

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

G & L Logistics, Inc.,)

C/A No. 2014-CP-23-05653

)
)
Plaintiff,)

v.)

)
Delta Power Systems, Inc.,)

)
)
Defendant.)

**FINDINGS OF FACT, CONCLUSIONS
RECEIVED AND ORDER FOR
JUDGMENT**

DEC 08 2016

SC Court of Appeals

This action was referred to this court for trial by order of the Honorable D. Garrison Hill dated March 3, 2016. The action was tried on October 13, 2016. Appearing on behalf of the plaintiff was Scott D. Robinson of the Greenville County Bar. Appearing on behalf of the defendant was Warren C. Powell, Jr. of the Richland County Bar. Based upon the evidence presented at trial, I find and conclude the following:

FINDINGS OF FACT

1. The plaintiff initiated this action by the filing of a Summons and Complaint for Claim and Delivery on October 14, 2014 demanding immediate possession of one 2001 Volvo tractor truck VIN 4V4NC9GH01N321218 (hereinafter at times referred to as the "black Volvo"). The plaintiff also sought as damages lost profits resulting from Defendant's allegedly wrongful withholding the black Volvo from Plaintiff. The defendant timely answered and entered a counterclaim asserting a repairman's lien as to the black Volvo and a judgment for unpaid invoices as to other equipment. The defendant later moved to amend his answer and counterclaim to include a claim for fraudulent transfer of title to the black Volvo and other equipment seeking to void any interest of the plaintiff in the subject personal property to the extent said claimed interest of the plaintiff would take priority over the defendant's repairman's lien and general claims.

2. The defendant seeks in this action an order authorizing the public sale of the aforesaid black Volvo diesel tractor and, in addition, seeks through his counterclaim a judgment against the plaintiff for labor and materials provided to repair and/or maintain certain other equipment as listed in Defendant's invoices constituting Defense Exhibit 20.

3. Plaintiff, G&L Logistics, Inc. was incorporated in the state of South Carolina on or about September 9, 2011 and ceased doing business during the last quarter of 2013 with the date of dissolution being October 29, 2013. (Graham testimony; Records from S.C. Secretary of State, Defense Exhibit 17)

4. Defendant is a South Carolina corporation and since 1969 has been in the business of repairing and maintaining heavy diesel driven vehicles including tractors, busses and related equipment. Delta Power Systems, Inc. is a corporation in good standing in the state of South Carolina and is owned by Juan Faneytte. (Faneytte testimony)

5. During 2010 or 2011 Delta performed work on at least the following equipment, then owned by P&L Logistics, Inc.:

- a. 2001 Volvo Tractor ("Black Volvo"), VIN: 4V4NC9GH01N321218;
- b. 2001 Volvo Tractor ("Green Volvo"), VIN: 4V4ND4RJ3YN244080;
- c. 1995 Peterbuilt (Detroit Diesel Tractor), VIN: 1XP-5DR8X-1TN391908;
- d. 1995 Peterbuilt (CAT Engine), VIN: 1XP-5DB8X-3-SN373562;
- e. 2003 Refrigerated Trailer, VIN: 1UYVS25303U129014VS2RA; and,
- f. 1997 Trailer, VIN: 1PTO1ANH6W90052X2.

6. The plaintiff's only witness, Terrance Graham, claims his relationship to P&L Logistics, Inc. was that of an employee, although he admits to having authority to write checks for P&L and to pay bills in currency for P&L Logistics, Inc. with P&L cash. (Graham testimony) Graham was the only person at P&L Logistics, Inc. who dealt with the defendant and its owner. (Faneytte testimony)

7. Graham testified that while he was at P&L Logistics, Inc. he became aware that the black Volvo had been involved in two accidents, the first taking place in either late 2010 or January 2011 and the second taking place in the State of Arizona on February 26, 2011 and that the black Volvo was taken to the Delta Power Systems shop for repairs at some point during March, 2011. (Graham testimony; State of Arizona accident report, Defense Exhibit 9)

