

Matter of GMAC v ACME Towing Inc.

2008 NY Slip Op 32215(U)

August 7, 2008

Supreme Court, Albany County

Docket Number: 0008902/0081

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

IN THE MATTER OF THE SPECIAL
PROCEEDING APPLICATION OF GMAC,

Petitioner,

-against-

DECISION and ORDER
INDEX NO. 890-08
RJI NO. 01-08-092120

ACME TOWING INC. and THE NEW YORK
STATE DEPARTMENT OF MOTOR VEHICLES,

Respondents.

Supreme Court Albany County All Purpose Term, July 22, 2008
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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New York State Office of the Attorney General
David L. Fruchter, Assistant Attorney General
Attorneys for Respondent The New York State Department of Motor Vehicles
The Capitol
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TERESI, J.:

This proceeding was commenced, pursuant to Lien Law §201-a, by Petitioner to determine the validity and amount of the garageman's lien claimed by respondent ACME

Towing Inc. (hereinafter "ACME") on a 2002 Cadillac. ACME claims its lien totaled \$14,395.22, as of January 12, 2008, and continues to accrue storage charges.

The Court of Appeals, in National Union Fire Ins. Co. of Pittsburgh, Pa. v. Eland Motor, (85 NY2d 725, 730 [1995]), set forth four elements a lienor is required to prove to claim a valid lien under Lien Law §184. This Court's prior Decision and Order, dated July 2, 2008, found that ACME had proven three of the four elements. Specifically, (1) ACME demonstrated that it is a bailee; (2) ACME towed and stored the vehicle with the owner's consent; and (3) there was an agreed upon price for towing and storage of the vehicle. This Court's prior Decision and Order found two factual issues remained. ACME and Petitioner were directed to submit further proof relative to ACME's alleged collusion with the vehicle owner and its compliance with the registration requirements of the Lien Law. Both ACME and petitioner have submitted proof on these issues, and no issues of fact remain.

Relative to petitioner's claim of collusion between ACME and the vehicle's owner, it is not supported by the record. ACME submits the affidavit of its president who alleges that the vehicle's owner was the immediate prior lessee of the premises ACME was leasing in December 2005 when the parties entered into their agreement. ACME has continued to lease that premise since such time. This competently explains why ACME has the same street address as that listed on the vehicle owner's 2005 insurance identification card. ACME's president avers that his company has had no contact with, nor in any way colluded with, the owner of the vehicle. As petitioner does not controvert such proof, there is no basis for finding that ACME and the vehicle's owner colluded in the creation, or continuation of, ACME's lien herein.

Turning to ACME's registration, Lien Law §184(4) states: "[t]he lien provided herein

shall not inure to the benefit of any person required to be registered as a motor vehicle repair shop pursuant to article twelve-A of the vehicle and traffic law who is not so registered.”

“Section 184 of the Lien Law being in derogation of common law, must therefore, be strictly construed in determining the persons to whom or cases to which it is applicable.” (Slank v. Sam Dell's Dodge Corp., 46 AD2d 445, 447 [4th Dept. 1975]). Moreover, “[t]he state has a strong public policy of requiring repair shops to be registered. When a repair shop flouts the Motor Vehicle Repair Shop Registration Act by failing to register, or by operating while its registration is suspended or revoked, or by operating with an expired registration, it should not be allowed to benefit from other provisions of law. Such an unregistered repair shop should be denied the benefits granted legitimate businesses by Lien Law Section 184” (Mem of NY State Dept of Motor Vehicles, 1985 McKinney's Session Laws of NY, at 2976)(quoted by Continental Ins. Co. v. Consumer Towing and Collision, Inc., 189 Misc.2d 172 [2001]).

Here, ACME submitted a copy of its “Tow Truck Funded” type license, which was issued on “6/20/05” and expired on “12/31/05”. No extension of such licence or additional licenses were provided. ACME’s president alleges that such license was in effect at the time “the services were performed herein”, but fails to specify the services he is referring to. Petitioner submitted no factual proof to discredit the license submitted. Accordingly, the court finds that ACME’s license authorized it to both tow the vehicle on December 23, 2005 and store the vehicle until December 31, 2005. (NYC Administrative Code §§ 20-496, 20-508 and 20-509 [setting forth the applicable regulations for licensing tow trucks and their related storage facilities]).

While ACME has proven that it was duly licensed / registered at the time of its initial

towing and storage of the vehicle, no proof is submitted that the registration continued in effect past December 31, 2005. Rather, the only proof submitted by ACME shows their license expired December 31, 2005, eight days after it towed the vehicle. Because a lien only inures to the benefit of a registered motor vehicle repair shop, ACME's lien accrued storage charges only for that portion of time ACME was duly licensed / registered. Such holding is wholly consistent with NYC Administrative Code §20-509(d)(2), which states: "[n]o charge for the towing or storage of vehicles may be imposed by any person who does not have a license to engage in towing as required by this subchapter at the time that the towing and storage services are performed." (emphasis added)

ACME proved it was registered at the time it towed the vehicle and for eight days of its storing the vehicle. In accord with ACME's agreement with the owner of the vehicle, and Lien Law §184, ACME is entitled to a lien for towing and storage of the vehicle from December 23, 2005 to December 31, 2005.

Accordingly, ACME's lien against the vehicle amounts to \$211.82 (Tow fee and First day of Storage - \$80 + Second and Third Day of Storage \$30 + Fourth through Eighth Day of Storage \$85 + Tax at 8.625%).

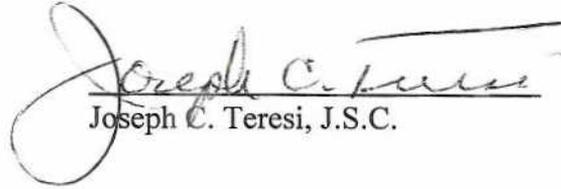
ACME's additional argument relative to its claim for "services performed" seek damages in contract or quasi contract, but does not support the validity of the lien claimed nor is it properly raised in this special proceeding under Lien Law §201-a.

All papers, including this Decision and Order are being returned to the attorneys for Petitioner. The signing of this Decision and Order shall not constitute entry or filing under

CPLR §2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: August 7, 2008
Albany, New York


Joseph C. Teresi, J.S.C.

Papers Considered:

1. Order to Show Cause, dated February 7, 2008, with attached Verified Petition of Karen Gilchrist, dated January 7, 2007.
2. Affirmation in Opposition to Verified Petition of Brooke Tiffany Skolnik, dated April 30, 2008, with attached Exhibits "A"- "C", and accompanying Affidavit of Michael Looney, dated April 30, 2008.
3. Reply Affirmation of Rudolph Meola, Esq., dated May 12, 2008, with attached Exhibits "A"- "B".
4. Letter of David L. Fruchter, Assistant Attorney General, dated March 6, 2008.
5. Affirmation of Brooke Tiffany Skolnik, dated July 15, 2008; and accompanying Further Affidavit of Michael Looney, dated July 18, 2008, with attached Exhibit "A".
6. Reply Affirmation of Rudolph J. Meola, Esq., dated July 30, 2008; and accompanying Affidavit of Ellen Springsteen, dated June 30, 2008, with attached unnumbered Exhibit.