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NEW JERSEY LAW REVISION COMMISSION

FINAL REPORT

relating to

MOTOR VEHICLE LIENS

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LIENS FOR MOTOR VEHICLE SERVICE

Introduction

This project was begun in response to the opinion of the Appellate Division in *General Electric Capital Auto Lease v. Violante*, 358 *N.J. Super*. 171 (App. Div. 2003), which indicated "that the Legislature might wish to study the impact of certain language in *N.J.S.A.* 2A:44-21, bearing upon the garage keepers' lien, in the face of contemporary transactional realities." That case held that a lien for service to a motor vehicle was not effective against the lessor of the vehicle. In affirming the lower court's decision, Judge Kestin explicitly stated that the Appellate Court is bound by "three cases from the third decade of the last century" though it might wish otherwise.

In 1994, The New Jersey Law Revision Commission examined in detail the six New Jersey artisans' liens statutes. These statutes establish liens for storage of, or work done on, goods which one person (owner) entrusts to another (lienor) who performs the service. The focus of the Commission's Report was to correct procedural defects in these statutes. Two of the six statutes require rather than allow sales in the absence of payment, and both were held unconstitutional. The Garage Keepers Lien Act provides for mandatory public sale of an automobile if the indebted owner does not post either the full amount of the disputed garage bill or a double bond, with court costs. The mandatory public sale procedure was held "unconstitutional under the Fourteenth Amendment in failing to afford all automobile owners the opportunity to be heard judicially prior to divestment of title." *Whitmore v. N.J. Div. Of Motor Vehicles*, 137 *N.J. Super*. 492, 500 (Ch. Div. 1975). (The other mandatory sale lien statute, the Stableman's Lien Act, was held unconstitutional in *White Birch Farms v. Garritano*, 233 *N.J. Super*. 553, 557-558 (L. Div. 1987).

The 1994 Commission Report on Distraint and Artisans' Liens proposed a single artisan's lien statute to replace most of the current statutes dealing with particular trades. However, as the Introduction to the report stated:

> The one statute not replaced by this proposal is Garage Keepers and Automobile Repairmen. The Commission recommends repeal of the current statute and amendment of the Abandoned Motor Vehicles laws, N.J.S. 39:10A-8 through 39:10A-20. Change in ownership of motor vehicles and boats requires adherence to certificate of title requirements, which the proposal does not encompass. Motor vehicles and boats are excluded from the proposal for this reason.

The 1994 recommendations provide a context for drafting a statute on liens for service to motor vehicles, but none of those recommendations addresses the issue of the extent to which these liens should be enforceable against lessors of motor vehicles or holders of a security interest in motor vehicles. There is little financial difference between a lease, a conditional sale and a chattel mortgage. While distinctions can be made among them, all provide methods of financing a car. Under current law, all are treated the same, and the Commission finds no reason to change that.

In some other respects, the proposed statute would change current law and practice. Current law makes a lessor or secured lender immune from the effects of the lien. However, in practice, a lessor or secured lender usually has to satisfy the lien to gain possession of the vehicle. Making lessors and secured lenders totally immune from these liens does not provide a fair result. If a lessor can reclaim a car that has been repaired without paying for the repair, he is unjustly enriched at the expense of the repair shop. But it is wrong to force a lessor to pay for months of storage of the car when he was not notified that the car was incurring these charges nor given a chance to claim the car and avoid the cost.

A fair statute requires careful balancing of the legitimate interests of repair, car towing and storage businesses, lessors, secured parties, and owner-drivers. The proposed statute attempts this balance. In general, liens for service to a vehicle are made enforceable against all parties. Liens for vehicle storage are made enforceable against a party after that party is notified and given a chance to reclaim the car. To assure that the rules set out in the statute apply in practice, a claimant is given a simple court remedy to reclaim a vehicle quickly, leaving the decision on the lawful amount of the lien until afterward. But a deposit of the asserted lien amount is required so that the lien holder is protected.

Section 1. Lien for motor vehicle repair

a. A person who repairs a motor vehicle owned by another, has a lien on the vehicle repaired and its contents while the vehicle is in the lienor's possession.

b. The amount of the lien is equal to the unpaid balance of the price agreed for the repair plus the reasonable cost of storage of a vehicle not reclaimed within two days after notification that repair is completed.

c. "Repair" includes improvement or modification of a motor vehicle or the replacement of parts or accessories of the motor vehicle, but does not include the cost of storage of the motor vehicle nor towing of the motor vehicle unless the towing is done to bring the vehicle to a place where other repair is performed.

