

**Matter of Santander Consumer USA, Inc. v Aledrew Corp.**

2021 NY Slip Op 33800(U)

March 18, 2021

Supreme Court, Albany County

Docket Number: Index No. 906781-20

Judge: Roger D. McDonough

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This opinion is uncorrected and not selected for official publication.

**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF ALBANY**

In the Matter of the Special Proceeding Application of,

SANTANDER CONSUMER USA, INC.,

Petitioner/Plaintiff,

**DECISION, ORDER, JUDGMENT**

-against-

Index No.: 906781-20

RJI No.: 01-20-136404

ALEDREW CORP., and THE NEW YORK STATE  
DEPARTMENT OF MOTOR VEHICLES,

Respondents/Defendants.

(Supreme Court, Albany County All Purpose Term)

Appearances:

**MEOLA LAW FIRM**

Attorneys for Petitioner/Plaintiff ("Petitioner")

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Albany, New York 12203

**GOLDSTEIN & GREENLAW, LLP**

Attorneys for Respondent/Defendant Aledrew Corp. ("Aledrew")

(Andrew Schwarsin, Esq., of Counsel)

118-35 Queens Boulevard, Suite 1515

Forest Hills, New York 11375

**Roger D. McDonough, J.:**

Petitioner seeks, via Order to Show Cause, the following relief: 1) an Order declaring that Aledrew's lien claim and claim for title on the subject 2017 Mazda Motor Vehicle (VIN#: JM3TCBCY1h0127182) is null and void; 2) an Order directing that respondent New York State Department of Motor Vehicles ("NYSDMV") shall maintain petitioner's lien on the vehicle title; and (3) an Order declaring the lawful amount, if any, due on account of the garage lien asserted.

Aledrew cross-moves to dismiss the petition pursuant to CPLR § 3211(a)(1), (7) and (10). Additionally, Aledrew asks the Court to exercise its discretion and grant summary judgment pursuant to CPLR § 3211(c). In their submissions attached to the cross-motion, Aledrew also asks that it be awarded \$6,948.00 for the services provided in storing the subject vehicle and the lien fee. Aledrew also seeks an award for costs and disbursements, and legal fees. Petitioner opposes the cross-motion in its entirety. The New York State Department of Motor Vehicles (“NYSDMV”) has not appeared in this matter.

The subject vehicle was released to petitioner in accordance with the Order to Show Cause executed by this Court and the Bond/Undertaking posted by petitioner.

### **Background**

Petitioner claims it holds the first priority perfected security interest and lien in the subject vehicle. Aledrew has asserted a garageman’s lien against the subject vehicle. Petitioner states that Aledrew has failed to present proper documentation for its charges as required by regulation and has failed to establish that it is properly licensed. Additionally, petitioner argues that Aledrew failed to mitigate its damages and failed to follow the requirements of Lien Law §§ 201 and 202.

Aledrew manages a parking lot in the County of Queens, State of New York. The parking lot’s purpose is to provide parking services for customers. Aledrew avers that it is properly licensed as a parking facility and does not perform any type of vehicle repairs. Additionally, Aledrew maintains that an agreement for storage existed herein between it and the owner of the subject vehicle. In support, Aledrew references the numbered ticket the owner would have received upon entering the lot. After the subject vehicle remained unclaimed in the parking lot for several months, Aledrew sought to place a lien and sell the subject vehicle.

Aledrew executed a Notice of Lien and Sale in August of 2020. The Notice set forth storage fees of \$4,289.68 (calculated at \$20.00 per day plus tax for a 197 day period ) as well as Lien Fee of \$150.00. The total amount due per the Notice of Lien and Sale was \$4,439.68. Additional storage charges, from the date of the Notice until the time the subject vehicle was retrieved, have raised the total amount due to \$6,948.00.

