Matter of Vaul Trust v Brothers II Auto Body Shop, Inc.
2009 NY Slip Op 31799(U)
August 12, 2009
Supreme Court, Albany County
Docket Number: 4919-09
Judge: Joseph C. Teresi
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

IN THE MATTER OF THE SPECIAL PROCEEDING AND APPLICATION OF VAUL TRUST and GMAC, LLC,

Petitioners,

-against-

DECISION and ORDER
INDEX NO. 4919-09
RJI NO. 01-09-096988

BROTHERS II AUTO BODY SHOP, INC. and THE NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES,

Respondents.

Supreme Court Albany County All Purpose Term, July 31, 2009
Assigned to Justice Joseph C. Teresi

APPEARANCES:
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TERESI, J.:

Petitioners are a lien holder on, and the owner of, a 2007 Cadillac (hereinafter "the vehicle"). Petitioners commenced this proceeding, pursuant to Lien Law §201-a, to determine

the validity and amount of the garageman's lien claimed by respondent Brothers II Auto Body Shop, Inc. (hereinafter "Brothers II") on the vehicle. Brothers II answered, submitted sworn proof of their claim, and seek a lien of $3,602.00 be imposed. Petitioners object to the amount of such lien, seeking instead that the lien be fixed in the amount of $232.00. Because Brothers II failed to demonstrate the validity of their claimed lien, their lien is limited to $232.00.

The parties agree that on March 13, 2009, Brothers II obtained Petitioner's vehicle pursuant to a law enforcement officer's direction that it be towed. It is also undisputed that on May 8, 2009, Brothers II served a Notice of Lien and Sale (hereinafter "May 8 Notice") on Petitioners. The May 8 Notice's total amount due was $677.00, plus seventy five dollars per day for storage beginning on May 8, 2009.

Petitioners claim that, upon obtaining Brothers II's May 8 Notice, they sought to pay its $677.00 demand. Petitioners claim that Brothers II rejected their offer of payment, and remitted a bill to Petitioners for $6,323.40. Brothers II does not deny either of the Petitioners' allegations. Moreover, Petitioners submitted the Brothers II's invoice setting the amount due at $6,323.40, which includes storage fees from March 10, 2009 through May 13, 2009 at $75.00 per day.

Lien Law §184, which authorizes a garageman's lien for the towing and storage of motor vehicles, "is in derogation of common law and thus is strictly construed." (Grant Street Const., Inc. v. Cortland Paving Co., Inc., 55 AD3d 1106, 1107 [3d Dept. 2008]; Slank v. Sam Dell's Dodge Corp., 46 AD2d 445 [3d Dept. 1975]). "In response to a challenge to [a garageman's] 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." (BMW Bank of North America v. G&B Collision Center, Inc., 46 AD3d 875, 876 [2d Dept. 2007]).

Lien Law §184(2) provides that "[a] person who tows and stores a motor vehicle at the request of a law enforcement officer authorized to remove such motor vehicle 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, and the address and times at which said motor vehicle may be recovered.... a person who fails to mail such notice within said five day period shall only be entitled to a lien for storage from and after the date that the notice was mailed. A failure to mail such notice in a timely fashion shall not affect a lien for towing."

Here, Brothers II failed to demonstrate that it notified the owner of the vehicle, petitioner Vaul Trust, in accord with Lien Law §184(2). The record clearly demonstrates that no notice was provided to any individual "within five working days from the initial towing". Nor has Brothers II at any point provided Vaul Trust with Lien Law §184(2) notice of "the person who towed" petitioner's vehicle, with "the amount that is being claimed for such towing" and the "address and times at which [Vaul Trust's] motor vehicle may be recovered". Lien Law §184(2). The only notice served on Vaul Trust (i.e. the May 8 Notice - "Notice of Lien and Sale"), sent more than two months after the vehicle's towing, does not state who towed the vehicle and fails to specify the towing charge. While the May 8 Notice does state the price per day for storage, the "lien fee", a "letter charge" and "amount owed", not one of the specifically referenced items sets forth "the amount that is being claimed for... towing". Nor does the May 8 Notice specifically allege where the vehicle was stored or when it could be recovered. The May 8 Notice's setting a

date, time and place for the vehicle to be auctioned wholly fails to strictly comply with such requirement. As such, because Brothers II has not served a notice in accord with Lien Law §184(2), it is entitled to no lien for storage.

While Brothers II is not entitled to a lien for storage, its failure to provide notice in accord with Lien Law §184(2) does not affect its "lien for towing". However, Brothers II has only established that its lien for towing is $232.00.

Brothers II's vice president submitted a affidavit stating that the "reasonable fees for said towing was $677.00". Brothers II fails to substantiate such claim with any additional allegations or documentary evidence. Moreover, its conclusory claim is directly contradicted by its May 8 Notice. Brothers II, in its May 8 Notice, broke down the charges being assessed as "LIEN FEE $200.00", "LETTER CHARGE $45.00" and "Amount owed $432.00", with a "TOTAL AMOUNT DUE $677.00". As such, the May 8 Notice clearly indicates that Brothers II's vice president's $677.00 claim includes non "towing" charges, such as a lien fee and a letter charge. As such, Brothers II failed to demonstrate its prima facie entitlement to a lien for towing in the amount of $677.00. However, because Petitioner conceded that the proper towing charge was $232.00, a valid lien has been stated in such amount.

Accordingly, on consent of petitioner, the valid lien assessed on the vehicle herein is $232.00. Upon Petitioners payment of such sum to Brothers II, the bond it posted in this proceeding shall be released.

This Decision and Order is being returned to the attorneys for the Petitioner. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall

not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: August 12, 2009
Albany, New York

Joseph C. Teresi, J.S.C.

Papers Considered:

1. Order to Show Cause, dated June 12, 2009; Petition of Amanda Dodd, dated June 10, 2009, with attached Exhibits "A"-"B"; Bond for $10,000.00, dated June 10, 2009, with accompanying exhibits; and Affidavit of Rudolph Meola, Esq., dated June 11, 2009, with attached Exhibit.
2. Letter of David L. Fruchter, Assistant Attorney General, dated June 26, 2009.
3. Affidavit of George Perrelo, dated July 23, 2009; Affidavit of Bruce Perlmutter, dated July 23, 2009, and Affidavit of Irene Judge, dated July 22, 2009, with attached Exhibits "A" - "D".
4. Reply Affirmation of Rudolph J. Meola, Esq., dated July 30, 2009; and accompanying Exhibits "A" - "B".