

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

RECEIVED

JUL 31 2012

SC Court of Appeals

SABERTOOTH MOTORCYCLES, LLC,

Respondent,

-v-

STANLEY SCRUGGS,

Appellant.

IN THE MATTER OF NOTICE OF RIGHT TO PRE-SEIZURE HEARING AND MOTION OPPOSING

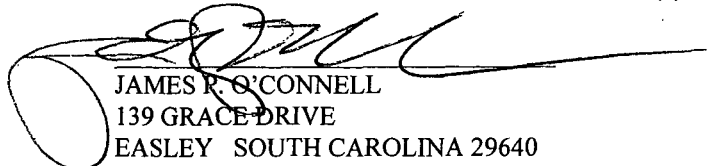
RECORD ON APPEAL

APPELLANT FILES THE following Record on Appeal: Indexed as follows:

1. Judgment in a Civil Case 2011-CP-23-1198 recorded March 6, 2012.
2. Notice of Right to Pre-Seizure Hearing, August 11, 2011 same cause of action number.
3. Civil Complaint filed August 11, 2012 same cause of action number.
4. Scruggs request for Pre-seizure hearing September 6, 2011.
5. Answer and Counterclaim and Return to Pre-Seizure hearing September 12, 2011.
6. Notice of Hearing January 9, 2012.
7. Return to Motion filed January 6, 2012.
8. Memorandum filed at Motion hearing February 16, 2012.
9. Brief against Motion Claim and Delivery January 17, 2012.
10. Motion to Reconsider filed March 20, 2012.
11. Order denying Motion filed March 2, 2012.
12. Transcript pages 2 through 8 inclusive.

I certify that the Record on Appeal contains no new matter or irrelevant matter to this Appeal.

July 23, 2012


JAMES P. O'CONNELL
139 GRACE DRIVE
EASLEY SOUTH CAROLINA 29640
ATTORNEY FOR APPELLANT
864-220-0005

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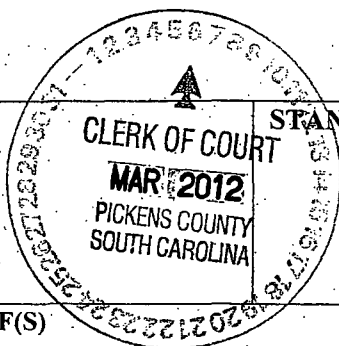
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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3901198

SABERTOOTH
MOTORCYCLES, LLC

STANLEY SCRUGGS



PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court

Attorney for: Plaintiff Defendant
 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.
- 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:
This matter comes before the Court on Plaintiff's Motion for Immediate Possession. This Court finds that the Plaintiff had no prior knowledge that the Defendant would be towing its vehicle. Therefore, under S.C. Code § 56-5-2525(B), the Defendant was required to notify law enforcement of the towing. This Court finds that law enforcement was not notified. As such, under S.C. Code § 56-5-2525(C), the Defendant is not entitled to compensation for towing and storage. Additionally, this Court finds that the Defendant has failed to establish a lien for storage of the vehicle because they did not provide the notice required under S.C. Code § 29-15-10. Finally, Plaintiff has presented evidence of ownership and this Court finds that it has title to the vehicle. Therefore, this Court finds that there is no genuine issue of material fact, and grants Plaintiff's Motion for Immediate Possession.

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)

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

[Signature]

Circuit Court Judge

2162

Judge Code

3/21/2012

Date

NB
 Clerk of Court
 Harold P. Welborn, Jr.

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, attorneys of record or to parties (when appearing pro se) as follows:

✓ **Brian Keith James**, P.O. Box 93, 609 West Main Street
29640 Easley, SC 29641

US
Mail
NB

✓ **James P. O'Connell** 139 Grace Dr., Easley, SC 29640

TRUE COPY

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]

Harold P. Welborn, Jr. - Clerk Of Court

Court Reporter

[Handwritten mark]

CLERK OF COURT
PICKENS COUNTY
STATE OF SOUTH CAROLINA
COUNTY OF PICKENS 2011 AUG 11 P 3:27

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Sabertooth Motorcycles, LLC,)
)
Plaintiff,)
)
vs.)
)
Stanley Scruggs,)
)
Defendant.)
_____)

Case No.: 2011-CP-39- 1198

**NOTICE OF RIGHT TO
PRE-SEIZURE HEARING**
(Claim and Delivery)

You, Stanley Scruggs, the Defendant, have the right to request a hearing within 5 days from the date you receive this, for the purpose of determining who shall have immediate possession of the property described below:

1. a 1998 Mack Truck Tractor with VIX #1M1AA18Y8WW085600;
2. 1988 Trailer with VIN #1KKVD482XJL081070 (herein collectively described as "vehicle"); and,
3. Contents of vehicle.

If you should fail to demand a hearing within 5 days, waiver of your right to a hearing will be presumed, and an order may be issued for the immediate taking of the property described herein above from your possession.

If you do desire a hearing on this matter, please contact:

Harold P. Welborn, Jr.
Pickens County Clerk of Court
PO Box 215
Pickens, 29671
Tel. 898.5866

Dated: August 11, 2011

Cheryl Watson - Deputy
Clerk of Court

COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Sabertooth Motorcycles, LLC,

Plaintiff(s)

2011 AUG 11 P 3:27 2011-CP-39-1198

vs.

Stanley Scruggs

Defendant(s)

(Please Print)

Submitted By: Brian K. James
Address: PO Box 93, Easley, SC 29641

SC Bar #: 11215
Telephone #: 864.859.5918
Fax #: 864.859.8848
Other:
E-mail: brianjames.law@gmail.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

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)
 - Employment (120)
 - General (130)
 - Breach of Contract (140)
 - Other (199)
- Torts - Professional Malpractice**
 - Dental Malpractice (200)
 - Legal Malpractice (210)
 - Medical Malpractice (220)
 - Previous Notice of Intent Case # 20-CP-
 - Notice/ File Med Mal (230)
 - Other (299)
- Torts - Personal Injury**
 - Assault/Slander/Label (300)
 - Conversion (310)
 - Motor Vehicle Accident (320)
 - Premises Liability (330)
 - Products Liability (340)
 - Personal Injury (350)
 - Wrongful Death (360)
 - 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)
- 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)
 - Other (799)
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 - Judicial Review (810)
 - Relief (820)
 - Permanent Injunction (830)
 - Forfeiture-Petition (840)
 - Forfeiture-Consent Order (850)
 - Other (899)
- Appeals**
 - Arbitration (900)
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 - Municipal (930)
 - Probate Court (940)
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 - Worker's Comp (960)
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 - Employment Security Comm (991)
 - Other (999)
- Special/Complex /Other**
 - Environmental (600)
 - Automobile Arb. (610)
 - Medical (620)
 - Other (699)
 - Pharmaceuticals (630)
 - Unfair Trade Practices (640)
 - Out-of State Depositions (650)
 - Motion to Quash Subpoena in an Out-of-County Action (660)
 - Sexual Predator (510)

Claim and Delivery

Submitting Party Signature:

Date: 08/01/11

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011 AUG 11 P 3:27

Sabertooth Motorcycles, LLC,

Case No.: 2011-CP-39-1198

Plaintiff,

vs.

SUMMONS

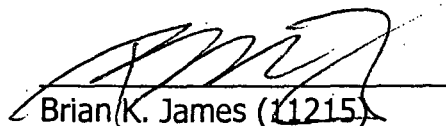
Stanley Scruggs,

Defendant.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

BRIAN K. JAMES, LLC



Brian K. James (1215)
Attorney for the Plaintiff
P.O. Box 93
Easley, SC 29641
Tel. 864.859.5918
Fax. 864.859.8848

Easley, SC
August 11, 2011

STATE OF SOUTH CAROLINA
CLERK OF COURT
PICKENS COUNTY IN THE COURT OF COMMON PLEAS
SOUTH CAROLINA THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF PICKENS

2011 AUG 11 P 3: 27

Sabertooth Motorcycles, LLC,

Case No.: 2011-CP-39- 1198

Plaintiff,

vs.

COMPLAINT

Stanley Scruggs,

Defendant.

Comes now Sabertooth Motorcycles, LLC, Plaintiff in the above-captioned matter, who alleges the following:

1. The Plaintiff Sabertooth Motorcycles, LLC, is a limited liability company which operates in the Commonwealth of Massachusetts.
2. Upon information and belief, the Defendant is a resident of Pickens County, South Carolina, and operates a business within Pickens County, South Carolina.
3. The Plaintiff has attached the affidavit of the founder and Managing Member [Ben Daniels] of Sabertooth Motorcycles, LLC, and hereby incorporates the same by reference.
4. The Plaintiff would show unto the Court that it is the owner of a 1998 Mack Truck Tractor with VIX #1M1AA18Y8WW085600 and 1988 Trailer with VIN #1KKVD482XJL081070 (herein collectively described as "vehicle").
5. The vehicle was parked with permission in the parking lot at 104 Hurricane Creek Road, Piedmont, SC next to the facility formerly occupied by Plaintiff.
6. Prior to the towing of the vehicle, in November 2010, Ben Daniels on behalf of Plaintiff had discussions with URP Holdings, 29 International Parkway, Dallas, TX (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.
7. 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.
 8. 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.
 9. Following January 20, 2011, Mr. Daniels or someone at his direction contacted several tow yards and located the vehicle at the Defendant Scruggs' tow yard.
 10. On February 4, 2011, after the Plaintiff's attorney contacted the Defendant, the attorney provided the Plaintiff with a fax written notice and bill he received from Defendant.
 11. At no time prior to receipt of the Scruggs Notice had the Plaintiff received any notice (written or otherwise) from the Defendant or any party regarding towing or storage of the vehicle. The only notice Plaintiff ever received was the Scruggs Notice demanding towing and storage in the amount of \$9,600.00, which was provided on February 4, 2011.
 12. 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.
 13. The Plaintiff has demanded in writing return of the vehicle and the Defendant has refused to comply.

