THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
J. Mark Hayes, Circuit Court Judge

Case No. 2016-CP-42-1145

Ken Howell and Karen Nicole Lamb, ... Respondents,

v.

Train Auto Sales, Inc., ... Appellant.

APPELLANT'S INITIAL BRIEF

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ISSUES ON APPEAL

1. Does a mechanic's lien extinguish where the owner of a car asks to test drive the vehicle being worked on as a ruse to regain possession and avoid the lien and bill for work performed?

2. Did the mechanic's lien in this case survive where Respondent Howell was allowed to test drive the vehicle and left the vehicle across the street from the Appellant's lot, and where the Appellant immediately recovered the vehicle when Respondent Howell left the car?

STATEMENT OF THE CASE

This action was initiated by a summons and complaint filed March 29, 2016, and served on April 11, 2016. An answer and counterclaim was filed May 5,2016, to which a reply was filed on June 1, 2016. Plaintiff filed a 12(b)(6) and a hearing was held on the on September 5, 2016, the Honorable J. Mark Hayes, II, presiding. As a result of the motion hearing an Order was entered dismissing the Appellant's counterclaim. Notice of appeal was timely filed and this brief follows.

STATEMENT OF FACTS

By way of counterclaim the Appellant alleged the following:

That Plaintiff [H]owell brought a 1998 Ford Van (VIN 1FTRE1426WHB98779) to the Defendant's Woodruff location in May of 2015 for maintenance. At that time the van was not running. The Plaintiff dropped off the van at the Defendant's location in Woodruff by towing the van on a trailer. That Plaintiff [H]owell represented to the Defendant's employee that he owned the van. [H]owell told the Defendant's employee that he wanted to get the van running and left it with the Defendant for approximately two months. The Defendant performed work on the van and got the van running. During the time the van was being worked on [H]owell came by the Defendant's location frequently and was informed about the progress on the van. Approximately two months later [H]owell stopped by the Defendant's location and the Defendant informed [H]owell that the van was running but still needed additional work. [H]owell was given a copy of the bill for work up to that point and offered an opportunity to test drive the van. [H]owell test drove the van but did not return it to the Defendant's lot. Instead [H]owell parked the van across the street from the Defendant's lot. [H]owell then walked across the street and got back in the car he had arrived in and left. [H]owell did not return the keys for the van to the Defendant's employee, nor did [H]owell return the van, nor did [H]owell pay for the parts and labor performed by the Defendant.

Neither Plaintiff [H]owell nor Plaintiff Lamb has paid the outstanding invoice

for the work on the van in the amount of $1,387.48. That amount remains due and owing.

The aforementioned van has been left at the shop for repairs, and the repairs have been completed, and the Defendant has notified in writing by certified mail addressed to Plaintiff [H]owell as the owner of the vehicle at the address given by [H]owell to the Defendant's employee, and more than thirty days have passed without the bill being paid.

Defendant has a lien arising out of the work performed and did not intend to waive that lien by allowing [H]owell to test drive the vehicle such that the Defendant has maintained constant possession of the vehicle.

Defendant performed work on the van at request of [H]owell who represented himself as the owner of the van.

Defendant claimed a right to lien and possession of the van pursuant to SC Code Section 29-15-10, et. seq., and to recover for the work and parts provided. (Counterclaim).

The Respondent moved for relief pursuant to Rule 12(b) alleging that the because Respondent Howell was allowed to drive the van off the lot, the mechanic's lien expired. (12(b)6 Motion). The circuit court agreed and dismissed the Appellant's counterclaim finding that when the Appellant allowed Respondent Howell to test drive the Appellant failed to continuously maintain possession fo the subject vehicle required pursuant to S.C. Code Section 29-15-10 to maintain its mechanic's lien. (Order).

ARGUMENT

I. THE TRIAL COURT ERRED IN FINDING THAT THE MECHANIC'S LIEN EXTINGUISHED WHERE THE PLAINTIFF OBTAINED POSSESSION OF THE VEHICLE BY FRAUD, MISREPRESENTATION, AND TRICKERY.

Standard of Review

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Bergstrom v. Palmetto Health Alliance, 352 S.C. 221, 573 S.E.2d 805 (Ct.App.2002). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001).

