

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
COURT OF COMMON PLEAS

LETITIA H. VERDIN, CIRCUIT COURT JUDGE

Case No. 2011-CP-39-1198

SABERTOOTH MOTORCYCLES, LLC,

RESPONDENT

v.

STANLEY SCRUGGS,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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SC COURT OF APPEALS

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STATEMENT OF ISSUES ON APPEAL

1. Did the Appellant Stanley Scruggs have a lien for storage of a vehicle against the Respondent Sabertooth Motorcycles, LLC, pursuant to S.C. Code Ann. §29-15-10(B) where Scruggs failed to follow the plain language of the statute by failing to provide any notice to Respondent Sabertooth?
2. Did Appellant Stanley Scruggs have a lien for storage of a vehicle against the Respondent Sabertooth Motorcycles, LLC, pursuant to S.C. Code Ann. §16-11-760(B) and §56-5-2525 where Scruggs failed to notify law enforcement?
3. Can Appellant Stanley Scruggs demand an undertaking contemplated in S.C. Code Ann. §15-69-50 where the Appellant failed to provide notice to the Respondent and to law enforcement as required by statute?

STATEMENT OF THE CASE

On August 11, 2011, Respondent Sabertooth Motorcycles, LLC, [hereinafter, "Sabertooth"] filed suit in the Court of Common Pleas in Pickens County against Appellant Stanley Scruggs [hereinafter, "Scruggs"] for claim and delivery of a certain Mack Truck tractor and trailer and for conversion of the same. Accompanying the filed suit were a Notice of Right to Pre-Seizure Hearing for claim and delivery specifically describing the vehicle and an affidavit from Benjamin D. Daniels. All of the pleadings were served upon Scruggs.

Scruggs filed his answer on September 12, 2011.

A hearing was held on February 16, 2012, wherein Sabertooth moved for immediate possession of the vehicle. Notice of the hearing was accomplished upon Scruggs through his attorney in January 2012.

At the February 16, 2012, hearing the parties filed respective memoranda. The Honorable Letitia H. Verdin took the matter under advisement and ruled on March 6, 2012, in favor of Sabertooth for immediate possession of the vehicle, finding that Scruggs had not notified Sabertooth as required by law, that Scruggs had not notified law enforcement as required by law, that Scruggs was not entitled to compensation for towing and storage, and that Scruggs had failed to establish a lien for storage of the vehicle by reason of his failure to provide notice. The court found that Sabertooth had presented evidence of ownership and title to vehicle. Accordingly, the court found that there was no genuine issue of material fact and granted Sabertooth's motion for immediate possession.

Subsequently, Scruggs filed a motion for reconsideration, which was denied, and then instituted this appeal.

STATEMENT OF FACTS

Sabertooth is the owner of a 1998 Mack Truck Tractor with VIX #1M1AA18Y8WW085600 and 1988 Trailer with VIN #1KKVD482XJL081070 (herein collectively described as "vehicle").

The vehicle was parked with permission in the parking lot at 104 Hurricane Creek Road, Piedmont, SC next to the facility formerly occupied by Sabertooth.

In November 2010 prior to the towing of the vehicle, Benjamin Daniels on behalf of Sabertooth had discussions with URP Holdings (herein, "URP"), the entity which Daniels believed was the owner of the property at 104 Hurricane Creek Road, Piedmont, SC, in order to make arrangements with URP for the pick-up of the vehicle.

On or about January 20, 2011, while making arrangements to pick up the vehicle, Mr. Daniels was informed that the vehicle was missing and not located where it had been parked at 104 Hurricane Creek Road, Piedmont, SC. Mr. Daniels contacted the former landlord, Thomas Beebee of Griffin Thermal Products, and Mr. Beebee was unaware of its location.

Mr. Daniels then contacted the police and the Sheriff's Department to report the vehicle missing or stolen and was informed that they had not been contacted by any tow company or another party informing the police that the vehicle had been towed or that it was being stored.