Aledrew maintains that it properly served the Notice of Lien and Sale on petitioner via

certified mail. Additionally, Aledrew maintains that petitioner failed to properly comply with the regulations for applying for a Temporary Restraining Order in this matter. Aledrew also argues that declaratory relief is not warranted here because petitioner is confusing Aledrew with a garage that does mechanical repairs. Further, Aledrew argues that petitioner has improperly raised claims that could not have been verified until the subject vehicle had been recovered. Aledrew also challenges the appropriateness of petitioner's request for declaratory relief and the timeliness of petitioner's challenge to the lien. Aledrew also maintains that the subject vehicle's owner is a necessary party to this action. Accordingly, respondent seeks dismissal/summary judgment as well as attorneys fees. No legal basis for the requested award of attorneys fees has been proffered by Aledrew.

In reply, petitioner questions Aledrew's motion to dismiss the request for declaratory relief in light of Aledrew's request that the Court award the full amount of the lien claim.<sup>1</sup> Petitioner also argues that Aledrew has forfeited the lien claim due to non-compliance with Vehicle and Traffic Law § 2129. Petitioner further claims that Aledrew has improperly attempted to create a lien in secret by failing to appropriately provide any meaningful opportunity to redeem the subject vehicle. Relatedly, petitioner contends that Aledrew failed to properly mitigate its damages by allowing storage fees to unnecessarily accumulate.

As to the cross-motion, petitioner maintains that it has clearly stated several causes of action in compliance with CPLR § 3211(a)(7). Petitioner also maintains that the owner is not a necessary party to this special proceeding garage lien dispute.

In reply, Aledrew reiterates that the Notice of the Lien and Sale was properly served in compliance with the Lien Law. Aledrew also argues that the issue of compliance with Vehicle and Traffic Law § 2129 is not properly before this Court. Finally, Aledrew questions the sufficiency of the proof that petitioner has a lien on this vehicle.

### **Discussion**

As an initial matter, Aledrew has not established that the instant proceeding is untimely. Aledrew has failed to demonstrate compliance with the service requirements of the Lien Law. "[Aledrew] failed to submit any proof that it exercised due diligence in seeking to effect

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<sup>1</sup> Absent the issuance of a declaratory judgment, it is entirely unclear how Aledrew proposes that this Court award it any amount of the claimed lien.

personal service upon petitioner of the notice of lien and sale before improperly resorting to the statutory alternative of certified mail service. As a result, the 10-day time limitation for petitioner to challenge the lien under Lien Law § 201-a did not begin to run, much less expire, before petitioner commenced this proceeding” (Matter of Manufacturers & Traders Trust Co. v J.D. Mar. Serv., 187 AD3d 1249, 1250 [3<sup>rd</sup> Dept. 2020]).

The Court is constrained to conclude that the amount due and owing for the Aledrew’s lien on the subject vehicle is zero dollars. Specifically, Aledrew failed to demonstrate compliance with V&T § 2129 requirements for unclaimed vehicles. Based on the plain language of V&T § 2129(c), the Court must rule that Aledrew has forfeited its lien for storage of the subject vehicle (*see*, National Car Rental Sys. v Villano, 63 AD2d 1088 [3<sup>rd</sup> Dept. 1978]). The purpose of the statute seems eminently clear and compliance with the statute would have allowed for proper and timely notification to the petitioner and would have protected Aledrew’s rights to be properly compensated for storage of an apparently abandoned/unclaimed vehicle. Additionally, the Court notes that there is nothing in the Lien Law that allows for recovery of any charges other than for towing, storage or repair. Accordingly, the \$150.00 Lien fee is not authorized. Based on all of the foregoing, the amount due and owing on Aledrew’s lien is zero dollars and Aledrew has forfeited all claims and liens for the storage of the subject vehicle.

Aledrew’s challenge to the 2129(c) issue was wholly unpersuasive. The petition adequately set forth claims that Aledrew failed to establish a valid Lien Law § 184 claim, had not followed the requirements of Lien Law § 201 and that Aledrew has not presented documentation for its charges as required by regulations. Accordingly, the Court has not been persuaded that the 2129(c) issue was improperly raised for the first time in petitioner’s reply papers (*see*, Ally Financial Inc. v Bill’s Towing Service, Inc., 181 AD3d 1045, 1046 [3<sup>rd</sup> Dept. 2020]).