COMMENT

This provision creates a lien for auto repair. It does not create a lien for storage not connected to repair nor for supply of fuel. There is no similar provision in the Abandoned Vehicle Act (39:10A-8 through 20). The equivalent provision of the existing garage keeper's lien is part of 2A:44-21:

> A garage keeper who shall store, maintain, keep or repair a motor vehicle or furnish gasoline, accessories or other supplies therefor, at the request or with the consent of the owner or his representative, shall have a lien upon the motor vehicle or any part thereof for the sum due for such storing, maintaining, keeping or repairing of such motor vehicle or for furnishing gasoline or other fuel, accessories or other supplies therefor, and may, without process of law, detain the same at any time it is lawfully in his possession until the sum is paid. A motor vehicle is considered detained when the owner or person entitled to possession of the motor vehicle is advised by the garage keeper, by a writing sent by certified mail return receipt requested to the address supplied by the owner or person entitled to possession of the motor vehicle, that goods or services have been supplied or performed, and that there is a sum due for those goods or services.

This section specifically provides that the lien extends to the contents of the vehicle. There is no similar provision in current law, but 2A:44-21, quoted above, gives a garage keeper the right to detain the vehicle which may include the right to detain the contents. Extending the lien to contents obviates problems of distinguishing

between equipment that is fairly considered part of the vehicle and items merely stored in it. The lien on contents is limited in that it is subject to claims of third parties. See Section 2(e) below.

Subsection (b) addresses the amount of the lien. There are two separate amounts that may be involved: repair and storage. The cost of repair is set as the amount agreed between the parties. The Commission was informed that when a car is left for service during business hours there is always an agreement as to the price. When a car is towed or left when the shop is closed, there is agreement as soon as possible. In any event, auto mechanics always obtain authorization for a repair before beginning work. This approach differs from existing law. Both the Abandoned Vehicle Act and the Garage Keepers' Lien Act are based on reasonable rather than agreed cost. 39:10A-14; 2A:44-23. The Commission decided that is was preferable for the amount of the lien to be definite and so to avoid disputes and litigation.

Cost of storage is a harder issue. A repair shop should have a lien for storage when, after a significant period of time, the vehicle is not claimed nor the repairs paid for. The Commission was informed that the custom among repair shops is to charge for storage beginning two days after the repairs are completed. However, amounts claimed for storage should not be excessive when compared with local parking charges. Storage charges could be left to agreement of the parties, but most repair shops are not in the business of storing cars, so there will not be any established rate. As a result, an "agreed storage cost" will be set by form contract language that is likely not to be read or understood. The provision restricts the cost of storage to what is reasonable. The provision also begins storage charges two days after notification that the car is ready.

After this project was completed, the New Jersey Supreme Court decided *General Electric Capital Auto Lease v. Violante*, 180 *N.J.* 24 (2004). In doing so, the Court said, with regard to storage, that "when storage of the vehicle is no longer necessary as an incident of the lessee's obligations under the lease agreement, it would be unfair to hold that the property of the lessor, who has no knowledge of the vehicle's location and no opportunity to keep costs from escalating, may be encumbered for services not contemplated in the underlying lease agreement." *Id.* at 37. The Court suggested that requiring notice to the lessor "avoids that potential injustice by ensuring that only storage expenses directly related to the performance of repairs may serve as a basis for a lien under the Act. Although the time period should be established by statute, until such time as the Legislature acts, trial courts must make that determination on the facts of each case." *Id.* at 38. Pending Legislative action, the Court offered "interim guidance" and said that "[o]rdinarily, notice to the lessor within seven days of the vehicle's arrival at the repair shop will be reasonable" and that in view of the practical realities of lease and repair situations "[s]even days thus serves as a baseline against which trial courts can measure the reasonableness of the garage keeper's conduct." *Id.* at 39. The Court further explained that

> Under our seven-day-notice approach, a garage keeper who provides notice within seven days will be entitled to a lien for both the cost of storage for those initial seven days and the cost of any storage that occurs after the lessor receives notice and an opportunity to reclaim the vehicle. In contrast, a garage keeper who notifies the lessor after seven days have passed will not be permitted to hold the lessor responsible for the storage charges incurred from the end of the initial seven-day period until the time of notification.
>
> We recognize that our solution may not be perfect. Until the Legislature fashions another remedy, however, in most instances our approach will adequately safeguard the interests of both the garage keeper and lessor, and thus give effect to the legislative intent undergirding the Act.

