



. . . the owner or any person entitled to notice pursuant to section two hundred one of this article may commence a special proceeding to determine the validity of the lien. . . If the owner or any such person shall show that the lienor is not entitled to claim a lien in the property, or that all or part of the amount claimed by the lienor has not been properly charged to the account of such owner or such person, or, as the case may be, that all or part of such amount exceeds the fair and reasonable value of the services performed by the lienor, the court shall direct the entry of judgment cancelling the lien or reducing the amount claimed thereunder accordingly. If the lienor shall establish the validity of the lien, in whole or in part, the judgment shall fix the amount thereof, and shall provide that the sale may proceed upon the expiration of five days after service of a copy of the judgment together with notice of entry thereof upon the owner or such person, unless the property is redeemed prior thereto pursuant to section two hundred three of this article. If the lien is cancelled, the judgment shall provide that, upon service of a copy of the judgment together with notice of entry thereof upon the lienor, the owner or such person shall be entitled to possession of the property.

Petitioner acknowledges that his recovered stolen car was towed by General Auto to its repair shop on March 14, 2007, and that he advised General Auto's manager that could not afford to pay for the repairs on his Lexus 300 at that time, which were estimated to cost \$6,744.43, but would attempt to secure a loan. He alleges, however, that he never authorized General Auto to repair the vehicle, and that while he "did sign an authorization for the towing. . . there was no money amount in that authorization." He further alleges:

I kept in contact with Mr. Byrd and in June, I told him that I did not think I could get a loan to pay for the repairs. He told me that the repairs were "nearly complete," and that I owed \$11,329.00(See Exhibit C). I went to the shop, where I saw that my car's fender was repaired and the passenger-side window also was repaired. I noticed that one of my front tires was missing, and Mr. Byrd told me that the tire had "exploded." There was no explanation for where my tire and its rim had gone. I know that the car had four working tires when I left it with Mr. Byrd.

Petitioner alleges that he took issue with the discrepancy between the initial estimate and the amount allegedly owed by him, and soon thereafter received a Notice of Lien and Sale, which prompted the instant special proceeding to stop the sale of his car at auction.

Respondent, in opposition, by its president, Mohamed Bacchus, alleges that petitioner's vehicle was towed to General Auto "to be repaired and to have replaced all of the stolen parts taken

from the vehicle by the thieves, as well as the interior and exterior damage inflicted on this expensive, luxury vehicle.” General Auto further alleges that petitioner “signed an authorization to repair his vehicle and to replace the parts that had been stolen, as well as to repair the damage to the vehicle itself,” and that a preliminary estimate was made on March 14, 2007. General Auto also alleges that petitioner acknowledged that he had no theft and/or collision insurance, but that he had applied for a loan through his Union. General Auto concedes that it “agreed to wait until the loan went through before commencing the repairs;” however, it was led to believe in May 2007, that petitioner had obtained a loan and that work could commence. Submitted was evidence that parts were ordered and that petitioner had written checks on May 1, 2007, in the amount of \$1,785.98, May 2, 2007, in the amount of \$237.38 and \$124.63, and on May 3, 2007, in the amount of \$20.00. General Auto acknowledged that, in response to petitioner’s queries made in May 2007 concerning the “stolen” Navigation System, he “informed him that such a system was very expensive to replace, and that I could not proceed to do any further work unless I was paid for the work originally authorized, before ordering such an expensive system.” General Auto alleged that he submitted a second bill in June 2007 to cover the installation cost of the Navigation System, and engaged the services of an Auctioneer to sell the vehicle after it was demanded that petitioner pay for the original work done pursuant to the original bill and remove his vehicle. General Auto conceded that it had “stored and secured the Petitioner’s vehicle since early March of this year. . . without charging any storage charges (emphasis in original).”

In reply, petitioner contends that General Auto “offered into evidence a doctored document” . . . His version of [the release] that says I agreed to pay \$6744.43 for the defendant to repair my car. He adds: “This is fraudulent. I have the original of the document which I signed, authorizing only that the care be towed. THERE IS NO DOLLAR AMOUNT ON THE VERSION I SIGNED.” Petitioner submitted a copy of his original yellow carbon copy. He further contends that the “work done on the car was far beyond what was needed to make the car functional,” and poses the question: “Does it make sense to believe that the defendant, after insisting that I pay upfront for repairs would suddenly make thousands of dollars of repairs with no deposit?”

Section 184 of the Lien Law, in brief, provides that a garage keeper who tows, stores, repairs, maintains, or otherwise furnishes services or supplies to a motor vehicle at the request, or with the consent of the owner, has a lien upon such vehicle to the extent of the sum due and owing for those services provided. Its purpose is to accord a form of security for personal credit by the vendor of services and supplies enhancing the value of the specified vehicle. See, Matter of National Union Fire Ins. Co. of Pittsburgh, PA. v. Eland Motor Car Co., 85 N.Y.2d 725, 730 (1995); Slank v. Dell's Dodge Corp., 46 A.D.2d 445, 448 (4<sup>th</sup> Dept.1975). “In response to a challenge to the lien pursuant to Lien Law § 201-a, the lienor must make a prima facie showing of the validity of the lien and entitlement to the amount claimed (citations omitted). In this case those elements include, inter alia, the existence of an agreement for the imposition of storage charges and that the cost of the repairs was in accordance with the written estimate.” BMW Bank of North America v. G & B Collision Center, Inc., 46 A.D.3d 875(2<sup>nd</sup> Dept. 2007). General Auto thus must demonstrate that there was a valid agreement between the parties for the performance of the repairs. Harrison v. Rubenfeld, 211 A.D.2d 698 (2<sup>nd</sup> Dept. 1995), citing General Motors Acceptance Corp. v. Chase Collision, Inc. 140

Misc.2d 1083 (Sup.Ct., Suffolk Co.1988)[“To sustain a claim that the garageman has a lien for repairs or storage, he must prove that he performed the work under an express or implied agreement with the owner of the vehicle and that the vehicle was repaired or stored at the owner's request, with his authorization and his consent. Lien Law § 184(1).”]

This special proceeding raises several issues that cannot be summarily determined. First, there is the issue of whether the repairs were authorized. Secondly, there is the issue of reasonableness of the amount claimed in the lien. Since neither of these issues can be determined from the papers submitted, an evidentiary hearing is needed. Accordingly, the petition is granted solely to the extent of setting this matter down for a hearing to determine the issues specified herein, and any other issue that may arise during that hearing. The hearing hereby is scheduled for March 25, 2008, at 9:30 a.m., in courtroom 63 of the Supreme Court, located at 88-11 Sutphin Blvd., Jamaica, New York.

Dated: February 7, 2008

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J.S.C.