

**Country-Wide Ins. Co. v Sassone Bros. Auto Body  
Inc.**

2019 NY Slip Op 32736(U)

September 13, 2019

Supreme Court, New York County

Docket Number: 154754/2016

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46

-----X  
COUNTRY-WIDE INSURANCE COMPANY,

Index No. 154754/2016

Plaintiff.

- against -

SASSONE BROS. AUTO BODY INC.,

Defendant  
-----X

DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiff originally sued to recover a motor vehicle in defendant's possession after the vehicle was struck while parked in New Rochelle, New York, rendering the vehicle disabled. A nonparty private towing business towed the vehicle to defendant's repair shop in Yonkers, New York, where defendant stored the vehicle from December 22, 2014, until March 2019. Once the vehicle was declared a total loss, its owner, plaintiff's insured, transferred title of the vehicle to plaintiff.

Defendant moves for summary judgment dismissing the complaint and granting a judgment on defendant's counterclaim for its towing and storage charges through March 2019, which at \$85.00 per day for storage amounted to \$81,818.00, plus tax of \$6,852.56, as of June 27, 2018. C.P.L.R. § 3212(b). Plaintiff

cross-moves for summary judgment declaring that plaintiff owes defendant only \$1,533.50 in towing and storage charges, including the applicable tax, and dismissing defendant's counterclaim for towing and storage charges in excess of that amount. C.P.L.R. §§ 3001, 3212(b). For the reasons explained below, the court grants defendant's motion in part and grants plaintiff's cross-motion in part.

## II. THE YONKERS CITY CODE

The gravamen of the dispute is the daily rate defendant was permitted to charge plaintiff for storage of plaintiff's vehicle. Plaintiff claims that Yonkers City Code Chapter 111, which sets a maximum storage fee of \$35.00 per day, applies to defendant's storage of plaintiff's vehicle. Defendant maintains that this ordinance does not apply because plaintiff's vehicle was neither towed from Yonkers nor towed at the Yonkers Police Department's request, allowing defendant to charge its storage rate of \$85.00 per day. Both parties agree on the initial towing fee of \$498.00.

### A. The Purpose of Yonkers City Code § 111-1

Yonkers City Code Chapter 111, § 111-1, provides:

It is hereby declared and found that the rates and charges imposed for the towing and storage of abandoned, damaged, disabled and wrecked vehicles in the City of Yonkers is a matter affecting the public interest. It is, therefore, the purpose and intent of this chapter to establish an orderly system for the safe and expeditious removal and storage of these vehicles from the streets and highways of the City of Yonkers; to supervise and control

private towing within the City; to ensure that motor vehicles damaged and disabled are towed to convenient locations where they may be lawfully repaired; and to protect the public from fraud, exorbitant rates and similar abuses.

The court must interpret this ordinance to effectuate the legislature's intent. Town of Aurora v. Village of East Aurora, 32 N.Y.3d 366, 372 (2018); Riley v. County of Broome, 95 N.Y.2d 455, 463 (2000); Majewski v. Broadalbin-Perth Cent. School Dist., 91 N.Y.2d 577, 583 (1998); Rossi v. New York City Dept. of Parks and Recreation, 127 A.D.3d 463, 464 (1st Dep't 2015). "As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof." Majewski v. Broadalbin-Perth Cent. School Dist., 91 N.Y.2d at 583. See N.Y. Statutes §§ 76, 94.

The court's interpretation of the ordinance requires neither "specialized knowledge and understanding of underlying operational practices" nor "an evaluation of factual data and inferences." RAM I LLC v. New York State Div. of Hous. & Community Renewal, 123 A.D.3d 102, 105 (1st Dep't 2014) (internal quotation marks omitted). Thus the court may interpret Yonkers City Code Chapter 111 based on its plain terms to effectuate the Yonkers legislature's intent. Makinen v. City of New York, 30 N.Y.3d 81, 85 (2017); Majewski v. Broadalbin-Perth Cent. School Dist., 91 N.Y.2d at 583.

The text of Yonkers City Code § 111-1 is unambiguous that it applies to the "storage of . . . disabled and wrecked vehicles in the City of Yonkers" regardless of a disabled vehicle's original location. Moreover, the stated purpose of Yonkers City Code § 111-1 is to establish an orderly system for the storage of disabled vehicles and to protect the public from excessive charges. Defendant's motion for summary judgment asks the court to ignore this express purpose and violate the established rules of statutory interpretation. When the statutory meaning is evident, "there is no room for construction and courts have no right to take away from that meaning." Majewski v. Broadalbin-Perth Cent. School Dist., 91 N.Y.2d at 583. See Makinen v. City of New York, 30 N.Y.3d at 85; Avella v. City of New York, 29 N.Y.3d 425, 434 (2017). Therefore Yonkers City Code § 111-1 applies to defendant's storage of plaintiff's vehicle.

B. Maximum Permitted Charges Under Yonkers City Code § 111-26

Yonkers City Code § 111-26(B)(4) sets forth the maximum charge permitted for the storage of vehicles:

Storage charges shall be at the rate of not more than \$35 for each 24 hours or part thereof. All vehicles must be stored on the premises of the licensee, whether indoors or outdoors, and shall not be permitted on City streets.