**FOR A FIRST CAUSE OF ACTION
(Claim and Delivery)**

14. The Plaintiff hereby incorporates the foregoing allegations, which are not inconsistent herewith, as fully and effectually as if set forth verbatim.
15. The Plaintiff is the owner of the vehicle, which is more fully described in the attached affidavit.
16. The Defendant is in wrongful possession of the property.
17. The Plaintiff has made demand on the Defendant for the return of the vehicle and the Defendant has failed or refused to do so.
18. As a result of the Defendant's wrongful retention, the Plaintiff has suffered damages in the amount of \$90,000.00.
19. As more fully set forth in the notice of pre seizure hearing attached, the Plaintiff is entitled to a pre seizure hearing and immediate delivery of the property.
20. The Plaintiff is accordingly entitled to an order of possession, damages for retention of the property, or, in the event that that property may not be had, for an order directing payment of the value of the property to the Plaintiff.

FOR A SECOND CAUSE OF ACTION

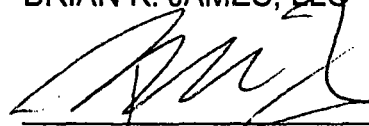
(Conversion)

21. The Plaintiff hereby incorporates the foregoing allegations, which are not inconsistent herewith, as fully and effectually as if set forth verbatim.
22. The Plaintiff owns or has right to possession of the property described herein as the vehicle and its contents.
23. The Defendant has converted to his own use and has wrongfully detained the vehicle and its contents.
24. The Plaintiff has demanded return of the same and the Defendant has failed or refused to comply.
25. Accordingly, the Plaintiff is entitled to recover compensatory damages from the Defendant in the amount of \$90,000.00 or such sum as may be proved at trial.
26. The Plaintiff is also entitled to recover punitive damages from the Defendant based upon the Defendant's reckless, willful and wanton conduct.

WHEREFORE, the Plaintiff prays for the following relief:

1. Immediate Return of the vehicle and its contents;
2. an order of possession, damages for retention of the property, or, in the event that that property may not be had, for an order directing payment of the value of the property to the Plaintiff;
3. compensatory damages from the Defendant in the amount of \$90,000.00 or such sum as may be proved at trial;
4. punitive damages.

BRIAN K. JAMES, LLC



Brian K. James (11215)
Attorney for the Plaintiff
P.O. Box 93
Easley, SC 29641
Tel. 864.859.5918
Fax. 864.859.8848

Easley, SC
August ____, 2011

AFFIDAVIT

BENJAMIN D. DANIELS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 AUG 11 P 3:27

I Benjamin Daniels, an individual residing at 30 Lyman Road, Chestnut Hill, Massachusetts 02467, under oath do hereby state that the following is true to the best of my knowledge:

1. I am the founder and Manager Member of Sabertooth Motorcycles, LLC (herein "Sabertooth") a motorcycle manufacturing company which formerly occupied and leased a facility at 100 Hurricane Creek Road, Piedmont, South Carolina.

2. Sabertooth is the owner of a 1998 Mack Truck Tractor with VIN #1M1AA18Y8WW085600 and 1988 Trailer with VIN #1KKVD482XJL081070 (herein collectively "Vehicle"). The Titles for each Vehicle are attached hereto as Exhibit A.

3. 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.

4. Prior to the towing of the Vehicle, in November 2010, I had discussions with URP Holdings, 29 International Parkway, Dallas, TX (herein "URP"), the entity that I believed was the owner of the Property at 104 Creek Road, Piedmont, SC in order to make arrangements with URP for the pick up of the Vehicle.

5. On or about January 20th, 2011, while making arrangements to pick up the Vehicle I was informed that the Vehicle was missing and not located where it had been parked at 104 Hurricane Creek Road, Piedmont, SC. At this time I contacted our former Landlord, Thomas Beebee of Griffin Thermal Products and Mr. Beebee maintained that he did not know where the Vehicle was.

6. Following information that the Vehicle was missing, I contacted the police and Sherriff's Departments for Piedmont SC to report the Vehicle missing or stolen and was informed by the Sherriff and Police Department that they had not been contacted by any tow company or any other party informing the police that the Vehicle had been towed, removed or that it was being stored anywhere.

7. Following January 20th, 2011 after contacting local tow yards within a reasonable radius of Piedmont, SC, Sabertooth representative Daniel Parker located the Vehicle at Scrugg's Wrecker & Towing Service, 4259 Calhoun Memorial Highway, Easley, SC (herein "Scruggs").

8. I provided the information regarding the towing of the Vehicle by Scruggs to my Attorney, Eugene M. Magier, PC, 687 Highland Avenue, Needham, MA 02494 (herein "Magier") and requested that Magier contact Scruggs and seek return of the Vehicle and personal property contained in the trailer portion of the Vehicle.


9. On February 4, 2011, following his telephone communication with Scruggs the day prior, Magier provided me with the facsimile written notice and bill he received from Scruggs attached hereto as Exhibit B (herein "Scruggs Notice").

10. At no time prior to receipt of the Scruggs Notice had I nor any Sabertooth representative or employee any notice (whether written or otherwise) from Scruggs or any party regarding the towing and storage of the Vehicle. The only notice I ever received regarding the towing and storage of the Vehicle is the Scruggs Notice demanding towing and storage charges of \$9,600.00, which notice was provided to Attorney Magier on or about February 4, 2011.

11. To the best of my knowledge, 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 totaling a value of approximately \$40,000.00.

12. Sabertooth has in writing demanded return of the Vehicle and Scruggs has refused to comply.

Signed under the pains and penalties of perjury this 27th day of April, 2011 by


Benjamin D. Daniels

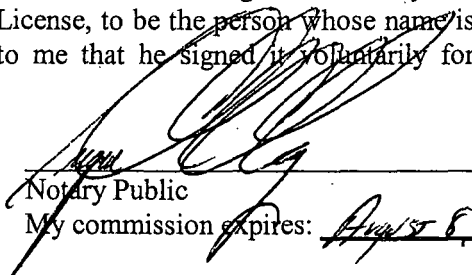
COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

On this 27th day of April, 2011, before me, the undersigned Notary Public, personally appeared Benjamin Daniels proved to me through satisfactory evidence of identification, being a Massachusetts Drivers License, to be the person whose name is signed on the preceding Affidavit, and acknowledged to me that he signed it voluntarily for its stated purpose.

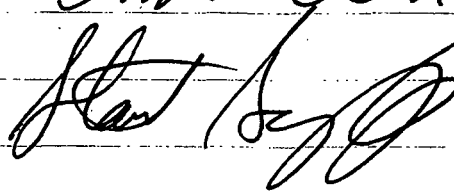
Attach official seal here




Notary Public
My commission expires: August 8, 2014

2011 AUG 11 P 3:21
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

I STANLEY SCRUGGS DEFENDANT
WOULD LIKE A HEARING WITHIN 5 DAYS
FROM THE DATE YOU RECEIVE THIS
FOR THE OP DETERMINING THAT THE
PROPERTY STOPS AT MY LOCATION
SABERTOOTH MOTORCYCLES LLC WAS
SENT A CERTIFIED LETTER NEVER
PICKUP A YEAR THE MAGISTRATE
HAD TRUCK AND TRAILER REMOVED
OR SAID HAVE IT TOWED
THAN AGAIN SENT A BILL 2-4-11
STILL NOT PICKUP

Jim O'Connell will be my attorney


2011 SEP -6 P 1:04

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS THIRTEENTH JUDICIAL CIRCUIT

SABERTOOTH MOTORCYCLES, LLC,

C.A. 2011-CP-39-1198

PLAINTIFF,

SUMMONS and NOTICE
with ANSWER AND RETURN TO
PRE-SEIZURE HEARING AND
COUNTERCLAIM

-V-

JURY TRIAL REQUESTED

STANLEY SCRUGGS,

DEFENDANT,

TO PLAINTIFF NAMED ABOVE, YOU ARE SUMMONED AND REQUIRED TO ANSWER OR OTHERWISE PLED to the pleading of the party issuing this Summons and Notice, in this action above captioned, which is this date served upon you with the pleading attached to the Summons and Notice, YOU ARE DIRECTED to serve your responding pleading to this pleading at the following address:

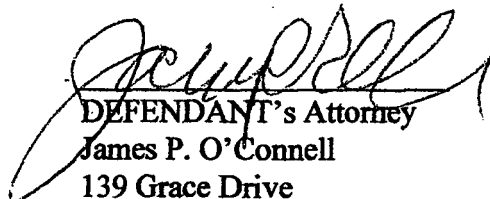
Party's attorney, James P. O'Connell, Attorney at Law, 139 Grace Drive, Grace Office Park, Easley, South Carolina (SC) 29640 or by Certified Mail at this address

within thirty (30) days after the day of service, not to include the day of service, if served by Certified Mail Return Receipt Requested, addressee only, the addition of five (5) days is added to the time to Answer or otherwise plead, and IF YOU FAIL TO ANSWER or otherwise plead or respond in writing, within the time noted, the party serving will apply to the Court for the relief requested in the pleading and JUDGMENT will be entered against you by DEFAULT.

IF YOU ARE A MINOR, INCOMPETENT OR A PRISONER a personal Guardian ad Litem may be or will be appointed for you by law, IF YOU DO NOT APPLY, for a Guardian ad Litem to be appointed.

