

**Matter of Hyundai Capital Am., Inc. v A1 Auto Serv.
Inc.**

2024 NY Slip Op 35611(U)

December 2, 2024

Supreme Court, Albany County

Docket Number: Index No. 902819-24

Judge: Kimberly A. O'Connor

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of

HYUNDAI CAPITAL AMERICA, INC., and
HYUNDAI LEASE TITLING TRUST,

Petitioners/Plaintiffs,

-against-

DECISION AND
ORDER/JUDGMENT
Index No.: 902819-24

A1 AUTO SERVICE 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
Attorneys for Petitioner/Plaintiff
(John M. Dubuc, Esq., of Counsel)
1822 Western Avenue
Albany, New York 12203

O'CONNOR, J.:

Background

On March 21, 2024, petitioner/plaintiff Hyundai Capital America, Inc. and Hyundai Lease Titling Trust ("Hyundai") commenced this combined Lien Law § 201-a proceeding and action for declaratory relief, replevin, and conversion seeking an order of the Court, among other things, invalidating a garagekeeper's lien asserted by respondent/defendant A1 Auto Service Inc. ("garage") against a certain 2020 Kia motor vehicle, bearing vehicle identification number ("VIN"): KNDP6CAC6L7829724 ("vehicle"), directing the garage to release the vehicle to Hyundai, and awarding Hyundai money damages. Together with the filing of its verified petition/complaint, Hyundai brought an application by Order to Show Cause (Ryba, J.), dated

March 25, 2024, for, among other things, 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 Hyundai upon Hyundai's filing of an undertaking for Thirty Thousand Dollars (\$30,000.00). The record demonstrates that the required bond was posted by Hyundai on January 16, 2024. Neither the garage nor respondent/defendant the New York State Department of Motor Vehicles ("DMV") has joined issue or otherwise appeared in this proceeding/action.

By Order and Judgment, dated July 25, 2024, the Court (O'Connor, J.) granted the petition and cancelled the asserted lien, holding that upon service of said Order and Judgment, Hyundai 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 and directed that the DMV suspend any title for the vehicle assigned to the garage and restore title to Hyundai. Hyundai 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.¹ In support of its motion, Hyundai submitted an attorney's affirmation and proof of service of the summons previously filed with the Court. 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,

¹ While Hyundai also seeks default judgment on its causes of action for declaratory relief and replevin, the Court has already granted Hyundai's requested relief on its first two causes of action by Decision and Order/Judgment (O'Connor, J.), dated July 25, 2024.

1214 [3d Dep't 2012]; *see* CPLR 3215[f]). The record demonstrates that the garage failed to join issue, and thus, is a defaulting party in this proceeding/action.

“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]).

“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]). “While a default judgment constitutes an admission of the factual allegations of the complaint and the reasonable

inferences which may be made therefrom..., [the] 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]; *see Nationstar Mortg., LLC v. Hilpertshauser*, 156 A.D.3d 1052, 1053 [3d Dep't 2017]; *Resnick v. Lebovitz*, 28 A.D.3d 533, 534 [2d Dep't 2006]). "The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (*Feffer v. Malpeso*, 210 A.D.2d 60, 61 [1st Dep't 1994]; *see Woodson v Mendon Leasing Corp.*, 100 N.Y.2d 62, 67 [2003]). Firsthand confirmation can be established through "either an affidavit asserting the facts comprising the claim or a verified complaint, so the court has nonhearsay confirmation of the factual basis constituting a prima facie case" (*State of New York v. Williams*, 44 A.D.3d 1149, 1152 [3d Dep't 2007], *abrogated by Manhattan Telecom. Corp. v. H & A Locksmith, Inc.*, 21 N.Y.3d 200 [2013]).²

In support of its motion for default judgment, Hyundai alleges that the garage has no valid claim to detain the vehicle from Hyundai. On this basis, Hyundai maintains that the garage's act of detaining the vehicle from Hyundai constitutes conversion. Hyundai provided a Petition/Complaint which alleges that it discovered that the garage attempted to enforce a lien through a newspaper written entirely in the Greek language. According to the Petition/Complaint, on December 28, 2023, "a telephone call was placed to the garage and the garage promptly hung up." Hyundai alleges that the garage did not follow the provisions of Lien Law §§ 201, 202, and 203 in asserted a garagekeeper's lien over the vehicle, and despite Hyundai's demands, has refused to release the vehicle. In support of its petition/complaint, Hyundai submitted a copy of the

² The portion of the decision which was abrogated relates to the Court's authority to set aside a default judgment, and does not affect or nullify the legal proposition stated within.

vehicles New York State Certificate of Title, which confirmed that Hyundai Lease Titling Trust is the owner of the vehicle. Hyundai also submitted a newspaper print copy which reflects that a lien sale action notice was scheduled for the vehicle to occur on November 6, 2023. The newspaper section, entitled "Legal Notice/Auction Notice" was addressed to Hyundai Lease Titling Trust, L.D. Beckford Jr. and L. Beckford. The auction was set to occur at 8:50 a.m. at 209 25th Street, Brooklyn, New York. The newspaper did not identify the entity or individual attempted to auction the vehicle and the garage is not identified in the newspaper in association with the auction of the vehicle.

Based on the foregoing, the Court finds that Hyundai failed to submit proof sufficient to establish conversion of the vehicle by the garage. The petition/complaint was verified by Yolanda Garcia, an individual employed and duly authorized by Hyundai, who stated that as an individual with knowledge, she believes the contents of the petition/complaint to be true. However, the verification provided was dated and notarized on January 18, 2024, and the Petition/Complaint was not dated until March 21, 2024, months after the verification was notarized. Therefore, the Court finds that the verification is defective, and treats the Petition/Complaint as unverified (*see* CPLR 3022). Looking to the proof submitted in support of the petition, Hyundai established that it is the titled owner of the vehicle. However, Hyundai did not submit any proof in the form of documentary evidence, a sworn affidavit from a person with direct knowledge, or any other evidence, that it demanded that the garage release the vehicle to it, or that the garage refused to release the vehicle to Hyundai after such a demand was made. The unverified Petition/Complaint cannot be relied on as proof in this case. Without the submission of any such proof, Hyundai cannot establish its cause of action for conversion (*see State of New York v. Williams*, 44 A.D.3d at 1152). Thus, the Court finds that Hyundai failed to establish entitlement to liability on its cause of action for conversion. Therefore, Hyundai's motion for default judgment is denied.

Accordingly, it is hereby

ORDERED, that plaintiff/petitioner's motion for default judgment is denied without prejudice; and it is further

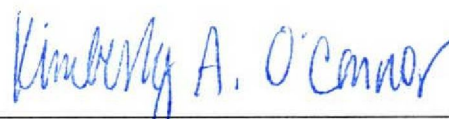
ORDERED, that in the event plaintiff/petitioner intends to file a new application for default judgment upon proper papers, plaintiff is directed to file the same within Forty-Five (45) days of entry of this Decision and Order.

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: December 2, 2024
Albany, New York



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



Papers Considered:

12/02/2024

1. Petition/Complaint, dated March 21, 2024, with Exhibits 1-2 annexed; Summons, dated March 21, 2024; Order to Show Cause (Ryba, J.), dated March 25, 2024; Affidavit of Service, sworn to March 29, 2024; Affirmation of Service, dated April 12, 2024;
2. Order and Judgment (O'Connor, J.), dated July 25, 2024; *and*
3. Notice of Motion for Default Judgment, dated August 5, 2024; Affirmation of John M. Dubuc, Esq., in Support, dated August 5, 2024, with annexed Exhibit 1.