Matter of Americredit Fin. Servs., Inc. v Next Level Auto Body, Inc.
2025 NY Slip Op 35533(U)
January 13, 2025
Supreme Court, Albany County
Docket Number: Index No. 905725-24
Judge: Kimberly A. O'Connor
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of:

AMERICREDIT FINANCIAL SERVICES, INC.,

Petitioner/Plaintiff,

-against-

DECISION AND ORDER/JUDGMENT
Index No.: 905725-24

NEXT LEVEL AUTO BODY, 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.:

Petitioner/plaintiff Americredit Financial Services, Inc. ("Americredit") has brought an application in this combined special proceeding, pursuant to Lien Law § 201-a, action for declaratory judgment and plenary action for an order of the Court, among other things, declaring a garagekeeper's lien asserted by respondent/defendant Next Level Auto Body, Inc. ("garage") against a certain 2019 Infiniti motor vehicle, bearing vehicle identification number ("VIN")

5N1DLOMM3KC522818 ("vehicle"), null and void. The garage joined issue on October 10, 2024, opposing the relief requested and asserting various affirmative defenses. Among others, the garage alleged that Americredit's filing of this proceeding was outside the ten-day statute of limitations. Respondent/defendant the New York State Department of Motor Vehicles ("DMV") has not appeared in this proceeding and action, or otherwise taken a position on the merits of Americredit's Petition/Complaint. Americredit replied to the garage's opposition.

Background

The record presented demonstrates that Jorge G. Baldeon is the owner of the vehicle. The record further establishes that the owner engaged in a discussion with the garage for the repair of the vehicle. In addition, the record demonstrates that Americredit, using the trade name of "GM Financial," holds a lien on the vehicle against which the garage has asserted a garagekeeper's lien. The Notice of Lien and Sale ("NOLS") form included the addresses of the owner and GM Financial. Within the NOLS, the garage asserted a lien pursuant to Lien Law § 184 in the sum of Nine Thousand and Thirty-Four Dollars and Sixty-Three Cents ($9,034.63) including a Three Hundred and Forty-Five Dollar ($345.00) lien fee, Two Thousand Six Hundred and Forty-Four Dollars and Sixty-Three Cents ($2,644.63) in repairs, and Six Thousand and Forty-Five Dollars ($6,045.00) in storage charges (storage for 93 days—8/10/23 through 11/9/23 at $65 per day). The NOLS indicated that an additional lien is being claimed for storage charges from November 10, 2023, to the date of payment or sale for the charges incurred in enforcing the lien. The NOLS advised that if payment was not received on or before November 22, 2023, the vehicle would be advertised for sale at a public auction on December 11, 2023. The NOLS was signed by a "garageperson" named Marcos Arias, and included a date of November 10, 2023.

By Order to Show Cause (Hartman, J.), dated June 20, 2024, the Court directed the garage to immediately release the vehicle to Americredit upon the filing of an undertaking in the sum of

Thirty Thousand Dollars ($30,000.00). The Court then enjoined the garage from removing the subject vehicle from this State and its location, and from disassembling, transferring, selling, pledging, assigning or otherwise disposing of the vehicle, or permitting the vehicle to become the subject of a security interest or statutory lien, except for delivery to the petitioner as directed, until further Court order; and prohibited the DMV from transferring title to the subject vehicle until petitioner takes possession of the vehicle or the proceeding is determined. The record indicates that petitioner posted the required bond, and that the vehicle was subsequently released to petitioner.

Discussion

A. Timeliness

As an initial matter, the garage alleges that the Petition is untimely because it was not filed within ten days of the garage's service of the NOLS. More specifically, the garage contends that Americredit failed to commence a special proceeding challenging the validity of the garage's lien within ten days after November 10, 2023, when the garage allegedly served the NOLS on Americredit. The garage emphasizes that Americredit instead waited until June 18, 2024, to commence this proceeding and action.

In opposition, Americredit states that as it noted in its pleadings, the garage failed to establish that the NOLS complied with the strict requirements of Lien Law § 201 and § 202. Americredit argues that because the garage failed to comply with the requirements of Lien Law § 201 and § 202, the ten-day period never began to run against Americredit, making petitioner's action/proceeding timely.

