

A&B Sys., Inc. v Wantagh Ave. Auto., Inc.

2011 NY Slip Op 30822(U)

March 24, 2011

Supreme Court, Nassau County

Docket Number: 023282/10

Judge: Randy Sue Marber

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**

Justice

X

A&B SYSTEMS, INC.,

IAS PART 18

Petitioner,

Index No.: 023282/10

Motion Sequence...01

- against-

Motion Date...01/27/11

XXX

WANTAGH AVE. AUTOMOTIVE, INC.,

Respondent.

X

Papers Submitted:

Order to Show Cause.....X

Respondent's Affidavit.....X

Respondent's Memorandum of Law.....X

Upon the foregoing papers, the Petitioner's Order to Show Cause seeking to lift the Notice of Lien and Sale related to the Petitioner's 1998 Ford E-350 van bearing VIN #: 1FDWE37L6WHA29196 and 2005 Ford F-250 pick-up truck bearing VIN #: 1FTWW33P65EC41865, for outstanding repair, towing, storage and other fees is determined as hereinafter provided.

The Petitioner alleges that on November 5, 2010 its 1998 Ford E-350 van bearing VIN #: 1FDWE37L6WHA29196 was brought to the Respondent's repair shop for

an inspection. The Petitioner alleges that a few days later, on November 7, 2010, it brought its Ford 350 King Cab "DULY" to the Petitioner for repairs. The Petitioner alleges that the Respondent advised that it could not perform the inspection on the first truck and moved it to an adjoining parking lot. The Petitioner alleges that the Petitioner was told the cost of repairs could not exceed \$1,100. No written estimate was provided. The Petitioner's President, Anthony Bouchard, alleges that when he went to pick up the second truck, he was presented with an invoice in the amount of \$3,680.58. Mr. Bouchard alleges that he never authorized the repairs and did not have sufficient money to pay the bill. The Respondent refused to release the truck. Upon returning two (2) weeks later, Mr. Bouchard alleges the trucks were blocked in. The Petitioner was then served, on December 14, 2010, with two Notice of Lien and Sale notices. The Notice regarding the first truck seeks payment for storage charges and other expenses. The Notice regarding the second truck seeks payment for repairs, storage charges and other expenses.

The Respondent's "proprietor", Steven Lauletta, submits an affidavit opposing the Petitioner's application. The Respondent, alleges that the Petitioner authorized the repairs on the second truck and simply is refusing to pay for it. The Respondent's "proprietor", Steven Lauletta, alleges that as more time passed, he called the Petitioner and left numerous messages that there would be charges for storage at the rate of \$50/day per truck. On December 6, 2010, Mr. Lauletta alleges that he decided to put liens on both trucks and secured the services of A&E Liens to do so.

Pursuant to Lien Law § 184 (1), 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 for the services performed. A garage keeper may maintain a lien against a vehicle where the garage keeper performed garage services or stored the vehicle with the owners consent for an agreed upon price or, in the absence of an agreement, for a reasonable price. *General Motors Acceptance Corp. v. Anthony J. Minervini, Inc.*, 301 A.D.2d 940 (3d Dept. 2003). Under Article 12-A of the Vehicle and Traffic Law, the garage must be a duly registered motor vehicle shop.

§ 184 of the Lien Law, which is in derogation of common law, must be strictly construed. *Phillips v. Catania*, 155 A.D.2d 866 (4th Dept. 1989). It is the garage keeper's burden to establish that it has performed garage services or stored the vehicle with the owner's consent. *National Union Fire Ins. Co. of Pittsburg, Pa. v. Eland Motor Car Co., Inc.*, 85 N.Y.2d (1995), clarification denied 87 N.Y.2d 1002 (1996).

A lien is specific to the vehicle upon which repairs were made (*National Union Fire Ins. Co. of Pittsburg, Pa. v. Eland Motor Car Co., Inc.*, supra at p. 730) and an estimate of repairs does not create a lien (*Mercedes-Benz Credit Corp. v. One Stop Auto Truck Ctrs.*, 170 Misc2d 354, 650 N.Y.S.2d 913 [Supreme Nassau Co. 1996]). Moreover, storage fees must specifically be authorized in order to be included as part of a lien on the vehicle. Where a garage keeper claims more than is actually due, he or she is guilty of conversion and liable

to the owner in damages. *BMW Bank of N. Am. v. G & B Collision Ctr., Inc.*, 46 A.D.3d 875 (2d Dept. 2007); *F & N Corvette Classics v. Corvette Repairs, Inc.*, 206 A.D.2d 349 (2d Dept.1994).

A vehicle owner faced with a garage keeper's lien on his vehicle may commence a special proceeding under Lien Law § 201-a to challenge the validity of the lien.

The section provides, in pertinent part:

[i]f 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.

It is the Court's responsibility, therefore, to determine the reasonableness of the amount claimed in the lien. *Munro v. Autosports Designs, Inc.*, 185 Misc. 2d 821, 714 N.Y.S. 2d 415 (Supreme Nassau Co. 2000). Refusal to release property based on the improper assertion of a lien can give rise to a cause of action for conversion. *Grant Street Canst., Inc. v. Cortland Paving Company, Inc.*, 55 A.D.3d 1106 (3d Dept. 2008).

Reviewing the Respondent, Steven Laletti's Affidavit and examining the exhibits attached to the Respondents' Cross-motion lead the Court to conclude that the Respondent never received any authorization or estimate. Specifically, the Respondent claims never to have gotten the Petitioner's authorization to charge any storage charges for either vehicle. Additionally, the invoice attached to the Petition as Exhibit A does not contain any signature nor does the Respondent provide any such invoice. Mr. Laletti's statement and the Exhibit are inconsistent. This exhibit establishes that the statements made by Mr. Laletti in his Affidavit are not credible. As such, the Court finds that the Respondent has not established that the repair and storage charges were authorized and the Lien is improper.

Accordingly, it is hereby

ORDERED, that the Petitioner is hereby directed to remit to the Respondent, through its counsel, the sum of \$1,100, the cost of the repair that the Petitioner agreed to pay, by money order or bank check, within ten (10) days of the date a copy of this Order is served on the Petitioner's Attorney; and it is further

ORDERED, that the Petitioner shall remove his vehicles from the Respondent's location within 24 hours of having delivered the aforementioned payment to the Respondent's counsel; and it is further

ORDERED, that the Petitioner's counsel shall serve a copy of this Order upon the Respondent's counsel by certified mail, return receipt requested and by regular mail

within ten (10) days of the date of this Order; and it is further

ORDERED, that in the event the Petitioner does not remit the aforementioned sum within ten (10) days from the date a copy of this Order is served on it pursuant to this Order or fails to remove the vehicle within 24 hours of remitting the payment, the Respondent may commence charging the Petitioner the sum of \$50 per day per vehicle for the storage of the Petitioner's vehicle; and it is further

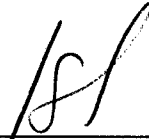
ORDERED, that upon receipt of the Petitioner's remittance, the Respondents' counsel shall direct the Respondent to release the Petitioner's vehicle to it; and it is further

ORDERED, upon the parties' compliance with this Order, the Notice of Lien and Sale shall be lifted.

All applications not specifically addressed are **DENIED**.

This decision constitutes the order of the court.

DATED: Mineola, New York
March 24, 2011



Hon. Randy Sue Marber, J.S.C.
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ENTERED
MAR 29 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE