SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. JACK L. LIBERT,
Justice.

TRIAL PART 23
NASSAU COUNTY

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

INDEX # 606797/17

-against-

M.V.B. COLLISION INC. d/b/a MID ISLAND COLLISION,

DECISION AFTER TRIAL

Defendant,

This action arises out of a garageman's lien filed by MVB against a motor vehicle insured by State Farm. State Farm seeks a declaration that the lien is invalid, a declaration that no money is due MVB for repair work and replevin of the vehicle.

Undisputed Facts

After a collision State Farm's insured brought her extensively damaged vehicle to MVB. The insured and MVB entered into an agreement for MVB to perform the repair work. That agreement provided that MVB would be compensated based upon a labor rate of $120 per hour and that the insured was liable to MVB for any charges in excess of those approved by State Farm. But in a second agreement State Farm's insured was relieved of that liability. That second agreement provided that MVB would exculpate the insured from payment of any charges not approved in exchange for an assignment of her rights of recovery under the insurance policy.

State Farm did an initial inspection of the vehicle on March 12, 2018 and estimated the cost of repair at $10,082.70. In accordance with 11 NYCRR 216.7, MVB notified State Farm that the estimate was inadequate and that approvals for additional work would be required. At that time State Farm sent its insured a "Notice of Rights" which informed her that State Farm and MVB did not reach an agreed upon price so that the insured could be liable for the disputed amount if she chose to have the vehicle repaired by

MVB. The insured chose to have MVB continue the repairs. During the course of the work State Farm made nine supplemental inspections and issued approvals for additional work following each inspection. By June 7, 2017, State Farm paid a total of $29,410.76 to MVB. On that date State Farm declared the car a total loss and advised MVB to cease work. MVB responded that the work was already complete and on June 15, 2017 submitted its invoice for an additional $32,503.96.

On June 30, 2017 MVB filed a lien in the sum of $50,728.44. State Farm had begun the process of obtaining title to the vehicle for salvage, but did not complete that process until August 2, 2017, well after the MVB lien was filed. The charges State Farm initially declined to pay totaled the sum of $21,231.41 (after applying the policy deductible). During the course of the trial the parties stipulated to reduce the disputed amount to $18,766.56. The amount remaining in dispute is mostly derived from the labor rate, which MVB asserts should be $120 per hour and All State asserts should be approximately $49 per hour. A small portion of the disputed amount is attributable to MVB using two OEM wheels rather than replacing only the left wheel with a re-manufactured one. There is also an issue concerning the mark-up on work performed at shops other than MVB. All State asserts that MVB is not entitled to the markup since these shops are owned by the same principal as MVB.

Validity of the Lien

"To assert a valid lien on a motor vehicle for the cost of towing, repairing or storing that vehicle, a garagekeeper must establish that "(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 had 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 Santander Consumer USA, Inc. v A-1 Towing Inc.*, 163 A.D.3d 1330, 82 N.Y.S.3d 629, 2018 N.Y. Slip Op. 05394 [3rd Dept., 2018, internal citations omitted.]).

The parties stipulated that MVB is a duly registered motor vehicle repair shop and that while MVB was a bailee it performed services with the consent of the owner (the insured). Based upon that stipulation three of the four requirements of asserting a valid lien were met. The remaining issue is the "agreed-upon price." The owner of the vehicle agreed to pay $120 per hour for labor, provided that the cost to her did not exceed the amount that State Farm agreed to pay MVB. She also assigned to MVB her rights under the

policy to dispute the amount approved by State Farm. The fact that the price is disputed between the insurer and MVB does not negate the fact that "an agreement upon price was reached" between the vehicle owner and MVB. The lien is on its face valid.

Amount of the Lien

State Farm asserts that the lien is overstated. 11 NYCRR §216.7 (b) regulates adjustment of partial losses due to a motor vehicle which is partially damaged as a result of a collision. That section states:

> (7) Negotiations must be conducted in good faith, with the basic goal of promptly arriving at an agreed price with the insured or the insured's designated representative. If the insured's intended repair shop is not a designated representative of the insured, the insurer may also reach an agreement with that repair shop on the cost to repair the damaged vehicle, but that agreement shall not be binding upon the insured or the designated representative. Early in negotiations, the insurer must inform the insured's designated representative or, if there is no designated representative, the insured of all deductions that will be made from the agreed price. If an insurer shall require a proof of loss, its offer shall be communicated to the insured via a proof of loss. The insurer shall also communicate the offer to the designated representative.

State Farm and MVB never reached an agreement on the total price of the repairs. MVB asserts that State Farm did not fulfill its obligation to negotiate in good faith in accordance with 11 NYCRR §216.7 (b)(7). That assertion is not entirely accurate. State Farm conducted a total of ten inspections over the course of three months. After each inspection, State Farm increased the estimated repair cost. MVB did not raise the issue of labor rates until after the fourth inspection. Rather MVB claims that State Farm was aware that MVB had a "standing objection" to State Farm's approved labor rate (trial transcript I, pg. 117). The court agrees with MVB's assertion that good faith negotiations (at least as to the labor rate) did not occur prior to the vehicle being declared a total loss. But the totality of the testimony shows a lack of good faith by both parties.

"If after negotiations an agreed price cannot be reached, the insurer must furnish the insured with a prescribed Notice of Rights letter" (11 NYCRR §216.7(b)(14)[i]). Following MVB's notice that it did not agree with the initial estimate, State Farm issued a notice of rights letter to its insured. The insured took no further action presumably because MVB contractually exculpated her from any charges not approved by State Farm.

On June 7, 2017, State Farm declared the vehicle a total loss in accordance with 11 NYCRR

§216.7(c) putting this matter outside the ambit of 216.7 (b). State Farm then paid off the insured's leaseholder, which fully satisfied State Farm's obligations to its insured. Since the insured has no further rights under the policy, neither does MVB. "Plaintiff's rights as assignee of contract funds ... can be no greater than those of its assignor," (*New York Nat. Bank v. Primalto Development & Const. Co., Inc.*, 270 A.D.2d 22 703 N.Y.S.2d 480, N.Y. Slip Op. 02087 [1st Dept. 2000]).

MVB and State Farm may well have contractual claims against each other. Resolution of those claims will require consideration of such matters as the documents exchanged, conduct of the parties, partial performance, implied covenant of good faith, and *quantum meruit*. None of those issues were raised in this replevin action; but there is a separate contract action brought by MVB currently pending in this court (Index No. 611274/17). That case is now the proper forum for resolution of these contract issues.

Conclusion

MVB's lien is valid. It may proceed with the lien sale. The proceeds of the sale are subject to offset by any recovery by State Farm in the pending contract action.

The court makes no finding with respect to the dispute between the parties over the value of the services performed by MVB nor the respective obligations of the parties with respect to these services. In addition to the issue being rendered moot by confirmation of the lien, a determination about the reasonableness of MVB's labor rates in this case could result in a verdict inconsistent with the verdict to be rendered in the pending contract action.

Submit judgment on notice.

ENTER

DATED: April 26, 2019

HON. JACK L. LIBERT
J. S.C.