J. Kuba 9, 2011

Easley, SC


DEFENDANT's Attorney
James P. O'Connell
139 Grace Drive
Easley, South Carolina 29640
Phone Fax 1-864-220-0005

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
SABERTOOTH MOTORCYCLES,)
)
)
Plaintiff,)
)
VS)
)
STANLEY SCRUGGS,)
)
)
Defendants.)

PICKENS IN THE COURT OF COMMON PLEAS
SOUTH CAROLINA

2011 SEP 12 P 1:51
THIRTEENTH JUDICIAL CIRCUIT

C.A. 2011-CP-39-1198

ANSWER
and Return to Notice of Pre-Seizure Hearing
DEMAND FOR PRE-SEIZURE HEARING
JURY TRIAL REQUESTED

The Defendant named above Answering the Complaint of the Plaintiff, named above,
AND the Notice of Right to Pre-Seizure Hearing, would show and allege to the Court:

I. Subject to any and all Motions, to include Motion to have the correct party in interest be named. The attachment of the Plaintiff indicates that the correct party is Scrugg's Wrecker & Towing Service. 1. Any and all allegations not responded to by Defendant are denied and strict proof is requested.

II. 1. Defendant requests that as to Paragraph 1. of the Notice of Right to Pre-Seizure Hearing, is responded to in that upon information and belief the vehicle described is the vehicle the subject of this action. 2. That the trailer is upon information and belief that as described.

2. Unknown as to the contents of the vehicle. Proof that the vehicle had any contents is requested. Paragraph 3 is denied.

III. 1. Immediate possession is denied, in that the vehicle, trailer and any contents if any have been located in South Carolina, Pickens County for over at least one year without any problems.

2. That if the vehicle were moved with trailer and if any contents, and moved out of state, the Defendant and or substitute party would have no recourse to any relief.

3. The vehicle, trailer and contents if any have been secured and have been over one year before

pick up by Defendant or the proper party.

III. There was no attached of any Bond nor any Undertaking attached to the Complaint and other papers served upon the Defendants.

A. The Claim and Delivery action is upon information and belief, flawed as not according to the laws and statutes of the State of South Carolina, and therefore the action or suit should be dismissed

1. The pleading the Complaint, indicates by Paragraph 1. that Plaintiff is a limited liability company operating in the State of Massachusetts, upon information and belief the same is denied and proof is request.

2. The Complaint and documents filed do not have filed with the Complaint and Notice of Pre-seizure Hearing, did not include a Surety Bond nor was any evidence included of the Surety Bond being posted, the same applies to the Undertaking being filed:

a. THE UNDERTAKING BY SURETY AND APPROVAL FOR CLAIM AND DELIVERY IS DISPUTED; 15-69-50 and 22-3-1340, as none was served upon Defendant with the Complaint and Notice.

FOR A FIRST ANSWER

1. Any and all allegations and statements made by Plaintiff, that are not admitted, denied, and responded to in any way, are denied and strict proof is requested.

2. As to paragraph one, upon information and belief, the allegation as to the Plaintiff being a limited liability company existing under the laws of the State of Massachusetts is denied, and as to being authorized to engage in business in South Carolina is denied, and strict proof is requested.

3. As to paragraph three, the same is denied as no proof of the statements were attached. Note the Affiant states "upon the best of his knowledge"?

4. As to paragraph two, the same is admitted.

5. As to paragraph four, upon information and belief, that Defendant responds as responded to above, in that there was and is no proof attached to the pleadings that Plaintiff is the owner of the vehicle as described, so therefore the same is denied and strict proof is requested.

6. As to Paragraph 5, and as stated by the Affidavit attached the same is denied and strict proof is requested.

7. As to Paragraph 6: the allegations are reported are denied and strict proof is requested.

8. As to paragraph Seven, upon information and belief, the allegations are denied as Defendant, and strict proof is requested.

9. As to paragraph Eight, upon information and belief, the allegations are denied and strict proof is requested.

10. As to paragraph Nine, the allegations, upon information and belief, are denied, as Defendant request strict proof of the allegations.

11. As to paragraph Ten, upon information and belief, the allegations are denied and strict proof is requested.

12. As to paragraph Eleven, the allegations are denied and strict proof is requested.

13. As to paragraph Twelve, all allegations are denied and strict proof is requested.

14. As to paragraph Thirteen all the allegations are denied and strict proof is requested.

15. As to paragraph Fourteen, all the allegations are denied and strict proof is requested.

16. As to paragraph Fifteen, all the allegations are denied and strict proof is requested.

17. As to paragraph Sixteen, all the allegations are denied and strict proof is requested.

18. As to paragraph Seventeen, all the allegations are denied and strict proof is requested.

19. As to paragraph Eighteen, all the allegations are denied and strict proof is requested.
20. As to paragraph Nineteen, all the allegations are denied and strict proof is requested.
21. As to paragraph Twenty, all the allegations are denied and strict proof is requested.
22. As to paragraph Twenty-One, all the allegations are denied and strict proof is requested.
23. As to paragraph Twenty-Two, all the allegations are denied and strict proof is requested.
24. As to paragraph Twenty-Three, all the allegations are denied and strict proof is requested.
25. As to paragraph Twenty-Four, all the allegations are denied and strict proof is requested.
26. As to paragraph Twenty-Five, all the allegations are denied and strict proof is requested.

FOR A SECOND ANSWER

27. As to paragraphs and allegations previously alleged, the same are denied and strict proof is requested.
28. Upon information and belief, the Defendant was requested to remove the vehicle, trailer and if any, any contents. As will be shown by documents already provided to Plaintiff or Plaintiff's attorney or other agent.
29. Upon information and belief, the Defendant was given information as to the vehicle, trailer and if any, any contents, being left and abandoned for over a year on the property or property believed to be owned by a party that requested Defendant to move the property.
30. Only after removing the trailer, vehicle, and contents if any, contact made as to the same.
31. Defendant is not holding the property for any other reason than that of storage, there has been no conversion nor anything else.
32. Defendant, upon information and belief, states there was no copy of any Bond attached to the pleadings, the Undertaking and or Bond must be attached to the pleadings to have jurisdiction.
33. Defendant request the storage fees as requested and that the requests and relief requested by

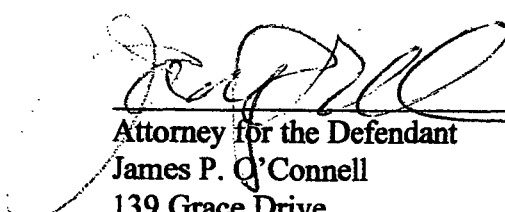
the Plaintiff be dismissed.

FOR A THIRD ANSWER AND BY WAY OF COUNTERCLAIM

34. Defendant repeats the prior responses and Answers by incorporation by reference here.
35. Defendant request the storage fees as requested and that the requests and relief requested by the Plaintiff be dismissed.
36. Defendant requests that Plaintiff pay for and be responsible for attorney fee and costs of the defense of this action.
37. Defendant requests any other fees and costs of the towing and moving of the vehicle, trailer and any contents if any.

WHEREFORE, Defendant requests of the Court to inquire into the matters set forth above and to Order the following:

1. The dismissal of the action and suit against the Defendant, for the reasons stated above.
2. Attorney fees and costs of the Defendant to be paid by the Plaintiff for the defense of this action.
3. The Court to enforce the laws as to Claim and Delivery in this state.
4. Defendant requests any other fees and costs of the towing and moving of the vehicle, trailer and any contents if any.



Attorney for the Defendant
James P. O'Connell
139 Grace Drive
Easley, South Carolina 29640
Phone/Fax: (864) 220-0005

Plenty 7, 2011
Jury Trial Request

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2012 JAN -9 P 3:16

Sabertooth Motorcycles, LLC,

Plaintiff,

vs.

Stanley Scruggs,

Defendant.

Case No.:2011-CP-39-1198

NOTICE OF HEARING

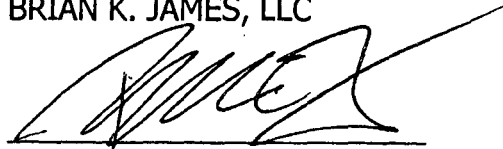
TO: JAMES P. O'CONNELL, Attorney for the Defendant, via fax to 864.220.0005 and US MAIL:

PLEASE BE ADVISED THAT on **February 16, 2012, at 9:30 a.m.**, at the Pickens County Courthouse, 214 East Main Street, Pickens, SC, the undersigned will move on behalf of the Plaintiff before the presiding judge for the relief specified in the Motion filed on October 28, 2011, which stated the following:

PLEASE TAKE NOTICE THAT the Plaintiff will move for immediate possession of a 1998 Mack Truck Tractor with VIX #1M1AA18Y8WW085600 and 1988 Trailer with VIN #1KKVD482XJL081070 (herein collectively described as "vehicle"), as referenced in the Plaintiff's Complaint and accompanying affidavit.

WHEREFORE, the Plaintiff moves for possession of said vehicle.

BRIAN K. JAMES, LLC



Brian K. James (11215)
Attorney for the Plaintiff
P.O. Box 93
Easley, SC 29641
Tel. 864.859.5918

Fax. 864.859.8848

Easley, SC
January 4, 2012

Cc: Cheryl Watson, Pickens County Clerk of Court, via fax and mail
Client

BRIAN K. JAMES, L.L.C.
Attorney at Law
609 West Main Street
Post Office Box 93 (Zip 29641)
Easley, South Carolina 29640
Tel. 864.859.5918
Fax. 864.859.8848

January 13, 2012

James P. O'Connell
Attorney at Law
139 Grace Drive
Easley, South Carolina 29640

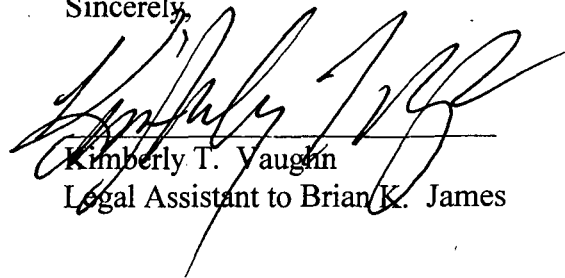
Re: Sabertooth Motorcycles, LLC vs. Stanley Scruggs
Case No.: 2011-CP-39-1198

Dear Mr. O'Connell:

Enclosed herein please find a filed copy of the *Notice of Hearing* regarding the above-referenced matter for your records, along with a duly executed *Certificate of Service*.