Petitioner’s challenge to the lien obligated Aledrew to make a prima facie showing of the validity of the lien (*see*, BMW Bank of North America v G&B Collision Center, Inc., 46 AD3d 875, 876 [2<sup>nd</sup> Dept. 2007]). Aledrew has failed to demonstrate compliance with a directly on point statute concerning unclaimed vehicles at parking garages. Accordingly, Aledrew failed to make a prima facie showing of the validity of the lien. In any event, even 2129(c) was improperly raised in the reply papers, petitioner would have been deemed to properly raise it as a defense to Aledrew’s request for declaratory relief in the form of this Court awarding it \$6,948.00 for the lien.

Additionally, respondent has not established its entitlement to dismissal of the complaint

pursuant to any of the cited CPLR § 3211 provisions. Further, based on both parties' clear charting of a path of resolving the lien issue via declaratory judgment, the Court finds that conversion of the cross-motion to one for summary judgment is wholly inappropriate.

The parties' remaining arguments and requests for relief have been considered and found to be lacking in merit and/or unnecessary to reach in light of the Court's findings. Assuming, *arguendo*, that petitioner failed to comply with the notification requirements for a temporary restraining order, Aledrew has failed to establish any prejudice arising therefrom. Aledrew's interests were wholly and completely protected by the posting of the subject Bond/Undertaking which significantly exceeded the original lien amount as well as the amended amount sought herein.

Based upon the foregoing it is hereby

**ORDERED and ADJUDGED** that the petition is granted to the extent that Aledrew's lien is hereby declared null and void and there is no amount due and owing on the lien; and it is further

**ORDERED AND ADJUDGED** that all stays in this proceeding are terminated and the bond/undertaking is released; and it is further

**ORDERED AND ADJUDGED** that the cross-motion is hereby denied in its entirety; and it is further

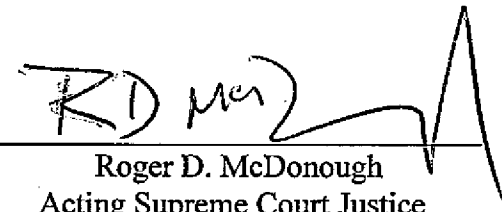
**ORDERED and ADJUDGED** that the NYS DMV may take whatever action it deems lawful and appropriate with respect to the title to the subject vehicle consistent with the decision, order and judgment herein.

This shall constitute the Decision, Order and Judgment of the Court. The original Decision, Order and Judgment is being returned to the counsel for petitioner who is directed to enter this Decision, Order and Judgment without notice and to serve all counsel for respondents with a copy of this Decision, Order and Judgment with notice of entry. The Court will transmit a

copy of the Decision, Order and Judgment to the County Clerk. As this is a NYSCEF case, the Court will not forward any hard copies of the papers considered to the County Clerk. The signing of the Decision, Order and Judgment and delivery of a copy of the Decision, Order and Judgment shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

**ENTER.**

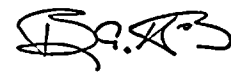
Dated: Albany, New York  
March 18, 2021



Roger D. McDonough  
Acting Supreme Court Justice

Papers Considered:

1. Petition/Complaint dated October 22, 2020, with annexed exhibit;
2. Summons, dated October 27, 2020;
3. Bond/Undertaking dated October 21, 2020;
4. Petitioner's Counsel's TRO Affirmation, dated October 27, 2020;
5. Order to Show Cause, executed by this Court on October 28, 2020;
6. Aledrew's Notice of Cross-Motion, dated December 16, 2020;
7. Affidavit of Natalya Roder, sworn to December 16, 2020, with annexed exhibits;
8. Aledrew's Counsel's Affirmation, sworn to December 16, 2020, with annexed exhibits;
9. Affirmation in Reply/Opposition of Petitioner's Counsel, dated January 6, 2021, with annexed exhibits;
10. Affidavit of Michael Calvario, sworn to January 4, 2021;
11. Reply Affirmation of Aledrew's Counsel, dated January 13, 2021.



03/23/2021