

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

Appellate Case No. 2017-000092

**RECEIVED**  
DEC 06 2017  
SC Court of Appeals

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

v.

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

RECORD ON APPEAL

Andrew R. Hart  
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Attorneys for Respondents

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Counsel for Appellant

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C/A NO: 2016-CP-42-1145
	)	
Ken Howell and Karen Nicole Lamb,	)	
	)	
Plaintiff	)	<b>ORDER</b>
v.	)	
Train Auto Sales, Inc.	)	
	)	
Defendant	)	
	)	

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**.

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

\_\_\_\_\_, 2016  
Spartanburg, South Carolina

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(a), 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:		



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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

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Ken Howell and Karen Nicole Lamb

Plaintiff(s)

vs.

The Train Auto Sales, Inc.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016 -CP- 42

2016-CP-42-1145

Submitted By: Andrew R. Hart
Address: P.O. Box 6326, Spartanburg, SC 29304

SC Bar #: 79063
Telephone #: 864-574-0870
Fax #: 864-574-0871
Other:
E-mail: office@alfordlaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), General (130), Breach of Contract (140), Fraud/Bad Faith (150), Failure to Deliver/Warranty (160), Employment Discrim (170), Employment (180), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -NI-, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Assault/Battery (370), Slander/ Libel (380), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture- Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Sexual Predator (510), Permanent Restraining Order (680), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Pre-Suit Discovery (670)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)

Submitting Party Signature:

Date: March 28, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCPC, Rule 11, and the South Carolina Frivolous SCCA / 234 (03/2016)

**Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.**

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

**Pursuant to the ADR Rules, you are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

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

IN THE COURT OF COMMON PLEAS  
C/A **2016-CP-42-1145**

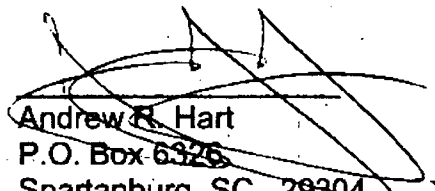
SUMMONS

JURY TRIAL REQUESTED

**TO THE ABOVE NAMED DEFENDANT:**

**YOU ARE HEREBY SUMMONED** and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the undersigned at his office located at P.O. Box 6326 (160 Hidden Hill Road), Spartanburg, SC 29304, within thirty (30) days after the service thereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

**ALFORD & HART, LLC**

  
Andrew R. Hart  
P.O. Box 6326  
Spartanburg, SC 29304  
(864) 574-0870  
Attorney for Plaintiff

Spartanburg, South Carolina  
March 28, 2016

2016 MAR 29 PM 4:30

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

IN THE COURT OF COMMON PLEAS  
**2016-CP-42-1145**  
C/A NO: 2016-CP-42-\_\_\_\_\_

**COMPLAINT**

**JURY TRIAL REQUESTED**

**COMES NOW THE PLAINTIFF**, through his undersigned attorney, complaining of the Defendant and would respectfully show unto this Honorable Court the following:

**PARTIES**

1. Plaintiffs are residents of Spartanburg County, State of South Carolina.
2. Train Auto Sales, Inc. is a company licensed to do business in the State of South Carolina with its principal place of business in Spartanburg County, and is in the business of auto sales and auto repair.
3. The actions giving rise to the causes of action in this Complaint took place in Spartanburg County, State of South Carolina.
4. Jurisdiction in the Court of Common Pleas in Spartanburg County, South Carolina is proper.

**FACTS**

5. On or about April 2015, Plaintiff Howell visited the Defendant's dealership in Spartanburg County, South Carolina with the intention of browsing for used cars for potential purchase.

APR 29 11:43 AM

6. Plaintiff was assisted by "JT," an agent of the Defendant. "JT," at all times described herein, acted as an agent of Defendant within the scope of employment, with actual or apparent authority to bind Defendant.
7. Plaintiff viewed a truck on Defendant's lot that he was interested in purchasing, but "JT" informed Plaintiff of the price and the truck was too expensive for Plaintiff.
8. Plaintiff informed "JT" that he had a van, owned, a 1998 Ford E-150 Econoline, VIN no. 1FTRE1426WHB98779 that was in need of repair.
9. Plaintiff described the mechanical issues the vehicle was having, and "JT" informed Plaintiff that he needed a new "O2 sensor or catalytic converter" and that the cost of repair would be "no more than \$200.00."
10. Plaintiff agreed to bring the vehicle back for repair, but Plaintiff informed "JT" that he "didn't want to put a lot of money" into the vehicle.
11. On or about April 10, 2015, Plaintiff dropped the vehicle off at the Defendant's place of business with the expectation that Defendant would seek authorization prior to any work being performed on the subject vehicle.
12. Over the next two to three weeks, Plaintiff did not hear anything from Defendant about the status of the vehicle, authorization for repairs to the vehicle, estimate of cost, or an update about the progress of any work that was being performed.
13. Following the passage of two to three weeks, Plaintiff received a phone call from an unknown agent of Defendant informing him that Defendant "didn't know" what was wrong with the vehicle, and that the vehicle had been picked up and taken to Mauldin, South Carolina for work.

