

**Caulfield v Dano's Auto Clinic, Inc.**

2016 NY Slip Op 31812(U)

March 15, 2016

Supreme Court, Suffolk County

Docket Number: 4742/2010

Judge: Ralph T. Gazzillo

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

Supreme Court - State of New York  
IAS PART 6 - SUFFOLK COUNTY

COPY

MOT. SEQ: 007 MD; 008 MG; 009 MG

**PRESENT:**

Hon. RALPH T. GAZZILLO  
A.J.S.C.

-----X	:
CAROL A. CAULFIELD,	:
	:
Plaintiff(s),	:
- against -	:
	:
DANO’S AUTO CLINIC, INC., d/b/a DANOS	:
AUTO CLINIC INC., DANIEL J. CICCARIANO,	:
ALL NY LIENS INC., d/b/a ALL N.Y.	:
AUCTIONEERS, and SAMANTHA STONE and	:
“JOHN DOE”, intended to be the current	:
registered owner of the subject vehicle,	:
	:
Defendant(s).	:
-----X	:

Upon the following papers numbered 1-26, Notice of Motion for summary judgment and supporting papers numbered 1-6(mot seq 007); Notice of Cross-Motion for summary judgment and supporting papers numbered 7-23 (mot seq 008); Notice of Cross-Motion for summary judgment and supporting papers numbered 24-26 (mot seq 009); it is,

**ORDERED** that the motion for summary judgment of defendant All NY Liens, Inc. (seq 007) is denied in its entirety as moot, and it is further

**ORDERED** that the plaintiff’s cross-motion for summary judgment against defendant Danos Auto Clinic, Inc., Daniel J. Cicciaro and All NY Liens, Inc (seq 008)., is granted in its entirety, and the plaintiff shall have judgment in amount to be determined following an inquest before this Court as set forth herein, and it is further

**ORDERED** that the Plaintiff is directed to prepare a bill of costs and a proposed judgment for submission to the Court at the time of the inquest with space provided for the inclusion of attorney’s fees, and costs and disbursements which are calculated by the Suffolk County Clerk; and it is further

**ORDERED** that prior to commencing the inquest, it is anticipated that the plaintiff(s) will present to the Court satisfactory proof of timely and appropriate notifications to the defendant(s) of the date, time, and place of the proceeding, including any adjournments thereof, and it is further

**ORDERED** that movant is directed to forthwith file a Note of Issue and Certificate of Readiness, pursuant to 22 NYCRR § 202.21, and submit all appropriate calendar fees in order to place this matter on the Inquest Calendar; and it is further

**ORDERED** that an Inquest regarding damages is scheduled for April 26, 2016, at 9:30 a.m. in the courtroom of the undersigned, located at One Court Street, Riverhead, New York, 11901 at which time, plaintiffs are expected to produce all documentary evidence and/or testimony regarding damages, and it is further

**ORDERED** that counsel of the plaintiff shall serve a copy of this Short Form Order upon the Calendar Clerk of the Court, and it is further and it is further

**ORDERED** that defendant Capital One Auto Finance's unopposed motion (seq 009) for summary judgment is granted in its entirety; and it is further

**ORDERED** that counsel for plaintiff shall serve a copy of this Order with Notice of Entry upon counsel for all other parties, pursuant to CPLR §§2103(b)(1), (2) or (3), within thirty (30) days of the date the order is entered and thereafter file the affidavit(s) of service with the Clerk of the Court.

Plaintiff commenced this action alleging conversion of a 2004 GMAC Sierra truck bearing VIN Number 1GTHK24U94E150011 which was sold at a public auction on September 11, 2009 at 8:30 am at the request of defendants Dano's Auto Clinic (hereinafter Dano's) and Daniel Cicciaro (hereinafter Cicciaro) by defendant All N.Y. Liens, Inc. d/b/a All N.Y. Auctioneers (hereinafter All NY Liens), pursuant to an alleged garagemen's lien which totaled \$7,891.06 (purportedly comprised of towing \$195.53, repair \$195.53 and storage from November 6, 2008 through August 14, 2009 totaling \$7,050.00). Plaintiff asserts that the bill that was the subject of the alleged garagemen's lien was fabricated to cover a \$1,000.00 personal loan allegedly made to plaintiff's now deceased son Ryan Caulfield by Cicciaro (the owner of Dano's), that the vehicle had been pledged as security of the loan. According to the plaintiff, when her son returned to Dano's to pay off the loan he was told that he owed substantially more than the principal amount because the payment was "late" and that the truck would not be returned unless the entire debt was paid.