8. The black Volvo was seriously damaged as a result of the second (Arizona) accident. (Graham testimony)

9. In 2011 P&L owed Delta Power Systems, Inc. for a number of invoices for the maintenance and repair of the then owned P&L equipment, including the black Volvo. Plaintiff's officer and managing owner, Graham, was aware of the defendant's claims for work on the subject equipment during 2011 when P&L was unable to pay its debts as they came due and was subject to suit on those debts. (Defense Exhibits 11, 12 and 20)

10. During 2011 and 2012 title to vehicles comprising the entire fleet of trucks owned by P&L Logistics, Inc., including the black Volvo was transferred to the plaintiff without any prior notice to Delta Power Systems, Inc., as follows:

Date	Vehicle	Consideration
September 30, 2011 (Defense Exhibit 21)	1995 Peterbilt diesel tractor (VIN ending in 3562)	\$2,000.00
September 30, 2011 (Defense Exhibit 22)	1996 Peterbilt diesel tractor (VIN ending in 1908)	\$2,000.00
July 16, 2012 (black Volvo: Defense Exhibit 13)	2001 Volvo diesel tractor (VIN ending in 1218)	\$100.00
July 16, 2012 (Defense Exhibit 14)	2000 Volvo diesel tractor (VIN ending in 4080)	\$100.00

11. There is testimony in the record that the black Volvo alone is worth \$23,000. (Graham testimony)

12. Both parties agree that the damage from the first accident to the black Volvo was not repaired. However, the plaintiff contends that Delta through its owner, Faneytte, stole money which belonged to P&L Logistics, Inc. and, therefore, should not be paid for the repair of the same vehicle following the second and more serious (Arizona) accident.

13. Mr. Faneytte, owner of Delta Power Systems, Inc., testified that Mr. Graham at P&L Logistics, Inc. instructed him to credit the insurance check from Great West Casualty to open invoices at P&L Logistics, Inc., specifically, invoices open for sums due for maintaining the green Volvo. Mr. Faneytte's testimony is supported by Delta's business records, specifically, Defense Exhibit 11-A (Bates DPS_0069), Invoice dated 2/24/2011, Invoice No. 5741-132 which contains the following note, "**A pmt. made by insurance comp., Great West for \$4,621.67 not apply to this inv. by customer's request.**" (Defense Exhibit 11-A). In addition, the Delta Power Systems, Inc. 'All Transactions Report' for Graham, Terrance/P&L Logistics indicates an entry on the same day as the prior entry on Invoice 5741-132, February 24, 2011, that the payment on that date of \$4,621.67 was "**per customer's inst. apply to other open invs.**" (Defense Exhibit 18). Further, Delta Power Systems, Inc. open invoices on the green Volvo (VIN ending in 4080) show them credited on February 24, 2011, as follows: Invoice 5741-105 (Bates DPS_0077) (**\$497.00**); Invoice No. 5741-136 (Bates DPS_0079) (**\$748.31**); Invoice No. 5740-158 (Bates DPS_0081-0083) (**\$2,082.94**); Invoice 5741-126 (Bates DPS_0084) (**\$802.29**); Invoice No. 5741-128 (Bates DPS_0085) (**\$398.37**); Invoice No. 5741-157 (Bates DPS_0087) (**\$947.80**), for a total credit amounting to \$5,476.71 which exceeds the Great West Casualty payment of \$4,621.67.

Based upon the foregoing this court finds that Delta Power Systems, Inc. was not compensated for repair work accomplished on the black Volvo resulting from the Arizona (second) accident by virtue of the Great West Casualty check for the unrepaired damage resulting from the first accident to the truck.

