STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Lancaster County
Honorable Brian M. Gibbons, Circuit Judge
Civil Action No.: 2014-CP-29-00065

Founders Federal Credit Union,

Appellant,

v.

Sharon T. Irving and The Auto Shop,

Respondents.

APPELLANT'S INITIAL BRIEF

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ISSUES ON APPEAL

I. Whether the trial court erred in awarding The Auto Shop $1,500.00 in storage charges that accrued while storing a vehicle under S.C. Code Ann. § 29-15-10(B) where The Auto Shop did not provide written notice by certified or registered mail to Founders Federal Credit Union, as lienholder of the vehicle, as required under S.C. Code Ann. § 29-15-10(B).

II. Whether the trial court erred in broadly interpreting the notice requirement of S.C. Code Ann. § 29-15-10(B) in awarding The Auto Shop $1,500.00 in storage charges, which will likely lead to inequitable results for lienholders.

III. Whether the trial court erred in awarding The Auto Shop $1,500.00 in storage charges under S.C. Code Ann. § 29-15-10(B) where the record is devoid of any factual evidence or legal authority to support the $1,500.00 figure.

STATEMENT OF THE CASE

This appeal seeks a reversal of the Circuit Court's Order requiring Founders Federal Credit Union ("Founders") to pay The Auto Shop $1,500.00 in storage charges for The Auto Shop's storage of a 2007 Lexus GS350 automobile (the "Lexus"). The Lexus served as collateral for a loan extended by Founders to Sharon T. Irving ("Ms. Irving"). The operative statute to determine the issues on appeal in this case is S.C. Code Ann. § 29-15-10(B)[1] and, therefore, it appears that the Court's interpretation of this statute shall determine these issues that focus on whether The Auto Shop is entitled to storage charges under the facts of this case. It appears that no published South Carolina case law exists interpreting Section 29-15-10(B).

Upon Founders' discovery that The Auto Shop was in possession of the Lexus and it subsequently becoming clear to Founders that the storage charges being demanded by The Auto Shop for relinquishing the Lexus could not be resolved, Founders filed its Complaint with the Lancaster County Clerk of Court on January 21, 2014, wherein it alleged a cause of action for claim and delivery for possession of personal property against The Auto Shop and a debt collection cause of action against Ms. Irving. [Complaint ¶¶17-28.] On March 13, 2014, the

[1] Hereinafter, referred to as Section 29-15-10(B).

Auto Shop filed a responsive pleading alleging its entitlement to all storage fees since it came into possession of the Lexus, which it asserted were $7,347.00 as of that date. [Answer p.2.] Ms. Irving did not file a pleading in response to the Complaint. [Trial Tr. 2:16-22, Oct. 27, 2014.]

The Court of Common Pleas for Lancaster County held a trial on the merits of this case before the Honorable Brian M. Gibbons, on October 27, 2014. Suzanne Taylor Graham Grigg, Esquire appeared at the trial on behalf of Founders, and Derrek Bowers, appearing as owner of the The Auto Shop, and Ms. Irving both appeared at the trial *pro se*. Founders received a copy of the trial court's signed Order and Judgment on November 17, 2014, and the Clerk of Court filed the Order and Judgment on November 20, 2014. In the Order and Judgment, the trial court held that Founders is entitled to a monetary judgment against Ms. Irving on the indebtedness due and owing under the Note (as defined below) in the total amount of $28,963.16, plus post-judgment interest at the rate of 7.50% per annum until the judgment is paid in full. No party has appealed the entry of this monetary judgment against Ms. Irving, and it is the law of the case.

Most importantly for purposes of this appeal, the trial court also held in its Order and Judgment that the notice to lienholder provision in Section 29-15-10(B) shall be construed broadly and held The Auto Shop's electronic mail ("e-mail") communication to Founders 69 days after first receiving the Lexus entitled The Auto Shop to storage fees of $1,500.00 to be paid by Founders in exchange for surrender of the Lexus to Founders.[2] On November 18, 2014, Founders served its Motion to Reconsider, Alter or Amend Order (the "Motion to Reconsider") pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure solely as to the trial court's decision on the storage charges issue based on the grounds that (1) the trial court erred in

[2] The Order and Judgment also required Founders to pay $663.00 to The Auto Shop for towing and tear down services it performed on the Lexus. At no point has Founders disputed that The Auto Shop is entitled to payment of the $663.00 and, therefore, it is not an issue in this appeal.

broadly construing the notice requirements in Section 29-15-10(B) and allowing The Auto Shop's e-mail notice to Founders to suffice; (2) broad construction of Section 29-15-10(B) will lead to inequitable results for lienholders in the future; and (3) no factual evidence or legal authority in the record supports the finding that The Auto Shop is entitled to $1,500.00 in storage charges.