Id.

As the quoted part of the opinion indicates, a legislative solution to the problem is needed. The language included in this Final Report represents a compromise reached after considerable discussion with a number of parties representing all the different interests involved. As a result, the language was not modified after the decision of the New Jersey Supreme Court was issued.

Section 2. Priority of lien; limitation as against lessors and secured parties; limitation regarding contents.

a. A lien on a motor vehicle for repair shall have priority over other liens and interests except as provided in this section.

b. A lien for repair is enforceable against the holder of a security interest indicated on the title document for the vehicle or against the lessor of a vehicle leased for a term of one year or more only to the extent provided by this section.

c. A lien for the price of service is enforceable against the holder of a security interest or a lessor if the holder of a security interest or lessor has agreed to the service and its price. Otherwise, the lien shall be enforceable against the holder of a security interest or lessor only to a maximum amount of $2000.

d. A lien for the cost of storage of a vehicle not paid for and taken after repair is completed is enforceable against the holder of a security interest indicated on the title document or a lessor to the extent that the cost is for storage beginning two days after the holder of a security interest or lessor has been notified by the lienor that the vehicle has not been paid for and taken.

e. A lien on the contents of a vehicle shall be subordinate to claims of owners of the contents who are not owners or habitual drivers of the vehicle.

COMMENT

This section limits the cases in which secured parties and lessors will be bound by the lien for repair. The Commission decided that secured creditors and lessors should be treated equally. As a basic rule, the Commission decided that the cost of repair adds to the value of the car and should be enforceable against any kind of financing party. There was discussion as to whether the secured party or lessor should be consulted before work is done that could result in a lien. Consultation was found unnecessary for ordinary repairs. The Commission was advised that the cost of repair rarely exceeds $2000. However, where the cost of service will be more than that amount, advance approval was found appropriate. In the absence of advance approval, only $2000 of the lien is enforceable against a secured party or lessor. The section also limits a secured party or lessor's liability for the cost of storage. It was considered unfair to charge for storage that occurred before the secured party or lessor was notified and had an opportunity to reclaim the vehicle.

The lien on the contents of a vehicle is limited differently from that on the vehicle itself. Repair of the vehicle benefits the vehicle and so benefits anyone with a claim to it. Items that happen to be in the vehicle that are not owned by owners or habitual drivers of the vehicle are not benefited by the repair. The phrase "habitual driver" is not defined. It is intended to encompass anyone who drives the car frequently enough that he can be considered benefited by the repair. The lien extends to these drivers as a matter of convenience. As a result, it is appropriate to make the lien subject to the claims of third party owners.

Section 3. Lien for towing and storage

a. A person who tows and stores a motor vehicle at the direction of a law enforcement officer or a person on whose property the motor vehicle is found has a lien on the motor vehicle and its contents while the vehicle is in the lienor's possession for the towing and storage. The amount of the lien shall be the price of towing and storage established by municipal ordinance or by contract between the municipality and the lienor. If no price has been set by ordinance or contract, the amount of the lien shall be the reasonable cost of towing and storage.

b. A lien for towing and storage shall have priority over other liens and interests except as provided in this subsection. A lien for storage is enforceable against the holder of a security interest indicated on the title document for the vehicle or a lessor of a vehicle leased for a term of one year or more only to the extent that the cost is for storage beginning two days after the holder of a security interest or lessor has been notified by the lienor that the vehicle has been

impounded. A lien on the contents of a vehicle shall be subordinate to claims of owners of the contents who are not owners or habitual drivers of the vehicle.

c. The amount of the lien for towing and storage enforced against the holder of a security interest or a lessor shall include the cost of identifying the holder of a security interest or lessor.

COMMENT

Subsection (a) establishes a lien for towing and storage not associated with repair. Current statutes establish a lien for storing a motor vehicle but do not provide specifically for towing. See 2A:44-21 quoted above. In practice, when a vehicle is towed and impounded, it is not released until charges are paid. The section also limits the amount of the lien to the price set by municipal ordinance or contract. If an amount is not set by ordinance or contract, or where the ordinance or contract does not apply, as where a vehicle is towed from private property, the amount is the "reasonable cost of towing and storage."

