

PV Holding Corp. v JD's Tire & Battery Ctr.
2010 NY Slip Op 32419(U)
September 3, 2010
Sup Ct, NY County
Docket Number: 106949/2010
Judge: Jane S. Solomon
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Solomon
Justice

PART 55

Joy Moby Corp.

INDEX NO. 106949/10

MOTION DATE _____

J.D.'s Time & Battery Center

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...

PAPERS NUMBERED

1-3

Answering Affidavits - Exhibits _____

4-5

Replying Affidavits _____

6-7

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion petition is decided by the annexed memorandum decision and order of judgment.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 9/3/10

JANE S. SOLOMON

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X
PV HOLDING CORP.,

Index No. 106949/2010

Petitioner,

-against-

DECISION, ORDER
AND JUDGMENT

JD'S TIRE AND BATTERY CENTER,
d/b/a JANS MED A CAR

Respondent.
-----X

SOLOMON, J.:

This petition to cancel a lien on a car that was towed and stored by respondent JD's Tire and Battery Center (JD) was made by order to show cause. A temporary restraining order enjoining JD from selling the vehicle at public auction pending a determination of the validity of the lien was granted on May 27, 2010 and remains in effect. The petition is decided as follows.

FACTS

Petitioner PV Holding Corp. (PV), a subsidiary of Avis Budget Car Rental, LLC (Avis), is the owner of a 2010 Nissan, VIN #3N1AB7AP6AL637950 (the Car). It leased the Car to a non-party as an insurance-replacement rental vehicle. Under unknown circumstances, on March 3, 2010, local police found the Car in the Ramapo River, and directed JD to tow the Car from the river. JD did so and stored the Car in its storage facility in Rockland County.

According to the petition, PV was not given notice that JD held the Car until May 17, 2010, when it received, by

certified mail a Notice of Lien and Sale dated May 14 (Notice, attached to Klein Affirmation, Ex. 1), with an amount due of \$1,964.86 in towing and lien fees. On May 20, PV sent a letter to JD offering to pay that amount plus reasonable storage fees of \$40 per day from May 14 through May 24 (Lerner Affidavit, ¶ 7, attached to Reply), but JD demanded payment of more than \$5,000 for the Car's release. This petition followed.

DISCUSSION

The relevant statutes are

1. Vehicle and Traffic Law (VTL) § 2129(c) which provides:

An operator of a place of business for garaging, parking or storing vehicles for the public, in which a vehicle remains unclaimed for a period of thirty days, shall, within five days after the expiration of that period, report the vehicle as unclaimed to the commissioner. . . . A person who fails to report a vehicle as unclaimed in accordance with this subdivision forfeits all claims and liens for its garaging, parking or storing.

2. Lien Law § 184, which provides at subdivision (2):

A person who tows and stores a motor vehicle at the request of law enforcement . . . shall be entitled to a lien for the reasonable costs of such towing and storage, provided that such person, within five working days from the initial towing, mails to the owner of said motor vehicle a notice by certified mail return receipt requested that contains the name of the person who towed and is storing said motor vehicle, the amount that is being claimed for such towing and storage . . . A person who mails the foregoing notice within said five day period shall be entitled to a lien for storage from and after the date of initial towing, but a person who fails to mail such notice . . . shall only be entitled to a lien for storage from and after the date the notice was mailed. A failure to mail such notice in a timely fashion shall not affect a lien for towing.

Subdivision (5) requires that notice be sent to every person who has perfected a security interest in the vehicle (Lien Law § 184[5]).

PV argues that JD violated VTL § 2129(c) by failing to report to the commissioner that the Car was unclaimed and, therefore, JD has forfeited its claims to the lien. JD opposes the motion with an affirmation by counsel, based on his client's information, and its correspondence with dates in April 2010 ostensibly giving notice to PV, the DMV and the lessee of the car (see, letters annexed to Affirmation in Opposition). Each letter is without evidence of mailing and refers to a towing event of March 13, 2010.

PV responds that the unsigned correspondence is fictitious. Based on the affidavit of Felicial Cofield, PV's impound specialist, its contention is sound. Cofield states "at no time prior to May 17, 2010 did Respondent notify PV that it towed the Vehicle, was in custody and control of the Vehicle or that the Vehicle was being held by Respondent at its towing facility" (Cofield Affidavit, ¶ 5, attached to Reply).

On the legal issue, VTL §2129(c) does not apply to the circumstances stated because JD does not operate a public parking/garaging/storage facility. It is § 184 of the Lien Law which governs the dispute.

PV's claim that it did not receive notice until May 14 is substantiated, and because JD did not give the statutorily

required notice to PV within 5 days of towing the Car, JD is not entitled to storage fees prior to mailing the notice. PV offered payment plus storage fees from May 14, the date of notice, until May 24, in accordance with Lien Law § 184 (a total of \$400 in storage fees). JD improperly sought more storage fees. Accordingly, the portion of the lien that seeks storage fees in excess of \$400 is invalid.

The portion of the lien that pertains to the towing and lien fees of \$1964.86 remains in full effect (Notice of Lien and Sale, attached to Cofield Affidavit, Ex. 2). Accordingly, the lien is valid in the amount of \$2,364.86.

In light of the foregoing, it hereby is

ORDERED and ADJUDGED that the petition is granted to the extent that respondent's lien on the 2010 Nissan, VIN #3N1AB7AP7AL637950 is cancelled and vacated to the extent that it exceeds \$2364.86, and is otherwise denied, and it further is

ORDERED that the restraint of sale on the Car shall continue for ten days from service of a copy hereof with notice of entry or until petitioner makes payment to respondent of \$2,364.86, whichever occurs first.

Dated: ~~August~~ ^{Sept} 3, 2010

Enter: 

 J.S.C.

Judge S. Solomon

UNFILED JUDGMENT
 This Judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).