14. Plaintiff did not authorize the transport of his vehicle from Defendant's place of business, and demanded immediate return of his vehicle.
15. Defendant eventually contacted Plaintiff and informed him that his vehicle had returned to Defendant's place of business and was ready for pickup.
16. Upon going to Defendant's place of business to pick up his vehicle on or about May 21, 2015, Defendant presented Plaintiff with an invoice for repairs (attached hereto as **Exhibit A**) totaling \$1,387.46 that Plaintiff was told that he "had to pay."
17. Plaintiffs did not authorize Defendant to complete any specific repairs on the subject vehicle.
18. Plaintiff took possession of the vehicle and took the vehicle for inspection to a local mechanic. The vehicle would not drive above approximately 10 miles an hour when Plaintiff left Defendant's place of business.
19. The mechanic Plaintiff took the vehicle to informed him that the problem with the vehicle was the catalytic converter, and noticed there were loose parts and unconnected electrical cords in the vehicle that should be fixed immediately.
20. Plaintiff was charged and paid \$5.00 for this inspection.
21. Plaintiff did not feel safe driving the vehicle home, and instead dropped the vehicle off in a parking lot across the street from Defendant's place of business for short period of time.
22. The parking lot where the vehicle was parked was not owned by the Defendant.
23. When Plaintiff's daughter went to pick up the vehicle hours later after he parked the vehicle, the vehicle had been towed by Defendant, who hired Starnes Wrecker Service to performing the towing, back to their place of business.

24. Plaintiff went to Defendant's place of business and requested possession of his vehicle back, but Defendant refused to return possession.

**CAUSES OF ACTION**

**For a First Cause of Action**  
**Conversion**

25. The above-paragraphs are restated.

26. Plaintiffs owned a vehicle, a 1998 Ford E-150 Econoline, VIN no. 1FTRE1426WHB98779.

27. Defendant converted the subject vehicle for their own usage without the permission or authorization of Plaintiff on or about May 21, 2015 by towing the vehicle and returning it to their place of business.

28. Defendant's conversion of Plaintiff's vehicle was willful, reckless, and committed with a conscious indifference to Plaintiff's right to possession.

29. Defendant remains in possession of the subject vehicle, or has sold or transferred the vehicle and benefited from the sale or transfer.

30. Plaintiff seeks actual damages, incidental damages and punitive damages.

**For a Second Cause of Action**  
**Negligence**

31. The above paragraphs are restated.

32. The Defendant owed a duty of reasonable care to the Plaintiff to perform work in a serviceable manner and up to the standard of their trade, and to obtain authorization from Plaintiff before incurring expenses for parts and labor.

33. The Defendant breached that duty of reasonable care by performing defective work on the subject vehicle, presenting Plaintiff with an invoice for \$1,387.48 when repairs were

- estimated at "no more than \$200.00" and performing work without authorization from the Plaintiff.
34. Defendant's actions were willful and wanton and performed in a conscious indifference to the rights of the Plaintiff.
35. Plaintiff suffered damages a result of Defendant's breach, and Defendants' breach of duty of reasonable care was the actual and proximate cause of Plaintiff's harm.
36. Plaintiff seeks actual, incidental and punitive damages.

**For a Third Cause of Action**  
**Unfair Trade Practices (SC Code 39-5-10 et seq.)**

37. The above paragraphs are restated.
38. Plaintiff restates all previous paragraphs.
39. Defendant is subject to SC Code 39-5-10 et seq. as a person engaged in trade or commerce in the state of South Carolina.
40. Defendant's above-described conduct constitutes unfair and deceptive practices, including but not limited to performing repairs and work on customer's vehicles without authorization, transporting vehicles to different locations without customer approval, misrepresenting repair cost to induce a customer to turn a vehicle over to them for repairs, and taking possession of customer's vehicles outside of the Defendant's place of business and returning them to Defendant's possession without the consent or authorization of the customer.
41. This unfair and deceptive practices have been repeated by Defendant on other persons, or has the ability and potential for repetition.
42. As a result of the Defendant's conduct, the Plaintiff has suffered an ascertainable loss of money and property.

43. This conduct is knowing and constitutes malicious conduct toward buyers such as Plaintiff.
44. Plaintiffs seek damages and attorney's fees and costs pursuant to SC Code 39-5-140 for the unfair and deceptive conduct of these Defendants for violation of SC Code 39-5-20.

**FOR A FOURTH CAUSE OF ACTION**

**Fraud**

45. The above paragraphs are restated.
46. Defendant represented to the Plaintiffs that repairs would be "no more than \$200.00" on the subject vehicle.
47. Defendant's representations were false, and were material to the Plaintiffs' decision to leave the vehicle at Defendant's place of business.
48. Defendant had knowledge that their representations were false, or the representations were made with a reckless disregard for their truth or falsity.
49. Defendant intended that the Plaintiffs rely on the representations, and Plaintiffs relied on the representations with ignore as to their falsity.
50. Absent Defendant's above-referenced representations, Plaintiffs would not have left their vehicle with the Defendant or allowed them to attempt to sell the vehicle.
51. Plaintiffs had a right to rely on the representations, and as a result of Defendant's false representations, Plaintiffs has suffered damages.
52. Defendant's conduct was willful and wanton.
53. Plaintiffs seeks actual, incidental and punitive damages.

**FOR A FIFTH CAUSE OF ACTION**

**CLAIM AND DELIVERY**

54. Plaintiffs restate all prior paragraphs.

55. Plaintiffs have right to possession of their 1998 Ford E-150 Econoline, VIN no:  
1FTRE1426WHB98779.

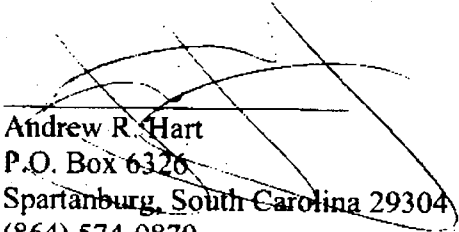
56. Defendant have wrongfully withheld possession of the vehicle.