The trial court held a hearing on Founders' Motion to Reconsider on November 30, 2015, before the Honorable Brian M. Gibbons. Ms. Grigg again appeared on behalf of Founders and Derrek Bowers, *pro se*, again appeared for The Auto Shop. The trial court heard arguments from both sides at the hearing, and issued its Form 4 Judgment denying Founders' Motion to Reconsider on November 30, 2015. Founders' filed its Notice of Appeal of the Order and Judgment and the Form 4 Judgment denying its Motion to Reconsider with the Court of Appeals on December 15, 2014. Through this appeal, Founders seeks reversal of the trial court's rulings that the notice requirement in Section 29-15-10(B) should be broadly construed, that the e-mail notice sent by The Auto Shop to Founders is sufficient notice as a matter of law, and that The Auto Shop is entitled to $1,500.00 in storage charges.

STATEMENT OF THE FACTS

On or about January 24, 2013, Ms. Irving executed and submitted that certain Security Agreement and Advance Receipt (the "Note") to Founders, secured by the Lexus. [Order ¶1.] Founders perfected its security interest in the Lexus by recording its lien on the face of the Lexus' Certificate of Title (the "Title"). [Order ¶3.] While Ms. Irving executed the Note and was the sole owner of the Lexus on the Title, she testified that Jason Twitty made the payments and was the sole driver of the Lexus. [Trial Tr. 22:10-15.] Shortly thereafter, this arrangement between Ms. Irving and Jason Twitty deteriorated, and on or about July 12, 2013, Jason Twitty sent a text message to Ms. Irving informing her that he was going to purposefully wreck the

Lexus. [Trial Tr. 23:21-24:12.] Jason Twitty followed through with this statement, and got into a car accident with the Lexus on or about July 12, 2013. [Trial Tr. 24:20-23.]

Also on July 12, 2013, The Auto Shop received a request to tow the wrecked Lexus, and The Auto Shop complied with the request and towed the Lexus to its facility on that same date. [Trial Tr. 15:18-20.] Shortly thereafter, around July 18, 2013, The Auto Shop communicated with State Farm, Ms. Irving's insurer, and conducted a "tear down" of the Lexus. [Trial Tr. 15:20-23.] The Auto Shop took no further action with respect to the Lexus. [Trial Tr. 16:3-9.] On September 17, 2013, 67 days after The Auto Shop took possession of the Lexus, one of The Auto Shop's representatives called Founders to inform Founders that the Lexus was in The Auto Shop's possession. [Trial Tr. 11:25-12:3.] Founders first learned that the Lexus was involved in a car accident by a phone call received from Ms. Irving on September 13, 2013; however, Ms. Irving did not state the location of the wrecked Lexus at that time. [Trial Tr. 8:1-3; 11:22-25.]

After the phone communication on September 17, 2016, Founders requested that The Auto Shop send them the current charges on the Lexus. [Trial Tr. 12:4-6]. On September 19, 2013, 69 days after The Auto Shop first took possession of the Lexus, Founders received an e-mail communication from The Auto Shop stating the charges due as of that date that Founders would need to pay to take possession of the Lexus and to preserve its collateral. The charges as of September 19, 2013, were: $243.00 for towing; $420 for teardown; and $2,139.00 for storage. [Trial Tr. 12:4-9; 16:5-9, 14-19.] Mr. Bowers testified that The Auto Shop discovered that Founders was the lienholder on the Lexus by discovering documents inside the Lexus on or around September 19, 2015. [Trial Tr. 16: 11-13; 37:21-24.]

It is undisputed that Founders never received notice or correspondence of any kind from The Auto Shop by certified or registered mail. [Trial Tr. 12:16-18; 18:16-18.] While Founders was agreeable to payment of the $243.00 for towing and $420.00 for teardown, it did not agree to

the storage charges demanded and, in response, filed this action when it became apparent that the parties would not be able to resolve the storage charges issue amicably.

