

Martelli v Car-Tone Auto Collision Inc.

2018 NY Slip Op 33034(U)

October 30, 2018

Supreme Court, Richmond County

Docket Number: 85137/2018

Judge: Wayne M. Ozzi

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This opinion is uncorrected and not selected for official publication.

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

-----X

COSMO MARTELLI,

Petitioner,

-against -

**CAR-TONE AUTO COLLISION INC., and
MICHAEL COTONA,**

Respondents.

-----X

Part 23

Present:

HON. WAYNE M. OZZI

DECISION AND ORDER

Index No. 85137/2018

Motion No: 3052-001

The following papers numbered 1 to 3 were fully submitted on the 20th day of September, 2018:

Papers Numbered

Order to Show Cause with Temporary Restraints (Affirmation, Verified Petition in Support) (Dated: July 13, 2018).....	1
Affirmation in Opposition (“Affidavit” of Respondent Michael Cotona) (Dated: September 12, 2018).....	2
Affirmation in Reply (Dated: September 18, 2018).....	3

Upon the foregoing papers, the relief requested in the Petition is granted and the Respondent’s lien is canceled.

It is undisputed that petitioner, Cosmo Martelli (hereinafter “Petitioner”), is the titled owner of a 2016 Ford F150 truck bearing New York State license plate number HJX 7583, Vehicle Identification Number 1FTEW1EP2GKF07979, which was involved in a two-vehicle accident on February 4, 2018, on Avenue S near its intersection with West 12th Street, Brooklyn, New York¹.

¹ The other vehicle involved in the accident was a 2006 Nissan sedan, owned and operated by Iosif Bitenskiy (see Police Report dated 2/5/2018; Petitioner’s Exhibit A).

Respondents, Car-Tone Auto Collision Inc. and its owner Michael Cotona (hereinafter collectively “Car-Tone”), are “an auto repair and body shop located at 815 39th Street, Brooklyn, New York” (see September 12, 2018 unacknowledged “Affidavit” of Respondent Michael Cotona). The police report, number 7, reflects that damage to the Ford truck was **exclusively to the passenger side**, while damage to the Nissan was exclusively to the driver’s side (see Petitioner’s Exhibit A).

Petitioner claims that on February 12, 2018 he brought his vehicle to Car-Tone for repairs necessitated by the February 4, 2018 accident. Petitioner’s insurer, Allstate Insurance Company, prepared three written estimates (one estimate and two “supplements”) dated February 28, 2018, March 8, 2018, and March 12, 2018, and issued two checks--one on March 1, 2018 in the amount of \$1,272.31 and one on March 12, 2018 in the amount of \$2,460.83 (see Petitioner’s Exhibits B, D), which the parties concede were paid to Car-Tone. When Petitioner contacted Car-Tone in late March 2018 to retrieve his vehicle he was advised for the first time that **additional repairs** had been made² in the amount of \$9,869.00 (i.e., parts of \$2,362.84, labor of \$6,312.02, plus “additional costs” of \$1,194.00), that storage charges of \$75.00 per day were due and accruing, and that the “balance” had to be paid before the truck would be released. By early April of 2018 Petitioner, through his attorney, sent Car-Tone a letter by certified mail demanding information in connection with the alleged “additional repairs” made to the truck. Car-Tone ignored this demand and in late June 2018 filed a “Notice of Lien and Sale” to sell the truck on July 20, 2018, for the amount of \$17,514.49, which included: \$9,869.49 for repairs, plus a “lien fee” of \$295.00, plus storage fees dating from March 15, 2018 of \$7,350.00 (98 days @ \$75.00 per day; see Petitioner’s Exhibit H).

² Car-Tone claims that the driver’s side was damaged and had been repaired prior to Allstate coming to inspect, photograph and estimate the damages to the truck.

This application by Petitioner pursuant to Lien Law §201-a, challenging the validity of Car-Tone’s lien was presented on July 13, 2018. Temporary stay of the sale was granted, and the matter was fully submitted on September 20, 2018.

Petitioner argues that Car-Tone does not have a valid lien herein since petitioner did not authorize or consent to any additional charges and, moreover, that the amount contained in Car-Tone’s Notice of Lien and Sale is fraudulent, and at best, misstated. In support Petitioner attaches photographs of his vehicle showing that during the relevant time period the driver’s side was free of damage, as well as photographs/citations for moving violations against the vehicle, during the time that it was allegedly exclusively held by Car-Tone (*see* Petitioner’s Exhibits F, G).

In opposition, Car-Tone argues that Petitioner did not meet its burden on the application, and moreover, that its garageman’s lien is valid because it provided Petitioner with a written estimate in the amount of \$9,689.00 (*see* Car-Tone’s Exhibit A, purported estimate dated 2/12/18); it ordered parts for the vehicle as evidenced by a bill from Hassett of Wantagh (*see* Car-Tone’s Exhibit B), and Petitioner knew of the repairs made to the driver’s side of the vehicle as evidenced by Petitioner’s April 4, 2018 text message to Car-Tone indicating that a third-party was responsible for some portion of damage (*see* Car-Tone’s Exhibit C). Also attached is the unsworn September 12, 2018 “affidavit” of Respondent, Michael Cotona, informing that the truck was brought to Car-Tone on February 2, 2018 with “significant damage on the left (driver’s) side”; that on February 4, 2018, Petitioner took the car out of the shop **without any repairs being done**³; and that on February 12, 2018 Petitioner returned the truck to Car-Tone, now with damages to the passenger

³ Car-Tone offers no explanation for the fact that the driver’s side appears free of damage, despite its insistence that it did not repair the driver’s side by February 4, 2018 and did not even order the parts to repair the driver’s side until February 14, 2018 (*see* para 7 of Cotona affidavit).

side as a result of the February 4, 2018 accident, in addition to the pre-existing driver’s side damage.

Pursuant to Lien Law §184, 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 (see Lien Law §184[1]; *General Motors Acceptance Corp. v. Anthony J. Minervini, Inc.*, 301 AD2d 940 [3d Dept. 2003]).

Where a party seeks to invalidate the garageman’s lien pursuant to Lien Law §201-a, “the lienor must make a *prima facie* showing of the validity of the lien and entitlement to the amount claimed” (*Matter of BMW Bank of N. Am. v. G&B Collision Ctr., Inc.*, 46 AD3d 875, 876 [2d Dept. 2007]). In order to make a *prima facie* showing of a valid lien, the garage owner must establish the following four elements: “(1) the garage is the bailee of a motor vehicle; (2) it has performed garage services or stored the vehicle with the vehicle owner’s consent; (3) there was an agreed-upon price or, if no agreement on price has been reached, the charges are reasonable for the services supplied; and (4) the garage is a duly registered motor vehicle repair shop as required under article 12-A of the Vehicle and Traffic Law (*Matter of National Union Fire Ins. Co. of Pittsburgh, Pa. v. Eland Motor Car Co.*, 85 NY2d 725, 730 [1995; *internal citations omitted*]; see Lien Law 184[1], [4]; *Matter of Daimler Trust & Daimler Tit. Co. v. SG Autobody LLC*, 112 AD3d 1123 [3d Dept. 2013]). The requirements of Lien Law §184 must be strictly construed, as the statute is in derogation of the common law (see *Matter of Ally Fin. Inc. v. Oakes Towing Serv., Inc.*, 130 AD3d 1355 [3d Dept. 2015]; *Grant St. Constr., Inc. v. Cortland Paving Co., Inc.*, 55 AD3d 1106, 1107 [3d Dept. 2008]; *Phillips v. Catania*, 155 AD2d 866 [4th Dept. 1989]). Where the papers and pleadings in a special proceeding pursuant to Lien Law §201-a fail to raise a

material issue of fact regarding the existence of a valid lien, a court is authorized to make a summary determination (*see* CPLR 409[b]; *Matter of Jones v. March*, 135 AD2d 887, 888 [3d Dept. 1987]).

Here, Car-Tone fails to meet its burden in establishing the validity of its lien. While not raised by Petitioner, the court notes that no proof has been presented showing that Car-Tone is in fact a duly registered motor vehicle repair shop pursuant to Vehicle and Traffic Law 12-A. Car-Tone has provided no record evidence, or even made any explicit assertion that the garage was so registered in February of 2018 (*see Matter of Santander Consumer USA, Inc. v. A-1 Towing Inc.*, 163 AD3d 1330 [3rd Dept. 2018]; [*internal citations omitted*]). Likewise, the record is devoid of proof that Petitioner consented to the storage fees and, without the owner's specific agreement for storage, the garage-keeper may not recover damages for the vehicle's storage (*see Phillips v. Catania*, 155 AD2d 866 [4th Dept. 1989]). The obvious dispute between Car-Tone's assertion that it repaired the truck's driver's side, and Petitioner's position (consistent with photographs, police report, and statement of Michael Cotona) that the truck suffered no damage to its driver's side, demonstrates that no agreed-upon repair price existed between the parties.

Car-Tone has failed to establish the requirements for a garage-keeper's lien, and the lien is accordingly declared void.


It is therefore

ORDERED, that the relief requested in the Petition is granted and it is further

ORDERED, that the Respondents' lien is canceled.

This constitutes the decision and order of the court.

Dated :
10/30/18

ENTER, 
HON. WAYNE M. OZZI
J.S.C.