

**Matter of Toyota Motor Credit Corp. v AAY Enters.,
Inc.**

2024 NY Slip Op 35404(U)

March 4, 2024

Supreme Court, Albany County

Docket Number: Index No. 906398-22

Judge: Kimberly A. O'Connor

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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:

TOYOTA MOTOR CREDIT CORP.,

Petitioner/Plaintiff,

-against-

DECISION AND
ORDER/JUDGMENT
Index No.: 906398-22

AAY ENTERPRISES, INC., and THE NEW YORK
STATE DEPARTMENT OF MOTOR VEHICLES,

Respondents/Defendants.

(Supreme Court, Albany County, All Purpose Term)

(Justice Kimberly A. O'Connor, Presiding)

APPEARANCES: LAW OFFICES OF RUDOLPH J. MEOLA
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O'CONNOR, J.:

On August 26, 2022, petitioner/plaintiff Toyota Motor Credit Corp. ("Toyota") commenced this combined Lien Law § 201-a proceeding and action for declaratory relief, replevin, conversion, and under General Business Law § 349 seeking an order of the Court, among other

¹ This Decision and Order addresses the Motion to Vacate and Stay the Contempt Order of respondent/defendant AAY Enterprises, Inc., as well as petitioner/plaintiff's Motion for Default Judgment on Conversion. The Court notes that although AAY moved to vacate, they did not formally appear in the action/proceeding, and failed to object to the motion for default judgment.

things, invalidating a garagekeeper's lien asserted by respondent/defendant AAY Enterprises, Inc. ("garage") against a certain 2019 Toyota motor vehicle, bearing vehicle identification number ("VIN"): 5TDZZ3DC2KS968832 ("vehicle"), directing the garage to release the vehicle to Toyota, and awarding Toyota money damages. Together with the filing of its verified petition/complaint, Toyota brought an application by Order to Show Cause (Mackey, J.), dated August 29, 2022, for, among other relief, a declaration that the garage's lien and any claim for title to the subject vehicle is null and void, and possession of the vehicle. The Court directed the garage to immediately release the vehicle to Toyota upon Toyota's filing of an undertaking for Thirty Thousand Dollars (\$30,000.00). The record demonstrates that the required bond was posted by Toyota on August 22, 2022. At this time, neither the garage nor Respondent/defendant the New York State Department of Motor Vehicles ("DMV") joined issue or otherwise appeared in the proceeding/action.

By Order and Judgment, dated January 11, 2023, the Court (O'Connor, J.) granted the petition and cancelled the asserted lien, holding that upon service of said Order and Judgment, Toyota shall be entitled to possess the vehicle and can obtain delivery of the vehicle from the garage upon its demand. The Court then released the bond over the vehicle, directed that the DMV suspend any title over the vehicle assigned to the garage and restore title to Toyota. The record demonstrates that thereafter, on September 6, 2022, a warning letter was sent from Toyota to the garage, demanding release of the vehicle to Toyota. In response to purported noncompliance with this demand, by Order to Show Cause (O'Connor, J.), dated December 5, 2022, Toyota moved for civil contempt sanctions against the garage. By Decision and Order/Judgment (O'Connor, J.), dated July 28, 2023, the Court granted Toyota's contempt motion against the garage, imposing a sanction of Twenty-Four Thousand Six Hundred and Fifty Dollars (\$24,650.00).

Thereafter, on October 11, 2023, the garage moved to vacate and stay the Contempt Order issued against them pursuant to CPLR 5015, on the grounds of impossibility of performance. As an initial matter, Toyota consents to vacating the contempt order and judgment. Accordingly, the Court grants the garage's motion to vacate the contempt order, dated July 28, 2023.

Toyota now moves for an order, pursuant to CPLR § 3215, granting default judgment in its favor and against the garage on its cause of action for conversion. In support of its motion, Toyota submitted an attorney's affirmation, with exhibits annexed, proof of service of the summons previously filed with the Court, and proof of service of the notice of motion and accompanying affirmation. The motion is unopposed.