STANDARD OF REVIEW

"When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts." *In re Estate of Boynton*, 355 S.C. 299, 301, 584 S.E.2d 154, 155 (Ct. App. 2003) (quoting *WDW Props. V. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000)). "In such cases, the appellate court owes no particular deference to the trial court's legal conclusions." *Id.* at 301-302, 584 S.E.2d at 155 (quoting *J.K. Constr., Inc. v. W. Carolina Reg'l Sewer Auth.*, 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999)).

ARGUMENT

I. THE AUTO SHOP IS NOT ENTITLED TO ANY STORAGE FEES FROM FOUNDERS FEDERAL CREDIT UNION BECAUSE THE AUTO SHOP FAILED TO COMPLY WITH THE NOTICE REQUIREMENT TO LIENHOLDERS IN S.C. CODE ANN. § 29-15-10(B).

It is undisputed that The Auto Shop failed to send notification to Founders of the location of the Lexus by certified or registered mail, as required by Section 29-15-10(B). [Trial Tr. 12:16-18; 18:16-18.] The trial court held that "the notification requirement in S.C. Code Ann. § 29-15-10(B) shall be construed broadly, and the electronic mail notification sent by [The] Auto Shop to [Founders] on September 19, 2013 satisfies the notification requirement under S.C. Code Ann. § 29-15-10(B)." [Order ¶18.]

Section 29-15-10(A-B) states the following:[3]

> Section 29-15-10. Liens for repairs or storage; sale of articles.

[3] Subsection A of Section 29-15-10 is included to provide the Court with the context in which the legislature contemplated storage charges issue arising under this statute.

> (A) A proprietor, an owner, or an operator of any towing company, storage facility, garage, or repair shop, or any person who repairs or furnishes any material for repairs to an article may sell the article at public auction to the highest bidder if:
>
> (1) the article has been left at the shop for repairs or storage and the repairs have been completed or the storage contract has expired;
>
> (2) the article has been continuously retained in his possession; and
>
> (3) thirty days have passed since written notice was given to the owner of the article and to any lienholder that the repairs have been completed or the storage contract has expired.
>
> The article must be sold by a magistrate of the county in which the repairs were done or the article was stored.
>
> (B) Storage costs may be charged that have accrued before the notification of the owner and lienholder, **by certified or registered mail**, of the location of the article. Notification to the owner and lienholder by the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must occur within five days, after receiving the owner's and the lienholders' identities. If the notice is not mailed within this period, storage costs after the five-day period must not be charged until the notice is mailed. (Emphasis added).

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing *Charleston Cnty. Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993)). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* (citing *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998); Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)).

At the trial and at the hearing on Founders' Motion to Reconsider, counsel for Founders argued that a repair shop must follow the specific statutorily prescribed notice requirements in Section 29-15-10(B) before it can charge storage fees. [Trial Tr. 36:4-17; 40:8-13; Hr'g Tr. 3:10-18; 4:19-5:2, Nov. 30, 2015.] The trial court disagreed and found that a broad construction of Section 19-15-10(B) was proper because it is undisputed that Founders received the e-mail requesting the $2,139.00 in storage charges on September 19, 2013, and the true intent of the legislature was for the lienholder to receive notice of the location of the vehicle. [Trial Tr. 43:10-17; Hr'g Tr. 9:6-17.]

Reviewing the clear and unambiguous language of Section 29-15-10, it is clear that the legislature intended a repair shop to send notice of its possession of the "article" to the owner and lienholder by certified or registered mail. Founders' asserts that this is because the legislature deems notice sent via certified or registered mail as the form of delivery most likely to arrive at the recipient's address. While e-mail may have passed certified or registered mail in volume of use and popularity, formal notices related to legal proceedings still must be sent by certified or registered mail (*e.g.* Rule 4 of the South Carolina Rules of Civil Procedure for service by mail). Legal notice provisions proscribed by statute or rule are often strictly interpreted. *See Jensen v. Doe*, 292 S.C. 592, 595, 358 S.E.2d 148, 149 (Ct. App. 1987) ("Compliance with the service of process requirements must be strict, and approximations will not be effective."). Broadly interpreting notice requirements related to a party's ownership or security interests in personal property is not supported in the law.