Thank you and should you have any questions or comments, please do not hesitate to contact our office.

Sincerely,



Kimberly T. Vaughn
Legal Assistant to Brian K. James

/ktv
encl.

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
Sabertooth Motorcycles, LLC)
)
Plaintiff,)
)
vs.)
)
Stanley Scruggs,)
)
Defendant.)

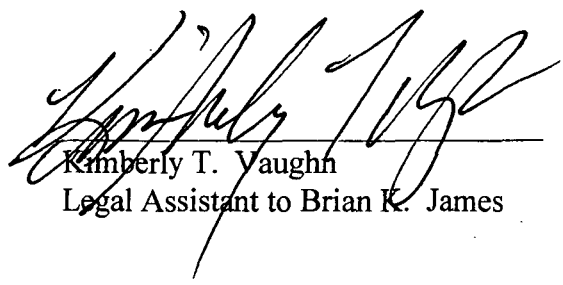
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
Case No.: 2011-CP-39-1198

CERTIFICATE OF SERVICE

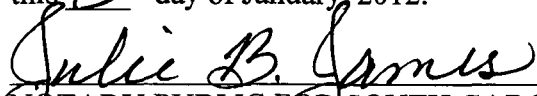
PERSONALLY appeared before me, the undersigned, who upon being duly sworn, deposed and stated the following:

1. That she is an employee of Brian K. James, L.L.C., Attorney at Law, 609 West Main Street (29640), P.O. Box 93, Easley, SC 29641, and that Brian K. James represents the Plaintiff in this matter.
2. That she served a *Notice of Hearing* on the Attorney for the Defendant. James P. O'Connell, Esq., through the United States Postal Service located in Easley, South Carolina, with sufficient postage affixed thereto, addressed as follows:

James P. O'Connell
Attorney at Law
139 Grace Drive
Easley, South Carolina 29640



Kimberly T. Vaughn
Legal Assistant to Brian K. James

Sworn to and subscribed before me
this 13th day of January, 2012.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 8/30/12

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
SABERTOOTH MOTORCYCLES, LLC)
Plaintiffs,)
VS)
)
STANLEY SCRUGGS,)
)
)
Defendant.)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
2012 JAN -6 A 10 2

C.A. 2011-CP-39-1198

RETURN TO MOTION

(JURY TRIAL REQUESTED)

The DEFENDANT named above Returning to the Motion for IMMEDIATE POSSESSION of vehicle noted and trailer; would respectfully show and allege to the Court:

A. As to the Affidavit alleged to be accompanying: NO AFFIDAVIT ATTACHED.

1. Defendant informs the Court that Plaintiff did not attached any Affidavit as stated.

- a. the Motion should be dismissed.
- b. If not, then as least continued, to allow Defendant time to review and if needed discover evidence as to the allegations stated by the Affidavit.

2. Defendant states that upon a review of the Complaint, no proof of ownership has been presented.

- a. no proof has been shown of the allegations; a. permission to park vehicle. b. no proof of the allegations of the Complaint, have been provided. c. As this is a claim and delivery of the two items, no undertaking has been filed. d. Plaintiff has not complied with the procedures for a Claim and Delivery by statute.

3. Defendant would further show the Court by copies of documents attached, that the property was properly removed and that the property has been safe.

- a. Plaintiff must prove that the property is in danger of being destroy or removed.

b. Defendant has not removed and or damaged the property.

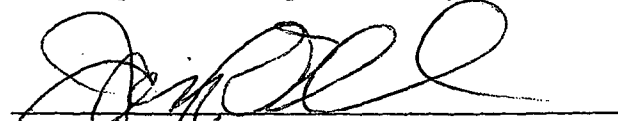
4. Plaintiff knows and or should know Defendant is requesting towing fee and storage fees.

B. DEFENDANT'S RESPONSE TO MOTION AS TO:

1. Defendant advises the Court that the Plaintiff made no attempt at communication until almost a year had passed, even though Plaintiff knew of the towing and the storage.
2. The knowledge of the towing and the storage satisfies the requirements of the law.
3. Defendant has no recourse as to Plaintiff if the property is allowed to be taken from the state.
4. Defendant responded to the allegations of the Complaint and requested a Jury hearing.

 2011

JURY HEARING REQUESTED


Attorney for the Defendant
James P. O'Connell
139 Grace Drive
Easley, South Carolina 29640
Phone/Fax: (864) 220-0005

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
Sabertooth Motorcycles, LLC,)
)
Plaintiff,)
)
vs.)
)
Stanley Scruggs,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No.:2011-CP-39-1198

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
POSSESSION OF VEHICLE**

Comes Now the Plaintiff Sabertooth Motorcycles, LLC, who moves for possession of its vehicle described in the filed motion.

Facts

The Plaintiff would show that it 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 Plaintiff.

Prior to the towing of the vehicle, in November 2010, Ben Daniels on behalf of Plaintiff had discussions with URP Holdings, 29 International Parkway, Dallas, TX (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 Defendant Scruggs' tow yard.

On February 4, 2011, after the Plaintiff's attorney contacted the Defendant, the attorney provided the Plaintiff with a fax written notice and bill he received from Defendant.

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

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.

The Plaintiff has demanded in writing return of the vehicle and the Defendant has refused to comply.

Law and Application

The law on this subject matter is clear that the towing company, Defendant Stanley Scruggs, must provide notice to the Plaintiff via certified or registered mail. Mr. Scruggs failed to do that.

Under §29-15-10 [Liens for Repair or Storage], a storage facility can charge for storage only after notification by certified or registered mail.

Section 16-11-760 [Parking on Private Property Without Permission; Removal of Vehicles] is consistent with and refers to the notice requirements of §29-15-10.

For further consistency, §56-5-5630 [Abandonment of Motor Vehicles on Highways] requires notice by certified or registered mail.

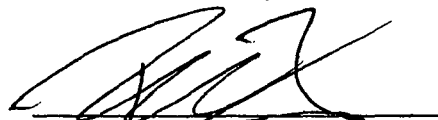
Moreover, Mr. Scruggs failed to notify law enforcement pursuant to §56-5-2525.

According to his affidavit, Plaintiff's officer, Mr. Daniels, called to law enforcement attempting to locate the vehicle and law enforcement was unaware of its location.

The Defendant, Mr. Scruggs, has no ownership or lien interest in the vehicle and should not be allowed to detain it.

Conclusion: The Plaintiff should be allowed to immediate possession of said vehicle because the Defendant failed to comply with the notice requirements and the Defendant has no legal interest in said vehicle.

BRIAN K. JAMES, LLC



Brian K. James (11215)
Attorney for the Plaintiff
P.O. Box 93
Easley, SC 29641
Tel. 864.859.5918
Fax. 864.859.8848

Easley, SC
January 4, 2012

AFFIDAVIT

BENJAMIN D. DANIELS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 AUG 11 P 3:26

I Benjamin Daniels, an individual residing at 30 Lyman Road, Chestnut Hill, Massachusetts 02467, under oath do hereby state that the following is true to the best of my knowledge:

1. I am the founder and Manager Member of Sabertooth Motorcycles, LLC (herein "Sabertooth") a motorcycle manufacturing company which formerly occupied and leased a facility at 100 Hurricane Creek Road, Piedmont, South Carolina.

2. Sabertooth is the owner of a 1998 Mack Truck Tractor with VIN #1M1AA18Y8WW085600 and 1988 Trailer with VIN #1KKVD482XJL081070 (herein collectively "Vehicle"). The Titles for each Vehicle are attached hereto as Exhibit A.

3. 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.

4. Prior to the towing of the Vehicle, in November 2010, I had discussions with URP Holdings, 29 International Parkway, Dallas, TX (herein "URP"), the entity that I believed was the owner of the Property at 104 Creek Road, Piedmont, SC in order to make arrangements with URP for the pick up of the Vehicle.

5. On or about January 20th, 2011, while making arrangements to pick up the Vehicle I was informed that the Vehicle was missing and not located where it had been parked at 104 Hurricane Creek Road, Piedmont, SC. At this time I contacted our former Landlord, Thomas Beebee of Griffin Thermal Products and Mr. Beebee maintained that he did not know where the Vehicle was.

6. Following information that the Vehicle was missing, I contacted the police and Sherriff's Departments for Piedmont SC to report the Vehicle missing or stolen and was informed by the Sherriff and Police Department that they had not been contacted by any tow company or any other party informing the police that the Vehicle had been towed, removed or that it was being stored anywhere.

7. Following January 20th, 2011 after contacting local tow yards within a reasonable radius of Piedmont, SC, Sabertooth representative Daniel Parker located the Vehicle at Scrugg's Wrecker & Towing Service, 4259 Calhoun Memorial Highway, Easley, SC (herein "Scruggs").

8. I provided the information regarding the towing of the Vehicle by Scruggs to my Attorney, Eugene M. Magier, PC, 687 Highland Avenue, Needham, MA 02494 (herein "Magier") and requested that Magier contact Scruggs and seek return of the Vehicle and personal property contained in the trailer portion of the Vehicle.

9. On February 4, 2011, following his telephone communication with Scruggs the day prior, Magier provided me with the facsimile written notice and bill he received from Scruggs attached hereto as Exhibit B (herein "Scruggs Notice").