57. Plaintiff demands immediate possession of the vehicle in accordance with their title and  
possessory right.

WHEREFORE, Plaintiff seeks the relief cited in the above-stated Causes of Action, and any  
other relief at law and equity deemed appropriate by this honorable court.

**JURY TRIAL REQUESTED**

**ALFORD & HART, LLC**

  
\_\_\_\_\_  
Andrew R. Hart  
P.O. Box 6326  
Spartanburg, South Carolina 29304  
(864) 574-0870

March 28, 2016

**ATTORNEY FOR PLAINTIFF**

2016 MAR 29 PM 4:31

**Common Pleas**  
**Clerk : M Hope Blackley**  
**Spartanburg County**  
**Spartanburg, SC 29304**  
**(864) 596-2591**

Received From: Hart, Andrew Ross  
 PO Box 6326  
 Spartanburg, SC 29304

Date: 3/29/2016  
 Receipt #: 96375  
 Clerk: c42amiller

Paying for: Howell, Ken

Transaction Type: Payment

Reference #: 1668

Payment Type: Check \$150.00

Comment:  
 Non-Refundable

Total Paid: \$150.00

Total Received: \$150.00

Change Due: \$0.00

<u>Case #</u>	<u>Caption</u>	<u>Previous Balance</u>	<u>Amount Paid</u>	<u>Balance Due</u>
2016CP4201145	Ken Howell VS Train Auto Sales Inc	\$150.00	\$150.00	\$0.00

<b>Total Cases:</b> 1	\$150.00	\$150.00	\$0.00
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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

Ken Howell and, )  
Karen Nicole Lamb, )  
Plaintiffs, )

Case No. 2016-CP-42-1145

vs. )

ANSWER AND COUNTERCLAIM  
JURY TRIAL DEMANDED

The Train Auto Sales, Inc., )  
Defendant. )

The Defendant, The Train Auto Sales, Inc., fully answering the Complaint of the Plaintiff would respectfully show unto the Court:

1. Defendant has insufficient information to admit or deny the allegations of paragraph 1 of the Complaint and therefore, denies same.
2. Defendant admits the allegations of paragraph 2 as to the place of business and nature of business alleged.
3. Defendant denies the allegations, however, jurisdiction is proper in Spartanburg County.
4. Defendant admits jurisdiction and venue appears proper in Spartanburg County.
5. Defendant has insufficient information to admit or deny the allegations of paragraph 5 of the Complaint, and therefore denies same.
6. Defendant admits that "J.T." is an employee of the Defendant and that "J.T." did assist Plaintiff Howell. All other allegations of paragraph 6 of the Complaint are denied whether express or implied.
7. Defendant denies the allegations of paragraph 7.

2016 FEB -5 PM 3:48  
CLERK OF COURT  
Spartanburg County

8. Defendant admits that Plaintiff Howell told "J.T." that Powell owned a van that was in need of repair but that Plaintiff also said that the van was not running. All other allegations of paragraph 8 of the complaint, express or implied, are denied.
9. Defendant denies that Plaintiff Howell told "J.T." described any mechanical issues other than the van had quit running and was not running. Any other allegations, express or implied, in paragraph 9 are denied.
10. Defendant denies that Plaintiff Howell told "J.T." that Powell "didn't want to put a lot of money" into the vehicle. All other allegations of paragraph 10 are denied.
11. Defendant admits that Plaintiff Howell brought the van to the location on the back of a trailer and "dropped" off the vehicle for repair. Defendant has insufficient knowledge as to any "expectation" of Plaintiff Howell and therefore denies same. Defendant further denies any agreement or basis for any such expectation by Powell. All other allegations of the paragraph 11 of the complaint, express or implied, are denied.
12. Defendant denies the allegations of paragraph 12 of the complaint. Plaintiff Howell came in to the business to check on the progress regularly while the van was being worked on.
13. Defendant admits that Plaintiff Howell was told in person that the van would have to be taken to Mauldin for further diagnosis and work and that Powell agreed to same. All other allegations of paragraph 13, express or implied, are denied.
14. Defendant denies the allegations of paragraph 14.
15. Defendant denies the allegations of paragraph 15. Plaintiff Howell came by the location and was told that the van had returned to the Woodruff but still needed additional work. "JT" told Powell he could drive the van and check it out. Powell was given a copy of the

bill for the work that had been performed prior to Powell driving the van off the lot. Powell drove the van off the lot and parked the van in the lot next to the Defendant's location and would not return the van nor give the keys back to "J.T." The Defendant left in the car that he had driven to the lot and left the van across from the Defendant's location.