Moreover, the legislature could have chosen to expand the notice requirement by stating "by certified or registered mail, **or other form of delivery if receipt of the notice by the owner and lienholder can be proven**." However, the legislature chose not to include such a provision. Attempting to insert this clause into the notice requirement, as the trial court's ruling does, adds

language to a statute that is already clear and unambiguous in the requirements that it puts on a repair shop before that repair shop can claim its charges. *See Hodges*, 341 S.C. at 85, 533 S.E.2d at 581 (citing *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998)). It is also clear that in 2011, when Section 29-15-10 was last amended, e-mail communication was widely used, and the legislature did not add any language to approve e-mail communication in this situation.

The trial court stated that the decision to broadly construe Section 29-15-10(B) is a case-specific decision because Founders acknowledged receiving the e-mail communication from The Auto Shop on September 19, 2013. [Hr'g Tr. 6:4-9; 9:15-10:1.] It is true that Founders acknowledges receiving the e-mail from The Auto Shop. [Trial Tr. 12:6-11; Hr'g Tr. 5:19-21.] However, Founders asserts that interpreting the language of a clear and unambiguous statute that requires notice by certified or registered mail on a case by case basis depending on whether receipt of the notice actually occurred will result in problematic cases under Section 29-15-10 going forward. For example, a repair shop who gets in the habit of sending notices by e-mail or over the phone could sell or charge exorbitant storage fees where the recipient either does not receive the notice or misunderstands a notice that would have been received or been much more clear if received via certified or registered mail. Furthermore, notions of judicial economy would not be achieved if each trial court has to determine whether receipt of the notice occurred every time a repair shop sends notice by means other than certified or registered mail. *See Davis v. Richland Cnty. Council*, 372 S.C. 497, 503-04, 642 S.E.2d 740, 743 (2007) (acknowledging the importance of judicial economy in the appellate courts).

There appears to be no published case law precedent on Section 29-15-10(B). However, some persuasive authority exists for the proposition that, at most, a repair shop can only receive five (5) days of storage charges before the date that a repair shop sends the notice by certified or registered mail to the owner and the lienholder. *See* Guidelines for Public Sales of

Vehicle/Property, Form SCCA/271, *available at* http://www.sccourts.org/forms/pdf/SCCA271.pdf (the "Magistrate's Court Guidelines").[4] The Magistrate's Court Guidelines are available on the South Carolina Judicial Department's website. Additionally, one written opinion exists to support this position issued by a Richland County Magistrate Judge. Typically, Magistrate's Court judges decide this issue due to the dollar amount in controversy and so it is to be expected that the Magistrate's Court would have published materials on this statute.

The Magistrate's Court Guidelines are available as a Magistrate's Court form on the South Carolina Judicial Department's website and provide that an "[o]wner's and lien holder's liability is only 5 days storage before mailing notice by certified, return receipt mail. Additional storage charges may accrue after the mailing of the letter." Guidelines for Public Sales of Vehicle/Property at 2, Form SCCA/271, *available at* http://www.sccourts.org/forms/pdf/SCCA271.pdf. Moreover, in a written Order signed by the Honorable George Anderson Surles, Richland County Magistrate for the Pontiac Division, the Magistrate's Court ruled that a repair shop is entitled only to 5 days storage at $25.00 per day for the period before notice is sent to the owner and lienholder by certified or registered mail. *See* Order at ¶¶7, 9, Case No. 2014CV401090175, *SAFE Federal Credit Union v. Brown Motor Works NE, Inc. a/k/a Brown Motor Works and Joseph Nathaniel Charles* (Rich. Cnty. Mag. Ct. June 11, 2014).[5] Founders made these sources known to the trial court at the hearing on the Motion to Reconsider. [Hr'g Tr. 6:19-7:4.] Again, Founders asserts that these sources from the Magistrate's Court, the court that most often deals with this issue, are persuasive regarding the common practice in our state for handling storage charges under Section 29-15-10(B).

[4] For ease of reference, a copy of the Guidelines are included as part of the Appendix to the Appellant's Initial Brief.
[5] For ease of reference, this Order is included as part of the Appendix to the Appellant's Initial Brief

Lastly, in short, Section 29-15-10(B)'s requirement of sending notice via certified or registered mail is not a difficult, costly or overly burdensome requirement for a repair shop. The Auto Shop knew or should have known of this requirement and could have easily performed the requirement; however, it chose not to do so.

For these reasons, Founders contends that the trial court erred in awarding any storage charges to The Auto Shop.

