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| <b>Matter of Toyota Motor Credit, Corp. v FR Limo, Inc.</b>                                                                                                                                                                    |
| 2024 NY Slip Op 35403(U)                                                                                                                                                                                                       |
| March 7, 2024                                                                                                                                                                                                                  |
| Supreme Court, Albany County                                                                                                                                                                                                   |
| Docket Number: Index No. 905442-23                                                                                                                                                                                             |
| Judge: Justin Corcoran                                                                                                                                                                                                         |
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STATE OF NEW YORK  
SUPREME COURT

ALBANY COUNTY

In the Matter of  
TOYOTA MOTOR CREDIT, CORP.,

Petitioner/Plaintiff,

-against-

FR LIMO, INC., and THE NEW YORK STATE  
DEPARTMENT OF MOTOR VEHICLE,

Respondents/Defendants.

**DECISION, ORDER  
& JUDGMENT**  
Index No. 905442-23

(Supreme Court, IAS/All Purpose Term)

APPEARANCES: Law Offices of Rudolph J. Meola  
Attorneys for Petitioner/Plaintiff  
Rudolph J. Meola, Of Counsel  
1822 Western Avenue  
Albany, New York 12203

The Law Office of Solomos & Storms, PLLC  
Attorneys for Respondent/Defendant FR Limo, Inc.  
33-08 Broadway  
Astoria, New York 11106

JUSTIN CORCORAN, J.S.C.:

Petitioner/plaintiff Toyota Motor Credit Corp. ("Toyota") commenced this hybrid action/proceeding seeking an order declaring the garage lien asserted by respondent/defendant FR Limo, Inc., ("the garage") to be null and void and asserting causes of action for replevin, conversion, and violation of General Business Law §349. In an order and judgment dated August 28, 2023, this Court declared that the garage's lien was void. Doc. No. 15. Now, Toyota moves for damages in the form of one dollar (\$1.00) and a bill of costs as allowed by statute in the amount of \$850.00.

By failing to serve an answer, the garage admitted "all traversable allegations in the complaint, including the basic allegation of liability" and any defense it could have raised to justify its dominion over the vehicle. *Wilson v. Galicia Contr. & Restoration Corp.*, 10 NY3d 827, 830 (2008). However, because the garage did not admit Toyota's claimed damages by its default in appearance, the Court scheduled an inquest, with notice to the garage that it could present any evidence "tending to defeat the plaintiff's cause of action." *Wilson v. Galicia Contr. & Restoration Corp.*, *supra*, citing *Rokina Opt. Co. v. Camera King*, 63 NY2d 728, 730 (1984). Toyota previously provided written submissions and/or affidavits in support of its requested damages. 22 NYCRR §202.46. The Court advised the garage that it was required to file its response, including any request for a hearing, on or before February 16, 2024. The garage has not filed any response or opposition.

Toyota presents no proof of the vehicle's value at the time of the conversion, nor of damages incurred due to the loss of possession from the time of the demand to the date the vehicle was recovered. *Matter of Manufacturers & Traders Trust Co. v. Outboard Barn Inc.*, 2019 NY Slip Op 52134(U) (Albany County, Sup. Ct. 2019). Although the vehicle was returned to Toyota, nominal damages may be awarded as a result of the conversion. *MacGuire v. Elometa Corp.*, 189 AD2d 708, 708 (1<sup>st</sup> Dept. 1993); *Harris v. Young*, 2004 NY Slip Op 30330(U) (Sup. Ct., Kings County 2004). Accordingly, Toyota is awarded damages in the amount of \$1.00.

Toyota also seeks the following statutory costs and disbursements:

- Costs before note of issue [CPLR 8201(1)] \$200.00
- Assessment of damages [CPLR 8201(3)] \$300.00
- Index No. [CPLR 8018(a)] \$210.00
- Request for judicial intervention \$95.00
- Motion fee [CPLR 8301 (b)] \$45.00

Total: \$850.00

CPLR 8101 provides for the award of costs to the party in whose favor a judgment is entered as of right, subject to the discretion of the court to deny costs when it would not be equitable to allow them under all circumstances. *See Keiser v. Goetz*, 235 AD2d 689,

692 (3d Dept. 1997); *Olmstead v. Federated Dept. Stores*, 208 AD2d 979, 982 (3d Dept. 1994) citing Weinstein-Korn-Miller, NY Civ Prac, 8101.17 (costs and disbursements properly awarded where “there are no factors relevant to the litigation that would make it inequitable to do so”); McLaughlin, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 8101:1. “Whoever is entitled to costs is also entitled to disbursements.” McLaughlin, Practice Commentaries, *supra*. Toyota prevailed in this action, and in the absence of any proof that an award of costs and disbursements would be inequitable, Toyota is entitled to such costs upon the entry of judgment.

Accordingly, it is

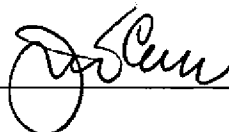
**ORDERED** that plaintiff Toyota Motor Credit Corp.’s motion for an assessment of damages is granted, without opposition, to the extent that Toyota Motor Credit Corp. may enter judgment against defendant FR Limo, Inc., in the principal sum of \$1.00, and costs and disbursement in the sum of \$850.00; and it is further,

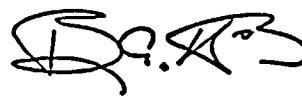
**ORDERED and ADJUDGED** that the Clerk of the Court shall enter judgment in favor of the plaintiff Toyota Motor Credit Corp. and against the defendant FR Limo, Inc. in the sum of \$1.00, along with an award of costs and disbursements in the sum of \$850.00; and it is further

**ORDERED** that plaintiff shall serve the garage with a copy of this Decision, Order and Judgment by certified mail within ten (10) days of entry and file proof thereof.

**ENTER,**

Dated: March 7, 2024  
Albany, New York.

  
JUSTIN CORCORAN  
Supreme Court Justice

  
03/08/2024

Papers Considered: Electronic Case Record Doc. Nos. 24-28 (Motion #3).

This shall constitute the Decision/Order/Judgment of the Court. The Court has uploaded this Decision/Order/Judgment to the case record as maintained on the NYSCEF website whereupon it is to be filed and entered by the Office of the Albany County Clerk. Plaintiff is not relieved from the applicable provisions of CPLR 2220 and §202.5b(h)(2) of the Uniform Rules of Supreme and County Courts insofar as it relates to service and notice of entry of the filed document upon all other parties to the proceeding, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.