10. At no time prior to receipt of the Scruggs Notice had I nor any Sabertooth representative or employee any notice (whether written or otherwise) from Scruggs or any party regarding the towing and storage of the Vehicle. The only notice I ever received regarding the towing and storage of the Vehicle is the Scruggs Notice demanding towing and storage charges of \$9,600.00, which notice was provided to Attorney Magier on or about February 4, 2011.

11. To the best of my knowledge, 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 totaling a value of approximately \$40,000.00.

12. Sabertooth has in writing demanded return of the Vehicle and Scruggs has refused to comply.

Signed under the pains and penalties of perjury this 27th day of April, 2011 by



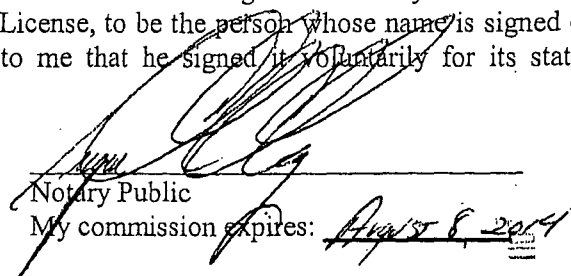
Benjamin D. Daniels

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

On this 27th day of April, 2011, before me, the undersigned Notary Public, personally appeared Benjamin Daniels proved to me through satisfactory evidence of identification, being a Massachusetts Drivers License, to be the person whose name is signed on the preceding Affidavit, and acknowledged to me that he signed it voluntarily for its stated purpose.

Attach official seal here



Notary Public
My commission expires: August 8, 2014

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
AUG 11 P 3:27

Title 29. Mortgages and Other Liens

Chapter 15. MISCELLANEOUS LIENS FOR SERVICES, DAMAGES, STORAGE OR MATERIALS

Current through 2011 Act No. 104

§ 29-15-10. [Liens for repairs or storage; sale of articles]

(A) A proprietor, an owner, or an operator of any towing company, storage facility, garage, or repair shop, or any person who repairs or furnishes any material for repairs to an article 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 retained in his possession; 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.

The article must be sold by a magistrate of the county in which the repairs were done or the article was stored.

(B) 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.

(C) Before the article is sold, the proprietor, owner, or operator of any towing company, storage facility, garage, or repair shop, or any person who repairs or who furnishes material for repairs to the article must apply to the appropriate titling facility including, but not limited to, the Department of Motor Vehicles or the Department of Natural Resources for the name and address of any owner or lienholder. For nontitled articles, where the owner's name is known, a search must be conducted through the Secretary of State's Office to determine any lienholders. The application must be on prescribed forms as required by the appropriate titling facility or the Secretary of State. If the article has an out-of-state registration, an application must be made to that state's appropriate titling facility. When the article is not titled in this State and does not have a registration from another state, the proprietor, owner, or operator of any towing

company, storage facility, garage, or repair shop, or any person who repairs or who furnishes material for repairs to the article may apply to the sheriff or chief of police in the jurisdiction where the article is stored to determine the state where the article is registered. The sheriff or chief of police shall conduct a records search. This search must include, but is not limited to, a search on the National Crime Information Center and any other appropriate search that may be conducted with the article's identification number. The sheriff or chief of police must supply, at no cost to the proprietor, owner, or operator of any towing company, storage facility, garage, or repair shop, or any person who repairs or who furnishes material for repairs the name of the state in which the article is titled.

(D) The magistrate, before selling the article, shall ensure that the owner or any lienholder of record has been notified of the pending sale. The magistrate must advertise the article for at least fifteen days by posting a notice in three public places in his township. The magistrate must pay to the proprietor, owner, or operator of any towing company, storage facility, garage, or repair shop, or any person who repairs or who furnishes material for repairs to the article the money due, receiving a receipt in return. Any remainder of the sale proceeds must be held by the magistrate for the owner of the vehicle or entitled lienholder for ninety days. The magistrate must notify the owner and all lienholders by certified or registered mail, return receipt requested, that the article owner or lienholder has ninety days to claim the proceeds from the sale of the article. If the article proceeds are not collected within ninety days from the day after the notice to the owner and all lienholders is mailed, then the article proceeds must be deposited in the general fund of the county or municipality.

(E) A proprietor, an owner, or an operator of the towing company, storage facility, garage, or repair shop, or any person who repairs or who furnishes material for repairs to the article may hold the license tag of any vehicle until all towing and storage costs have been paid, or if the vehicle is not reclaimed, until it is declared abandoned and sold.

(F) A proprietor, an owner, or an operator of the towing company, storage facility, garage, or repair shop, or any person who repairs or who furnishes material for repairs to the article must place a minimum bid of one dollar on the article being sold at public auction. If no higher bid is offered, the article must be awarded to the proprietor, owner, operator, or person who repairs or who furnishes material for repairs to the article at no cost.

(G) For purposes of this section, "article" means a motor vehicle, trailer, mobile home, watercraft, or other item or object that is subject to towing, storage, or repair and applies to any article in custody at the time of the enactment of this section. "Article" includes:

(1) an item that is towed and left in the possession of a towing, storage, garage, or repair facility; and

(2) personal property affixed to the article.

History. Amended by **2011 S.C. Acts, Act No. 22 (HB 3438), s 1**, eff. 5/9/2011.

Title 16. Crimes and Offenses

Chapter 11. OFFENSES AGAINST PROPERTY

Article 7. TRESPASSES AND UNLAWFUL USE OF PROPERTY OF OTHERS

Current through 2011 Act No. 104

§ 16-11-760. Parking on private property without permission; removal of vehicles; lien for towing and storage; sale of vehicles; penalty for violation

(A) It is unlawful for a person to park a vehicle, as defined in Section **56-5-5630**, on the private property of another without the owner's consent. If the property is for commercial use, the owner must post a notice in a conspicuous place on the borders of the property near each entrance prohibiting parking. Proof of the posting is considered notice conclusive against the person making entry.

(B) 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.

(C) If the vehicle is not claimed by the owner, lienholder, or his agent, the vehicle must be sold pursuant to Section **29-15-10** by a magistrate in the county in which the vehicle was towed or stored.

(D) A person violating the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned for not more than thirty days. This punishment is in addition to the other remedies authorized in this section.

Title 56. Motor Vehicles

Chapter 5. UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS

Article 39. DISPOSITION OF ABANDONED MOTOR VEHICLES ON HIGHWAYS

Current through 2011 Act No. 104

§ 56-5-5630. Notice to owners and lienholders; payment for release of vehicle; liability of lienholders; stolen vehicles

(A)(1) For purposes of this article, " vehicle" means a motor vehicle, trailer, mobile home, watercraft, or any other item or object that is subject to towing and storage, and applies to any vehicle in custody at the time of the enactment of this section. "Vehicle" includes:

- (a) items that are towed and left in the possession of a towing, storage, garage, or repair facility;
- (b) contents contained in the vehicle; and
- (c) personal property affixed to the vehicle.

Storage costs for those vehicles in custody at the time of the enactment of this section must not exceed sixty days.

(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.

(C) A lienholder is not subject to a criminal penalty imposed by law in this State for abandonment unless the vehicle is abandoned by the lienholder or his agent or if a false statement or report to a law enforcement officer is made as provided by Section **16-17-722**. The owner of a vehicle which has been stolen, whether or not the vehicle was subsequently abandoned, is liable for:

- (1) actual recovery and towing charges; and
- (2) storage costs that accrue beginning seven days after the vehicle was towed.

The law enforcement agency must, within two days after the vehicle's towing, notify the owner that the vehicle has been recovered, provide the owner with the location of the vehicle, and explain that daily storage charges will begin to accrue if the vehicle is not reclaimed within seven days of the towing date.

A vehicle is considered to be stolen when the registered owner notifies a police officer and files a report which is accepted and placed on the records of the sheriff or chief of police as a stolen vehicle. The law enforcement agency that requested the tow must provide the towing company and storage facility, at no cost to the towing company and storage facility, the owner's name and address. A law enforcement agency is not liable for any costs or fees associated with the towing and storage of a vehicle as provided by this section.

(D) The court may order restitution from a person convicted of stealing a vehicle to cover the costs associated with the recovery, towing, and storage of the vehicle.

Title 56. Motor Vehicles

Chapter 5. UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS

Article 19. STOPPING, STANDING AND PARKING

Current through 2011 Act No. 104

§ 56-5-2525. Notice to authorities of towing and storing of motor vehicle without person's knowledge; exceptions; return of vehicle

(A) For purposes of this section, "vehicle" means a motor vehicle, trailer, mobile home, watercraft, or any other item that is subject to towing and storage, and applies to any vehicle in custody at the time of the enactment of this section. "Vehicle" includes:

(1) items that are towed and left in the possession of a towing, storage, garage, or repair facility;

(2) contents contained in the vehicle; and

(3) personal property affixed to the vehicle.

(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.

(D) A towing company that tows away a person's vehicle without his knowledge and stores it is not required to return the vehicle to the person after the company's normal business hours.

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
SABERTOOTH MOTORCYCLES, LLC,))
)
) PLAINTIFFS,)
)
-VS-)
)
STANLEY SCRUGGS,)
)
)
) DEFENDANT.)

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

C. A. 2011-CP-39-1198

BRIEF Against
Motion for Immediate Possession
CLAIM AND DELIVERY

2011 JAN 17 37
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

DEFENDANT PRESENTS TO THE COURT and to opposing attorney or party the following questions and or issues presented by the Motion for Immediate Possession pursuant Rule 12 SCRPC.

The DEFENDANT, requests the Court to review the issues and questions as reported here.