16. Defendant admits that Powell was given the bill for the work done to date when Powell came to the lot and was offered an opportunity to test drive the van. All other allegations of paragraph 16 are denied.
17. Defendant denies the allegations of paragraph 17.
18. Defendant has insufficient information to admit or deny the allegations of paragraph 18 and therefore denies same.
19. Defendant has insufficient information to admit or deny the allegations of paragraph 19 and therefore denies same.
20. Defendant has insufficient information to admit or deny the allegations of paragraph 20 and therefore denies same.
21. Defendant has insufficient information to admit or deny the allegations of paragraph 21 and therefore denies same.
22. Defendant admits that the parking lot across from the Defendant's lot where Powell parked the van was not owned by the Defendant. All other allegations of paragraph 22 of the complaint, express or implied, are denied.
23. Defendant admits that the van had to be towed back to the Defendant's lot because Powell did not return the key after he test drove the van. All other allegations of

- paragraph 23 are denied.
24. Defendant denies the allegations of paragraph 24.
  25. Defendant denies the allegations of paragraph 25 unless otherwise expressly admitted above.
  26. Defendant has insufficient knowledge as to the allegations of paragraph 26, and therefore denies same. Plaintiff Powell represented to the Defendant that he owned the van.
  27. Defendant denies the allegations of paragraph 27.
  28. Defendant denies the allegations of paragraph 28.
  29. Defendant admits that it is in possession of the van that Powell brought to the Defendant. All other allegations of paragraph 29 are denied.
  30. Defendant denies the allegations of paragraph 30.
  31. The allegations of paragraph 31 are denied unless otherwise expressly admitted above.
  32. The allegations of paragraph 32 are denied.
  33. The allegations of paragraph 33 are denied.
  34. The allegations of paragraph 34 are denied.
  35. The allegations of paragraph 35 are denied.
  36. The allegations of paragraph 36 are denied.
  37. The allegations of paragraph 37 are denied unless otherwise expressly admitted above.
  38. The allegations of paragraph 38 are denied unless otherwise expressly admitted above.
  39. The Defendant admits that it is engaged in trade or commerce within South Carolina. All other allegations of paragraph 39, whether express or implied, are denied.
  40. The allegations of paragraph 40 are denied.

41. The allegations of paragraph 41 are denied.
42. The allegations of paragraph 42 are denied.
43. The allegations of paragraph 43 are denied.
44. The allegations of paragraph 44 are denied.
45. The allegations of paragraph 45 are denied unless otherwise expressly admitted above.
46. The allegations of paragraph 46 are denied.
47. The allegations of paragraph 47 are denied.
48. The allegations of paragraph 48 are denied.
49. The allegations of paragraph 49 are denied.
50. The allegations of paragraph 50 are denied.
51. The allegations of paragraph 51 are denied.
52. The allegations of paragraph 52 are denied.
53. The allegations of paragraph 53 are denied.
54. The allegations of paragraph 54 are denied unless otherwise expressly admitted above.
55. The allegations of paragraph 55 are denied.
56. The allegations of paragraph 56 are denied.
57. The allegations of paragraph 57 are denied.
58. Each and every allegation of the entire complaint not expressly admitted or qualified is hereby denied.

**BY WAY OF COUNTER-CLAIM**

60. That the Defendant is in the business of buying, selling and leasing vehicles and has a car

lot and maintenance facility located in Woodruff, South Carolina, in Spartanburg County.


That the Plaintiff Ken Howell and Plaintiff Karen Nicole Lamb, upon information and belief, are each a citizen and resident of Spartanburg County

61. That Plaintiff Powell 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 Powell represented to the Defendant's employee that he owned the van. Powell 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 Powell came by the Defendant's location frequently and was informed about the progress on the van. Approximately two months later Powell stopped by the Defendant's location and the Defendant informed Powell that the van was running but still needed additional work. Powell was given a copy of the bill for work up to that point and offered an opportunity to test drive the van. Powell test drove the van but did not return it to the Defendant's lot. Instead Powell parked the van across the street from the Defendant's lot. Powell then walked across the street and got back in the car he had arrived in and left. Powell did not return the keys for the van to the Defendant's employee, nor did Powell return the van, nor did Powell pay for the parts and labor performed by the Defendant.
63. Neither Plaintiff Powell 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.

64. 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 Powell as the owner of the vehicle at the address given by Powell to the Defendant's employee, and more than thirty days have passed without the bill being paid.
65. Defendant has a lien arising out of the work performed and did not intend to waive that lien by allowing Powell to test drive the vehicle such that the Defendant has maintained constant possession of the vehicle.
66. Defendant performed work on the van at request of Powell who represented himself as the owner of the van.
67. Defendant is entitled to a lien and subsequent sale of the van pursuant to SC Code Section 29-15-10, et. seq. to recover for the work and parts provided.

**WHEREFORE THE DEFENDANT PRAYS:**

1. That the Complaint and claims of the Plaintiff be denied and dismissed;
2. That the Defendant be awarded mechanics lien/judgment and right to sell the van to satisfy the outstanding charges for parts, labor, and reasonable storage;
3. For such other relief this Court deems fair and proper.

  
\_\_\_\_\_  
J. Falkner Wilkes, 12893  
114 Whitsett Street  
Greenville, SC 29601  
(864) 282-1292  
Attorney for the Defendant

2016 MAY -5 PM 2:48  
M. HOPES/LACRILEY

May 5, 2016.