II. A BROAD INTERPRETATION OF S.C. CODE ANN. § 29-15-10(B) WILL LEAD TO AN INEQUITABLE RESULT FOR LIENHOLDERS WHERE THE LIENHOLDER DOES NOT LEARN OF THE WHEREABOUTS OF ITS COLLATERAL FOR SEVERAL MONTHS.

At trial and at the hearing on Founders' Motion to Reconsider, Founders argued that there is a certain fundamental unfairness where a lienholder first learns that its collateral has been in the repair shop's possession for 69 days and that notice is accompanied by a request for $2,139.00 in storage charges (charges at $31.00 per day). [Trial Tr. 35:25-36:7; 40:25-41:4; Hr'g Tr. 7:5-19; 10:23-11:5.] Expecting a lienholder to pay this amount to preserve its collateral, when it had no way to mitigate its damages beforehand, is truly inequitable. This is where the five-day limitation for storage charges stated in the Guidelines for Public Sales of Vehicle/Property in the Magistrate's Court forms provides a solution far more rooted in equity and fairness for lienholders.

If the trial court found that The Auto Shop was entitled to five days of storage charges at $31.00 per day when it first learned that The Auto Shop had the vehicle, Founders would have paid this $155.00 storage fee immediately, preserved its collateral by taking possession of the Lexus, and legal action would have been avoided. While it is true that Section 29-15-10(B) prevents a repair shop from charging storage fees to an owner or lienholder if the repair shop does not send the notice within five (5) days of learning the identity of the owner or lienholder, a

broad interpretation of the statute opens the door to repair shop charging large amounts of storage fees when the repair shop is dilatory, or otherwise slow, in obtaining the name of the owner or lienholder. For example, if a repair shop allows a vehicle to remain in limbo for three months (90 days) due to questions regarding payment by the owner or the insurance company, by the time a repair shop sends notice via certified or registered mail to the lienholder, the lienholder will face the choice of paying $2,700.00 to take possession of its collateral or losing all rights in the collateral through a sale by the repair shop under Section 29-15-10(A). This is a fundamentally unfair decision for a lienholder to be required to make. The Auto Shop should not and cannot be rewarded for its dilatory behavior, especially when it testified that it found the information stating that Founders was the lienholder inside the Lexus that was in its possession for 69 days. [Trial Tr. 16: 11-13; 37:21-24.]

For these reasons, Founders seeks reversal of the trial court's decision to award storage charges to The Auto Shop because Founders did not learn of the storage charges for 69 days and had no way to mitigate the charges asserted by The Auto Shop during this time period.

III. THE RECORD IS DEVOID OF ANY EVIDENCE TO SUPPORT THE TRIAL COURT'S DECISION TO AWARD THE AUTO SHOP $1,500.00 IN STORAGE CHARGES.

Lastly, Founders contends that the trial court's decision to award The Auto Shop $1,500.00 in storage charges lacks any legal or factual support in the record. The trial court acknowledged both at trial and at the hearing on Founders' Motion to Reconsider that its decision to award The Auto Shop $1,500.00 was based upon equitable principles. [Trial Tr. 43:7-17; Hr'g Tr. 10:7-13.] At trial, The Auto Shop requested $3,500.00 total, which would have resulted in $2,837.00 in storage fees after deducting towing and teardown. [Trial Tr. 17:20-24]. This request at trial was far lower than the $7,347.00 in storage charges The Auto Shop sought in its Answer. [Answer, p.2.] At trial, Founders asserted that The Auto Shop was entitled

to no storage charges since it failed to send notice as required by Section 29-15-10(B). Therefore, no factual or legal evidence exists to support the trial court's award of $1,500.00 in storage charges, and principles of equity are not applicable to a claim and delivery for personal property cause of action, which is legal in nature. *First Palmetto Bank & Trust Co. v. Boyles*, 302 S.C. 136, 138, 394 S.E.2d 313, 314 (1990) (citing *Haverty Furniture Co. v. Worthy*, 241 S.C. 369, 128 S.E.2d 707 (1962)) ("An action in claim and delivery is an action at law for the recovery of specific personal property.").

For these reasons, Founders asserts that the court erred in awarding The Auto Shop $1,500.00 in storage charges because no evidence in the record supports this conclusion.

CONCLUSION

For the reasons set forth above, the Order and Judgment of the trial court should be reversed insofar that it broadly construes the notice requirement of Section 29-15-10(B) by allowing e-mail notice to owners and lienholders to be sufficient and awards The Auto Shop $1,500.00 in storage chares.