QUESTION: 1. South Carolina Code of Laws Section 16-11-760: An unauthorized or unlawfully parked vehicle as defined by Sec. 56-5-5630 on private property without the property owners consent:

- a. The Complaint indicates that the trailer was parked with the owners consent and the trailer owners consent.
- b. See Paragraph 5 and 6 of the Complaint. Also, paragraphs 3, 4, and 5 indicate the same.
- c. That Code Section is not applicable.

QUESTION: 2. South Carolina Code of Laws Section 29-15-10: a. Trailer left with towing company the Defendant.

- b. Trailer has been continuously left in possession of towing company.
- c. Section C. does not need to be complied with as the party's all have information and knowledge of the ownership and towing and storage.

QUESTION: 3. South Carolina Code of Laws Section 56-5-5620: An abandoned vehicle seized by police.

- a. the vehicle here was not abandoned.
- b. the factual situation indicates that the party's knew of the trailer location.

QUESTION: 4. South Carolina Code of Laws Section 56-5-5630: An abandoned vehicle.

- a. The trailer was not abandoned.
- b. Complaint and Affidavit and facts indicate that the trailer was not abandoned.
- c. Even if the claim the vehicle might have been abandoned, then notice was given as
- d. indicated by the Complaint and Affidavit.

QUESTION: 5. South Carolina Code of Laws Section 56-5-5635: A law enforcement officer

that directs the towing.

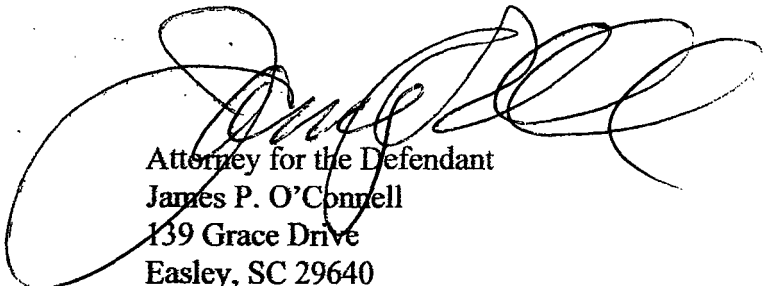
- a. the vehicle was towed at the request of the land owner or person in place of authority where the trailer was parked.
- b. A review of the Complaint and Affidavit of the Plaintiff would indicate all the factual issues.

QUESTION: 6. Trailer was towed with permission of the land owner or person in authority to order the towing.

- a. The Affidavit and Complaint of the Plaintiff with all letters attached,
- b. the Affidavit of the Defendant with all letter incorporated by reference,
- c. All indicate the trailer was not abandoned, was towed by authorization, and notice was and did take place to Plaintiff.
- d. The trailer has been stored at the storage facility of the towing company the Defendant.
- e. there is no harm to the trailer, and,
- f. if the trailer is release and taken out of state,
- h. Defendant would have no "real" recourse.
- i. Plaintiff may inspect the trailer.

Greenville, S. C.

James P. O'Connell
2011



Attorney for the Defendant
James P. O'Connell
139 Grace Drive
Easley, SC 29640
Phone/Fax(864) 220-0005

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
SABERTOOTH MOTORCYCLES, LLC

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C. A. No. 2011-^{CP}DR-39-1198

PLAINTIFF,

-V-

STANELY SCRUGGS,

DEFENDANTS..

AFFIDAVIT
OF
DEFENDANT

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
JAN 17 A 8:37

DEFENDANT, upon oath, makes the following statement and Affidavit pursuant to SCRCP: upon personal knowledge and not hearsay, except if stated or indicated as hearsay. Attached to and incorporated by reference are additional Affidavits and documents (if any).

1. I, Stanley Scruggs, was requested to tow a tractor and trailer by the landowner, who stated the trailer had sat on the land for about one year, and the landowner showed the letters as to the authorization and contact with Sabertooth showing a storage agreement.
2. The letters are attached to my Return and also, Sabertooth contacted me, and stated that I could have the tractor and trailer if Sabertooth could get the contents of the trailer.
 - a. I told Sabertooth yes. B. and Sabertooth agreed. C. then later an attorney calls demanding return. D. that was all done the same day, January 20th 2011. E. I tried to call Sabertooth back and the cell phone was turned off. F. I then sent a bill after attempting to Contact the attorney, to the Attorney, and then I started to get the letters.
3. The landowner had me move the tractor and trailer because Sabertooth would not come And pick the vehicle up. Landowner was advised by the Magistrate (I was told) to have the tractor and trailer moved.
4. The tractor and trailer were not park illegally as Sabertooth had been paying storage.

5. The tractor and trailer has no identification and no tags. The landowner gave me the information about Sabertooth.

6. The tractor and trailer do not have any license or fuel or insurance as the tractor and trailer are not road worthy as even the tires appear to be rotten.

7. Also, since towing to my storage lot, the tractor and trailer and in safe keeping, and, I have put locks on both. A. Sabertooth was told by me to come and check on the tractor and trailer, but as far as I know has not. B. The tractor and trailer are safe.


8. The tractor and trailer are located in South Carolina and if allowed to be moved out of State then Sabertooth does not even have to appear in Court later. A. I believe Sabertooth has gone bankrupt and may not even be the owner of the tractor and trailer. B. Also, I am unable to find and kind of license and title for the tractor and trailer to Sabertooth. I went to the South Carolina DMV and there is no record of the tractor and trailer, and I did this right after towing.

9. All notices were given as Sabertooth knew of the towing and did nothing.

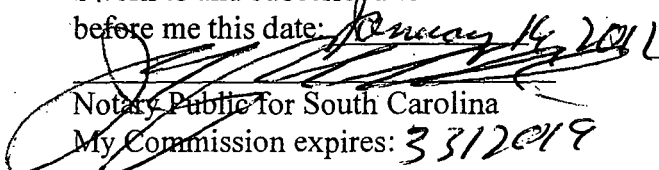
10. When Sabertooth, contacted my office, a. I checked the towing code, and; b. the tractor and trailer were towed with knowledge of the owner of the tractor and trailer and c. as requested by the owner of the land, see letters filed. above indicated. d. the code states "without knowledge of owner" only does the towing company forfeit.

11. Sabertooth knew and I did what the code states.

January 14, 2012


Defendant

Sworn to and subscribed to
before me this date:


Notary Public for South Carolina
My Commission expires: 3/31/2019

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FAMILY COURT

Sabertooth Motorcycles,
Plaintiff,

2012 MAR 20 AM 11:44 CASE NO. 2011-~~03~~-39-1198

-vs-

MOTION INFORMATION FORM
AND COVER SHEET

STANLEY SCRUGGS,
Defendant.

(check party requesting)

Name/address SC Bar # of Plaintiff's Attorney

Defendant's Attorney

Brian K. James

JAMES P. O'CONNELL # 4259

POB 93

139 GRACE DRIVE

Easley SC 29641

EASLEY, SC 29640

Telephone 864-859-5918

Telephone: 864-220-0005 Fax 864-220-0005

other

other

MOTION HEARING REQUESTED (attach Motion and complete Sections I & III)

FORM MOTION NO HEARING REQUESTED (complete Sections II & III)

SECTION I: HEARING INFORMATION

Nature of Motion: RECONSIDER

Estimated Time Needed: 30 Court Reporter Needed: yes

SECTION II: MOTION TYPE

Written Motion attached

Form Motion

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

James P. O'Connell
Signature of Attorney

March 8, 2012
Date Submitted

SECTION THREE: MOTION FEE

PAID - AMOUNT \$ 25.00

EXEMPT: 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 R 69SCRPC

Proposed Order submitted at request of the Court or, reduced to writing from motion made in open Court per Judge's instructions.

Court Reporter: _____

Other: ORDER OF CONTINUANCE from hearing

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached Order

Other: _____

JUDGE

CODE: _____

DATE: _____

CLERK'S VERIFICATION

Collected by: Michelle

DATE FILED: _____

MOTION FEE COLLECTED: _____

CONTESTED-AMOUNT DUE: \$25 Cash - paid

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
SABERTOOTH MOTORCYCLES,)
)
Plaintiff,)
VS)
)
STANLEY SCRUGGS,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. 2011-CP-39-1198

Notice of and Motion for
RECONSIDERATION
CHANGE and or AMENDMENT

Clerk of Court
Pickens County
South Carolina
MAR 20 11:11 AM

YOU WILL PLEASE TAKE NOTICE, THAT ATTORNEY FOR THE DEFENDANT HAS BEEN REQUESTED TO FILE, THIS MOTION TO RECONSIDER, CHANGE and or AMEND: TO: PLAINTIFF and Attorney for the Party. PLEASE TAKE NOTICE The Defendant's attorney will move before the Presiding Judge for the Court above indicated on the tenth (10th) day after service hereof or at such other time and place as is convenient to the court and Counsel, for an Order pursuant to Rule 52(b) Court may amend the Court's findings, make additional findings, and may amend the Judgment accordingly, with Rule 59(e) as to filing within 10 days of receipt of the Order from the Clerk of Court:

The DEFENDANT, requests the Court and hereby moves the Court to Reconsider, Alter and or Amend the Order of the Court that was issued by the Court recorded: MARCH 6, 2012, mailed to the Attorney for Defendant by the Greenville County Clerk of Court by regular mail and received by Defendant 's attorney March 14th 2012.

1. DEFENDANT advises the Court that this action was filed as a Claim and Delivery.
A. No undertaking and or Bond was served on the Defendant with the Claim and Delivery as stated by the Defendant's Answer and Counterclaim. And as stated by and in Court.

1. Plaintiff's attorney upon information and belief stated in Court at the Motion hearing the subject of this Motion that Plaintiff did not believe an undertaking or bond was of record.

B. DEFENDANT would show the Court that the South Carolina Code of Laws Section 15-69-50 does not contain any language as to Defendant having to have filed any lien.