Following January 20, 2011, Mr. Daniels or someone at his direction contacted several tow yards and located the vehicle at the Appellant Stanley Scruggs' [hereinafter, "Scruggs"] tow yard.

On February 4, 2011, *after* Sabertooth's attorney contacted Scruggs, Scruggs provided Sabertooth with a fax written notice and bill.

At no time prior to receipt of the Scruggs faxed notice had Sabertooth received any notice (written or otherwise) from Scruggs or any party regarding towing or storage of the vehicle. The only notice Sabertooth ever received was the Scruggs notice on February 4, 2011, demanding towing and storage in the amount of \$9,600.00, which followed Sabertooth's contact to Scruggs.

The value of the vehicle at the time of towing was \$50,000.00. In addition, the trailer portion of the vehicle contained motorcycle parts and engine supplies valued at approximately \$40,000.00.

Sabertooth demanded in writing return of the vehicle and Scruggs refused to comply.

ARGUMENT

1. Appellant Scruggs failed to notify Respondent Sabertooth by certified or registered mail pursuant to S.C. Code Ann. §29-15-10 of the location of the vehicle within five (5) days of receiving the owner's identity and thus Appellant cannot avail himself of a storage lien on the vehicle.

S.C. Code Ann. section 29-15-10(B) states the following:

Storage costs may be charged that have accrued before the notification of the owner and lienholder, by certified or registered mail, of the location of the article. Notification to the owner and lienholder by the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must occur within five days, after receiving the owner's and lienholders' identities. If the notice is not mailed within this period, storage costs after the five-day period must not be charged until the notice is mailed.

There is no dispute that Scruggs failed to mail any notice to Sabertooth of the location of the vehicle. In fact, Sabertooth tracked down the vehicle by calling local tow yards.

On February 4, 2011, Sabertooth's attorney contacted Scruggs and only then did Scruggs provide a fax notice and bill to Sabertooth.

Therefore, because Scruggs failed to follow the plain language of §29-15-10, he cannot charge storage costs to Sabertooth.

2. Appellant Scruggs does not have a lien for storage of the vehicle against Respondent Sabertooth because Scruggs failed to notify law enforcement pursuant to S.C. Code Ann. §16-11-760(B) and §56-5-2525.

S.C. Code Ann. section 16-11-760(B) states the following:

A vehicle found parked on private property may be towed and stored at the expense of the registered owner or lienholder, and charges for towing, storing, preserving the vehicle, and expenses incurred if the owner and lienholder are notified pursuant to Section 29-15-10 constitute a lien against the vehicle, provided that the towing company makes notification to the law enforcement agency pursuant to Section 56-5-2525.

S.C. Code Ann. section 56-5-2525 provides the following:

(B) A towing company which tows and stores a person's vehicle without the person's knowledge must immediately notify the police department of the municipality where the vehicle was parked, or the sheriff of the county, if the vehicle was parked outside the limits of a municipality, of the location from which the vehicle was towed, the name of the company which towed the vehicle and the place where the vehicle is stored.

(C) A towing company failing to give this notice within one hour of the time the vehicle was towed is not entitled to any compensation for the towing and storing operations. The provisions of this section must be posted in a conspicuous place in all public areas on the premises of the towing company. The law enforcement agency that receives this notice must draft a towing report and furnish the towing company with the report's document number within a reasonable time. Notification to the law enforcement agency is not required when the towing is performed at the direction of a law enforcement officer.

S.C. Code Ann. section 56-5-2530 provides the following:

(A)(2) When an abandoned vehicle has been taken into custody, the towing company and storage facility having towed and received the vehicle shall notify by registered or certified mail, return receipt requested, the last known registered owner of the vehicle and all lienholders of record that the vehicle has been taken into custody. Notification of the owner and all lienholders by certified or registered mail, return receipt requested, constitutes notification for purposes of this section. This notification must satisfy the notification requirements contained in Section 29-15-10. The notice must:

(a) give a description of the year, make, model, and identification number of the vehicle;

(b) set forth the location where the vehicle is being held;

(c) inform the owner and all lienholders of the right to reclaim the vehicle within thirty days beginning the day after the notice is mailed, return receipt requested, upon payment of all towing, preservation, storage charges, notification, publication, and court costs resulting from placing the vehicle in custody; and

(d) state that the failure of the owner and all lienholders to exercise their right to reclaim the vehicle within the time provided is considered a waiver by the owner

and lienholders of all rights, title, and interest in the vehicle and is considered as their consent to the sale of the vehicle at a public auction.