Plaintiff initially sought a temporary restraining order to prevent the auction of the vehicle by Order to Show Cause and Petition dated September 11, 2009 (Emerson, J.), unfortunately, however the vehicle had actually been sold at the auction at 8:30 am on September 11, 2009 just hours prior to the service of the Order to Show Cause which occurred later that day (despite the plaintiff having advised defendants Dano's and Cicciaro that she was proceeding to attempt to stay the sale). The vehicle was purchased at the auction by defendant Samantha Stone for \$2,500.00. It is alleged that at the time of the auction, defendant Samantha Stone was the girlfriend of defendant Daniel Cicciaro.

Accordingly, thereafter on September 21, 2010 the remaining relief sought in the Petition was denied and the petition was dismissed based upon the fact that the vehicle had already been sold, thereby rendering the petition (which sought to stay the sale) moot (Gazzillo, J.). Plaintiff thereafter commenced an action alleging conversion and fraud on the part of the defendants. Specifically, the second amended complaint contains four separate causes of action seeking replevin or alternatively money damages (including punitive damages) based upon the defendants' alleged conversion and fraud of her vehicle.

Defendant All NY Liens thereafter moved to dismiss the action for failure to name necessary party defendants (mot seq 001). Defendant argued that the necessary defendants included Ryan Caulfield, Capital One Auto Finance (the lienholder of the vehicle), and the New York State Department of Motor Vehicles. Plaintiff opposed the motion. While the motion was *sub judice*, Ryan Caulfield died. The Court was not initially notified of the death. Following receipt of notice that Ryan Caulfield had died, on September 21, 2010, this Court ordered the inclusion of certain necessary parties within "sixty (60) days of receipt of a copy of this order." Both the Department of Motor Vehicles and Capital One Auto Finance were served within the ordered time frame, however, for obvious reasons, Ryan Caulfield was not made a party to the action. A stay of the action was then imposed by Short Form Order dated September 25, 2011 to allow for the administration of Mr. Caulfield's Estate. Thereafter, Mark O'Brien was appointed as administrator of the Mr. Caulfield's Estate and the stay was discontinued.

On or about November 22, 2010, COAF served its answer and counterclaims. Thereafter, plaintiff served a Second Supplemental Summons and Second Amended Verified Complaint dated October 16, 2012 which COAF answered on December 10, 2012. COAF's Verified Answer to the Second Amended Complaint *did not* contain any counterclaims. Defendant All NY Liens filed its Verified Answer to the Plaintiff's Second Amended Verified Complaint on January 9, 2013 and asserted 37 Affirmative Defenses, two (2) Cross-claims and preserved numerous affirmative defenses.

Plaintiff obtained a default judgment against Samantha A. Stone pursuant to Short Form Order of this Court dated April 14, 2014 (Gazzillo, J.). Defendant Capital One Auto Finance initially filed a counterclaim against plaintiff seeking repayment of the automobile financing that was obtained when the vehicle was purchased. However, COAF has abandoned any interest it had in the lien on the subject vehicle and now seeks summary judgment (mot seq 009) dismissing the claims made against it in the second amended complaint. COAF's application herein is unopposed. Accordingly, the Court will grant COAF's motion dismissing the claims in the amended complaint against it since the lack of opposition is tantamount to consent. (*see, Tortorello v Larry M. Carlin*, 260 AD2d 201 ). Moreover, the absence of any challenge to the truth of the alleged facts operates as a concession that no question of fact exists (*Keuhne & Nagel v. Baiden*, 36 NY 2d 539).

Defendant All NY Liens also moves for summary judgment (mot seq 007) essentially asserting that it acted in accordance with the directions given to it by the principals Dano's and Ciccario. Plaintiff cross moves for summary judgment (mot seq 008) motion herein is based upon her assertion that All NY Lien defendants had no authority or consent to sell her vehicle to satisfy an obligation of her deceased son and that the purported lien which was created by Dano's and/Ciccario was void pursuant to Lien Law 184(1). Further, she argues that All NY Liens is strictly liable for conversion even if it acted on good faith on an invalid lien. Accordingly, she argues that All NY Liens is liable for conversion<sup>1</sup>.

Lien Law 184(1) provides that "[a] person keeping a garage, hangar or place for the storage, maintenance, keeping or repair of motor vehicles ... and who in connection therewith tows, stores, maintains, keeps or repairs any motor vehicle ... at the request or with the consent of the owner ... whether or not such motor vehicle, motor boat or aircraft is subject to a security interest, has a lien upon such motor vehicle, motor boat or aircraft for the sum due for such towing, storing, maintaining, keeping or repairing of such motor vehicle, motor boat or aircraft or for furnishing gasoline or other

<sup>1</sup> The motion sequences are taken out of order.

supplies therefor and may detain such motor vehicle, motor boat or aircraft at any time it may be lawfully in his possession until such sum is paid, except that if the lienor, subsequent to thirty days from the accrual of such lien, allows the motor vehicle, motor boat or aircraft out of his actual possession the lien provided for in this section shall thereupon become void as against all security interests, whether or not perfected, in such motor vehicles, motor boat or aircraft and executed prior to the accrual of such lien, notwithstanding possession of such motor vehicle, motor boat or aircraft is thereafter acquired by such lienor.”

Lien Law § 201 provides, in pertinent part, that should the alleged lienor wish to enforce its lien, the lienor is required to serve a detailed notice of sale “upon the owner ... by mailing it to the owner at his last known place of residence, or to his last known post-office address ... by certified mail, or by first-class mail [with] ... a certificate of mailing.” The notice of sale is ineffective if someone other than the lienor (i.e., a third-party auctioneer) serves the notice of sale, or if the notice of sale is sent in a manner not prescribed by the relevant statute. (See, *Hsu v Emerson Collision*, 126 Misc 2d 385.)

It is well settled that an “auctioneer may be held personally liable for conversion where the auctioneer sells property in behalf of a principal who, as it turns out, never actually had title to, or the authority to dispose of, the property”. (See, *Parker v. P & N Recovery of New York*, 182 Misc.2d 342, 344-345 citing *Sprights v Hawley*, 39 NY 441, 447; *Levy Bros. & Adler, Rochester v Karp*, 124 Misc 901; 7 NY Jur 2d, Auctions and Auctioneers, § 37, at 636; 18 Am Jur 2d, Conversion, § 72, at 193.) The true owner of the property, under these circumstances, would have a viable cause of action against both the principal and the auctioneer.” (*Parker* at 346).

Moreover, “an auctioneer may be liable even if the auctioneer acted in good faith and without knowledge of the principal's lack of title or authority to sell”. (*Sprights v Hawley*, supra, 39 NY, at 446). The auctioneer does not escape liability even if he or she was complying with the principal's specific instructions (See, *Ingram v Machel & Jr. Auto Repair*, 148 AD2d 324). “Although the foregoing rule of law, imposing as it does apparent strict liability upon auctioneers for conversion, may appear to be harsh, it is, as a matter of public policy, ‘designed to discourage larceny and the reckless sale of personal property’ ” (See, *Parker, supra, citing Levy Bros. & Adler, Rochester v Karp*, supra, 124 Misc. 901 at 902). In order to protect himself from liability it is incumbent upon the auctioneer to verify that the principal has the right and/or proper title to the vehicle it has been asked to auction (*Parker, supra.*)

A reading of the plaintiff's papers shows that it has established *prima facie* entitlement to summary judgment against the All NY Lien defendant regardless of whether the corporation acted in good faith and/or at the direction of Dano's or Cicciaro. The plaintiff has produced proof that she never requested, authorized, acknowledged or was aware that defendant Dano's did any other work warranting the placement of a garageman's lien on the subject vehicle. Moreover, and more importantly, plaintiff has established that Ryan Caulfield had no authority to pledge the vehicle as security for any debt, or repairs, if they had in fact been completed by Dano's since he was not the owner of the vehicle. Accordingly, the lien on the vehicle would be considered invalid (Lien Law 184), and the auctioneer would have no authority to sell it and, as a matter of law, the auctioneer would have liability for having done so (see, *Parker, supra.*)

Once the plaintiff's proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form...and must “show facts sufficient to require a trial of any issue of fact” (CPLR 3212[b]; *Zuckerman v City*

of *New York*, 49 NY2d 557). The opposing party must present facts sufficient to require a trial of any issue of fact by producing evidentiary proof in admissible form (*Joseph P. Day Realty Corp. v Aeroxon Prods.*, 148 AD2d 499) and must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (*Castro v Liberty Bus Co.*, 79 AD2d 1014).

Here, in opposition to the motion, defendant All NY Liens asserts that the plaintiff's claims as to the loan made to her deceased son are unsubstantiated and that it relied upon the representations of defendant Dano's and Cicciaro that the person who pledged the truck as security had the authority to do so. Nowhere does All NY Liens, Inc. set forth a viable defense to the strict liability it has for selling the vehicle it had no right to sell (see, *Sprights v. Hawley*, supra). Defendant further argues that this Court's September 21, 2009 decision which denied the plaintiff's application for temporary relief and dismissal of its original petition as 'moot' because the vehicle had already been sold somehow has a *res judicata* effect on plaintiff's claim herein is without merit. The dismissal of the petition seeking return of the vehicle does not preclude the plaintiff's from seeking damages based upon conversion (See, *Champion v Wilsey*, 114 AD2d 630). Defendant All NY Lien's remaining assertions and defenses are without merit.

Accordingly, plaintiff's cross motion is granted and defendant All NY Lien's motion is denied as moot.

Dated: 3/15/16  
 Riverhead, N.Y.

  
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 Ralph T. Gazzillo  
 A.J.S.C.

NON-FINAL DISPOSITION

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