Filed 3/23/17 Peterson-More v. Club Towing CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THOMAS D. PETERSON-MORE, Plaintiff and Appellant, v. CLUB TOWING et al., Defendant and Respondent.	B268035 (Los Angeles County Super. Ct. No. GC050380)

APPEAL from an order of the Superior Court of Los Angeles County, Anthony J. Mohr, Judge. Reversed and remanded.

David Romley for Plaintiff and Appellant.

Harrington, Foxx, Dubrow & Canter, LLP, Daniel E. Kenney and Karina M. Lobeto for Defendant and Respondent.

INTRODUCTION

Plaintiff Thomas D. Peterson-More appeals the trial court's judgment in favor of Defendants Club Towing and Tony Calvin Edwards following a bench trial on his claim for conversion. Defendants towed and stored Plaintiff's car, and demanded Plaintiff pay $9,180 to extinguish the lien on the car for storage fees. Defendants refused Plaintiff's settlement offer for $2,500, and Plaintiff brought this action for conversion. The court found there was no conversion, instead concluding that Defendants had a lien for 120 days worth of storage fees on the vehicle, i.e. $6,000.

We reverse. Defendants failed to comply with Civil Code[1] section 3068.1, subdivision (b), and did not commence lien sale proceedings within 15 days of towing the car. Compliance with section 3068.1, subdivision (b) is necessary to claim a lien worth greater than 15 days of storage fees. Thus, Defendants only had a lien worth 15 days of storage fees, i.e. $750. By demanding drastically more for return of the vehicle, Defendants wrongfully exercised dominion over Plaintiff's car. We remand for the trial court to find Plaintiff's damages and enter judgment in Plaintiff's favor.

FACTS AND PROCEDURAL BACKGROUND

Plaintiff kept a car and a boat outside his cabin on a gravel driveway at Big Bear Lake. Big Bear Lake sent out notices warning residents, including Plaintiff, that deputy sheriffs would start to ticket and impound unregistered and illegally parked vehicles. On August 24, 2009, Big Bear sent a letter to Plaintiff's

---

[1] All subsequent statutory references are to the Civil Code unless indicated otherwise.

cabin stating that his property had been inspected and the boat and car were improperly parked there. Plaintiff was given ten days to move the vehicles. As this was his vacation home, he was unaware of the notices and did not comply.

In October 2009, Big Bear Lake engaged Defendants to remove Plaintiff's boat and car. Although the boat's identification information appears to have been readily available, Defendants could not confirm that Plaintiff owned the car as the vehicle identification number (VIN) was not visible. Because two different tow truck drivers towed the vehicles, Defendants did not utilize the boat's ownership information to help determine the ownership of the car. Plaintiff learned of the towing and within a couple of weeks, Plaintiff paid the fees to retrieve his boat. It appears to have taken longer for Plaintiff to locate the car.

When Plaintiff tried to retrieve his car in December 2009, Club Towing said he owed $9,180 to extinguish the lien on the vehicle for storage fees.[2] Plaintiff offered $2,500 as settlement, which was not accepted by Defendants.[3] We note that

---

[2] Defendants charged $50 per day in storage fees and $180 for towing.

[3] The trial court found that Defendants did not accept Plaintiff's settlement offer because Plaintiff conditioned his offer on his ability to inspect the vehicle and Defendants objected to this term of the settlement. We note that the owner has a right to such an inspection. Under section 3068.1, subdivision (d)(1)(A), any lien for storage fees is extinguished if the lien holder refuses to permit inspection of the vehicle by the owner after the owner makes a written demand either by personal service or certified mail. It is unclear whether Plaintiff complied with these formalities in order to inspect his car and thus this aspect of the statute is not at issue.

Defendants never commenced lien sale proceedings on the car.[4]

Plaintiff then brought this action for conversion against Defendants. Plaintiff asserted that Defendants converted his car by refusing to return it to him and that Defendants lacked any lien rights to the car because they failed to comply with section 3068.1. Plaintiff sought punitive as well as compensatory damages.

The parties agreed that Plaintiff's car was worth less than $4,000 and thus section 3068.1 was applicable. At issue during trial was the proper interpretation of section 3068.1. The parties disputed whether Defendant had a lien on the vehicle because Defendant failed to commence lien sale proceedings within 15

---

[4] Defendants asserted at oral argument that they did in fact commence lien sale proceedings within 15 days of towing the car. After a thorough inspection of the record, we conclude otherwise. The trial court found that Defendants never commenced lien sale proceedings. The court's statement of decision states: "When Club Towing found the VIN number, it did not start a lien sale because two to three years had passed, and by then Club Towing had heard from the owner and had concluded that conducting a sale would only have been more costly to the owner." In addition, Defendant's failure to commence lien sale proceedings is the focal point of Plaintiff's trial brief and post-trial brief. On appeal, Defendants do not directly respond to Plaintiff's arguments regarding their failure to commence the lien sale within 15 days. Rather, Defendants responded arguing that the statute should be construed as not requiring commencement of the lien sale when the VIN is altered. In addition, Defendants admit in their brief: "Although Respondents eventually located the VIN number two to three years after the car was first towed, they reasonably chose not to initiate a lien sale because [Plaintiff] had already identified himself as the owner of the vehicle and instituting a lien sale at that time would only be more costly to [Plaintiff]."

days of towing the car. The parties also sparred over whether section 3068.1, subdivision (b)(3) created an exception when the VIN was either painted over or removed from the vehicle such that Defendants were not required to commence lien sale proceedings.

Without addressing Defendants' failure to commence lien sale proceedings, the trial court found that the case turned on whether the VIN was altered or removed from the vehicle. Finding that the VIN was altered, the court held that Defendants' lien was worth 120 days of storage fees. The court concluded "[t]he evidence does not preponderate in favor of a conversion, with the result that the plaintiff shall take nothing by way of his complaint against defendants." Plaintiff appeals.

DISCUSSION

"In reviewing a judgment based upon a statement of decision following a bench trial, we review questions of law de novo. [Citation.] We apply a substantial evidence standard of review to the trial court's findings of fact. [Citation.] Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings." (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981.)

1. Defendants Only Had a 15-Day Storage Lien

The trial court denied Plaintiff's conversion claim because it found Defendants had a 120-day lien on the vehicle. This conclusion was based on the court's interpretation and application of section 3068.1, subdivision (b)(1).

In reviewing the trial court's interpretation on appeal, we apply the cannons of statutory construction. "Our role in construing a statute is to ascertain the Legislature's intent so as to effectuate the purpose of the law. [Citation.] In determining intent, we look first to the words of the statute, giving the language its usual, ordinary meaning. If there is no ambiguity in the language, we presume the Legislature meant what it said, and the plain meaning of the statute governs. [Citation.]" (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000.) "Furthermore, we consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose." (*Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063 (*Curle*).)

In relevant part, section 3068.1, subdivision (a)(1) establishes that persons who tow and store a vehicle (when authorized to do so by a public agency) have a lien on the vehicle for the costs of the towing and storage. The statute states that this lien arises on the date of possession, i.e. when "the vehicle is removed and is in transit." (§3068.1, subd. (a)(1).) Subdivision (b) of the statute sets forth the rules for enforcing a lien against a vehicle worth $4,000 or less. Subdivision (b), states:

> "If the vehicle has been determined to have a value not exceeding four thousand dollars ($4,000), the lien shall be satisfied pursuant to Section 3072. Lien sale proceedings pursuant to Section 3072 shall commence within 15 days of the date the lien arises. No storage shall accrue beyond the 15-day period unless lien sale proceedings pursuant to Section 3072 have commenced. The storage lien may be for a period not exceeding 60 days if a completed notice of a pending lien sale form has been filed pursuant to

> Section 3072 within 15 days after the lien arises. Notwithstanding this 60-day limitation, the storage lien may be for a period not exceeding 120 days if any one of the following occurs:
>
> (1) A Declaration of Opposition form is filed with the department pursuant to Section 3072.
>
> (2) The vehicle has an out-of-state registration.
>
> (3) The vehicle identification number was altered or removed.
>
> (4) A person who has an interest in the vehicle becomes known to the lienholder after the lienholder has complied with subdivision (b) of Section 3072." (§3068.1, subd. (b).)

Here, the trial court entirely overlooked the first part of subdivision (b), which requires commencement of the lien sale. The court did not analyze the significance of Defendants' failure to commence the lien sale. Rather, the court relied on the latter portion of subdivision (b) to conclude Defendants had a 120-day ($6,000) lien on Plaintiff's car. We disagree with this interpretation, as the statute must be read as a whole, giving meaning to each word, phrase, and sentence. (*Curle, supra,* 24 Cal.4th at p. 1063.)

The second and third sentences of subdivision (b) unequivocally require the lien holder to commence lien sale proceedings within 15 days from the date it towed the car in order to claim any lien greater than 15 days of storage fees. The legislature repeatedly used the word "shall" in these sentences, stating "[l]ien sale proceedings . . . *shall* commence within 15 days" and "[n]o storage *shall* accrue beyond the 15-day period unless lien sale proceedings . . . have commenced." (§ 3068.1, subd. (b) (italics added).) It is well established that " 'shall' is

ordinarily construed as mandatory." (*Common Cause of California v. Board of Supervisors* (1989) 49 Cal.3d 432, 443.) Thus, commencement of the lien sale in order to obtain a lien for more than a 15-day period of storage was compulsory for Defendants. Based on the plain meaning of the subdivision, failure to commence lien sale proceedings prohibited accrual of a lien greater than 15 days of storage fees.

The fourth sentence of subdivision (b) sets a maximum limit to the amount of the lien, stating that the lien may not "exceed[] 60 days if a completed notice of a pending lien sale form has been filed pursuant to Section 3072 within 15 days after the lien arises." (§ 3068.1, subd. (b).) Again, the statute reiterates the requirement that the lienholder commence the lien sale in order to obtain the maximum lien of 60 storage days on the vehicle.