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

PLAINTIFF ANSWER TO DEFENDANT'S  
 COUNTERCLAIM

2016 JUN - 15 PM 4: 00  
 M. HOPE BLACKLEY

Plaintiffs Ken Howell and Karen Nicole Lamb, responding to the Counterclaim of the Defendant, answer as follows:

1. Any allegations contained in Defendant's Answer and Counterclaim not admitted herein are expressly denied.
2. Responding to ¶60, Plaintiffs are without knowledge as to the Defendant's business, other than engaging in the repair of vehicles. Plaintiffs admits ¶60 both Ken Howell and Karen Nicole Lamb are residents of Spartanburg County. All remaining allegations are denied.
3. Plaintiff admits ¶61 to the extent that Plaintiffs brought the subject vehicle to Defendant's place of business in or around May 2015; Plaintiffs brought the vehicle in by tow; Plaintiff Ken Howell represented that he was the owner of the vehicle; that the vehicle was left at the Defendant's place of business; that Plaintiff Howell visited Defendant's place of business for updates on the status of the vehicle; that Plaintiff Howell drove the van and did not return to Defendant's place of business, and parked the van across the street from Defendant's place of business and did not return the van nor pay Defendant. Plaintiffs are without knowledge as to the identify of "Plaintiff Powell" identified in ¶61;

and are without knowledge as to any work performed by the Defendant on the subject vehicle. The remaining allegations contained in ¶61 are denied.

4. Plaintiffs admit ¶63 only to the extent that no payments have been made to Defendant by Plaintiffs. Plaintiffs are without knowledge as to the identify of "Plaintiff Powell" identified in ¶62. Plaintiffs deny all remaining allegations.
5. Plaintiffs deny ¶64.
6. Plaintiffs deny ¶65.
7. Plaintiffs admit ¶66 only to the extent that Plaintiff Ken Howell represented himself as the owner of the subject vehicle. Plaintiffs are without knowledge as to the identify of "Plaintiff Powell" identified in ¶66. All remaining allegations are denied.
8. ¶67 constitutes a conclusion of law to which no response is required. To the extent a response is deemed to be required, Plaintiffs deny ¶67.

**FOR A FIRST DEFENSE**

**(Failure to State a Claim)**

9. Defendant's Answer and Counterclaim fails to state facts sufficient to constitute a cause of action against it, and accordingly, Defendant's counterclaim should be dismissed.

**FOR A SECOND DEFENSE**

**(Laches)**

10. Defendant's claims are barred by the operation of the equitable doctrine of laches. This doctrine is thus pled as a defense and bars to Defendant's claims.

**FOR A THIRD DEFENSE**

**(Unclean Hands)**

11. Defendant's claims are barred by the operation of the equitable doctrine of unclean hands.

This doctrine is thus pled as a complete defense and bars to Defendant's claims.

**FOR A FOURTH DEFENSE**

**(Comparative Negligence)**

12. Even assuming Plaintiff was negligent in any respect, and that such conduct was the proximate cause of Defendant's damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense, Defendant was also negligent, grossly negligent, reckless, willful, wanton and/or intentional under the circumstances, which conduct was greater than 50% cause of Defendant's damages, if any, and accordingly, Defendant's counterclaim is barred.

**FOR A FIFTH DEFENSE**

**(Comparative Negligence)**

13. Even assuming Plaintiff was negligent in any respect, and that such conduct operated as 50% or greater cause of Defendant's damages, if any, all of which is expressly denied and admitted solely for the purposes of this defense, Plaintiff is entitled to a determination as to the percentage by which Defendant's negligence, reckless, and/or intentional conduct contributed to his damages, if any, and to a reduction of any amount awarded to Defendant by an amount equal to the percentage of Defendant's own negligent, reckless and/or intentional conduct.

**FOR A SIXTH DEFENSE**

**(Assumption of Risk)**

14. Defendant, by and through its actions or inactions with regard to the subject alleged in the counterclaim, assumed the risk or accepted all portions of any alleged damages and such assumption of risk or acceptance is a bar to Defendant's counterclaim against Plaintiff.

**FOR A SEVENTH DEFENSE**

**(No Proximate Cause)**

15. For all damages cited by the Defendant, Plaintiff was not the proximate cause of such damages complained of by Defendant, and accordingly, the counterclaim should be dismissed.

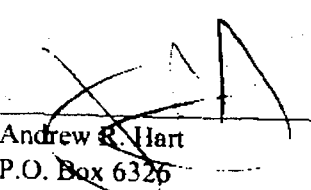
**FOR AN EIGHTH DEFENSE**

**(Waiver)**

16. Defendant's claims are barred by the operation of the equitable doctrine of waiver. This doctrine is thus pled as complete defense and bars to Defendant's claim.

WHEREFORE, having fully responded to Defendant's Answer and Counterclaim, Plaintiff prays for the dismissal of Defendant's counterclaim, with costs, for the relief requested in Plaintiff's Complaint, and for such other relief in law and equity that the court deems appropriate.

**ALFORD & HART, LLC**



Andrew R. Hart  
P.O. Box 6326  
Spartanburg, South Carolina 29304  
(864) 574-0870

June 1, 2016

**ATTORNEY FOR PLAINTIFF**

2016 JUN - 1 PM 4: 00  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-42-1145

Ken Howell and Karen Nicole Lamb )

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

Plaintiff, )

vs. )

Train Auto Sales, Inc. )

Defendant. )

Plaintiff's Attorney:

Andrew R. Hart, Bar No. 79063

Address:

P.O. Box 6326, Spartanburg, SC 29304

Phone: 864-574-0870 Fax 864-574-0871

E-mail: office@alfordlaw.com Other: \_\_\_\_\_

Defendant's Attorney:

J. Falkner Wilkes, Bar No. 12893

Address:

114 Whitsett Street, Greenville, SC 29601

Phone: 864-282-1292 Fax \_\_\_\_\_

E-mail: jfalknerwilkes@gmail.com Other: \_\_\_\_\_

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: To Dismiss Counterclaim of Defendant

Estimated Time Needed: 15 (Fifteen) minutes

Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached

Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

  
Signature of Attorney for  Plaintiff /  Defendant

June 1, 2016

Date submitted

**SECTION III: Motion Fee**

PAID - AMOUNT: \$ \_\_\_\_\_

EXEMPT:

(check reason)

Rule to Show Cause in Child or Spousal Support

Domestic Abuse or Abuse and Neglect

Indigent Status  State Agency v. Indigent Party

Sexually Violent Predator Act  Post-Conviction Relief

Motion for Stay in Bankruptcy

Motion for Publication  Motion for Execution (Rule 69, \_\_\_\_\_)

Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_

Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.

Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_

Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: 

Date Filed: 6-3-2016

MOTION FEE COLLECTED: \$ 25

CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG )

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

Ken Howell and Karen Nicole Lamb, )

Plaintiff )

PLAINTIFF'S 12 (b)(6) MOTION TO DISMISS  
COUNTERCLAIM OF DEFENDANT

v. )

Train Auto Sales, Inc. )

Defendant )

**TO: J. FAULKNER WILKES, ATTORNEY FOR DEFENDANT**

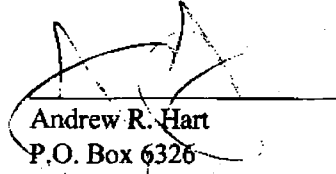
YOU WILL PLEASE TAKE NOTICE that Plaintiffs Ken Howell and Karen Nicole Lamb, by and through undersigned counsel, will move this Court, at a date and time to be set by the Court, but no sooner than ten (10) days after service hereof, for an Order pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure dismissing Defendant's Counterclaim for damages pursuant to SC Code §29-15-10, et seq., inasmuch as Defendant's Answer and Counterclaim fail to state facts sufficient to constitute a cause of action against Plaintiff. This motion is based on one or more of the following grounds:

1. Defendant fails to state facts sufficient to establish a lien pursuant to SC Code §29-5-10, et seq.

This motion is based upon the pleadings filed in this action, the South Carolina Rules of Civil Procedure, any memorandum of law that may be filed and presented to the Court hearing this motion, and upon applicable common and statutory law.

CLERK OF COURT  
SPARTANBURG COUNTY  
2016 JUN - 1 PM 3:59  
M. HOPE BLACKLEY

**ALFORD & HART, LLC**



---

Andrew R. Hart

P.O. Box 6326

Spartanburg, South Carolina 29304

(864) 574-0870

June 1, 2016

**ATTORNEY FOR PLAINTIFF**

SPARTANBURG, SC  
2016 JUN - 1 PM 3: 59  
M. HOPE BLACKLEY

**Common Pleas**

**Clerk : M Hope Blackley  
Spartanburg County  
Spartanburg, SC 29304**

**Phone:(864) 596-2591 Fax:(864) 596-2239**

Received From: Hart, Andrew Ross  
PO Box 6326  
Spartanburg, SC 29304

Date: 6/ 3/2016  
Receipt #: 98038  
Clerk: c42scousin

Paying for: Howell, Ken

Transaction Type: Payment

Reference #: 1720

Payment Type: Check \$25.00

Comment: Motion Fee - Dismiss Counterclaim  
Non-Refundable

Total Paid: \$25.00

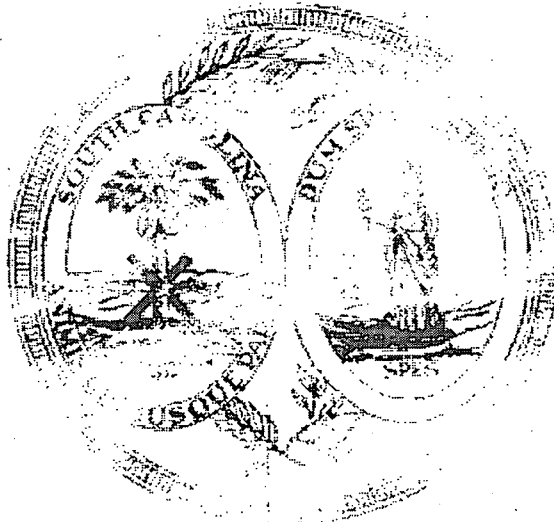
Total Received: \$25.00

Change Due: \$0.00

You may check the status of your Spartanburg case at:

<http://www.sccourts.org/caseSearch/>

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2016CP4201145	Ken Howell VS Train Auto Sales Inc	\$25.00	\$25.00	\$0.00



<b>Total Cases: 1</b>		<b>\$25.00</b>	<b>\$25.00</b>	<b>\$0.00</b>
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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

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION TO DISMISS  
(SCRPC 12(b)(6))**

Plaintiffs, through undersigned counsel, file this motion in support of their Motion to Dismiss Defendant's counterclaim.

**FACTS**

The matter stems from Plaintiffs, individuals and owners of a 1998 Ford E-150 Econoline van, leaving the vehicle with Defendant, a business engaged in auto mechanics, for inspection and potential repair (Complaint ¶11). The present motion concerns Defendant's Counterclaim that it is entitled to a mechanic's lien pursuant to SC Code §29-15-10, et seq. for repairs alleged to have been performed to the subject vehicle.