Respectfully submitted,

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April 8, 2016
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APPENDIX TO APPELLANT'S INITIAL BRIEF

A. Guidelines for Public Sales of Vehicle/Property, Form SCCA/271, *available at* http://www.sccourts.org/forms/pdf/SCCA271.pdf.

B. Order, Case No. 2014CV401090175, *SAFE Federal Credit Union v. Brown Motor Works NE, Inc. a/k/a Brown Motor Works and Joseph Nathaniel Charles* (Rich. Cnty. Mag. Ct. June 11, 2014).

STATE OF SOUTH CAROLINA

COUNTY OF _____

GUIDELINES FOR PUBLIC SALES OF VEHICLE/PROPERTY

Guidelines for Businesses for Tow/Repair Vehicles
Section 56-5-5620-5670 SC Code of Laws as Amended

Ways to obtain vehicles:

1. Law Enforcement Officer directs vehicle towed as a result of motor vehicle collision, vehicle breakdown, or after an arrest or other law enforcement action.
2. Owner or person having control over vehicle requests it to be towed or repaired thus creating a contract between the parties.
3. Private property owner requests unlawfully parked vehicle be removed from his/her property.
4. Lien holder requests repossession. (Not addressed herein.)
5. Sales of vehicles towed with a colored tag (Red Tag) affixed are sold in accordance with Section 29-15-10.

Any time a vehicle is towed by the towing company without the knowledge of the owner or person in possession of the vehicle, the towing company must notify the municipal police chief or sheriff in the county's unincorporated areas within one hour of moving the vehicle or all charges for the tow/storage are forfeited. The law enforcement agency must complete a timed and numbered towing report form. A sign to reflect this notice must be posted in the tow company's shop.

Business must provide to appropriate law enforcement agency within 10 days after vehicle is towed (if towed by law enforcement direction) a full description of the vehicle including VIN and license tag number, registration information, if available, and full description of vehicle remaining in tow company's possession. Failing to do so results in the business forfeiting all storage costs until notification is mailed to all parties. Occasionally tag and registration information is not available so a newspaper ad must be published.

Law enforcement agency must furnish owner and lien holder information to business within 10 days at no cost, including NCIC stolen vehicle statement. Business to notify owner and person having control over vehicle when towed and lien holder by certified mail, return receipt, that charges are due (see attached sample letter). Must publish in newspaper if owner or lien holder cannot be determined or does not receive the mailed notice (see Publication Notice) of charges and storage.

Storage charges to begin on the first day if certified return receipt notices to the owners and lien holders are mailed within 5 days of determining their identities. Otherwise no storage charges accrue until the notices are mailed.

SECTION 16-11-760

Towing vehicles unlawfully parked on private property at property owner's request:

1. Commercial property must be posted at each entrance with appropriate 16-11-760 warning for immediate towing.
2. Towing business has lien against vehicle for charges. Must notify law enforcement of vehicle information within one hour of towing or forfeit charges.
3. No storage charges are allowed before mailing notification to owner and lien holder by certified mail; return receipt unless the notices are mailed within 5 days for receipt of information.
4. 30 days after mailing, if vehicle is not reclaimed, property may be sold by requirements of section 29-15-10.

Section 29-15-10, SC Code of Laws as Amended
Owner/Customer Requested Tow or Repair

When a vehicle is towed or delivered for repair, the business has the duty to capture the name, address and phone number of the owner. If a person other than owner is requesting services, the business needs information on both people.

After the ordered service or repairs are complete, and no payment by the customer is received, then within 35 days the business must file Unclaimed Vehicle Form. The business must give notice that after 30 days from the mailing date of the certified, return receipt letter (mailed to the owner and person ordering towing/repairs if not owner and lien holder) that the business will apply for a public sale. The business must file with D.P.S. Motor Vehicle Division an Unclaimed Vehicle Form to get owner/lien holder of record information. The same form as above.

Owner's and lien holder's liability is only 5 days storage before mailing notice by certified, return receipt mail. Additional storage charges may accrue after the mailing of the letter.

After sending the 30-day notice, the business may file appropriate papers with the Magistrate's Court having Jurisdiction in that area of the county to have the vehicle sold at public auction.

Before the sale date the magistrate will set a hearing date to determine all contested matters concerning the vehicle: such as the right to sell, compliance with the statutes or the amount of the charges.