Finally, the last portion of subdivision (b) extends the lien to 120 storage days where complications with the vehicle's registration and identification would likely delay the sale. The fifth sentence of subdivision (b) acknowledges that although most liens may only last 60 days, there is a special exception increasing the length of the storage fees lien in certain circumstances. These circumstances include instances when owners oppose the lien sale, when the vehicle is registered out of state, when the lien holder belatedly learns of a party who has an interest in the vehicle, and when there is an altered or removed VIN number.

That said, the latter portion of subdivision (b) does not alleviate the lien holder's duty to commence lien sale proceedings set forth in the former. This plain language reading of the statute is logical and reasonable: the lien holder must make

efforts to timely commence sale proceedings so that the owner of the vehicle is properly noticed, but the statute gives the lien holder more time to complete the sale when there are obstacles to the sale, like impediments to owner identification.[5]

In sum, no storage fees could accrue beyond the 15-day period in this case, regardless of whether the VI was altered or removed, because Defendants failed to commence lien sale proceedings. Alteration or removal of the VIN would simply extend the amount of time the lien holder could collect storage fees prior to selling the vehicle under section 3068.1. Alteration or removal of the VIN does not exempt the lien holder from commencing lien sale proceedings with the Department of Motor Vehicles as required by section 3068.1, subdivision (b).

Based on the foregoing, Defendants only had a 15-day storage fee lien on the car, worth $750.

2. Plaintiff Proved Conversion

Plaintiff argues that the trial court's findings in the statement of decision show that Defendants committed conversion. Plaintiff asserts that the case should be remanded for the trial court to find damages. We agree.

---

[5] When the VIN is unavailable, the lienholder must still commence lien sale proceedings under section 3072 by requesting the names and addresses of the registered and legal owners of record. (§ 3072, subd. (a).) "The request shall include a description of the vehicle, including make, year, model, identification number, license number, and state of registration. If the vehicle identification number is not available, the Department of Motor Vehicles shall request an inspection of the vehicle by a peace officer, licensed vehicle verifier, or departmental employee before releasing the names and addresses of the registered and legal owners and interested parties." (*Ibid.*)

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendants' conversion by a wrongful act or disposition of property rights; and (3) damages. Conversion is a strict liability tort." (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066; *Poggi v. Scott* (1914) 167 Cal. 372, 375 ["The foundation for the action of conversion rests neither in the knowledge nor the intent of the defendant. It rests upon the unwarranted interference by defendant with the dominion over the property of the plaintiff from which injury to the latter results."].) "Unjustified refusal to turn over possession on demand constitutes conversion even where possession by the withholder was originally obtained lawfully." (*Cerra v. Blackstone* (1985) 172 Cal.App.3d 604, 609; *Schroeder v. Auto Driveaway Co.* (1974) 11 Cal.3d 908, 918.)

Here, the trial court found that Plaintiff was the owner of the car. The court also found that Defendant towed Plaintiff's car, stored it, and demanded $9,180 in exchange for returning it. As a matter of law, Defendants could only claim a lien worth 15 days of storage fees ($750) because Defendants failed to comply with section 3068.1. This unreasonably high demand in exchange for the vehicle constituted a wrongful act, interfering with Plaintiff's dominion over his car.

The conversion here resembles the conversion in *Weinberg v. Dayton Storage Co.* (1942) 50 Cal.App.2d 750 (*Weinberg*). There, the plaintiff contracted with a New York moving company to move her furniture across the country, where it was to be stored by a California storage company. (*Id.* at p. 752.) Although the furniture weighed 4,415 pounds, the New York moving company represented to the California storage company that it

weighed 7,900 pounds. (*Id.* at p. 755.) The California company refused to return the furniture to the plaintiff unless she paid storage fees on 7,900 pounds, even though the plaintiff contested the weight of the furniture being stored. (*Id.* at pp. 754-755.) The plaintiff brought a claim for conversion against the storage company and the trial court found in her favor. (*Id.* at pp. 755-756.) The Court of Appeal affirmed, concluding that charging excessive fees for return of the furniture was conversion and holding that the storage company had a duty to ascertain the true weight of the furniture before making a demand for payment. (*Id.* at pp. 757-758.)

Likewise here, Defendants charged excessive fees, well beyond the statutorily authorized lien, for return of Plaintiff's vehicle. We note that even if Defendants had hypothetically complied with section 3068.1, they could only have had a lien for 120 storage days ($6,000). Instead, Defendants charged $9,180 for the vehicle's return, which was well beyond any possible statutorily authorized lien and twelve times the actual lien in this case. Like the storage company in *Weinberg*, Defendants had a duty to ascertain the true amount of their lien ($750) before demanding such extraordinary fees in exchange for the vehicle.

We therefore conclude Plaintiff proved Defendants converted his car. We remand for the trial court to determine Plaintiff's compensatory and punitive damages.

DISPOSITION

We reverse the trial court's judgment in favor of Defendants. We remand for the trial court to find Plaintiff's

damages and enter judgment in Plaintiff's favor. Plaintiff Thomas D. Peterson-More is awarded costs on appeal.

SORTINO, J.*

WE CONCUR:

FLIER, ACTING P. J.

GRIMES, J.

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.