Plaintiff's Complaint alleges that Defendant charged Plaintiffs for work claimed to have been performed on the vehicle without seeking prior authorization of the Plaintiffs (Complaint ¶17); transporting the vehicle to other locations without the consent of Plaintiffs (Complaint ¶13, 14); misrepresenting the potential cost of repair (Complaint ¶9, 16); and failing to provide Plaintiffs with updates or estimates prior to allegedly performing work (Complaint ¶12). Plaintiffs regained physical possession of the subject vehicle after Defendant's demanded payment of \$1,387.48, and took the vehicle to another mechanic for inspection (Complaint ¶18, 19). Plaintiffs then parked the vehicle in a separate parking lot, 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).

### **STANDARD OF REVIEW**

#### **I. Motion to Dismiss (SCRCP 12(b)(6))**

Under Rule 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).

#### **II. Mechanic's Lien (SC Code §29-15-10, et seq.)**

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.”

### ARGUMENT

Defendant failed to state facts sufficient to constitute a claim for a mechanic’s lien on the subject vehicle, as Defendant admits it surrendered possession of the subject vehicle to the Plaintiff, thereby extinguishing it’s claim to a mechanic’s lien.

Is it clear from SC Code §29-5-10 that “continuous possession” of an article by a repairman is required in order to maintain the 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 upheld as Defendant, a 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, as they admit now to having physical possession of the subject vehicle (Counterclaim

¶29). Consistent with the holding of the South Carolina Supreme Court 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 that Defendant involuntarily lost possession of the subject vehicle.

**CONCLUSION**

As Defendant's allegations on the face of their Counterclaim admit the failure to maintain continuous possession of the subject vehicle, Defendant fails to state facts upon which a cause of action for a mechanic's lien pursuant to SC Code §29-15-10, et seq. can be granted. Defendant's Counterclaim should be dismissed pursuant to R. 12(b)(6), SCRCP.

**ALFORD & HART, LLC**

/s/ Andrew R. Hart  
SC Bar no. 79063  
Andrew R. Hart  
P.O. Box 6326  
Spartanburg, South Carolina 29304  
(864) 574-0870

**ATTORNEY FOR PLAINTIFF**

Spartanburg, South Carolina  
September 2, 2016

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
KEN HOWELL AND NICOLE LAMB	)	
	)	TRANSCRIPT OF RECORD
PLAINTIFFS,	)	2016-CP-42-01145
	)	
-vs-	)	SEPTEMBER 6, 2016
	)	SPARTANBURG, SOUTH CAROLINA
THE TRAIN AUTO SALES, INC.,	)	
	)	
DEFENDANT.		

B E F O R E:

THE HONORABLE J. MARK HAYES, II, JUDGE.

A P P E A R A N C E S:

ANDREW R. HART, ESQUIRE  
ATTORNEY FOR THE PLAINTIFF

J. FALKNER WILKES, ESQUIRE  
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS  
CIRCUIT COURT REPORTER

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WITNESSES

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(NO WITNESSES CALLED)

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NO. DESCRIPTION

ID. EV.

(NO EXHIBITS MARKED)

1 (PROCEEDING, SEPTEMBER 6, 2016)

2 THE COURT: Now we have Ken Howell versus Train  
3 Auto Sales. Mr. Hart and Mr. Wilkes.

4 All right. I have got that this is Howell versus  
5 Train Auto and that we here on the plaintiffs' motion to  
6 dismiss the counterclaim. Is that everybody's  
7 understanding?

8 MR. HART: That's correct, Your Honor.

9 MR. WILKES: Yes.

10 THE COURT: All right. I'll be more than happy to  
11 hear from you.

12 MR. HART: Thank you, Your Honor.

13 May it please the court, I had filed on Friday a  
14 memorandum in support of THE motion to dismiss. I was  
15 making sure the court had that. If not, I have extra copies  
16 with me.

17 THE COURT: You're probably going to need to let  
18 me have that.

19 MR. HART: All right.

20 THE COURT: Thank you.

21 MR. HART: I represent Ken Howell and Nicole Lamb,  
22 the plaintiffs in this case. They are the owners of an  
23 Econoline van that was left with the defendant, Train Auto  
24 Sales, Incorporated, for potential repair and for --  
25 preparing an estimate for repairs on the vehicle.

1 My motion concerns the counterclaim that was  
2 raised by Train Auto Sales in response to the complaint.

3 The complaint alleges that Train Auto Sales held  
4 the vehicle without updating the defendant -- held the  
5 vehicle without updating the plaintiffs of any status of  
6 repairs, billing for work that was not properly approved by  
7 the plaintiff, and for subsequently converting the van after  
8 it was relinquished from possession.

9 The counterclaim was made by the defendant in this  
10 case for a mechanics lien on the vehicle.

11 The mechanics lien, the important part -- one of  
12 the important parts and elements of that claim is for  
13 continuous possession of the subject vehicle where the item  
14 is being -- where the lien is being claimed on.

15 In the pleadings of this matter, just on the face  
16 of the complaint and on the answer to that complaint, it was  
17 admitted that possession was voluntarily relinquished by the  
18 defendant.

19 The vehicle was turned back over, physical  
20 possession, to the plaintiffs. It was released from the  
21 shop to the plaintiffs, such that the plaintiffs left the  
22 dealership and repair shop with the vehicle, took it  
23 elsewhere.

24 The defendants then regained possession by going  
25 off site, off the business site, to bring the vehicle back

1 to their shop and that's where they claim the mechanics lien  
2 still is enforce.

3 Because there was not continuous possession of  
4 this vehicle, the mechanics lien should be extinguished and  
5 the claim on its face should be dismissed.

