

U-Haul Co. of Ariz v 123 Auto Serv. Inc.

2023 NY Slip Op 31947(U)

June 6, 2023

Supreme Court, Kings County

Docket Number: Index No. 510382/2023

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 6th day of June 2023

HONORABLE FRANCOIS A. RIVERA

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U-HAUL CO. OF ARIZONA and U-HAUL CO. OF
NEW YORK AND VERMONT, INC.

Plaintiff,

DECISION & ORDER

-against-

Index No.: 510382/2023

123 AUTO SERVICE INC.

Defendant.

-----X

Recitation in accordance with CPLR 2219 (a) of the papers considered on the order to show cause and petition, filed on April 5, 2023, under motion sequence one, by petitioners U-Haul Co. of Arizona (hereinafter UHAZ) and U-Haul Co. of New York and Vermont, Inc (hereinafter UHNY) (hereinafter collectively as the petitioners) pursuant to New York Lien Law § 184 and CPLR §§ 411, 3001, and 7101 for an order declaring that respondent, 123 Auto Service Inc.'s (hereinafter the respondent) lien claim to a certain U-Haul rental vehicle (hereinafter the subject vehicle) is null and void, as having been improperly submitted, and directing that the respondent immediately release the subject vehicle to petitioners' representatives upon demand; and setting this matter down for a hearing on the issue of damages. The order to show cause and petition is unopposed.

- Order to Show Cause
- Petition
- Affirmation in Support
- Affirmation of Emergency
- Affidavit in Support
 - Exhibits A-E
- Affidavit of Service

BACKGROUND

On April 5, 2023, the petitioners commenced the instant action for declaratory and injunctive relief by filing an order to show cause, petition, and accompanying documents with the Kings County Clerk's office.

The petition alleges the following salient facts. The respondent has claimed a lien to a certain U-Haul rental vehicle (hereinafter the subject vehicle). On February 2, 2023, the respondent towed the subject vehicle to its place of business for allegedly illegally blocking a private driveway. Thereafter, the respondent did not notify the petitioners of the tow and storage of the subject vehicle until the petitioners received a Notice of Lien and Sale on March 27, 2023. Subsequently, the petitioners requested the immediate release of the subject vehicle. However, the respondents refused to release the subject vehicle and demanded towing and storage fees that were unsubstantiated, excessive, and unlawful. The petitioners contend that the towing and storage rates for vehicles towed for blocking a private driveway are regulated by the Administrative Code of the City of New York § 19-169. Petitioners further contend that the respondent's demand was well more than the regulated rates and therefore improper and unlawful.

The petitioners further contend that the respondent did not comply with the notice requirements under Lien Law § 184 (2). Finally, the petitioners contend that they will be severely prejudiced if the respondent is allowed to go forward with the public auction of the subject vehicle as the petitioners may never be able to recover the subject vehicle. Accordingly, the petitioners seek a preliminary injunction, directing that the subject vehicle shall not be removed from this State, from its current location, disassembled,

transferred, sold, auctioned, pledged, assigned, or otherwise disposed of by the respondent, or permitted to become subject to a security interest or statutory lien until further ordered by this Court.

LAW AND APPLICATION

CPLR 3001 provides that the Supreme Court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed (*see Peters v Smolian*, 154 AD3d 980, 983 [2d Dept 2017], citing CPLR 3001). To constitute a justiciable controversy, there must be a real dispute between adverse parties, involving substantial legal interests for which a declaration of rights will have some practical effect (*see Cong. Machon Chana v Machon Chana Women's Inst., Inc.*, 162 AD3d 635 [2d Dept 2018], quoting *Chanos v MADAC, LLC*, 74 AD3d 1007, 1008 [2d Dept 2010]).

CPLR 6301 provides in pertinent part as follows.

“A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.”

The party seeking a preliminary injunction must do more than show that the underlying action falls within one of the categories specified in CPLR 6301. Under

longstanding judicial precedent, the movant in most cases must, in addition, demonstrate three things: (1) a likelihood of success on the merits of the action; (2) the danger of irreparable injury in the absence of preliminary injunctive relief; and (3) a balance of equities in favor of the moving party (*see e.g. Nobu Next Door, LLC v Fine Arts Housing, Inc.*, 4 NY3d 839, 840 [2005]). In applying these requirements, the court must “weigh a variety of factors,” and the matter is committed to the court’s sound discretion (*Doe v Axelrod*, 73 NY 2d 748, 750 [1988]).

The petitioners seek, among other things, a mandatory injunction directing that the respondent immediately release the subject vehicle to the petitioners’ representatives upon demand. The petitioners’ evidentiary submission demonstrates that the respondents lawfully obtained possession of the subject vehicle. It also demonstrates that the petitioners received a notice of lien and sale from the respondent. The notice of lien stated that the respondent took possession of the subject vehicle on February 3, 2023 and that the charged storage fees of \$65.00 a day for forty-nine days totaled \$3185.00. The notice further stated that the amount due as of the date of the notice was \$3,760.00.

The petitioners contend that the notice of lien and sale was not sent to it as required by Lien Law § 184 (2). They further contend that the daily storage charges imposed by the respondent were excessive and in violation of section 19-169 of the Administrative Code of the City of New York.

The respondents have not appeared in the action or submitted opposition to the instant motion. The order to show cause, although unopposed, is nevertheless denied. The petitioners contend that they will be severely prejudiced and may lose the subject

vehicle without the benefits of the requested injunctive relief. However, they may obtain the subject vehicle by the mere expedient of paying the storage fees requested by the respondent under protest. They may also continue to litigate their claim that the storage fees imposed are improper and excessive.

A preliminary injunction is an extraordinary remedy that should not be granted when there is an adequate remedy at law. Here a monetary judgment for the storage fees paid by the petitioners under protest deemed excessive or improper is an adequate remedy at law. Accordingly, this branch of the petitioners' motion for injunctive relief is denied.

The branch of the petitioners' motion seeking declaratory relief is denied as premature. The ultimate relief of a declaratory judgment is not available by an order to show cause for a preliminary injunction. The petitioner must move and prevail on a notice of motion for an accelerated judgment to obtain declaratory relief.

CONCLUSION

The branch of the order to show cause by U-Haul Co. of Arizona AZ and U-Haul Co. of New York and Vermont, Inc., pursuant to Lien Law § 184, CPLR §§ 411, 3001, and 7101 for an order directing that the respondent 123 Auto Service Inc. immediately release the subject vehicle to petitioners' representatives upon demand and setting this matter down for a hearing on the issue of damages is denied.

The branch of the order to show cause by U-Haul Co. of Arizona AZ and U-Haul Co. of New York and Vermont, Inc. seeking an order declaring that respondent 123 Auto

Service Inc.'s lien claim to a certain U-Haul rental vehicle is void, is denied without prejudice as premature.

The foregoing constitutes the decision and order of this Court.

ENTER:

Francois A. Rivera

J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C.