"A plaintiff's right to recover upon a defendant's default in answering is governed by CPLR [§] 3215" (*Walley v. Leatherstocking Healthcare, LLC*, 79 A.D.3d 1236, 1238 [3d Dep't 2010] [internal quotation marks and citation omitted]). A plaintiff demonstrates entitlement to a default judgment, pursuant to CPLR § 3215, "by submitting proof of service upon defendant, the facts supporting its claim[,] and defendant's default" (*Preferred Mut. Ins. Co. v. DiLorenzo*, 183 A.D.3d 1091, 1094 [3d Dep't 2020], citing *Dayco Mech. Servs., Inc. v. Toscani*, 94 A.D.3d 1214, 1214 [3d Dep't 2012]; see CPLR 3215[f]). "To demonstrate the facts constituting the claim, [a plaintiff] need only submit sufficient proof to enable the court to determine if the claim is viable" (*Global Liberty Ins. Co. v. Haar Orthopaedics & Sports Med., P.C.*, 170 A.D.3d 1125, 1126 [2d Dep't 2019], citing *Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, 71 [2003] [further citations omitted]). Notably, "a defaulting defendant is 'deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them'" (*Nationstar Mortg., LLC v. Hilpertshauser*, 156 A.D.3d 1052, 1053 [3d Dep't 2017], quoting *Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d at 71).

“A conversion occurs ‘when someone, intentionally and without authority, assumes or exercises control over property belonging to someone else, interfering with that person’s right of possession’” (*Ciprich v. Atwood*, 163 A.D.3d 1332, 1334 [3d Dep’t 2018], quoting *Colavito v. New York Organ Donor Network, Inc.*, 8 N.Y.3d 43, 49 [2006]; accord *Cassadei v. County of Schenectady*, 50 A.D.3d 1439, 1440, n. 2 [3d Dep’t 2008]). The “[t]wo key elements of conversion are[:] (1) plaintiff’s possessory right or interest in the property[,] . . . and (2) defendant’s dominion over the property or interference with it, in derogation of [the] plaintiff’s rights” (*Colavito v. New York Organ Donor Network, Inc.*, 8 N.Y.3d at 50).

Even “‘where possession of property is initially lawful, conversion occurs when there is a refusal to return the property upon demand’” (*Ciprich v. Atwood*, 163 A.D.3d at 1334, quoting *Salatino v. Salatino*, 64 A.D.3d 923, 925 [3d Dep’t 2009], *lv. denied* 13 N.Y.3d 710 [2009]), and “[i]ntent to possess another’s property is not an essential element of conversion” (*Ahles v. Aztec Enters.*, 120 A.D.2d 903, 903-904 [3d Dep’t 1986]). Indeed, “[a]ny wrongful exercise of dominion by one other than the owner is a conversion” (*id.* at 904 [internal quotation marks and citation omitted]). In the context of a garagekeeper’s lien, “[r]efusing to release property based upon the improper assertion of a lien can give rise to a cause of action for conversion” (*Grant St. Constr., Inc. v. Cortland Paving Co., Inc.*, 55 A.D.3d 1106, 1107-1108 [3d Dep’t 2008]). As such, “a garagekeeper [that] claims more than is actually due . . . is guilty of conversion and liable to the owner in damages” (*Matter of BMW Bank of N. Am. v. G & B Collision Ctr., Inc.*, 46 A.D.3d 875, 876-877 [3d Dep’t 2007], citing *Phillips v. Catania*, 155 A.D.2d 866, 866 [4th Dep’t 1989]; *F & N Corvette & Classics v. Corvette Repairs*, 206 A.D.2d 349, 350 [2d Dep’t 1994]).

The record discloses on or about March 27, 2021, Andrey Kamalov, the owner of the vehicle (“owner”), brought the vehicle to the garage to complete various repairs and repaint the

vehicle. The Notice of Lien and Sale (“NOLS”) demonstrates that the garage began to store the vehicle on August 27, 2021, for a total of 251 days. The NOLS further reflects that the garage asserted an additional lien for storage charges from May 5, 2022, to the date of payment or sale. In support of its motion to vacate, the garage contends that it returned the vehicle to the owner after receiving full payment for its services, on May 22, 2022. The record includes a receipt from the garage, authorized on May 24, 2022, and dated May 27, 2022, which reflects that the owner paid the garage in cash for the repairs. The receipt instructed the owner to pick up the vehicle after all repairs were finished, and stated that if the vehicle is not picked up 24 hours after repairs are done, the owner would be charged Eighty-Five Dollars (\$85.00) per day for the garage’s storage of the vehicle. According to the affidavit of the owner of the garage, submitted in support of the garage’s motion to vacate, after the owner paid the repair costs, the owner took possession of the vehicle. The record further demonstrates that thereafter, on September 6, 2022, following commencement of this proceeding/action and the Court’s Order (Mackey, J.) directing the garage to release the vehicle to Toyota, Toyota sent a warning letter to the garage directing the garage to immediately turn over the vehicle.