Pursuant to Lien Law 201-a, "[w]ithin ten days after service of the notice of sale, the owner or any person entitled to notice pursuant to [Lien Law § 201] may commence a special proceeding to determine the validity of the lien." "Service of such notice of sale by the lienor must be effectuated by personal service 'within the county where [the] lien arose,' unless the person to be served 'cannot with due diligence be found within such county'" (*Manufacturers and Traders Tr. Co. v J.D. Mar. Serv.*, 187 A.D.3d 1249 [3d Dep't 2020], quoting Lien Law § 201). If personal service cannot be completed, "notice shall be served by [certified mail, return receipt requested, and by first-class mail] . . . to the owner at his last known place of residence, or to his last known post-office address" (Lien Law § 201). Adequate notice shall contain a statement describing "[t]he nature of the debt or the agreement under which the lien arose, with an itemized statement of the claim and the time when due; . . . [a] brief description of the personal property against which the lien exists; . . . [t]he estimated value of such property; . . . [and] [t]he amount of such lien, at the date of the notice" (Lien Law § 201). "In the event that proper service does not occur, the 10–day period to commence a proceeding to declare the lien void does not begin to run" (*Santander Consumer USA, Inc. v Aledrew Corp.*, 206 A.D.3d 1191, 1192 [3d Dep't 2022] [citation omitted]).

While the record demonstrates that the garage created a notice of lien and sale, such notice is facially defective, insofar as it failed to include a statement describing the nature of the debt or the agreement under which the lien arose. Additionally, the notice of lien and sale is invalid due to defective service. The garage did not submit any evidence demonstrating that it served either the owner or Americredit with the NOLS. For the foregoing reasons, the Court finds that the NOLS is invalid. Without proof of proper service of the NOLS, the 10-day period to commence a special proceeding has not yet began to run against Americredit (*see* Lien Law 201-a). As a result, the Court determines that the proceeding/action was timely filed.

B. Validity of the Garage's Lien

In its Petition/Complaint, Americredit asserts that the garage's lien is invalid because, among other things, the garage failed to contact Americredit regarding its purported charges prior to accruing them, and failed to present any proof demonstrating that Americredit or the owner had consented to the charges being placed against the vehicle. Americredit further alleges that the garage has not shown that Americredit or the owner specifically agreed to any storage charges by the garage against the vehicle.

In opposition, the garage submitted, among other things, the affidavit of Rick McCook, an officer of the garage. McCook explained that the vehicle was sold to a third party after the auction referenced within the NOLS took place. McCook maintained that the garage was a registered motor repair shop at the time of the vehicle's repair and storage. In support of this contention, the garage attached a copy of its registration which confirmed that the garage was properly registered from October 8, 2021, through October 31, 2023. McCook stated that on July 24, 2023, the vehicle's owner brought the vehicle to the garage for repairs, at which time the owner signed an Authorization to Repair form. A copy of this form was provided in support. The form, entitled "AUTHORIZATION TO REPAIR" identified the garage and the vehicle at issue (NYSCEF Doc. No. 20). Under the title, next to the line entitled "Name:" was the name "Jorge Baldeon" followed by the following statement:

> By signing this form, I understand and agree to the following terms and authorize Next Level Autobody Inc. to repair the above aforementioned vehicle as per verbal agreement. Next Level Autobody Inc. is also authorized to act as my agent for the purpose of negotiating on my behalf with insurer for the costs of the repairs, including damages not listed or visible at the time of the initial insurance appraisal was done....I understand that any charges not paid by the insurer are my responsibility, including but not limited to the following: Towing, Deductible, Betterment or for additional work requested, I also understand that those charges are due upon pickup/delivery of my vehicle....Unless prior arrangements have been made, I agree to pick up my vehicle or have my vehicle delivered to me within two (2) business days upon completion, otherwise a $65.00 per day storage outside and $130.00 indoor storage will be added to the total costs of repair....In the event that I do not pay the charges owed necessary to remove my vehicle from Next Level Autobody Inc., I understand that I will be responsible for any and all legal fees incurred (NYSCEF Doc. No. 20).

The document was signed and dated by the vehicle owner on July 24, 2023.

McCook stated that the vehicle was insured by Allstate Fire and Casualty Insurance Company ("Allstate"). A copy of Allstate's initial estimate was provided, which reflected an initial repair estimate of Two Thousand One Hundred and Forty-Four Dollars and Sixty-Three Cents ($2,144.63), and indicated that the owner would be responsible for a Five Hundred Dollar ($500.00) deductible. The estimate, dated August 2, 2023, identified the vehicle, and confirmed that Jorge Baldeon was the insured on the vehicle. McCook stated that a supplemental estimate was provided by Allstate on August 17, 2023. The supplemental estimate, provided by the garage, reflected that vehicle repairs would cost Six Thousand and Eighty-Four Dollars and Seventy-Eight Cents ($6,084.78). After subtracting the owner's Five Hundred Dollar ($500.00) deductible, the estimate stated that the total repair would cost Five Thousand Five Hundred and Eighty-Four Dollars and Seventy-Eight Cents ($5,584.78). According to McCook, "the owner agreed to have the vehicle repaired" according to the final repair estimate provided by Allstate (NYSCEF Doc. No. 18 at 3). No document or additional information was provided in support of this assertion.

