

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

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SC 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.

RESPONDENT'S BRIEF

Steven D Bowers, Owner
The Auto Shop
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Lancaster, SC 29720
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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 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.

RESPONSE

The Appellant is seeking 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 storage of a 2007 Lexus GS350 (the "Lexus").

Response:

The Lexus was towed per Owner's Request for an accident that occurred on July 12, 2013. The owner, Sharon Irving, contacted The Auto Shop and came to the office and signed a repair order giving The Auto Shop permission to repair the vehicle. State Farm Insurance Company came to the facility and did an estimate on the vehicle. The Auto Shop then proceeded to perform an initial "tear down" to look for additional damages. The owner, Sharon Irving, contacted The Auto Shop via telephone or in person at least once a week to discuss the status of repairs. Several weeks had passed and The Auto Shop had not heard from State Farm Insurance. The Auto Shop contacted the owner, Sharon Irving and she informed The Auto Shop that State Farm had an issue with the claim. On September 17, 2013, The Auto

Shop contacted Founders Federal Credit Union via telephone and advised that the Lexus was at our facility for repairs and that there was a potential problem with the insurance and The Auto Shop was hoping Founders could help with the situation and get matters resolved. Pat Caskey, a representative for Founders Federal Credit Union requested that The Auto Shop send a copy of the invoice for services via electronic mail (e-mail). Founders Federal Credit Union responded and communication from that point forward was via electronic mail (e-mail) or telephone.

The Appellant claims that The Auto Shop was in possession of the Lexus and it became 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.

Response:

Founders Federal Credit Union made no attempt to resolve the situation and would not negotiate regarding storage charges on the vehicle. Founders was only willing to pay for the tear down charges and the towing charges. Founders at no point in time ever presented a claim and delivery or right to cure for Founders to re-claim the vehicle. Furthermore, The Auto Shop never "demanded" payment for anything regarding the Lexus from Founders. We do not charge storage on vehicles that are repaired at our facility. State Farm Insurance went as far as agreeing to pay The Auto Shop for storage fees during the time the Lexus was at The Auto Shop and would settle with Founders to pay for the repairs, and would not have cost Founders Federal Credit Union anything and the issue would have been resolved, however, Founders Federal Credit Union refused and made it clear that they were going forward with proceedings in Court. Founders Federal Credit Union advised State Farm Insurance that they were proceeding with Court and not to pay The Auto Shop anything and that any money paid was to be given directly to Founders Federal

Credit Union. Founders was paid well in excess of \$3,500.00 (which is what State Farm offered The Auto Shop) and only had to pay \$1,500.00.

The Appellant claims that 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 under S.C. Code Ann. 29-15-10(B).

Response:

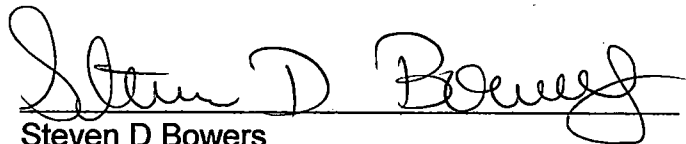
The Auto Shop did not provide notice via certified mail/return receipt requested because under S.C. Code Ann. 29-15-10(B) the Lexus was never abandoned and the repairs were never completed therefore it was not required to contact the State of South Carolina for information regarding the lienholder (if any) and owner of the vehicle. Founders Federal Credit Union was given notice that The Auto Shop had the vehicle as a courtesy in hopes of aiding the situation with State Farm Insurance Company and getting the vehicle repaired and back to the owner. However, if we had to contact the State of South Carolina, under S.C. Code ANN. 29-15-10(B) it takes approximately 30 to 60 days to receive information regarding the owner and lienholder (if any), which is required by the Magistrate in Lancaster County, therefore creating more storage charges and prolonging the process. Had Founders Federal Credit Union allowed The Auto Shop to repair the vehicle there would have been no storage charges and the vehicle would have been repaired and returned to them. However, Founders made it perfectly clear that they wanted the vehicle returned to them in the same condition that it was brought in to our facility. Founders was Court Ordered to pay the storage charges and other fees within a certain amount of time after Court and it was approximately thirty days before they paid the charges and had the vehicle removed.

CONCLUSION

The Auto Shop has been in business for over thirty years. Times have changed and while it is unfortunate that some of the laws are not up to date with regards to such evolving technological times, The Auto Shop has always tried to be honest and fair with regards to this business. Founders Federal Credit Union has made it very clear as to their position regarding this particular case, however, The Auto Shop has went above and beyond to avoid going to Court and resolving this situation amicably. So much so that after speaking with representatives from State Farm Insurance Company, State Farm Insurance agreed to pay The Auto Shop \$3,500.00 for storage and the other fees (i.e. towing, tear down) on the Lexus and agreed to settle with Founders Federal Credit Union so this case could be resolved. Founders Federal Credit Union refused to settle and proceeded with the case. This entire case has been nothing but a loss for everyone involved. The Auto Shop has lost time and money by having to appear in Court and Founders has spent a lot of money in attorneys to argue over \$1,500.00. The Auto Shop does not have the funds to to argue a case that should have never gotten to this point to begin with. If the way Founders is claiming the process should have been handled, this is going to set the precedent for a lot of unnecessary cost for customers whose vehicles are in possession of auto repair shops for more than ten days. This particular case was the exception because the owner never abandoned the vehicle and always kept in constant contact with The Auto Shop regarding the repairs. The repairs were never completed because of Founders Federal Credit Union insisting that the vehicle be returned to their possession. Founders Federal Credit Union has evolved with the times and they process paperwork electronically and customers sign documents electronically. The Auto Shop has never seen a copy of the original title for the

Lexus GS350, only an "electronic copy" that Founders submitted to the Judge during Court. Why is that acceptable but notification via e-mail is not?? It takes time to correct and update laws that were written many years ago but it is clear that changes are going to have to be made if we are going to keep working in such a technologically advanced society. This particular case could have been avoided had Founders complied with State Farm Insurance Company's offer. If a storage facility cannot charge storage on vehicles, the companies should not be held liable for those vehicles while in their possession. We do not charge storage just to get "easy money" it costs us to have these vehicles in a secure location and be covered under insurance during the course of time that they are in a storage facility's possession.

Respectfully submitted,

A handwritten signature in black ink that reads "Steven D Bowers". The signature is written in a cursive style and is positioned above a horizontal line.

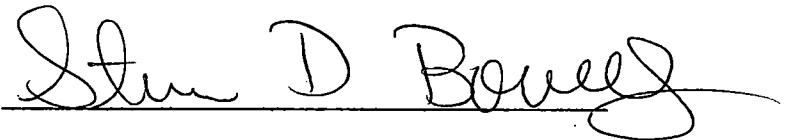
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June 9, 2016
Lancaster, South Carolina

I, Steven D. Bowers, owner of The Auto Shop, hereby certify that I served one copy each of the Respondent's Brief submitted by the Respondent, The Auto Shop, on the Appellant and other Respondent at the addresses on June 9, 2016 via U.S. Mail, postage prepaid, at Lancaster, South Carolina.

Nexsen Pruet, LLC
Attn: Suzanne Grigg
1230 Main Street, Suite 700
Columbia, SC 29201

Sharon Irving
4401 Berth Lane
Heath Springs, SC 29058

A handwritten signature in cursive script that reads "Steven D. Bowers". The signature is written in black ink and is positioned above a horizontal line.

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June 9, 2016
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