6 THE COURT: Yes, sir.

7 MR. WILKES: The facts that we have alleged,  
8 judge, are that the owner of the car, he had come by to see  
9 how the car was doing or how they were doing with the car.  
10 My people have alleged that they informed him of the status,  
11 that it was running. It wasn't running when they started  
12 working on it. It was brought in on a trailer. They had it  
13 running, but indicated it was still running rough at fifty  
14 miles an hour. They thought that there was an injector  
15 problem that still needed to be remedied, and the plaintiff  
16 asked if he could test drive the car to see what it was  
17 doing and they said sure. Well, he drove the car off the  
18 lot and didn't bring it back. He parked it across the  
19 street from the lot, or across the corner from the lot,  
20 walked over, got in his car and left. Apparently when he  
21 did that my clients went and took the car and drove it back  
22 around the corner to their lot.

23 The issue before the court for dismissal is  
24 whether there was a voluntary relinquishment, and it was --  
25 it has been alleged by my clients that the relinquishment

1 did not exist. It was not voluntary. He asked to drive, to  
2 test drive the car, to see what it was doing. They said  
3 okay for that purpose, but they did not release the car to  
4 him for the purpose of releasing the lien or being under the  
5 impression that they were done with the car or that he was  
6 going to take the car and not pay anything.

7 So the question legally is voluntary  
8 relinquishment. That's a factual issue which, of course,  
9 they say they did not voluntarily relinquish the car to him  
10 for the purpose of him just leaving without paying. He  
11 specifically said "I want to test drive the car," and that  
12 would be no different than him coming on the lot and  
13 stealing the car or tricking them into letting him drive the  
14 car off the lot. Either way it's a factual question, which  
15 we claim obviously was not voluntary relinquishment.

16 MR. HART: Briefly, Your Honor.

17 In the case I have attached to the memorandum I  
18 submitted, Welcome Home Center v. Central Chevrolet, the  
19 court says "by statute and under common law, the vitality of  
20 repairman's lien is conditioned on his continuous possession  
21 of the article."

22 There might be a different claim that might be  
23 appropriate here - unjust enrichment, breach of an  
24 agreement -- but release of possession of that vehicle  
25 extinguished the mechanic's lien by the holding in this

1 case. It's admitted that that vehicle was physically  
2 released to the plaintiff.

3 There has been no cases cited by the defendant in  
4 this case saying that whether it's for a test drive or for a  
5 small purpose like that it makes any difference about  
6 continuous possession.

7 It's admitted that continuous possession was not  
8 held by the defendants in this case and I believe that  
9 extinguishes the lien that was held on that vehicle.

10 MR. WILKES: Again, Your Honor, I don't think  
11 Welcome says that.

12 The question is one of voluntary and whether he  
13 tricks them into letting him in the car or whether he steals  
14 the car is irrelevant. It is still not a voluntary  
15 relinquishment of the vehicle for the purposes of the lien.

16 THE COURT: All right. It's a motion on the  
17 pleadings so I am limited just to view what's alleged, is  
18 that correct?

19 MR. HART: That's correct, Your Honor.

20 THE COURT: All right. And with it being -- and  
21 I'm supposed to view the allegations in the pleadings in a  
22 light that is favorable to the nonmoving party?

23 MR. WILKES: Yes, sir.

24 MR. HART: That's correct, Your Honor.

25 THE COURT: All right. Okay. I will take a look

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at it and let you know.

MR. WILKES: Thank you, Your Honor.

THE COURT: Thank you.

MR. HART: Thank you, Your Honor.

(END OF REQUESTED TRANSCRIPT OF RECORD)

## CERTIFICATE

1  
2 I, the undersigned, Michael R. Watts, Official Court  
3 Reporter for the Seventh Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate and complete Transcript of Record of the  
6 proceedings had and the evidence introduced in the trial of  
7 the captioned case, relative to appeal, in the Court of  
8 Common Pleas for Spartanburg County, South Carolina, on the  
9 6th day of September, 2016.

10 I do further certify that I am neither of kin, counsel  
11 nor interest to any party hereto.

12  
13  
14 March 31, 2017

15  
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18 Michael R. Watts  
19 Circuit Court Reporter  
20  
21  
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24  
25

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

Appellate Case No. 2017-000092

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

v.

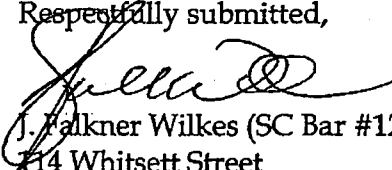
Train Auto Sales, Inc., ..... Appellant.

CERTIFICATE OF SERVICE

I certify that on November 13, 2017, I served the Record on Appeal on the Respondents by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record as indicated below:

Andrew R. Hart, Esq.  
ALFORD & HART, LLC  
P.O. Box 6326  
Spartanburg, SC 29304

Respectfully submitted,

  
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(864) 282-1292  
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Counsel for Appellant

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM SPARTANBURG COUNTY  
COURT OF COMMON PLEAS  
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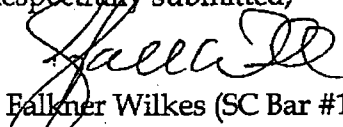
CERTIFICATION

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I certify that the Record on Appeal contains all the matter designated by the parties and no irrelevant matter.

I further certify that the Record on Appeal has been redacted in accordance with the Supreme Court's order on redaction of private data and personal identifiers.

Respectfully submitted,



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