

ELECTRONICALLY FILED - 2016 Dec 20 10:14 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201145

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Ken Howell and Karen Nicole Lamb,)
)
 Plaintiff)
)
 v.)
 Train Auto Sales, Inc.)
)
 Defendant)

IN THE COURT OF COMMON PLEAS

C/A NO: 2016-CP-42-1145

ORDER

RECEIVED

JAN 18 2017

SC Court of Appeals

Initial Hearing Date: September 5, 2016
 Presiding Judge: The Hon. J. Mark Hayes, II
 Plaintiff's Attorney: Andrew R. Hart, Esq.
 Defendant's Attorney: J. Faulkner Wilkes, Esq.

This matter came before me for hearing pursuant to Plaintiff's Motion to Dismiss Defendant's counterclaim pursuant to R. 12(b)(6), SCRCP. For the reasons detailed below, the Plaintiff's Motion to Dismiss Defendant's counterclaim is granted.

I. Background

The matter came before the Court pursuant to Plaintiff's Motion to Dismiss Defendant's Counterclaim raised against Plaintiff pursuant to R. 12(b)(6). Plaintiff initiated this matter by the filing of their Complaint on March 29, 2016. The complaint alleges that Plaintiffs, as owners of a 1998 Ford E-150 Econoline van, left possession of the vehicle with Defendant, a vehicle mechanic and repair shop, for potential repair. Plaintiffs allege that Defendant charged Plaintiffs for work claimed to have been performed on the vehicle without seeking prior authorization of the Plaintiffs (Complaint ¶17); transported the vehicle to other locations without the consent of Plaintiffs (Complaint ¶13, 14); misrepresented the potential cost of repair (Complaint ¶9, 16); and failed to provide Plaintiffs with updates or estimates prior to allegedly performing work (Complaint ¶12). Plaintiffs regained physical possession of the subject vehicle

after Defendant demanded payment of \$1,387.48 but voluntarily released physical possession of the subject vehicle to Plaintiffs (Complaint ¶18, 19). Plaintiffs then parked the vehicle in a parking lot separate from Defendant's property, and Defendant subsequently hired a third party to tow the vehicle back to their place of business (Complaint ¶18, 19, 21, 23). Defendant thereafter refused the requests of Plaintiff to return possession of the subject vehicle back to Plaintiff. Defendant's Answer to Plaintiff's Complaint included a counterclaim alleging that it is entitled to a mechanic's lien pursuant to SC Code §29-15-10, et seq. for repairs performed to the subject vehicle. Defendant's counterclaim admits that physical possession of the vehicle was released by Defendant to Plaintiffs, Plaintiffs did not return the subject vehicle to Defendant's place of business (Counterclaim ¶61), and that in order for Defendant to regain possession of the subject vehicle, they had to remove the vehicle from another person's property and return it to their own (¶61).

Plaintiff subsequently filed an Answer to Defendant's Counterclaim and a motion to dismiss pursuant to R. 12(b)(6) on the grounds that Defendant's Counterclaim failed to state a claim upon which relief can be granted.

II. Standard of Review

Pursuant to R. 12(b)(6), SCRCP, a party may move to dismiss a claim made against it based on a failure to state facts sufficient to constitute a cause of action. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). In considering such a motion, the court must base its ruling solely on the allegations set forth in the complaint. *Id.* The question is whether, in the light most favorable to the Plaintiff, the complaint states any claim for relief. *Gentry v. Yonce*, 331 S.C. 1, 552 S.E.2d 137, 139 (1999). The grant of a motion to dismiss will be sustained if the

facts alleged in the complaint do not support relief under any theory of law. *O'Laughlin v.*

Windham, 330 S.C. 379, 498 S.E.2d 689, 691 (Ct.App. 1998).

Pursuant to SC Code §29-15-10,

"a proprietor, owner or operator of any...garage or repair shop...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 maintained in his possession* (emphasis added); 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."

III. Conclusions of Law

As Defendant failed to continuously maintain possession of the subject vehicle required pursuant to SC Code §29-15-10, Defendant fails to state a claim upon which relief can be granted.