14. Plaintiff does not contend that Delta's repairs to the black Volvo were in any way unauthorized or defective but, rather, contends that whatever lien Delta had on the black Volvo was lost because the plaintiff had put the vehicle back on the highway in Greenville County subsequent to the title transfer of July 2012. Plaintiff argues that as a result of Delta's voluntary surrender of possession of the black Volvo that its repairman's lien was lost. Defendant concedes if in fact Delta had voluntarily surrendered possession of the truck Plaintiff would be correct that the repairman's lien would have been forfeited. However, Delta contends that it has had continuous possession of the black Volvo tractor since it was brought to its premises during March 2011 for repair after the Arizona accident.

15. The Court finds that Delta Power Systems, Inc. has retained continuous possession of the black Volvo since the truck was brought to its yard following the Arizona accident. This is based upon Delta's original work order for the black Volvo following the Arizona accident, said work order dated March 15, 2011 (Defense Exhibit 15). This exhibit contains a good deal of information about the truck concerning visible damage, estimates related to repair and, material to this discussion, the odometer reading on the truck which is shown on the March 15, 2011, work order as **817966.5** miles.

16 Mr. Faneytte testified that within a day or two after Mr. Graham's deposition in this case on February 26, 2016 he personally took a number of photographs of the truck, one being a photograph of the odometer reading as shown in Defense Exhibit 16 (Bates DPS_0124, among others) which shows the odometer reading precisely the same as the March 2011 work order, **817966.5** miles. This is weighty evidence and this court finds that Delta Power Systems, Inc. has retained continuous possession of the black Volvo truck since March 2011, contrary to the plaintiff's contention that it had used the truck on Greenville County highways after July 2012.

17. Delta Power Systems, Inc. transmitted during July 2011 Exhibit 11-D (Bates DPS_0072-0073), to owner P&L Logistics, Inc., c/o Terrance Graham at the P&L address, 50-J Little John Glenn Court, Greenville SC 29615 for work accomplished on the black Volvo showing sums due for labor and materials in the amount of \$3,903.38 and an additional charge for 120 days of storage. However, Mr. Faneytte testified that at the time he transmitted this invoice he was under the mistaken impression that he would be permitted to charge storage fees from the initial receipt of the truck but, since that time, learned this was in error so he re-transmitted the invoice by way of Exhibit 11-E (Bates DPS_0074-0075) on or about January 4, 2013. Mr. Faneytte also testified that he as a matter of company policy maxes out storage charges at 250 days in the hope that the cap on storage will encourage late paying customers to pay the balance and receive their property rather than having said property sold by way of public sale. Therefore, the total sum due as of September 1, 2011 for labor and materials devoted to repair of the black Volvo is \$3,903.38 plus interest at the legal rate (8.75%) since that date on that sum. Storage through May 8, 2012 (September 1, 2011 plus 250 days at \$22 per day) amounts to storage fees of \$5,500 plus interest from May 8, 2012 through October 13, 2016. The total due through trial for labor, materials, storage and interest as to the black Volvo (VIN ending in 1218) and, therefore, the amount of the defendant's perfected repairman's lien is:

Labor & materials	3,903.38 (principle) + 6,763.75 (interest) = \$10,667.13
Storage	5,500.00 (principle) + 4,576.25 (interest) = <u>\$10,076.25</u>
TOTAL DUE:	<u>\$20,743.38</u>

18. The defendant through its counterclaim also seeks a judgment, free of any repairman's lien, against the plaintiff for labor and materials furnished to repair and/or maintain equipment listed in Paragraph 5 above, Items 5c through 5f, on the grounds that, like sums due for maintenance and repairs to the black Volvo, Mr. Graham was aware of Delta's bills due for equipment listed in 5a-5f when it received title to P&L equipment for far less than adequate consideration.