If a vehicle has been towed pursuant to the provisions of this section, the towing company and storage facility must accept as payment for the release of the vehicle the same manner of payment that they would accept if the owner of the vehicle had requested his vehicle towed.

(B) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the area where the vehicle was abandoned is sufficient to meet all requirements of notice pursuant to this article. The notice by publication may contain multiple listings of abandoned vehicles. This notice must be within the time requirements prescribed for notice by registered or certified mail and must have the same contents required for a notice by registered or certified mail.

It is likewise undisputed that Scruggs failed to notify both Sabertooth and the applicable law enforcement agency pursuant to the above-referenced statutes. In fact, Mr. Daniels on behalf of Sabertooth contacted the police and the Sheriff's Department to report the vehicle missing or stolen and was informed that they had not been contacted by any tow company or another party informing the police that the vehicle had been towed or that it was being stored.

Therefore, because Scruggs failed to act according to the statutes, he is not able to retain the vehicle or charge towing and storage costs.

3. Appellant Scruggs cannot demand that Sabertooth serve upon Scruggs an undertaking as contemplated by S.C. Code Ann. §15-69-50 where Scruggs has failed to provide notice to Respondent Sabertooth and has failed to provide notice to the law enforcement agency.

Contrary to Scruggs' argument in his brief, Sabertooth alleged in its complaint that Scruggs had failed to give notice to Sabertooth and to law enforcement.

Therefore, Scruggs was aware that Sabertooth would or could argue the applicable notice statutes. It was the basis of the case.

Sabertooth's position is that Scruggs had wrongfully taken possession of the vehicle and was simply trying to take advantage of Sabertooth by demanding \$9,600.00 for a short time of storage and towing.

If Scruggs was in wrongful possession of the vehicle by failing to notify Sabertooth and the law enforcement agency, as the trial court so found, then Scruggs was not entitled to a written undertaking. Essentially, Scruggs' argument is that even if he failed to follow the statutes applicable to his towing and recovery business, he is still entitled to protection of the law under §15-69-50 and can impose a significant burden on the bona fide owner of the vehicle.

CONCLUSION

Applying the law to the uncontroverted facts of this case, it is clear that Scruggs cannot assert a lien for towing and storage costs for the Sabertooth vehicle because he failed to follow the consistent statutes in providing notice by certified or register mail to Sabertooth and by failing to notify law enforcement. Consequently, the judgment of the trial court should be affirmed.

Respectfully submitted,



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June 21, 2012


Sabertooth's position is that Scruggs had wrongfully taken possession of the vehicle and was simply trying to take advantage of Sabertooth by demanding \$9,600.00 for a short time of storage and towing.

If Scruggs was in wrongful possession of the vehicle by failing to notify Sabertooth and the law enforcement agency, as the trial court so found, then Scruggs was not entitled to a written undertaking. Essentially, Scruggs' argument is that even if he failed to follow the statutes applicable to his towing and recovery business, he is still entitled to protection of the law under §15-69-50 and can impose a significant burden on the bona fide owner of the vehicle.

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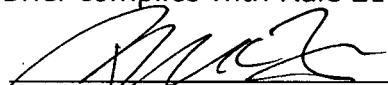
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.



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PROOF OF SERVICE

I certify that I have served the Final Brief of Respondent on Appellant Stanley Scruggs by depositing a copy of it in the United States Mail, postage prepaid, on August 28, 2012, addressed to his attorney of record, James P. O'Connell, 139 Grace Drive, Easley, SC 29640.



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