In support of its motion for default judgment, Toyota argues that the complaint asserts that the garage has no valid claim to detain the vehicle from Toyota. On this basis, Toyota maintains that the garage’s act of detaining the vehicle from Toyota constitutes conversion.

The record reflects that the owner consented to the garage’s repair of the vehicle. “While a default judgment constitutes an admission of the factual allegations of the complaint and the reasonable inferences which may be made therefrom..., plaintiff must present some proof of liability so that the reviewing court can determine that the prima facie validity of the uncontested cause of action has been established... because the granting of a default judgment does not become

a mandatory ministerial duty upon a defendant's default" (*Gagen v. Kipany Productions Ltd.*, 289 A.D.2d 844, 845-846 [3d Dep't 2001] [internal quotation marks and citations omitted]). Although the petition/complaint alleges that the garage possessed the subject vehicle "against the wishes" of Toyota by claiming a garage lien against the vehicle, Toyota failed to present any proof that the garage was in possession of the vehicle when the Court initially directed that the vehicle be turned over. Moreover, Toyota did not present any proof of possession when Toyota sent a warning letter to the garage directing the garage to turn over the vehicle. Toyota argues that the garage cannot claim that it had the right to possess the vehicle now that it is in default. However, as the record reflects through the affidavit of Krishendath Boodoo, the garage's owner, in support of vacatur, the garage is not claiming that it has the right to possess the vehicle, but rather, that the vehicle was returned to the owner prior to commencement of this proceeding/action. In light of the foregoing, despite the garage's default and its subsequent failure to oppose the motion for default, the Court finds that Toyota failed to set forth proof sufficient for the Court to determine the prima facie validity of the uncontested cause of action for conversion.

Accordingly, it is hereby

ORDERED AND ADJUDGED, that Toyota's motion for default judgment is denied; and it is further

ORDERED, that the parties shall appear for a virtual conference on *March 25, 2024 at 10:00 a.m.*

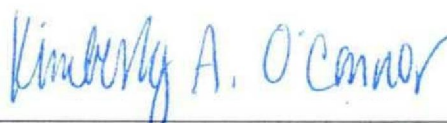
This memorandum constitutes the Decision and Order/Judgment of the Court. The original Decision and Order/Judgment is being uploaded to the NYSCEF system for filing and entry by the Albany County Clerk. The signing of this Decision and Order/Judgment and uploading to the NYSCEF system shall not constitute filing, entry, service, or notice of entry under CPLR 2220

and 22 N.Y.C.R.R. § 202.5-b(h)(2). Counsel is not relieved from the applicable provisions of those rules with respect to service and notice of entry of the Decision and Order/Judgment.

SO ORDERED AND ADJUDGED.

ENTER.

Dated: March 4, 2024
Albany, New York



HON. KIMBERLY A. O'CONNOR
Acting Supreme Court Justice



03/04/2024

Papers Considered:

1. Petition/Complaint, dated August 26, 2022, with Exhibits 1-2 annexed; Summons, dated August 26, 2022; Order to Show Cause to Invalidate Garage Lien, dated August 29, 2022; Affirmation of Service, sworn to September 6, 2022; Affirmation of Service, sworn to September 14, 2022;
2. Petitioner/Plaintiff's Order to Show Cause for Contempt, dated December 5, 2022; Affirmation in Support, dated November 30, 2022, with Exhibits 1-3; Affidavit of Service, sworn to December 7, 2022; Affidavit of Service, sworn to December 16, 2022; Decision and Order/Judgment, dated January 11, 2023;
3. Respondent/Defendant AAY Enterprises, Inc.'s Notice of Motion to Vacate and Stay the Contempt Order, dated October 11, 2023; Affidavit of Krishendath Boodoo in Support of Motion, sworn to September 18, 2023; Affirmation of Patrick Marc. Esq., in Support of Motion, dated October 21, 2023, with Exhibits A-D annexed; *and*
4. Petitioner/Plaintiff's Notice of Cross-Motion for Default Judgment, dated November 6, 2023; Affirmation of John Dubuc, Esq., in Support of Motion, November 6, 2023, with Exhibits 1-2 annexed.