

**New Town Used Auto Sales & Auto Parts Inc., v  
Ogden Bros. Collision , Inc.**

2010 NY Slip Op 32509(U)

September 9, 2010

Supreme Court, Nassau County

Docket Number: 11087/10

Judge: Thomas P. Phelan

Republished from New York State Unified Court  
System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

S

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. THOMAS P. PHELAN,**

*Justice*

TRIAL/IAS PART 3  
NASSAU COUNTY

NEW TOWN USED AUTO SALES & AUTO  
PARTS INC.,

Petitioner,

-against-

OGDEN BROTHERS COLLISION, INC.,

Respondent.

ORIGINAL RETURN DATE:06/15/10  
SUBMISSION DATE: 07/13/10  
INDEX No.: 11087/10  
ACTION #1

MOTION SEQUENCE #1

-----  
NEW TOWN USED AUTO SALES & AUTO  
PARTS INC.,

Petitioner,

-against-

OGDEN BROTHERS COLLISION, INC.,

Respondent.

ORIGINAL RETURN DATE:06/15/10  
SUBMISSION DATE: 07/13/10  
INDEX No.: 10616/10  
ACTION #2

MOTION SEQUENCE #1

The following papers read on this motion:

Order to Show Cause.....	1,2
Answering Papers.....	3,4
Reply.....	5

Petitioners move by Orders to Show Cause dated June 2, 2010 (Phelan, J.), and June 9, 2010 (Marber, J.), pursuant to Lien Law § 201-a, for an order cancelling and discharging the Notices of Lien and Sale filed by Respondents. Respondents oppose the motion.

The court notes from the outset that counsel for the respective parties in both actions by stipulation dated June 15, 2010, have consented to the consolidation of both actions into Index No. 11087/10. That action was transferred to the undersigned by short form order dated June 9, 2010 (Marber, J.). Accordingly, Action No. 2 shall be consolidated into Action No. 1. The action, as consolidated, shall go forward under Index No. 11087/10, and the title shall read as follows:

"NEW TOWN USED AUTO SALES & AUTO  
PARTS INC.,

Petitioner,

-against-

OGDEN BROTHERS COLLISION, INC.,

Respondent."

A Notice of Lien and Sale was filed by Respondent against a 2005 Mack Tractor bearing vehicle identification number 1M1AD65Y75M001513 owned by petitioner. The notice informed petitioner that if the vehicle was not redeemed on or before June 7, 2010, it would be advertised for public auction to be held on July 1, 2010. The total amount alleged to be due is \$48,954.38.

A Notice of Lien and Sale was filed by Respondent against a 2005 Benley Semi Trailer bearing vehicle identification number B9G353305B180432 owned by petitioner. The notice informed petitioner that if the vehicle was not redeemed on or before May 17, 2010, it would be advertised for public auction to be held on June 4, 2010. The total amount alleged to be due is \$39,079.38.

Petitioner brought this special proceeding pursuant to Section 201-a of the Lien Law to dispute the validity of the lien. Petitioner alleges that the vehicles were originally stored at Metropolitan Auto Salvage, 4600 Metropolitan Avenue, Ridgewood, New York 11385, and that petitioner did not authorize the vehicles to be towed by respondent to its premises in Freeport. It is further alleged by petitioner that the vehicles have not been stored in Freeport but at Tri County Towing's storage facility in Island Park, New York. Moreover, petitioner claims that it has never received any demand for payment as there were no monies due and owing.

Respondent contends that the towing and storage were authorized by Vincent Marino, an authorized representative of petitioner. Petitioner alleges that Vincent Marino either works with or is an employee of Metropolitan Auto Salvage and does not work for petitioner or have authority to act as an agent on petitioner's behalf.

Lien Law § 184 provides, in pertinent part, as follows:

"1. A person keeping a garage, hangar or place for the storage, maintenance, keeping or repair of motor vehicles as defined by the vehicle and traffic law, . . . and who in connection therewith stores, maintains, keeps or repairs any motor vehicle, . . . has a lien upon such motor vehicle, . . . for the sum due for such towing, storing, maintaining, keeping or repairing of such vehicle . . . and may detain such motor vehicle, . . . at any time it may be lawfully in his possession until such sum is paid . . ."

"The statute clearly inures to the benefit of a garage owner who can establish the following elements: (1) the garage is the bailee of a motor vehicle (citations omitted); (2) it has performed garage services or stored the vehicle with the vehicle owner's consent (citation omitted); (3) there was an agreed-upon price or, if no agreement on price had been reached, the charges are reasonable for the services supplied (citations omitted); and (4) the garage is a duly registered motor vehicle repair shop as required under Article 12-A of the Vehicle and Traffic Law (citation omitted)" (*Continental Ins. Co. v. Consumer Towing and Collision, Inc.*, 189 Misc.2d 172, 174-175 [N.Y. City Civ. Ct. 2001]). Here, as in *Continental*, respondent has failed to satisfy the element of consent.

Accordingly, it is hereby

ORDERED that the aforesaid Notices of Lien and Sale be and the same hereby are cancelled and discharged and respondent is directed to release the vehicles to petitioner's possession.

Petitioner has not demonstrated any authority for its request for attorney's fees, costs and disbursements. Said request, therefore, is hereby denied.

This decision constitutes the order of the court.

Dated: 9-9-10

HON THOMAS P. PHELAN  
*Thomas P. Phelan*  
J.S.C.

Attorneys of Record

Law Offices of Thomas Weiss, P.C.  
Attorneys for Petitioner  
41 Hilton Avenue  
Hempstead, NY 11550

Kleinhardt & Kleinhardt  
Attorneys for Respondent  
2300 Grand Avenue  
Bank of America Building  
P. O. Box 364  
Baldwin, NY 11510

**ENTERED**  
SEP 13 2010  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE