

State Farm Mut. Auto. Ins. Co. v M.V.B. Collision Inc.
2017 NY Slip Op 33082(U)
December 8, 2017
Supreme Court, Nassau County
Docket Number: 606797/17
Judge: Jeffrey S. Brown
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SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE**

-----X	TRIAL/IAS PART 13
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	INDEX # 606797/17
Plaintiffs,	
-against-	Mot. Seq. 1
M.V.B. COLLISION INC. d/b/a MID ISLAND COLLISION,	Mot. Date 8.14.17
Defendant.	Submit Date 11.2.17
-----X	

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The following papers were read on this motion:	E File Docs Numbered
Notice of Motion, Affidavits (Affirmations), Exhibits Annexed.....	2, 13, 21
Answering Affidavits (Affirmations).....	24
Reply Affidavit.....	39
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Motion by State Farm Mutual Automobile Insurance Company (State Farm) for an order of seizure pursuant to CPLR § 7102 directing the seizure of a certain 2015 Nissan, VIN No. 5N1AA0NC3FN613953 presently located at MVB Collision Inc. d/b/a Mid Island Collision (MVB), 20 Lakeview Avenue, Rockville Centre, New York; an order for a preliminary injunction enjoining MVB from removing or otherwise disposing of the chattel until the conclusion of this action; and an order pursuant to Lien Law § 201-a directing a hearing on the validity of liens asserted by MVB on the subject vehicle.

State Farm brings the instant action sounding in replevin, violation of Lien Law § 201-a and for a declaration that it has no obligation to pay MVB any additional amounts sought for the alleged work on the Nissan. In support of this motion, State Farm submits the affidavit of Cheyenne Cook, a Team Manager in plaintiff's Columbia, Missouri operations center. Ms. Cook states that she manages some of State Farm's property damage claim units for New York State. She explains that State Farm maintains comprehensive claim files, with notes that are created contemporaneously by State Farm employees conducting communications relevant to a claim. In addition, all letters, estimates and reports are scanned into the claim file.

Ms. Cook states that State Farm issued a policy of insurance to one Courtney Pope covering her 2015 Nissan, which vehicle had a finance lien from TD Auto Finance. On March 27, 2017, the Nissan was damaged in a collision and was taken to MVB for a repair. According to Ms. Cook, the policy and New York State regulations provide that if the cost of repairing the vehicle exceeded a total loss threshold which is 75% of actual cash value of the vehicle, no further repairs will be covered. Instead, State Farm would pay the insured the actual cash value for the Nissan. Starting on March 31, 2017 and continuing to May 25, 2017, State Farm's estimators conducted site inspections at MVB's request and approved repairs in the amount of approximately \$28,000.00. On June 5, 2017, the claim was reassigned to State Farm's Total Loss Unit, which determined that the Nissan had reached the 75% threshold, after which no additional repairs would be covered. MVB was so advised on the same day.

Ms. Cook states that on June 7, 2017, State Farm paid Ms. Pope and TD the actual cash value of the Nissan and Pope signed title for the vehicle over to State Farm. On June 9, 2017, State Farm attempted to arrange pick up of the Nissan but MVB advised that the vehicle was not ready and that final charges would be ready on June 12, 2017. On June 15, 2017, MVB informed State Farm that it required an additional \$32,503.96 in charges to release the Nissan, which after credits was reduced to \$21,042.68. On July 6, 2017, State Farm receive via facsimile a notice of lien and sale on the Nissan, seeking an additional \$50,728.44 for repair and storage charges. MVB's own estimate reflected a market value of only \$36,000.00 for the vehicle.

Although the court disagrees with MVB's contention that State Farm is without standing to bring the instant action, it finds that factual questions preclude granting State Farm's motion for an immediate order of seizure. The title document, while reflecting Ms. Cook's signature as "Seller" is dated June 12, 2017 and is blank as to the buyer, and State Farm has not provided checks issued to Ms. Pope or TD. In addition, State Farm submits a supplemental affirmation, which purports to attach the "salvage certificate" confirming that State Farm is the title holder of the vehicle. However, the certificate filed in support of the motion reflects a different VIN number. Accordingly, State Farm has not conclusively established its entitlement to present possession of the vehicle.

Moreover, the court finds that a hearing on the validity of MVB's lien is warranted. MVB submits the affidavit of Brian McGauvran, the General Manager of defendant MVB Collision. Mr. McGauvran states that MVB was authorized by the owner Courtney Pope to make the necessary repairs and replacements to her vehicle and agreed to pay for the same. According to Mr. McGauvran, on April 11, 2017, upon realizing that the car would require more work than anticipated, it advised the estimator to deem the car a "total." Rather than heeding that advice, the estimator drafted a list of required repairs. This transpired several more times and MVB continued work on the car for weeks. When the final bill was due, State Farm refused full coverage and the car's owner did not make up the shortfall. Accordingly, MVB hired a lien specialty company to draft and serve a garagekeepers' lien on Ms. Pope and the financing company. MVB also submits the affidavit of Lawrence Montanez, III a consultant engaged in the business of estimating and analyzing vehicle damage. Mr. Montanez states that he has reviewed

the repair bill and photographs of the vehicle and finds that all work performed by MVB was required by Nissan to restore the vehicle back to its pre-loss condition.

According to Ms. Cook and as corroborated by the date stamp on the document, the notice of lien and sale was received by State Farm on July 6, 2017. The instant action was commenced on July 21, 2017. Lien Law § 201-a provides that “[w]ithin ten days after service of the notice of sale, the owner or any person entitled to notice pursuant to section two hundred one of this article may commence a special proceeding to determine the validity of the lien.” MVB contends that this action is untimely as it was brought beyond the ten-day statutory period. However, the precise requirements of service pursuant to Lien Law § 201, have not been satisfied here. (*See Travis v. 29-33 Convent Ave. HDFC*, 19 Misc3d 749 [Sup. Ct. N.Y. County 2008] [strict compliance with technical requirements of Lien Law § 201 required for the ten day limit to warrant dismissal]). The statute requires a lienor to serve the notice of sale upon the owner of the disputed property and “upon any person who shall have given to the lienor notice of an interest in the property.” Ms. Cook states by her affidavit that MVB was notified on June 5, 2017 that the vehicle was a total loss and all work should cease, which would indicate that State Farm was paying the insured for the market value of the car. Mr. McGauvran, in his affidavit, does not dispute that the information was received. Accordingly, MVB was required by the statute to serve a notice of lien and sale upon State Farm, which it failed to do.

On balance, the court finds that the conflicting affidavits of the parties concerning the work that was authorized on the vehicle necessitate a hearing on the issue of ownership of the vehicle and validity of the lien.

Finally, the court grants State Farms’ request for a preliminary injunction. To establish entitlement to a preliminary injunction, a movant must clearly demonstrate: (1) a likelihood of success on the merits, (2) irreparable injury absent granting the preliminary injunction, and (3) a balancing of the equities in the movant’s favor (*Nobu Next Door, LLC v. Fine Arts Housing, Inc.*, 4 NY3d 839, 840 [2005]; *Aetna Ins. Co. v. Capasso*, 75 NY2d 860 [1990]; *Matter of Armanida Realty Corp. v. Town of Oyster Bay*, 126 AD3d 894 [2d Dept 2005]; *Trump on the Ocean, LLC v. Ash*, 81 AD3d 713, 716 [2d Dept 2011]). “The remedy is considered a drastic one which should be used sparingly” (*Town of Carmel v. Melchner*, 105 AD3d 82, 91 [2d Dept 2013]) and a movant must satisfy each requirement with “clear and convincing evidence” (*County of Suffolk v. Givens*, 106 AD3d 943, 944 [2d Dept 2013]). The decision to grant or deny a preliminary injunction lies within the sound discretion of the supreme court (*Doe v. Axelrod*, 73 NY2d 748, 750 [1988]). Here, upon Ms. Cook’s affidavit and the evidence substantiating that the vehicle was totaled on or about June 7, 2017, State Farm has established a likelihood of success on the merits and equity dictates that the status quo be preserved until the amount due to the defendant, if any, is determined.

For the foregoing reasons, it is hereby

ORDERED, the matter will be set down for a hearing and on the issues of State Farm's entitlement to possession of the subject vehicle, the validity of MVB's notice of lien and sale, and the amount, if any, due to MVB for work performed on the subject vehicle; and it is further

ORDERED, that the parties are directed to appear for a conference in this part on **January 9, 2018 at 9:30 a.m.** to address what discovery, if any, is required in advance of the hearing. At the conclusion of discovery, this matter will be referred to the calendar control part (CCP) for hearing of this action.

ORDERED, that pending further order of this court, MVB Collision Inc. d/b/a Mid Island Collision is enjoined from removing, transferring, selling, pledging, assigning, disposing of or permitting the chattel to become subject to a security interest or lien and that any pending scheduled auctions of this chattel is stayed until further order of this court, conditioned upon State Farm's posting of an undertaking in accordance with CPLR 6312 in the amount of \$7,500.00.

This constitutes the decision and order of this court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
December 8, 2017

ENTER :



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J.S.C.

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