After the sale, the successful bidder must bring to the Magistrate appropriate funds to pay the bidding price. The Magistrate will issue to the business a check for the accrued charges and costs with any surplus going to the owner and/or lien holder. The business must bid $ 1.00. If no other bidders, the business will be awarded the article at no cost. If a surplus the magistrate must notify the owner and lien holder of such by certified return receipt mail giving 90 days to provide proof of claim.

RED TAGS

Vehicles with colored tags affixed by law enforcement are now sold under the authority of sections 56-5-5635 and 29-15-10. An abandoned or derelict vehicle (as defined in section 56-5-5810) should be marked with a colored tag as legal notice to the owner or person in possession the vehicle can be removed from public or private property or the roadway:

After 48 hours from a roadway, or

After 7 days on public or private property

from attachment of the timed-dated-colored tag. The towing company must notify the sheriff or police chief within one hour of these type tows when law enforcement does not call the tow business.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE MAGISTRATE'S COURT

SAFE Federal Credit Union,

Plaintiff,

vs.

Brown Motor Works NE, Inc. a/k/a Brown Motor Works and Joseph Nathaniel Charles,

Defendants.

Case No. 2014CV401090175

ORDER

THIS MATTER COMES BEFORE THE COURT upon the *Amended Complaint* filed by the Plaintiff, SAFE Federal Credit Union ("SFCU"), on March 26, 2014. The Court conducted a hearing in this claim and delivery action on June 4, 2014. Present at the hearing was Kyle A. Brannon, attorney for SFCU; Keith Huggins, owner of Brown Motor Works NE, Inc. a/k/a Brown Motor Works ("Defendant Brown"); and Joseph Nathaniel Charles ("Defendant Charles").

Based on the pleadings filed in this case and the arguments of the parties present at the hearing, the Court finds and orders as follows:

FINDINGS OF FACT

1. On or about May 11, 2010, Defendant Charles executed and submitted that certain Retail Installment Sale Contract (the "Note") to SFCU, secured by that certain 2006 Mercedes S430 automobile VIN # WDBNG83J96A480383 (the "Mercedes").

2. SFCU perfected its security interest in the Mercedes by recording its lien on the face of the Mercedes' certificate of title (the "Title").

3. SFCU holds a first lien on the Mercedes, as denoted on the Title.

B

4. On or about May 27, 2013, Defendant Charles experienced engine problems with the Mercedes and requested that Defendant Brown tow the Mercedes to Defendant Brown's garage in Richland County.

5. Defendant Charles gave Defendant Brown a deposit check for a portion of the work on the Mercedes. Defendant Brown began work on the Mercedes prior to verifying the funds represented by the deposit check. Once deposited, the deposit check was returned for insufficient funds, and Defendant Brown stopped work on the Mercedes. Defendant Brown remains in control and possession of the returned deposit check.

6. Subsequently, Defendant Charles abandoned the Mercedes by leaving it with Defendant Brown for several months.

7. Defendant Brown sent notice to SFCU, by certified mail, of its possession of the Mercedes on January 7, 2014. In this notice, Defendant Brown demanded $5,735.00 in exchange for relinquishing possession of the vehicle.

8. After negotiations between SFCU and Defendant Brown failed, SFCU filed this claim and delivery action to recover possession of the Mercedes.

CONCLUSIONS OF LAW

9. Pursuant to S.C. Code Ann. § 29-15-10, Defendant Brown is entitled to payment of only five (5) days of storage at $25.00 per day. Upon SFCU's payment of the $125.00 storage charge, SFCU is lawfully entitled to possession of the Mercedes.

10. SFCU is not liable for any additional charges requested by Defendant Brown.

11. Upon SFCU's repossession of the Mercedes, SFCU is entitled to have the Mercedes sold in a commercially reasonable manner, with the proceeds applied to reduce the amount of the indebtedness due and owing by Defendant Charles to SFCU under the Note.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that SFCU is entitled to possession of the Mercedes in exchange for payment of storage charges in the amount of $125.00 to Defendant Brown, as against Defendant Brown and Defendant Charles.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that SFCU has the right to dispose of the Mercedes in a commercially reasonable manner, and that SFCU is allowed to apply the proceeds from such sale to the indebtedness due and owing by Defendant Charles to SFCU under the Note;

AND IT IS SO ORDERED.

The Honorable George Anderson Surles
Richland County Magistrate, Pontiac Division

6/11, 2014
Elgin, South Carolina