South Carolina courts have interpreted SC Code §29-15-10 to require "continuous possession" of an article by a repairman in order to maintain a lien on the property. In *Welcome Home Center, Inc. v. Central Chevrolet Center, Inc.*, the direct issue addressed by the South Carolina Supreme Court was "whether a repairman's lien survives a voluntary relinquishment of possession to the owner." *Welcome Home Center, Inc. v. Central Chevrolet Center, Inc.*, 272 S.C. 176, 249 S.E.2d 896 (1978). Summary judgment in favor of the Plaintiff was granted by the trial court and upheld by the South Carolina Supreme Court. The court reasoned that the repairman seeking to enforce a lien pursuant to SC Code §29-15-10, et seq. had voluntarily relinquished possession of the subject property to the owner, and the lien expired at the time the repairman had relinquished possession of the vehicle. *Id.*

Defendant admits in its Answer to Plaintiff's Complaint that it released possession of the subject vehicle to the Plaintiff (Counterclaim ¶61). Following release of the subject vehicle to Plaintiffs, Defendants then, without authorization, retrieved the subject vehicle from another's

property, leaving them in current possession of the subject vehicle (Counterclaim ¶29). Consistent with the holding in *Welcome Home Center, Inc.*, any potential lien the Defendant might have claimed expired at the time of voluntary relinquishment of possession of the subject vehicle back to Plaintiffs. Defendant makes no allegation in their Answer and Counterclaim that Defendant involuntarily lost possession of the subject vehicle, or possession by the Plaintiffs was obtained by any means other than voluntary relinquishment by the Defendant. Accordingly, Defendant's claim for a lien pursuant to SC Code §29-15-10 fails as a matter of law, as Defendant cannot plead all elements required to prove a claim pursuant to the statute.

IV. Conclusion

For the foregoing reasons, Plaintiff's Motion to Dismiss Defendant's Counterclaim for a lien pursuant to SC Code §29-15-10, et seq. is hereby **GRANTED**.

The Hon. J. Mark Hayes, II
Court of Common Pleas, Spartanburg County

_____, 2016
Spartanburg, South Carolina

RECEIVED

JAN 18 2017

SC Court of Appeals

FORM 4

STATE OF SOUTH CAROLINA
COUNTY SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-42-01145

Ken Howell and Karen Nicole Lamb
PLAINTIFF(S)

Train Auto Sales, Inc.
DEFENDANT(S)

Submitted by: Andrew R. Hart

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(b), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		

If applicable, describe the property, including tax map information and address, referenced in the order:

ELECTRONICALLY FILED - 2016 Dec 20 10:14 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201145

ELECTRONICALLY FILED - 2016 Dec 20 10:14 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201145



Spartanburg Common Pleas

Case Caption: Ken Howell VS Train Auto Sales Inc
Case Number: 2016CP4201145
Type: Order/Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2016-12-19 14:58:53 page 8 of 8

ELECTRONICALLY FILED - 2016 Dec 20 10:14 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201145

 * P. 01 *
 * TRANSACTION REPORT *
 * JAN-18-2017 WED 12:55 PM *
 * FOR: J FALKNER WILKES 8642716035 *

 * DATE START RECEIVER TX TIME PAGES TYPE NOTE M# DP *

 * JAN-18 12:51 PM 18645962259 3'51" 13 SEND OK 006 *

 * TOTAL : 3M 5S PAGES: 13 *

 * *****

J. FALKNER WILKES
Attorney at Law

114 Whitsett Street
 Greenville, South Carolina 29601

Telephone: (864) 282-1292
 Facsimile: (864) 211-8835

RECEIVED

JAN 18 2017

SC Court of Appeals

January 18, 2017

Jenny Abbott Kitchings
 Clerk of the Court of Appeals
 P.O. Box 11629
 Columbia, SC 29211

And by facsimile to: (803) 734-1839

Re: Ken Howell and Nicole Lamb v. The Train Auto Sales, Inc.
 C.A. No.: 2016-CP-42-1145; Appellate Case No.: _____

Dear Ms. Kitchings,

I represent The Train Auto Sales, Inc. Enclosed please find a Notice of Appeal and Certificate of Service along with a check for the filing fee in the above captioned case.

 * P. 01 *
 * JAN-18-2017 WED 12:47 PM *
 *
 * FOR: J FALKNER WILKES 8642716035 *
 *
 * DATE START RECEIVER TX TIME PAGES TYPE NOTE M# DP *
 * JAN-18 12:45 PM 18845740871 2' 07" 13 SEND OK 005 *
 *
 * TOTAL : 2M 7S PAGES: 13 *

J. FALKNER WILKES
Attorney at Law

114 Whitsett Street
 Greenville, South Carolina 29601

Telephone: (864) 282-1292
 Facsimile: (864) 271-6035

January 18, 2017

RECEIVED

JAN 18 2017

SC Court of Appeals

Jenny Abbott Kitchings
 Clerk of the Court of Appeals
 P.O. Box 11629
 Columbia, SC 29211

And by facsimile to: (803) 734-1839

Re: Ken Howell and Nicole Lamb v. The Train Auto Sales, Inc.
 C.A. No.: 2016-CP-42-1145; Appellate Case No.:

Dear Ms. Kitchings,

I represent The Train Auto Sales, Inc. Enclosed please find a Notice of Appeal and Certificate of Service along with a check for the filing fee in the above captioned case.