

**Matter of Toyota Motor Credit Corp. v Online Auto.,
Inc.**

2024 NY Slip Op 35406(U)

March 27, 2024

Supreme Court, Albany County

Docket Number: Index No. 908409-22

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:
Special Proceeding Application of

TOYOTA MOTOR CREDIT CORPORATION,

Petitioner/Plaintiff,

DECISION AND ORDER

-against-

Index No.: 908409-22

ONLINE AUTOMOTIVE, INC., 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")
(John M. Dubuc, Esq., of Counsel)
1822 Western Avenue
Albany, New York 12203

LAW OFFICE OF EARL WILLIAMS
Attorney for Respondent/Defendant, Online Automotive, Inc. ("Respondent")
(Earl Williams, Esq., of Counsel)
20 East 3rd Street
Mount Vernon, NY 10550

Roger D. McDonough, J.:

This Court has already executed an Order and Judgment, on May 24, 2023, in this matter wherein the Court: (1) adjudged that respondent's claims against petitioner for garaging, repairing and storing the subject vehicle are canceled; (2) ordered and adjudged that the subject vehicle was to be delivered to petitioner upon service of the Order and Judgment; and (3) that

petitioner's right to pursue its conversion damages is preserved to abide the circumstances. Petitioner now brings a motion for a default judgment as to the damages portion of the conversion cause of action. Respondent cross-moves to dismiss the amended verified petition/complaint. Alternatively, respondent seeks an Order directing petitioner to accept respondent's late answer. Additionally, respondent seeks costs, attorneys' fees and sanctions against petitioner's attorneys. Petitioner opposes the cross-motion in its entirety.

Discussion

As to respondent's cross-motion to dismiss, the Court has not been presented with documentary evidence that refutes petitioner's establishment of the invalidity of the lien, petitioner's superior claim to title as against respondent, or petitioner's entitlement to judgment on the issue of liability for conversion. Additionally, the Court finds that petitioner has properly stated all of its causes of actions in accordance with CPLR § 3211(a)(7). However, respondent has appropriately pointed to the absence of a necessary party. Petitioner's affirmation in support of the default judgment motion specifically seeks restoration of the vehicle's title and delivery of the subject vehicle to petitioner. The Court notes that petitioner did not respond to this argument. The Court has been persuaded that High End Auto Sales of Newfoundland, New Jersey must be joined as a necessary party as they appear to be the current titled owner of the subject vehicle. In light of that status, there interests in the title would certainly be greatly impacted by an award of title and possession of the subject vehicle to petitioner. However, the Court has not been persuaded that the prior owner of the vehicle is a necessary party that petitioner was required to join.

In light of the existence of a necessary party, the Court must decline any award of default judgment. Additionally, as a necessary party must be joined, and in the interest of deciding cases fully on their merits, the Court will grant respondent's alternative relief of directing petitioner to accept respondent's late answer in this matter. Finally, the Court finds absolutely no basis for an award of sanctions, costs or fees and both counsel are reminded that a frivolous request for such awards may be grounds in and of itself for the imposition of sanctions.

The parties' remaining arguments and requests for relief have been considered and found to be without merit and/or unnecessary to reach in light of the Court's findings.

Based upon the foregoing it is hereby

ORDERED that petitioner's motion for a default judgment is hereby denied in its entirety; and it is further

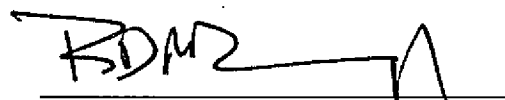
ORDERED that respondent's cross-motion is hereby granted solely to the extent that petitioner is directed to accept respondent's late verified; and it is further

ORDERED that petitioner is directed to join High End Auto Sales of Newfoundland, New Jersey in this action within seventy-five (75) days of the date of this Decision and Order.

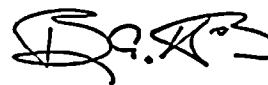
This shall constitute the Decision and Order of the Court. The original Decision and Order is being returned to the counsel for respondent who is directed to enter this Decision and Order without notice and to serve all counsel of record with a copy of this Decision and Order with notice of entry. The Court will transmit a copy of the Decision and Order 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 and Order and delivery of a copy of the Decision and Order 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 27, 2024



Roger D. McDonough
Acting Supreme Court Justice



03/29/2024

Papers Considered:

1. Petitioner's Notice of Motion for Judgment by Default, dated October 20, 2023;
2. Affirmation of John M. Dubuc, Esq., dated October 20, 2023, with annexed Memorandum of Law on Damages;
3. Respondent's Notice of Cross-Motion, filed on November 10, 2023;¹
4. Affidavit of Roy Abraham, sworn to June 16, 2023;
5. Affirmation of Earl Williams, Esq., filed on November 10, 2023, with annexed exhibits and verified answer;²
6. Reply Affirmation of John M. Dubuc, Esq., dated November 14, 2023;
7. Reply Affirmation of Earl Williams, Esq., dated November 29, 2023.

¹ Based on apparent scrivener's errors, several of respondent's documents dated November 9, 2022 should read November 9, 2023 in actuality.

² Papers considered numbered 5 and 6 and the annexed exhibits thereto appear to have been filed twice.