2. The final paragraph of said code section states that if Plaintiff has not complied with the law then Defendant does not have to release the property until Plaintiff does have the proper undertaking. Copy of Code Section attached.

3. Even though Plaintiff argued no notice, again, the Code Sections quoted all state the party in possession, which was the landlord.

a. letters present to the Court showed that landlord and the alleged owner of the tractor and trailer knew of the situation.

C. DEFENDANT again states that the issue in the previous Motion and this Reconsideration is is there an undertaking or bond that takes the place of the tractor and trailer.

1. The suit was filed as a Claim and Delivery with a request for Pre-Seizure hearing.

2. Defendant requested the Pre-Seizure hearing.

3. Plaintiff filed for a Claim and Delivery, but no undertaking and or bond was posted as pointed out by Defendant's attorney at Court.

4. Unless the statute is complied with, the posting of a bond or undertaking, and that bond or undertaking is served with the Complaint and Claim and Delivery and Notice of Pre-Seizure hearing, the Court has no jurisdiction to make any other Order.

5. No undertaking and or bond was served with the Plaintiff's above named pleadings.

6. Defendant's attorney did allege and report the above information as part of the Defendant's

Answer and Counterclaim.

D. DEFENDANT further states that by Plaintiff's own statement Plaintiff knew of the location of the tractor and trailer (see Affidavit of Benjamin D. Daniels attached to Complaint). Again note paragraph three "parked with permission" and paragraph four as to "make arrangements to pick up". The Plaintiff was talking with the owner of the property where left.

1. Defendant was phoned by owner of property where parked.

2. Plaintiff phoned Defendant January 20th 2011 and therefore had knowledge of the location.

3. Suit to recover by Claim and Delivery was filed August 11th 2011, sixth months later.

4. 56-5-2525(B) Plaintiff had knowledge.

5. 56-19-10 Definitions: (13) "lien holder" means a person holding a security interest in vehicle.

see 56-19-10(29) "Security interest" an interest in a vehicle reserved or created by agreement and which secures payment or performance of an obligation, ... or other lien or encumbrance. A. As argued by Defendant the lien is the action or suit brought by the Plaintiff either against the tractor and trailer or the bond or undertaking.

6. As per 29-15-10(B), since Plaintiff states Plaintiff had notice of the location of the tractor and trailer since the filing of Plaintiff of the claim and delivery, Defendant has a security interest since a verdict in Defendant's favor is a judgment which is a lien.

THEREFORE:

1. The Court still had no jurisdiction over the suit as Plaintiff did not file and undertaking or bond, and further did not serve the Bond or undertaking with the Complaint for Claim and Delivery, Summons and Notice and Notice of Pre-Seizure, as that is how this Court came to hear the Motion.

2. If the Court finds that the Court has jurisdiction either by there being an undertaking or bond filed of record or otherwise, then Defendant states that immediate possession leaves no recourse for Defendant as the tractor and trailer will be out of state and Defendant will have no way to enforce any judgment.

3. Defendant further should not be made to relinquish the tractor and trailer as the owner of the property where the vehicle was located gave permission to move from the owner's property.

The Code section referred to has to deal with property removed without permission and at the order of the police authority.

4. Defendant does have a lien or security interest in and to the tractor and trailer as Plaintiff knew of the location and the same since January 20, 2011.

Based upon the filing of the Motion to Reconsider is made.

This Return to the Motion is based upon the laws of the State of South Carolina and the South Carolina Rules of Civil Procedure. Further, this Motion is not intended for delay per Rule 11 SCRPC. Applicant's attorney informs the Court that no communication has been made with the opposing party's attorney as the same would be futile.

Date:

March 17, 2012
Easley, SC


DEFENDANT'S Attorney

James P. O'Connell

139 Grace Drive

Easley SC 29640

Phone Fax 1-864-220-0005

§ 15-69-50. Sheriff shall serve affidavit and notice; required security; sheriff shall be directed to take property.

Archive

South Carolina Statutes

Title 15. Civil Remedies and Procedures

Chapter 69. RECOVERY OF PERSONAL PROPERTY

Current through 2011 Act No. 104

§ 15-69-50. Sheriff shall serve affidavit and notice; required security; sheriff shall be directed to take property

Upon the receipt of the affidavit and notice, with a written undertaking executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if the return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, including damages suffered on account of depreciation in value of the property pending the determination of the action, the sheriff shall forthwith serve the same upon defendant. If the defendant (1) fails to demand a preseizure hearing within five days of service, or (2) after such hearing the judge shall find that plaintiff's claim for immediate possession should be allowed, or (3) the clerk of court or judge finds that a preseizure hearing has been previously waived in writing as provided in this chapter, or (4) the clerk of court or judge finds, as provided in this chapter, that there is a probability that the subject property is in immediate danger of being destroyed or concealed by the possessor of such property, then the clerk of court or judge shall endorse upon the affidavit for possession a direction to the sheriff requiring him to take the property described therein from the defendant and keep it, to be disposed of according to law.

In case the plaintiff does not execute the required undertaking, the party having possession of the property shall retain it until the determination of the suit, and no endorsement allowing immediate possession shall be made on the affidavit until the appropriate undertaking is executed.

FORM 4

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

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3901198

SABERTOOTH MOTORCYCLES, LLC	2012 MAR 23 P 12: 02 STANLEY SCRUGGS
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRCP;
 - Rule 41(a), SCRCP (Vol. Nonsuit);
 - Rule 43(k), SCRCP (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRCP;
 - 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:
This matter comes before the Court on Defendant's Motion to Reconsider, for Change and/or Amendment. Defendant's Motion is DENIED.

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)

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**



 Circuit Court Judge



 Judge Code

2/16/2012

 Date

or Clerk of Court Office Use Only


This judgment was entered on 3/6/2012, and a copy mailed first class or placed in the appropriate attorney's box on 3/6/2012, to attorneys of record or to parties (when appearing pro se) as follows:

Brian Keith James P.O. Box 93 609 West Main Street -
 29640 Easley, SC 29641

James P. O'Connell 139 Grace Dr. Easley, SC 29640

 ATTORNEY(S) FOR THE PLAINTIFF(S)

 ATTORNEY(S) FOR THE DEFENDANT(S)



 Harold P Welborn, Jr. - Clerk of Court

Court Reporter



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STATE OF SOUTH CAROLINA:

IN THE FAMILY COURT

COUNTY OF PICKENS :

SABERTOOTH MOTORCYLES, LLC:

vs.

TRANSCRIPT OF RECORD

2011-CP-39-1198

STANLEY SCRUGGS :

February 16, 2012

Pickens, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

BRIAN KEITH JAMES, Esquire

Attorney for the Plaintiff

JAMES P. O'CONNELL, Esquire

Attorney for the Defendant

Maria M. Smith, RPR

Court Reporter

1 THE COURT: All right. Sabertooth Motorcycles vs.
2 Stanley Scruggs. Yes, sir.

3 MR. JAMES: Yes, ma'am. Your Honor, Brian James on
4 behalf of Sabertooth Motorcycles. And I passed up a memo and
5 attached affidavit to your Clerk up there and he's got a copy
6 as well. I don't want to hinder your ability to read this
7 but, essentially, the facts are that the Plaintiff is a
8 motorcycle company out of Boston. They had a truck and the
9 trailer that they stored down here around Piedmont on I-85,
10 and which they leased some property to place that on. The
11 lease ran out. They were trying to make arrangements to pick
12 up the trailer -- the tractor and the trailer. Ran into
13 problems there. The -- whoever the land owner was, and we
14 apparently -- it's changed hands or something, but they
15 called Mr. Scruggs to pick up the tractor and the trailer.
16 My folks -- and starting in November of 2010, and it really
17 got hot and heavy in January 2011, they started trying to
18 find out where this tractor and trailer was. So they called
19 around. They didn't know. They had no notice as to who had
20 gotten this vehicle. So eventually they found that it was
21 Mr. Scruggs. They contacted Mr. Scruggs -- not Mr. Scruggs
22 contacted them -- on February the 4th, 2011. It was at that
23 point that Mr. Scruggs sent them a bill and sent them
24 notice. Prior to that they had no knowledge.

25 Now, Mr. Scruggs is retaining this tractor and this

1 trailer for all this time, which is over a year, and won't
 2 release it until they pay him "X" amount of dollars, but he's
 3 asserting a lien. But I've attached the lien statute, your
 4 Honor, and all these statutes are very clear that to assert a
 5 lien you've got to provide prior notice by certified mail and
 6 you've got to notify law enforcement. That has never been
 7 done. I don't think that Mr. Scruggs is even asserting that
 8 it has been done. And, therefore, our position is that he
 9 does not have a lien on this vehicle and he doesn't have the
 10 right to retain it.

11 Now, his claim that he may be owed money is a separate
 12 matter from today and maybe he is, maybe he isn't, that'll
 13 have to be determined at a later date, but he can't detain
 14 this vehicle. And we provided our affidavit from the owner
 15 of the company which substantiates what I just told you, and
 16 also copies of the statutes and, therefore, I think we've met
 17 our burden of proof.

18 THE COURT: All right. Mr. O'Connell?

19 MR. O'CONNELL: Your Honor, please the Court?

20 THE COURT: Yes, sir.

21 MR. O'CONNELL: First of all ---

22 THE COURT: Have you-all perfected a lien on this, on
 23 this tractor/trailer? I mean is there a lien?

24 MR. O'CONNELL: I don't believe Mr. Scruggs has filed a
 25 lien, but that's not what's really happening here.

1 THE COURT: Okay.

2 MR. O'CONNELL: As you can see from our documents that
3 we've already filed with the Court, and Mr. James has, we
4 have already established that he was authorized to pick this
5 trailer. All those liens that they're talking about say
6 unauthorized. He's authorized to pick up the trailer.