A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. *See* Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999); Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602-603 (1995); *see also* Baird, 33 S.C. at 527, 511 S.E.2d at 73 (if the facts and inferences drawn from the facts alleged on the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper); McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App.1997) (motion to dismiss cannot be sustained if facts alleged in complaint and inferences reasonably deducible therefrom would entitle plaintiff to relief on any theory of the case). In deciding whether the trial court properly granted

the motion to dismiss, this Court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *See* Gentry, 337 S.C. at 5, 522 S.E.2d at 139; *see also* Cowart v. Poore, 337 S.C. 359, 523 S.E.2d 182 (Ct.App.1999) (looking at facts in light most favorable to plaintiff, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief).

"Dismissal of an action pursuant to Rule 12(b)(6) is appealable." Williams, 347 at 233, 553 S.E.2d at 500. Upon review of a dismissal of an action pursuant to Rule 12(b)(6), the appellate court applies the same standard of review implemented by the trial court. *Id.*

Discussion

The Appellant claimed a lien pursuant to S.C. Code Section 29-15-10, *et seq*. The operative facts alleged in the Appellant's counterclaim are that Respondent Howell misrepresented his intent when he asked to test drive the vehicle, and that Howell did not return the vehicle to the Appellant's lot, but instead parked it across the street in an attempt to avoid paying for the work performed and defeat the mechanic's lien. These facts are sufficient to maintain the lien in favor of the Appellant and allow the Appellant to recover the vehicle which Howell left across the street from the Appellant's lot. Maintaining its lien the Appellant is entitled to continue to assert the lien and recover for the work performed.

This issue of the validity of a lien where the object of the lien has been

wrongfully taken has been addressed before. Whether a lien or right to possession is destroyed when the property was taken from the custody and possession of the mechanic depends on how the property was taken. In Bouknight v. Headden, our Supreme Court said:

> In 6 C.J. 1136, we find the following: "It is a general rule that if a bailee voluntarily parts with the possession of goods before receiving compensation his common-law lien upon them is lost. This rule applies only where, by loss of possession, the bailee also parts with his special property in the chattel; for *if the chattel is wrongfully recovered* by the bailor, or removed from the possession of the bailee without his consent, or returned to the bailor in a new character, as a special bailee or agent, or delivered to a third person as such, the lien survives, not only against the bailor, but against third persons. The delivery of a portion only of the goods does not defeat a lien upon the remainder for the entire amount due under the contract."

Bouknight v. Headden, 188 S.C. 300, 199 S.E. 315 (1938) *emphasis added.*

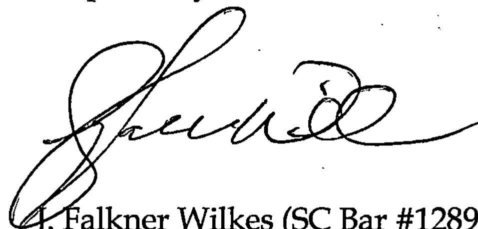
In Bouknight the Court found that the Bouknight was in lawful possession of the tank-trailer in question, and that a lien upon such trailer existed in his favor to the amount of the value of the labor and materials furnished by him in the repair of such vehicle. Similar to the present case, the owner of the trailer got possession of the trailer without the knowledge or consent of the lien holder. In Bouknight the trailer was wrongfully and unlawfully taken away in the dead hours of the night from where the lien holder kept it at his place of business. Although not stolen in the night, Respondent Howell nonetheless obtained the vehicle by fraud and misrepresentation of his intent to avoid payment and to defeat the lien. Where possession was wrongfully obtained the Court in Bouknight held: "Under applicable principles of law, as is seen, the plaintiff

could not be thus deprived of his right to possession of the trailer, but was entitled to have such property restored to his possession for the purpose of enforcing his surviving lien thereon, should he be so advised." Bouknight, *at* 301. Accordingly, the Supreme Court upheld the trial judge's refusal to grant defendant's motion for a non-suit. Taken in light most favorable to the non-moving party, the facts in the present case show that Howell obtained possession of the vehicle wrongfully. Where the Appellant's possession was interrupted by Howell's fraud and misrepresentation, the Court erred in holding that the Appellant's right to a mechanic's lien had expired based solely on a failure to maintain continuous possession.

Conclusion

Based on the foregoing, the decision of the circuit court should be reversed and the case remanded for further proceedings.

Respectfully submitted,



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June 4, 2017.

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CERTIFICATE OF SERVICE

I certify that on July 4, 2017, I served the Appellant's Initial Brief on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record as indicated below:

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