Basis	Amount requested was an estimate. No evidence of actual costs admitted. *See* Trial Transcript, 87:23–88:5.	NY Lien Law § 180 and § 187; Plaintiff's Exhibit E. Trial Transcript 101:17–22.	NY Lien Law § 180 and Plaintiff's Exhibit E.	Trial Transcript 77:12–19.	Disc not returned or fixed until Nov. 2024; amount charged by Defendant and paid by Plaintiff on Plaintiff's Exhibit J, Invoice 1471 (pg. 7) for same services from NY to TN.

Invoice 1519 Line Items Eleven to Fourteen				
	Line Item Eleven	**Line Item Twelve**	**Line Item Thirteen**	**Line Item Fourteen**
Description	"High lift rental some I have paid and need to rent one more time to load disc on trailer"	"Trucking roller and plow home"	"Two tires for trailer"	"Another charge of [sic] for disc as they are not repaired and back in New York"
Quantity	1	1	2	1
Rate	$2,100.00.	$8,000.00.	$200.00.	$10,000.00.
Amount Requested	$2,100.00.	$8,000.00.	$400.00.	$10,000.00.
Lien Attached	No	Yes.	No.	No.
Amount Awarded	$1,050.00	$8,000.00	$0.00	$10,000.00
Basis	Disc not returned or fixed until Nov. 2024. *See* Trial Transcript 77:20–25. "Some paid" warrants 50% award.	Testimony and exhibits confirmed it was an out-of-pocket expense. *See* Defendant's Exhibit 6; Trial Transcript, 78:2–79:9.	No evidence of expense provided.	Leased on behalf of Plaintiff. *See* Trial Transcript, 76:10–14; *see also id.* 80:16 - 81:10.