7 THE COURT: But is he authorized to retain the
8 trailer?

9 MR. O'CONNELL: Well it doesn't say anything about
10 retaining it. Your Honor, first things first: When you do a
11 claim and delivery, either Magistrate Court or Civil Court,
12 you have to file an undertaking or a bond. First of all,
13 does the file contain a bond or an undertaking? If there's
14 not one in the file -- we've not been served one. The code
15 section says, that I've quoted in my Complaint, the answer to
16 the Complaint, Counterclaim, states you're supposed to serve
17 a -- on Mr. Scruggs, a claim and delivery, a bond. I have
18 not seen one.

19 And from my experience in Court in doing these things,
20 a lot of times employer -- the company will sign their own
21 bond. You ain't supposed to do that. That's not supposed to
22 be done. What happens is they have to get a bonding
23 company. Because if they get the right to this vehicle
24 today, and they take it away or when you order it, what do we
25 sue against? This company is out of Boston or somewhere. We

1 believe its filed bankruptcy.

2 To give you a little history, he wasn't notified until
3 around December of 2010. Prior to that, as you can see from
4 what we filed, there was a letter written in '09 saying
5 here's the deal, you're renting the space -- and this is how
6 it's not unauthorized, it was authorized -- he was renting
7 this space. Then in around November, October of '10 the
8 owners of the building said, wait, we're the new owners
9 coming in, or the prior owners coming, you must do something
10 with this. They then authorized him to take the vehicle.
11 When he got the vehicle, he searched for the company that
12 owned it. He did all the work trying to find it. When he
13 found it he notified them. At first they said -- and this is
14 factual basis, it'll come out at a hearing if it goes that
15 far -- they said, well, for \$5,000 you can have it and take
16 everything..

17 The third thing here is they showed proof of ownership
18 of the pulling part, the truck part. They do not show any
19 ownership proof of the trailer or the contents of the
20 trailer. They must show that. They don't show that. I have
21 seen no documents from Mr. James other than something we
22 already had, a title to the cab part; you know, the part that
23 pulls the trailer and everything, so -- and we have pictures
24 here that I've already shown Mr. James where it can't be
25 taken, it's not road-worthy; neither the cab or the trailer

1 part is road-worthy.

2 It's what I'm trying to point out is, before we even
3 get to any of this other part, is there a bond or an
4 undertaking posted in the file? When you do a claim and
5 delivery -- and that's what he's asking for -- immediate
6 possession, you must serve a bond or an undertaking with the
7 paperwork and that wasn't done.

8 Now, there could be one in the file but when I went to
9 look in the file there was none. It's supposed to be two
10 times the amount they claim. They're claiming \$90,000 in
11 their Complaint, so it should be a bond in the amount of
12 \$100,000, or -- if we didn't do that and in this Court
13 ordered that they get immediate possession, they would take
14 it out of the State of South Carolina and we'd be with
15 nothing.

16 They filed the suit. We answered. So, in a sense, we
17 do have a lien asking for our money back for the storage and
18 everything else in it. If we need to perfect a lien I need
19 the Court to tell me that that's what we need to do because
20 once they file that suit and we responded with a Counterclaim
21 saying you owe us money, that in effect is a lien, because if
22 we win it becomes a judgment, which is a lien against
23 everything that -- what's over there.

24 THE COURT: Okay. Your last statement there was a new
25 one for me but go ahead.

1 MR. O'CONNELL: Ma'am?

2 THE COURT: I said your last statement was a new one on
3 me.

4 MR. O'CONNELL: Well, no, it does. The judgment
5 becomes a lien so, therefore, when you Counterclaim it is in
6 the form of a lien saying you owe me money. Anyway, to get
7 to the point, if you were to read our paperwork over you'll
8 see I filed a statement saying that also there's no affidavit
9 attached. He did attach his affidavit to his Complaint, but
10 when he filed for the claim and delivery hearing there was no
11 attachment, but that's up to the Court to determine. We did
12 put our letters with it. We did put my client's affidavit,
13 which you'll read over, say all these code sections actually,
14 and I did a brief also, it's attached to my paper, all they
15 all say is unauthorized. He was authorized to take it.

16 THE COURT: Okay. All right.

17 MR. O'CONNELL: So bottom line is, is first I'd like --
18 oh, and we've also agreed that the caption ought to read
19 really instead of Stanley Scruggs, it should be Stanley
20 Scruggs, doing business as Scruggs Wrecker & Towing Service.

21 THE COURT: All right.

22 MR. O'CONNELL: And so we've agreed to change the
23 caption if the Court would agree to change the caption on it.

24 THE COURT: Certainly.

25 MR. JAMES: We've agreed to keep his name but put DBA.

1 MR. O'CONNELL: Yeah.

2 THE COURT: Certainly.

3 MR. O'CONNELL: So the point I'm trying to raise here
4 is if this is taken from the State and there's nothing there
5 he has nothing.

6 THE COURT: Okay.

7 MR. O'CONNELL: And we'd just like to keep it here.
8 It's secured. They can go look at it. They can check it
9 out. They can even check the contents of it because we don't
10 know what's in the truck either, your Honor, it's been
11 locked.

12 THE COURT: Okay.

13 MR. O'CONNELL: Thank you, your Honor.

14 THE COURT: Thank you. Yes, sir?

15 MR. JAMES: Very briefly, your Honor. I was looking
16 through the statutes when Mr. O'Connell was talking and I
17 don't see where there's any distinction made between
18 authorized and non-authorized. If he can point that out,
19 what he's referring to, because I don't see it. And as far
20 as the bond goes, your Honor, we don't -- number one, we
21 don't believe we need to post a bond because they actually
22 own the property and there is no lien, but if we need to post
23 a bond, we'll post it, we just need to determine the amount
24 that needs to be posted.

25 And as the Court will see, even from their own

1 documents, there wasn't any notification from Mr. Scruggs to
 2 the company until they notified him. And that's the whole
 3 point of the lien. With regard to the trailer that he
 4 mentioned, it's clearly connected. I haven't seen a title
 5 for it but I don't think anybody is disputing that they have
 6 the trailer, that it's attached to the truck and that it's
 7 their truck and their parts. And with regard to the
 8 affidavit, your Honor, it's the same affidavit I filed with
 9 the Court. I filed -- when I originally filed this case, I
 10 attached my notice for the procedure hearing, Summons,
 11 Complaint, affidavit, everything; it's the same document,
 12 there's no change to it.

13 THE COURT: All right. Thank you. I will take this
 14 matter under advisement and issue my decision shortly.

15 MR. JAMES: Thank you.

16 MR. O'CONNELL: Thank you, your Honor.

17 MR. JAMES: Are we free to go, your Honor?

18 THE COURT: Yes, certainly.

19 MR. JAMES: Okay. Thank you.

20 ---END OF REQUESTED TRANSCRIPT OF RECORD---

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STATE OF SOUTH CAROLINA :

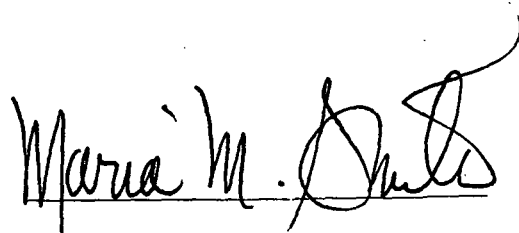
CERTIFICATE OF REPORTER

COUNTY OF PICKENS :

I, the undersigned Maria M. Smith, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record, of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal in the Court of Common Pleas for Pickens County, South Carolina, on the 16th day of February, 2012.

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

May 16, 2012



Maria M. Smith, RPR

Official Court Reporter

*

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-

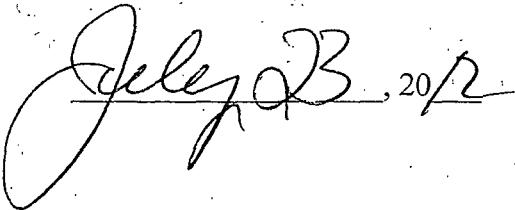
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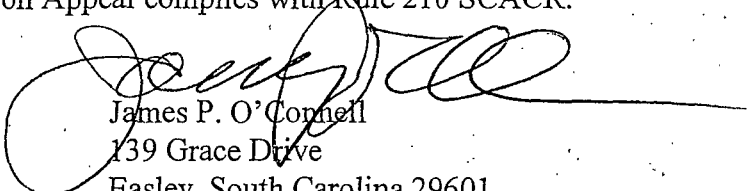
Appellant.

IN THE MATTER OF NOTICE OF RIGHT TO PRE-SEIZURE HEARING AND MOTION OPPOSING

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 210 SCACR.

 20/12


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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
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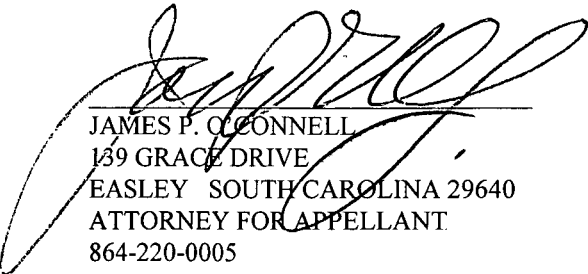
Appellant.

IN THE MATTER OF NOTICE OF RIGHT TO PRE-SEIZURE HEARING AND MOTION OPPOSING

CERTIFICATE OF SERVICE

APPELLANT ADVISES the Court, that on July 30th 2012, the Appellant did cause to be served upon the attorney for the Respondent, Brian James, by hand delivery to the address noted below; the Final Brief of the Appellant and the Record of Appeal, so stated by attorney for Appellant.

July 30, 2012


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