19. Sums due Delta on the 1995 Peterbilt (CAT Engine), VIN 1XP-5DB8X-3-SN373562 are as follows:

<u>Date</u>	<u>Invoice No.</u>	<u>Amount</u>
5.21.11	5741-187	\$ 530.44
6.6.11	5741-197	\$ 253.37
6.24.11	5741-220	\$ 498.57
8.15.11	5741-260	\$ 37.50
TOTAL:		<u>\$1,637.58</u>
(Defense Exhibit 20)		

20. G&L Logistics, Inc. acquired title to this truck from P&L Logistics, Inc. on September 30, 2011 for the sum of \$2,000 (Defense Exhibit 21).

21. Sums due Delta on the 1995 (or 1996) Peterbilt truck, VIN 1XP5DR8X1TN391908, are as follows:

<u>Date</u>	<u>Invoice No.</u>	<u>Amount</u>
8.15.11	5741-259	\$ 379.77
5.21.11	5741-186	\$ 801.28
TOTAL:		<u>\$1,181.05</u>
(Defense Exhibit 20)		

22. G&L Logistics, Inc. acquired title to the above truck on September 30, 2011 for the sum of \$2,000 (Defense Exhibit 22).

23. The registered owner from S.C. DMV records for all vehicles addressed in this Order is G&L Logistics, Inc. The address shown on the Certificate of Title is 306 Winding River Ln., Simpsonville SC 29681 but this address is no longer valid and any communication to the owner of the vehicles for purposes of compliance with §29-15-10 for the public sale of the subject articles should also be sent to the plaintiff's attorney, Scott D. Robinson, Esquire at 819 E. North St., Greenville SC 29601.

24. The articles addressed in this order were left at Defendant's shop for repairs and the repairs were completed.

25. The black Volvo (VIN ending in 1218) has been in the continuous possession of the defendant since March 2011.

26. More than thirty days have passed since written notice was given to P&L Logistics in July 2011 and to Plaintiff on January 4, 2013 that the repairs were completed and payment for work and storage costs were due.

27. No evidence was presented to justify any award to the plaintiff for lost sales and profits.

28. The defendant did not wrongfully retain possession of the subject 2001 black Volvo truck, VIN: 4V4NC9GH01N321218.

CONCLUSIONS OF LAW

1. The defendant is entitled to judgment as to its counterclaim against the plaintiff, as follows:

a. As to the black Volvo, VIN: 4V4NC9GH01N321218: \$20,743.38 (subject to repairman's lien)

b. As to the Peterbilt trucks, VIN's: 51XP-5DR8X-86N391908 and 1XP-5DB8X-3-SN373562 (general judgment not subject to repairman's lien)

2. The defendant's prayer for a judgment as to the remaining equipment, Paragraph 5, Items e and f, 2 trailers, is denied as there was no evidence admitted that G&L Logistics, Inc. ever took title to that equipment.

3. The defendant has a perfected repairman's lien as set out in §29-15-10 of the S.C. Code as to the black Volvo VIN: 4V4NC9GH01N321218 and is entitled to have said vehicle sold at public sale pursuant to that section.

4. The findings of fact and conclusions of law recited herein are binding upon the parties in any subsequent proceeding to sell the black Volvo by the Magistrate.

IT IS THEREFORE ORDERED:

1. That defendant is awarded judgment against the plaintiff in the sum of \$20,743.38 as to the black Volvo which is subject to the repairman lien;

2. That defendant is awarded judgment against the plaintiff as to the Peterbilt trucks in the sum of \$2,818.63, which is not subject to the repairman's lien;

3. That the black Volvo, VIN: 4V4NC9GH01N321218 be sold at public sale by the Magistrate pursuant to §29-15-10 of the S.C. Code; and

4. All findings of fact and conclusions of law contained in this order is binding upon the parties in any subsequent proceedings or actions, including the public sale of the black Volvo by the Magistrate.

JUDGE'S SIGNATURE PAGE TO FOLLOW FORM 4



Greenville Common Pleas

Case Caption: G & L Logistics Inc vs. Delta Power Systems Inc

Case Number: 2014CP2305653

Type: Order/Judgment and Form 4

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)