McCook then submitted a copy of a check written by Allstate to the garage for Three Thousand Four Hundred and Forty Dollars and Fifteen Cents ($3,440.15). The check listed Jorge Baldeon as both the insured and the claimant for coverage. The check recognized that the payment was being made to the garage to cover a loss which occurred on July 23, 2023. McCook stated that after this payment was made to the garage, Two Thousand Six Hundred and Forty-Four Dollars and Sixty-Three Cents ($2,644.63) remained unpaid. McCook stated that storage charges started to accrue after the repairs were completed on August 2, 2023. McCook maintained that the storage charges were agreed upon by the owner within the Authorization to Repair form. McCook then stated that as an employee of the automotive repair industry and an officer of the garage, he believed that a storage fee of Sixty-Five Dollars ($65.00) per day is reasonable and within the industry standard. McCook stressed that because the garage had limited space, the storage of the vehicle within its facility caused the garage to lose "potential revenue due to the inability to store other vehicles" in the occupied spot. McCook maintained that the total amount owed to the garage for repairs and storage is Eight Thousand Six Hundred and Eighty-Nine Dollars and Sixty-Three Cents ($8,689.63), and stated that any discrepancy in the NOLS is an error caused by the third party who filled out the NOLS.[1]

In reply, Americredit argues that the garage never had grounds to assert a lien because it was always relying upon payments from insurance proceeds. Americredit asserts that a lien may only arise when a garage agrees to perform work on its "personal credit" to the vehicle owner who in exchange promises to pledge the vehicle as collateral for the owner's promise to pay for the work done. While Americredit acknowledges the existence of the garage's Authorization to Repair form, it maintains that the agreement is insufficient to establish owner consent to repairs or storage. Americredit notes that both estimates provided by Allstate were generated several days after the Authorization to Repair form was signed, and post-estimate, the garage failed to demonstrate that the owner consented to the repairs at a specific price after an estimate was made. Americredit then argues that the garage also failed to submit an invoice or other documentation sufficient to establish that repairs were actually performed. With respect to the alleged storage charges, Americredit argues that the storage claim is barred by the doctrine of laches, because the garage failed to provide notice to the vehicle owner or Americredit before the accrual of storage fees. For these reasons, Americredit claims that the lien must be invalidated.

Lien Law § 184(1) provides, in relevant part, that

> [a] person keeping a garage . . . or place for the storage, maintenance, keeping or repair of motor vehicles . . . and who in connection therewith tows, stores, maintains, keeps or repairs any motor vehicle . . . at the request or with the consent

[1] The Court does not find any discrepancy in the NOLS. The total amount alleged by the garage for repairs and storage is Eight Thousand Six Hundred and Eighty-Nine Dollars and Sixty-Three Cents ($8,689.63) within the NOLS. An additional "Lien Fee" of Three Hundred and Forty-Five Dollars ($345.00) resulted in a total lien amount of Nine Thousand and Thirty-Four Dollars and Sixty-Three Cents ($9,034.63).

> of the owner . . . has a lien upon such motor vehicle . . . for the sum due for such towing, storing, maintaining, keeping or repairing of such motor vehicle . . . and may detain such motor vehicle . . . at any time it may be lawfully in his [or her] possession until such sum is paid.

The purpose of Lien Law § 184, known as a garageman's or garagekeeper's lien, "is to provide the repair shop with security for the labor and material it expends which enhance the value of the vehicle" (*Grant St. Contr. v. Cortland Paving Co.*, 55 A.D.3d 1106, 1107 [3d Dep't 2008], quoting *Gen. Motors Acceptance Corp. v. Anthony J. Minervini, Inc.*, 301 A.D.2d 940, 941 [3d Dep't 2003]; *see Matter of Nat'l Union Fire Ins. Co. v. Eland Motor Car Co.*, 85 N.Y.2d 725, 730 [1995]; *Slank v. Dell's Dodge Corp.*, 46 A.D.2d 445, 448 [4th Dep't 1975]). Thus, the statute inures to the benefit of a garage owner who can establish that: "(1) the garage is the bailee of the motor vehicle . . . ; (2) it has performed garage services or stored the vehicle with the vehicle owner's consent . . . ; (3) there was an agreed-upon price, or if no agreement on price had been reached, the charges are reasonable for the services supplied . . . ; and (4) the garage is a duly registered motor vehicle repair shop as required under article 12-A of the Vehicle and Traffic Law" (*Matter of Nat'l Union Fire Ins. Co. v. Eland Motor Car Co.*, 85 N.Y.2d at 730 [internal citations omitted]; *Matter of Daimler Trust & Daimler Title Co. v. SG Autobody LLC*, 112 A.D.3d 1123, 1124 [3d Dep't 2013]; *Matter of Toyota Motor Credit Corp. v. Impressive Auto Ctr., Inc.*, 80 A.D.3d 861, 864 [3d Dep't 2011]).