Like Yonkers City Code § 111-1, Yonkers City Code § 111-26(B)(4) applies to defendant's storage of plaintiff's vehicle, regardless of the fact that the vehicle was towed from New Rochelle into

Yonkers. The maximum amount defendant may charge for the storage of vehicles in Yonkers is \$35.00 per day. Therefore defendant may not charge plaintiff more than \$35.00 per day for the storage of plaintiff's vehicle. Plaintiff's offer to defendant January 16, 2015, of \$1,533.50, the maximum daily rate permitted by Yonkers City Code § 111-26(B)(4) multiplied by the number of days defendant stored plaintiff's vehicle, plus the applicable tax, to recover possession of the vehicle abided by the applicable ordinance. Allowing defendant to charge plaintiff a daily storage rate of \$85.00 simply because plaintiff's vehicle was towed from New Rochelle into Yonkers would violate the express purpose and terms of Yonkers City Code §§ 111-1 and 111-26(B)(4).

### III. THE BAILMENT

When plaintiff's insured constructively delivered her vehicle to defendant, which subsequently accepted the vehicle, the parties created a bailment. People v. Wilson, 93 N.Y.2d 222, 227 (1999); CN Funding, LLC v. Ensig Group, Ltd., 52 A.D.3d 273, 273 (1st Dep't 2008); Canon Financial Servs., Inc. v. Medico Stationary Serv., Inc., 300 A.D.2d 66, 66-67 (2002). When plaintiff assumed ownership of the vehicle from its insured, plaintiff continued to place its personal property in the care of and under the control of defendant, the bailee, with its knowledge and consent.

When defendant took lawful possession of the vehicle without

the intent to appropriate that personal property of another party, the bailment imposed on defendant the duty to account for the vehicle. Beazer v. New York City Health and Hospitals Corp., 76 A.D.3d 405, 407 (1st Dep't 2010); Pivar v. Graduate Sch. of Figurative Art of the New York Acad. of Art, 290 A.D.2d 212, 213 (1st Dep't 2002); Martin v. Briggs, 235 A.D.2d 192, 197 (1st Dep't 1997). As the bailee, defendant exercised dominion and control over the vehicle, but contemplated a procedure to ensure the vehicle's return to its owner upon the owner's payment of the accrued charges for towing and storage. Obremski v. Image Bank, Inc., 30 A.D.3d 1141, 1141-42 (1st Dep't 2006); Chubb & Son, Inc. v. Edelweiss, Inc., 258 A.D.2d 345, 345-46 (1st Dep't 1999). Although the parties disputed the applicable storage charges, the payment of those charges constituted the procedure for the vehicle's return. Chubb & Son, Inc. v. Edelweiss, Inc., 258 A.D.2d at 345-46.

Once plaintiff offered to pay \$1,533.50, the maximum daily rate for storage of the vehicle and the undisputed towing charge, plus tax, plaintiff established a superior possessory right to the vehicle, requiring defendant to return the vehicle to plaintiff upon its demand. Reif v. Nagy, \_\_\_ A.D.3d \_\_\_, 2019 WL 2931960, at \*8 (1st Dep't 2019); Pivar v. Graduate Sch. of Figurative Art of the New York Acad. of Art, 290 A.D.2d at 213. In fact defendant recognized plaintiff's superior possessory

right when defendant continued to store the vehicle rather than dispose of it, even though both parties had determined it was irreparable and unsalvageable. Yet defendant refused to return plaintiff's vehicle because plaintiff refused to pay the storage charge as calculated by defendant: \$4,500.81 as of January 16, 2015, including the towing charge and applicable tax. Pivar v. Graduate Sch. of Figurative Art of the New York Acad. of Art, 290 A.D.2d at 213. Although plaintiff repeatedly demanded the vehicle's return, defendant refused all demands pending plaintiff's payment of defendant's excessive charges.

Since principles of bailment obligated defendant to return plaintiff's vehicle upon its offer to pay the maximum lawful charges, defendant then must bear the loss of the storage fees that accrued from the point that plaintiff communicated its demand for its vehicle and offered to pay the maximum lawful charges. Pivar v. Graduate Sch. of Figurative Art of the New York Acad. of Art, 290 A.D.2d at 213. In seeking the excessive charges before returning plaintiff's vehicle, defendant violated the daily maximum rate established by Yonkers City Code § 111-26(B)(4). The court may not permit defendant to violate either the maximum daily rate allowed for the storage of vehicles expressly prescribed by Yonkers City Code § 111-26(B)(4) nor the ordinance's purpose and intent expressed by Yonkers City Code § 111-1.

IV. CONCLUSION

For the foregoing reasons, the court grants plaintiff's cross-motion for summary judgment to the extent that the court declares and adjudges that plaintiff owes defendant \$1,533.50 for towing and storage charges through January 16, 2015, when plaintiff communicated its demand and offered to pay the maximum lawful charges. C.P.L.R. §§ 3001, 3212(b). The court grants defendant's motion for summary judgment on its counterclaim to the extent of awarding defendant a judgment for \$1,533.50 against plaintiff and grants plaintiff's cross-motion for summary judgment to the extent of dismissing defendant's counterclaim for any amount in excess of the judgment awarded. C.P.L.R. § 3212(b) and (e). This decision constitutes the court's order and judgment. The Clerk shall enter the judgment awarded.

DATED: September 13, 2019

*Lucy Billings*

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LUCY BILLINGS, J.S.C.

**LUCY BILLINGS**  
**J.S.C.**