BMW Fin. Servs. NA, LLC v A1 NY Collision Inc.
2014 NY Slip Op 30641(U)
March 12, 2014
Sup Ct, NY County
Docket Number: 159680/2013
Judge: Cynthia S. Kern
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

----------X

BMW FINANCIAL SERVICES NA, LLC as servicer for BMW BANK OF NORTH AMERICA, INC.,

Index No. 159680/2013

Petitioner,

-against-

DECISION/ORDER

A1 NY COLLISION INC.,

Respondent.

----------X

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : Default Judgment

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Answering Affidavits and Cross Motion.....	2
Replying Affidavits.....	3
Exhibits.....	

Respondent A1 NY Collision Inc. ("NY Collision") has brought the present motion to vacate the Order of Seizure made by this court on November 19, 2013 on default. For the reasons stated below, the motion is denied.

The relevant facts are as follows. This action revolves around possession and rights to a BMW 535xi vehicle (VIN WBAFU7C55CDU62191) (the "Vehicle"). On or about May 9, 2012, non-party Sydonnie L. Castro ("Castro") purchased the Vehicle from petitioner pursuant to a Motor Vehicle Retail Installment Contract (the "Contract"). The Contract provided that the purchaser may not "sell the Vehicle without [petitioner's] written consent . . . not allow a lien to

be placed upon the Vehicle . . . not abandon the Vehicle or use it for hire or illegally." On or about May 11, 2012, Castro entered into an agreement with Crown Rental Car Inc. ("Crown Rental") wherein she "agreed to transfer title rights and all other rights to the vehicle to Crown Rental Cars Inc." in exchange for payment in the amount of "7,000 and an undisclosed cash payment" (the "Crown Agreement").

In late 2012, Crown Rental allegedly went out of business and transferred all of its contract rights and obligations to Royal Enterprise Rentals Inc. ("Royal Enterprise"). On or about May 9, 2013, the Vehicle was involved in an accident and was towed to NY Collision for repair. Respondent alleges that on that date it contacted Royal Enterprise with the repair estimate describing the necessary repairs to the Vehicle, which came to a total of $26,153.48. Additionally, respondent alleges that on that date Royal Enterprise's manger went to NY Collision and signed the repair order authorizing the repair work be performed on the vehicle and, if necessary, store the vehicle after the repairs were made.

In fall of 2013, Royal Enterprise allegedly went out of business and failed to pay for the repairs to the Vehicle or for any other expenses relating to the repair and storage of the Vehicle. Thus, on or about October 11, 2013, respondent had a Notice of Lien and Sale served upon the Vehicle owner, Castor, Vehicle registrant, Royal Enterprise, and Vehicle lien holder, petitioner herein.

On or about October 21, 2013, petitioner commenced the instant action, inter alia, to recover possession of the Vehicle upon which it has a perfected security interest due to Castro's default under the Contract and to cancel respondent's alleged Lien on the Vehicle. By Order dated November 19, 2013, this court granted petitioner's application for an order of seizure (the

"Order of Seizure") and directed that the Sheriff take possession of the car and retain it for ten days. Additionally, the Sheriff was directed that at the expiration of the ten days, it should deliver the Vehicle to petitioner if there has not been served upon him a notice of exception to petitioner's surety, a notice of motion for impounding, a returning order, or the necessary papers to reclaim the Vehicle. Thereafter, on February 20, 2014, the Sheriff seized the Vehicle from respondent. Respondent now makes the instant motion seeking to have the court vacate the Order of Seizure, excuse its failure to appear and its late submission of its opposition papers, restore this action to the Court calendar and enjoin the Sheriff from delivering the Vehicle to petitioner.

It is well settled that a party seeking to vacate a default judgment under CPLR §5015(a)(1) must establish a reasonable excuse for the default and a meritorious defense to the underlying action. *Mercado v. Allstate Life Ins. Co.*, 193 A.D.2d 476 (1st Dept 1993); *Arred Enterprises Corp. v. Indemnity Ins. Co.*, 108 A.D.2d 624 (1st Dept 1985).

In the present case, respondent's motion to vacate its default in appearing and opposing petitioner's application for an Order of Seizure is denied on the ground that it has failed to establish a meritorious defense to the action. Respondent herein alleges it has a valid lien on the Vehicle pursuant to Section 184 of New York's Lien Law. Section 184 of New York's Lien Law authorizes a garage that stores, maintains, keeps or repairs a motor vehicle at the request or consent of the owner to assert a lien on such motor vehicle. It is well settled that "[t]he authority must, as it has been seen, be one lawfully derived 'from the owner.'" *Manufacturers Trust Co. v. Stehle*, 1 A.D.2d 471, 473 (1st Dept 1956). Here, respondent cannot assert a valid lien on the Vehicle pursuant to Section 184 as it did not have authorization from the owner of the Vehicle,

i.e. Castro, to make the repairs to the Vehicle or to have it stored at its location. While respondent argues that it had valid consent from the owner pursuant to Section 184 as it reasonably believed that Royal Enterprise, as successor to Crown Rental, was either the owner of the Vehicle or an agent of the owner with the authority to consent to the repairs, such contention is without merit. Pursuant to the explicit terms of Castro's Contract with petitioner, she could not transfer her rights to the Vehicle without the consent of petitioner. As it is undisputed petitioner never gave consent to the Crown Agreement, such agreement, even if it evidenced a transfer of ownership rights to the Vehicle, is invalid and as such cannot serve as a basis to bestow ownership in the car to Crown and subsequently its alleged successors in interest.

Based on the foregoing, respondent's motion is denied and the temporary restraining order enjoining the Sheriff from delivering the Vehicle to petitioner until further order of the Court is hereby vacated. This constitutes the decision and order of the court.

Dated: 3/12/14

Enter: _____

J.S.C.

CYNTHIA S. KERN
J.S.C.