

EAN Holdings, LLC v Manhattan Auto Care, Inc.

2021 NY Slip Op 31357(U)

April 23, 2021

Supreme Court, New York County

Docket Number: 152205/2021

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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EAN HOLDINGS, LLC,

Petitioner,

- v -

MANHATTAN AUTO CARE, INC.,

Respondent.

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INDEX NO. 152205/2021
MOTION DATE 04/22/2021
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for SEIZURE/REPLEVIN

ORDER

Upon the foregoing documents, it is

ORDERED and ADJUDGED that to the extent that petitioner seeks an order vacating the Garage Keeper's Lien pursuant to Lien Law § 184(1) on the 2020 Toyota Highlander bearing Vehicle Identification Number 5TDGZRBH3LS503390 (Vehicle), such petition is granted; and it is further

ORDERED and ADJUDGED that the Garage Keeper's Lien described as aforesaid is vacated; and it is further

ORDERED that to the extent that the petitioner seeks an order of seizure/replevin, such relief is denied, without prejudice to the commencement of a plenary action for replevin should, upon service of this order with notice of entry,

respondent not relinquish possession of the Vehicle to petitioner; and it is further

ADJUDGED that petitioner, having an address at _____, do recover from respondent Manhattan Auto Care, Inc., having an address at _____, costs and disbursements in the sum of \$ _____, as taxed by the Clerk, and petitioner have execution therefor.

DECISION

In this proceeding pursuant to Lien Law § 201-a, petitioner has established prima facie entitlement to vacatur of the Garage Keeper's Lien that respondent has on petitioner's 2020 Toyota Highlander bearing Vehicle Identification Number 5TDGZRBH3LS503390 (Vehicle). Petitioner has established, which is uncontroverted by respondent, that respondent did not obtain petitioner's consent to furnish services to its vehicle, as required by Lien Law § 184(1). The contract between the parties, which, in opposition, respondent raises but does not append, does not provide for any lien, even assuming arguendo that such contract was still in effect at the time respondent took possession of the Vehicle. Therefore, this court shall vacate the Garage Keeper's Lien at bar. See Santander Consumer USA, Inc. v A-1 Towing Inc., 163 AD3d 1330 (3d Dept 2018).

At oral argument, respondent requested that, should the court grant petitioner relief, the court grant respondent leave

to serve and file an answer to the herein petition. The court notes that, in opposition to the petition, respondent served a bare affidavit of its principal challenging petitioner's entitlement to the vacatur of the Garage Keeper's Lien. Though respondent requested affirmative relief in terms of an undertaking, it did not cross move for affirmative relief. For example, respondent did not move for dismissal based upon an objection in point of law. Compare Daimler Trust v R&W Auto Body, Inc., 187 AD3d 1468 (3d Dept 2020). Accordingly, there is no ground for granting respondent permission to serve an answer pursuant to CPLR § 404(a).

Furthermore, as petitioner was not seeking the vacatur of the Garage Keeper's Lien as a provisional remedy, the court deemed respondent's opposing affidavit as respondent's answer, rather than opposition to a motion for interim relief. Moreover, with respect to the affirmative relief, by way of opposition papers rather than by motion, that respondent sought, i.e. the posting of an undertaking, this court agrees with petitioner's counsel that, as the current proceeding is resolved with the vacatur of the Garage Keeper's Lien, an undertaking pursuant to CPLR § 7103 (b) is unwarranted.

However, this court rejects the argument of petitioner's counsel that in this special proceeding, it has established entitlement to replevin, as CPLR § 7101 requires that such

action be brought as a plenary action. To the extent that petitioner cites contrary opinions of judges of coordinate jurisdiction, this court disagrees that such relief may be granted in the context of a special proceeding, as is the one at bar. Of course, petitioner is free to commence such an action by service of a complaint. Conversely, respondent may pursue damages by way of service of a complaint claiming breach of contract or based upon quasi contract.

Debra A. James

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4/23/2021

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE