

Matter of VW Credit Inc. v Junior's Auto. Ctr., Inc.
2025 NY Slip Op 35650(U)
January 8, 2025
Supreme Court, Albany County
Docket Number: Index No. 911805-23
Judge: Susan M. Kushner
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

In the Matter of the
Special Proceeding/Application of

VW CREDIT INC., and VW CREDIT LEASING LTD.,

Petitioners/Plaintiffs,

**DECISION, ORDER and
PARTIAL JUDGMENT
Index No. 911805-23**

-against-

**JUNIOR'S AUTOMOTIVE CENTER, INC., and THE
NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES,**

Respondents/Defendants.

APPEARANCES:

FOR PETITIONER: MEOLA LAW FIRM

FOR RESPONDENTS: No appearance

This Special Proceeding/Legal Action was commenced on December 8, 2023 by Petitioner/Plaintiff, VW Credit Inc. and VW Credit Leasing LTD (VW Credit) by filing a Verified Petition/Complaint (NYSCEF # 1) against Respondents/Defendants, Junior's Automotive Center, Inc. (Juniors), and the New York State Department of Motor Vehicles (DMV). DMV was named as a party solely to prevent the issuance of a new Certificate of Title deleting VW's status as owner¹.

The matter was brought on by Order to Show Cause (OTSC), executed on December 13, 2023, seeking a Temporary Restraining Order to restrain Juniors from selling or removing a 2022 Volkswagen (VIN: 1V2AR2CA8NC529503) from New York State among other actions. (NYSCEF # 10). The OTSC also required Juniors to deliver the motor vehicle to VW Credit

¹ While the OTSC states it seeks to retain VW Credit's status as lienholder, no proof of a lien was provided and the only proof submitted was that VW Credit Leasing LTD. is the owner. Pursuant to **CPLR § 2001**, the Court deems this a draftsman error and finds VW Credit seeks to maintain its' title to the 2022 Volkswagen.

upon the posting of an undertaking. The OTSC further directed DMV to maintain VW Credit's status as lienholder, however, the Court deems this to have been intended to maintain VW Credit's status as owner.

Initially, VW Credit was unable to serve Juniors in the time directed by the OTSC. (See NYSCEF #13). VW Credit filed an Amended OTSC seeking more time to serve Juniors. (NYSCEF # 12). The OTSC required personal service upon a person of suitable age and discretion. (NYSCEF #10). VW Credit filed an Affidavit of Service demonstrating Juniors had been served by delivery to the Secretary of State on or about February 5, 2024. (NYSCEF # 15). As a result, VW Credit failed to file proof of service upon Juniors as directed in the OTSC. By e-filed letter dated April 8, 2024, the Court advised VW Credit's counsel it did not find it had acquired personal jurisdiction over Juniors because VW Credit did not serve process in accordance with the OTSC. (NYSCEF #17). Thereafter, on July 9, 2024, VW Credit filed its' second Amended OTSC, (NYSCEF #18), which the Court executed on September 4, 2024. (NYSCEF #20). This time VW Credit demonstrates that it served Juniors in accordance with the OTSC. (NYSCEF # 22).

Juniors and DMV failed to answer and/or appear. In the special proceeding portion of this matter, the Court is authorized to render a summary determination if warranted. CPLR 409 (b).

VW Credit demonstrates it is a corporation duly authorized to do business in the State of New York, and is the agent for VW Credit Leasing LTD. VW Credit also establishes that VW Credit Leasing LTD is the owner of the 2022 Volkswagen. (NYSCEF # 4)

Per VW Credit, it was in the process of repossessing the vehicle when it learned that Juniors had the vehicle (NYSCEF # 1, ¶ 5). VW Credit claims it tried to recover the vehicle however Juniors refused to release it unless certain charges were paid. VW Credit filed a bill captioned, "Juniors Automotive Center, Inc." in the amount of \$23,586.74.² The charges were for 18 days of storage at \$125.00 per day, an \$80.00 administrative fee and a \$125.00 towing charge plus tax and another \$500.00 fee (the purpose of which remains illegible). VW Credit alleges it did not agree to any charges against its' vehicle and that Juniors failed to substantiate its' garagekeeper's claim.

² This is based on the Court's limited ability to read the bill as it scanned poorly and is nearly illegible. The Court is unable to read the complete document. On request, VW Credit provided a more legible copy.

VW Credit seeks multiple forms of relief:

- (1) Recovery of the motor vehicle;
- (2) A declaratory judgment that the Juniors' lien is invalid;
- (3) The equitable relief of replevin;
- (4) Legal damages on the basis of conversion; that Juniors' continued retention of the motor vehicle despite an invalid lien was unlawful, subjecting Juniors to liability for any damages incurred as a result of said conversion, and
- (5) Legal damages based on General Business Law § 349.