However, Lien Law § 184, "is in derogation of common law and thus is strictly construed" (*Matter of Santander Consumer USA, Inc. v. Steve Jayz Automotive, Inc.*, 197 A.D.3d 1407, 1409 [3d Dep't 2021] [internal quotation marks and citation omitted]; *see Matter of Santander Consumer USA, Inc. v. A-1 Towing Inc.*, 163 A.D.3d 1330, 1331 [3d Dep't 2018]; *Matter of Ally Fin. Inc. v. Oakes Towing Serv., Inc.*, 130 A.D.3d 1355, 1356 [3d Dep't 2015]). Further, the burden of demonstrating that a garage has complied with all requirements of Lien Law § 184 and that a valid garageman's lien exists is affirmatively placed on the garage (*see Matter of Nat'l Union Fire Ins. Co. v. Eland Motor Car Co.*, 85 N.Y.2d at 730; *Matter of Daimler Trust & Daimler Title Co. v. SG Autobody LLC*, 112 A.D.3d at 1124; *Matter of Toyota Motor Credit Corp. v. Impressive Auto Ctr., Inc.*, 80 A.D.3d at 864; *Matter of DCFS Trust v. New York State Dep't of Motor Vehicles*, 13 Misc.3d 1056, 1059 [Sup. Ct., Kings County 2006]). Therefore, a lien claim that does not strictly comply with § 184(1) is "null and void" (*Matter of Daimler Trust & Daimler Title Co. v. SG Autobody LLC*, 112 A.D.3d at 1125; *see F&N Corvette & Classics v Corvette Repairs, Inc.*, 206 A.D.2d 349 [2d Dep't 1994]).

Upon review of the record, the Court finds that the garage failed to establish the validity of its garagekeeper's lien on the vehicle. As relevant here, to assert a valid garage lien under Lien Law § 184(1), a garage owner must prove that the vehicle was stored with the owner's consent (*see Matter of Nat'l Union Fire Ins. Co. v. Eland Motor Car Co.*, 85 N.Y.2d at 730; *Matter of Daimler Trust & Daimler Title Co. v. SG Autobody LLC*, 112 A.D.3d at 1124-1125; *Grant St. Contr. v. Cortland Paving Co.*, 55 A.D.3d at 1107; *BMW Bank of N. Am. v. G & B Collision Ctr., Inc.*, 46 A.D.3d 875, 876 [2d Dep't 2007]; *Phillips v. Catania*, 155 A.D.2d 866, 866 [4th Dep't 1989]; *see General Motors Acceptance Corp. v. Chase Collision, Inc.*, 140 Misc.2d 1083, 1085 [Sup. Ct., Suffolk County 1988]). Moreover, "storage fees must be specifically authorized to be included as part of a lien on a vehicle" (*Grant St. Contr. v. Cortland Paving Co.*, 55 A.D.3d at 1107; *see Matter of BMW Bank of N. Am. v. G & B Collision Ctr., Inc.*, 46 A.D.3d at 876; *Phillips v. Catania*, 155 A.D.2d at 866).

While the Court finds that the Authorization to Repair document demonstrates that the owner explicitly authorized the garage to make repairs, it is insufficient to demonstrate repairs were actually completed. The Authorization to Repair form stated that the owner authorized the garage "to repair the above-mentioned vehicle as per verbal agreement" (NYSCEF Doc. No. 20).

While two repair estimates were provided by Allstate, the owner's insurance provider, the garage failed to provide a copy of an invoice or any other document itemizing the parts purchased or labor performed on the vehicle. A general authorization form, which predates both of Allstate's repair estimates, is insufficient to demonstrate that any repairs were made after owner consent was provided. While the check provided by Allstate demonstrates that it paid the garage as the vehicle owner's insurer for a loss which occurred on July 23, 2023, the loss is not defined, and it is not specified if the amount paid was towards repairs performed on the vehicle at issue. Accordingly, the Court finds that the garage failed to demonstrate that actual repairs were performed on the vehicle. While the garage maintains that Allstate only made partial payment to the garage, without a final invoice or other evidence to demonstrate the existence of repairs performed, it is unclear if additional payment was required to be made by Allstate.

