

EXAMINERS' ANALYSIS OF QUESTION NO. 9

(a) Carolyn will not be successful in recovering her vehicle until she pays Greg's bill. Although Carolyn is the owner of the convertible, Greg has a lien on it, which entitles him to retain possession of the vehicle until Carolyn's debt to him is paid.

A lien is "a right or claim against some interest in property created by law as an incident of [a] contract." *Cheff v Haan*, 269 Mich 593, 598 (1934). The Garage Keeper's Lien Act, MCL 570.301 et seq., outlines Greg's statutory right to a lien on Carolyn's vehicle. A garage keeper's lien requires a contract that is "expressed, implied, written, or unwritten" between a garage keeper and a vehicle's owner. MCL 570.303(1). The lien is in the amount of money due from the vehicle's owner "for the storage, maintenance, keeping, diagnosis, estimate of repairs, and repair of the vehicle and for . . . supplies furnished, expenses bestowed, or labor performed on the vehicle at the request or with the consent of the owner of the vehicle." The lien attaches to the vehicle as long as the vehicle remains in the possession of the garage keeper, i.d., and attaches "the day the garage keeper performs the last labor or furnishes the last supplies for which a lien is claimed against the vehicle." MCL 570.303(2).

Here, the facts indicate that Carolyn and Greg entered into an oral contract for the repair of the vehicle. Greg repaired the vehicle and has kept it in his possession by storing it. Thus, he satisfies the statutory criteria for the creation and attachment of a lien for the amount due on those repairs and storage. As a result, Carolyn is not entitled to recover the vehicle until she pays the amount owed to Greg.

The Court of Appeals has also held that a common-law artisan's lien survived enactment of the Garage Keeper's Lien Act. *Nickell v Lambrecht*, 29 Mich App 191, 196-198 (1970). The common-law lien attaches when someone "who by labor, skill, or materials adds value to the chattel of another while under an express or an implied agreement." *Id.* at 196. The lien is "a possessory lien . . . for the value of his services and [the artisan] may retain the chattel in his possession until the same be paid." *Id.* The same facts that support Greg's entitlement to retain possession of Carolyn's convertible under the Garage Keeper's Lien Act also support his entitlement to retain possession of the convertible under the common law.

(b) Greg is entitled to charge Carolyn \$5 per day as a storage fee. The Garage Keeper's Lien Act allows the lienholder to include as part of the lien, "an amount of not more than \$10.00 per day for the storage of the vehicle," unless the parties otherwise agreed to something else in writing. MCL 570.304. As a result, absent an alternative agreement, Greg's daily \$5 storage fee is allowed under Michigan law. The facts here do not indicate whether the parties agreed to alternative terms, but the existence of an oral contract for the repairs strongly suggests that the parties did not contemplate an alternative arrangement in writing.

(c) Greg cannot accept Laura's offer to purchase Carolyn's vehicle. Greg does not have the authority to sell Carolyn's vehicle without her consent. The Garage Keeper's Lien Act provides Greg with the right to sell Carolyn's vehicle in order to recover the charges that Carolyn incurred. However, a lien under the Act "shall be enforced only as provided in MCL 570.305, which requires certain procedures for "a public sale" of the vehicle. MCL 570.305(1) & (2). Thus, to sell the vehicle, Greg must apply to the Department of State for a certificate of foreclosure within 105 days of the lien's attachment MCL 570.305(3), and provide notice to Carolyn, all lienholders, and the Department of State of the public sale date of the vehicle. MCL 570.305(4). The notice must contain an itemized statement of the lien, a demand for payment, a statement regarding the rights of other lienholders, a statement of daily storage fees, and a statement of the date, time, manner, and place that the vehicle will be sold. It also must give Carolyn not less than 30 days after the postmark date of the notice to satisfy the lien. MCL 570.305(4)(b). The sale may not be held less than 75 days after the date placed on the certificate of foreclosure, MCL 570.305(5), and Carolyn may redeem the vehicle at any time before the sale by paying the amount of the lien plus Greg's reasonable expenses. MCL 570.305(7).

Because Laura's offer to purchase Carolyn's vehicle is wholly inconsistent with the procedures outlined in the Garage Keeper's Lien Act, Greg may not lawfully accept Laura's offer to purchase Carolyn's vehicle.

Additionally, although the common-law artisan's lien survives enactment of the Garage Keeper's Lien Act, *Nickell v Lambrecht*, 29 Mich App 191 (1970), a common-law lien only allows the lienholder to retain possession of the property, not to sell it. *Aldine Manufacturing Co v Phillips*, 118 Mich 162, 164 (1898). Thus, Greg may not sell the convertible under his common-law right of possession. Also, under the UCC and the common-law doctrines of conversion and breach of contract, a bailee who sells something entrusted under the bailment agreement is liable for damages.