VW Credit alleges that any garagekeeper's lien asserted by Juniors is invalid because it failed to properly establish a lien in accordance with the NYS Lien Law. VW Credit alleges, as owner, that it did not consent to the lien charges. It also contends that Juniors failed to demonstrate it is a registered and licensed motor vehicle repair shop. Failing to meet these requirements, which are preconditions to asserting a lien, Juniors may not seek to recover on its' lien. VW Credit further contends that Juniors failed to timely notify it of the charges and failed to comply with the provisions of NYS Lien Law §§ 201 and 202 rendering any contemplated sale invalid.

The burden is on Juniors to establish the existence of a valid lien. To do so, it must show it "is duly registered as a repair shop as required by statute, is the bailee of a motor vehicle, that it performed garage services or storage with the vehicle owner's consent, and [that] the parties had agreed upon a price or—absent such agreement—the charges were reasonable". *Daimler Trust and Daimler Title Co., v SG Autobody LLC*, 112 AD3d 1123, 1124 (Third Dept., 2013) (*Internal citations omitted*).

Having defaulted in this matter, Juniors has failed to demonstrate the elements necessary for the establishment of a valid lien. On its face, the purported bill fails to claim a lien and fails to include evidence of an agreement by VW Credit (or by the vehicle lessee) to the charges. In the absence of such agreement, Juniors has the burden to demonstrate the charges were reasonable. Also, the Court has no proof before it that Juniors is the authorized bailee of the 2022 Volkswagen.

Based on the record before it, the Court is satisfied that Juniors' lien claim is invalid. The record establishes VW Credit is the owner of the vehicle and that as owner VW Credit did not consent to the charges Juniors seeks to impose. There is no proof before the Court that Juniors is a registered repair shop and no proof that the charges it seeks to impose are reasonable

under the circumstances. In addition, Juniors failed to properly and timely notify VW Credit of said charges.

Furthermore, the Court finds Juniors' continued possession of the motor vehicle is unlawful because it has not demonstrated it had a valid garagekeeper's lien. The Court finds Juniors unlawful retention of the vehicle is conversion. VW Credit may be entitled to compensation if it can demonstrate it has suffered damages.

Now, therefore, it is:

ADJUDGED that the petition is granted; and it is further

ADJUDGED that the garagekeeper's lien claim asserted by Juniors Automotive Center Inc. upon the 2022 Volkswagen (VIN: 1V2AR2CA8NC529503) is declared invalid and hereby cancelled; and it is further

ADJUDGED that VW Credit Inc. and VW Credit Leasing LTD's right to possession of the 2022 Volkswagen (VIN: 1V2AR2CA8NC529503) is established; and it is further

ORDERED that Juniors Automotive Center Inc. shall within 15 days of service of the associated Orders and Judgment deliver the 2022 Volkswagen (VIN: 1V2AR2CA8NC529503) to VW Credit Inc. and VW Credit Leasing LTD; and it is further

ADJUDGED that VW Credit Inc. and VW Credit Leasing LTD are liable to the Respondent, Juniors Automotive Center Inc. in the Amount of \$0 dollars upon the invalid garagekeeper's lien; and it is further

ADJUDGED that Juniors Automotive Center Inc. has committed conversion by retaining possession of the 2022 Volkswagen (VIN: 1V2AR2CA8NC529503) despite having no legal right to do so; VW Credit Inc. and VW Credit Leasing LTD shall submit written proof of damages to the Court, based on legally sufficient evidence, for the Court to assess whether there is a need to schedule an inquest on the matter of damages, and it is further

ORDERED that all stays are terminated upon VW Credit Inc. and VW Credit Leasing LTD taking possession of the 2022 Volkswagen (VIN: 1V2AR2CA8NC529503), and it is further

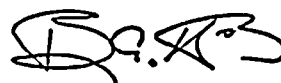
ORDERED that the bond herein is released, and it is further

ORDERED that VW Credit Inc. and VW Credit Leasing LTD's claim for damages under GBL § 349 is continued to abide the circumstances.

This constitutes the Decision of the Court. The Court shall e-file it in NYSCEF. VW
Credit shall serve Notice of Entry on Respondents in accordance with CPLR R 2220.

DATED: January 8, 2024

ENTERED


SUSAN M. KUSHNER, A.J.S.C.
01/09/2025

Papers Considered:

- (1) Verified Petition/Complaint with Exhibits filed December 8, 2023. (NYSCEF #1, 4-7)*
- (2) Order to Show Cause with Temporary Restraining Order filed December 13, 2023 (NYSCEF # 10), Amended Order to Show Cause filed January 18, 2024 (NYSCEF # 14) and Second Amended Order to Show Cause filed September 9, 2024 (NYSCEF # 20)*
- (3) Proof of Service (NYSCEF # 11, 15 and 21,22)*