Subsection (b) limits the cases in which secured parties and lessors will be bound by the lien for storage. For the same reasons as in the lien for motor vehicle service, the Commission decided that secured creditors and lessors should be treated equally. The Commission found that charges for storage present the most serious problems and must be subject to the strictest limitations. Some drivers who decide that they cannot make car payments abandon their cars on the street. These cars are towed and impounded. The lessor or secured party often is not informed of that until several months pass. By the time notice is given, storage charges are substantial. It is unfair for the secured party or lessor to be responsible for storage charges incurred before he was able to reclaim the vehicle. Because the lienor may incur cost in identifying the holder of a security interest or a lessor, subsection (c) provides that the party who incurs that cost may include it as part of the lien. As for liens for repair, the lien against items in the vehicle is limited and affects only owners and habitual drivers of the vehicle. The phrase "habitual driver" is not defined. It is intended to encompass anyone who drives the car frequently enough to be considered benefited by the repair.

Section 4. Retention and release of motor vehicle subject to lien

a. A person who has possession of a motor vehicle and has a lien on it under this act may hold that vehicle and shall release it to any person who has a right to possession of the vehicle who tenders the amount of the lien as provided by this act.

b. If a person claims the vehicle and disputes the amount asserted as a lien, the person may bring a summary action in Superior Court to determine the amount due. If the person deposits in court the amount asserted as a lien, the court shall immediately order the vehicle released and after determining the amount due, shall order it paid from the deposit in court and order the balance of the deposit returned.

c. On payment of the lien amount, the person in possession of the motor vehicle may release it to any person who claims the vehicle and appears to have the right to its possession. If more than one person claims the motor vehicle, after the lien amount is paid, the person with possession of the vehicle shall release the vehicle to the person listed on the title document as owner or immediately bring an action in Superior Court to determine who has the right to possession of the vehicle.

COMMENT

Subsection (a) gives the lien holder the right to enforce the lien by holding the vehicle. Such a right is inherent in any possessory lien. Subsection (b) is an attempt to solve the problem of vehicles being held when the amount claimed as a lien is disputed. It is an alternative to a penalty provision which would be hard to enforce and might raise its own problems. While a summary action in court with a deposit of the amount in dispute is not convenient, it does serve the purpose of allowing the immediate release of the vehicle to preserve its value.

Subsection (c) allows the release of the vehicle to any person who appears to have a right to the vehicle. In most cases, the person who retrieves the car is the person who left it for service. That person may not be the owner of the car as shown on title documents, but the habitual driver raises the issue of disputed claims to ownership. While this problem was not raised in presentations to the Commission, it may deserve consideration.

Section 5. Disposition of unclaimed motor vehicle

a. If a person has possession of a motor vehicle and has a lien on it under this act, and the vehicle has not been claimed for more than 60 days after notice of the vehicle's possession has been given to the owner of the vehicle and to any person whose security interest is filed with the Director of the Division of Motor Vehicles, and the amount of the lien is not known to be the subject of a dispute, the lien holder may:

(1) sell the motor vehicle at public or private sale, or

(2) if the motor vehicle is incapable of being operated safely or of being put in safe operational condition except at a cost in excess of its value, apply to the Director of the Division of Motor Vehicles for a title certificate allowing the vehicle to be disposed of as junk.

b. Prior to the sale of a motor vehicle pursuant to this section the lien holder shall give the owner of the motor vehicle or the holder of any security interest in the motor vehicle filed with the Director of the Division of Motor Vehicles and the Director of the Division of Motor Vehicles:

(1) at least 30 days written notice of the intent to sell the motor vehicle, and

(2) at least five days written notice of the date, time, place and manner of the proposed sale.

c. If a lien holder determines that the motor vehicle is incapable of being operated safely or of being put in safe operational condition except at a cost in excess of its value, the lien holder shall so certify to the Director of the Division of Motor Vehicles, on an application, and the Division of Motor Vehicles shall, without further certification or verification, issue for a fee of $10.00, a junk title certificate for the vehicle; but no title certificate shall be issued unless the motor vehicle service facility first gives 30 days notice of its intention to obtain a junk title certificate to the owner of the motor vehicle or other person having a legal right to it and to the holder of any security interest in the motor vehicle filed with the Director of the Division of Motor Vehicles.

d. At any time prior to the sale of the motor vehicle or the issuance of a junk title certificate for it, the owner of the motor vehicle may reclaim possession of the motor vehicle from the motor vehicle repair facility or other person with whom the motor vehicle is stored pursuant to this act, upon payment of the reasonable costs of removal and storage of the motor vehicle, the expenses incurred pursuant to the provisions of this act, and the charges for the servicing or repair of the motor vehicle.

COMMENT

This section is based on parts of 39:10A-9, 39:10A-11, 39:10A-12, and 39:10A-14.