Turning to the storage charges, the Court finds that the Authorization to Repair is insufficient to demonstrate that a written agreement was entered into between the garage and the owner wherein the owner authorized the storage charges at an agreed upon price. The form stated that the owner "agreed to pick up [the] vehicle or have [the] vehicle delivered to [him] within two (2) business days upon completion, otherwise a $65.00 per day storage outside and a $130.00 indoor storage will be added to the total costs of repair[.]" (NYSCEF Doc. No. 20). This agreement was contingent upon the completion of the vehicle's repairs, yet the garage failed to demonstrate that the owner was informed when any alleged repairs were completed. Moreover, the agreement included two separate options for storage charges depending on whether the vehicle would be stored inside or outside. As was previously stated, the garage failed to demonstrate that repairs were ever performed, let alone completed by the garage, which was a required action to trigger any storage fee accrual. Considering the contingency required to trigger an obligation to pay storage fees, and the existence of two potential storage fees, the document, by itself, is insufficient to establish that the owner specifically agreed to storage fees at an agreed upon price. Additionally, in the absence of any other documentation, the Court finds that the storage claim is barred by the doctrine of laches, as the garage failed to provide the notice to the party to be charged before it started to accrue storage charges against the owner and Americredit as a lienholder over the vehicle (*see Santander Consumer USA, Inc. v. Steve Jayz Automotive Inc.*, 197 A.D.3d at 1409).

Based upon the foregoing, the Court finds that the garage's lien is null and void. Any remaining arguments not specifically addressed herein have been considered and found to be lacking in merit or need not be reached in light of this determination.

According, it is hereby

ORDERED AND ADJUDGED, that the Petition is granted to the extent that it is

ADJUDGED AND DECLARED, that respondent/defendant Next Level Auto Body Inc. failed to establish the existence of a valid garagekeeper's lien against a certain 2019 Infiniti motor vehicle, bearing VIN: 5N1DLOMM3KC522818, for the reasons stated herein; and it is further

ORDERED, ADJUDGED AND DECLARED, that, pursuant to Lien Law § 201-a, the lien asserted by respondent/defendant Next Level Auto Body Inc. against a certain 2019 Infiniti motor vehicle, bearing VIN: 5N1DLOMM3KC522818 is cancelled; and it is further

ORDERED AND ADJUDGED, that within 45 days of service of this judgment upon it, respondent/defendant DMV is directed to invalidate any title to the vehicle issued as a result of the public auction, reject any application for title or lien release based upon respondent/defendant Next Level Auto Body Inc.'s claimed lien, and restore title to plaintiff/petitioner Americredit Financial Services, Inc.; and it is further

ORDERED, that all stays are terminated; and it is further

ORDERED, that the parties shall appear for a **virtual conference** via Microsoft Teams on ***February 4, 2025 at 10:00 a.m.***, to discuss petitioner/plaintiff Americredit Financial Services, Inc.'s remaining causes of action. If the parties resolve the remaining claims in advance of the conference date and notify Chambers in writing of such resolution, the conference will be cancelled.

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 NYCRR § 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, ADJUDGED, AND DECLARED.

ENTER.

Dated: January 13, 2025
Albany, New York

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

01/15/2025

Papers Considered:

1. Order to Show Cause (Hartman, J.), June 20, 2024; Petition/Complaint, dated June 18, 2024, with Exhibits 1-2 annexed[2]; Bond/Undertaking, dated March 6, 2024; Affidavit of Service, sworn to June 25, 2024; Affirmation of Service, dated July 10, 2024;
2. Next Level Auto Body, Inc.'s Answer, dated October 10, 2024; Affirmation of Rick McCook, dated October 16, 2024, with Exhibits A-E annexed; Affirmation of John Harwick, Esq., in Opposition to Petition/Complaint, dated October 17, 2024, with Exhibits A-C annexed; *and*
3. Reply Affirmation of John M. Dubuc, Esq., dated October 22, 2024, with Exhibits 1-5 annexed.

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[2] While the Court recognizes that the Petition/Complaint was labeled as verified, the verification provided was dated March 7, 2024, which is several months before the date of the Petition/Complaint. Consequentially, the Court finds that the Petition/Complaint is not properly verified, and cannot be treated as a verified pleading.