

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CHRISTOPHER F. NESBITT, Sr. <i>Pro Se</i> Plaintiff)	Civil No. _____
)	
v.)	
)	
City of Methuen, Methuen Police Dept.)	<u>Motion for TRO & Preliminary Relief</u>
Ronald Parrino, individually and officially,)	
Frank Korn, individually and officially,)	
Michael Papalardo, individually and officially,)	
)	
Defendant's)	
)	

Motion for Temporary Restraining Order and Preliminary Relief

NOW Comes the Petitioner, Pro Se, seeking a Temporary Restraining Order and Preliminary relief pursuant to Federal Rule 65, and in support thereof states as follows.

1. The defendant Ronald Parrino initially had a lien on the Plaintiff's vehicle, but the Towing and Storage charges that the debt relied upon for the lien was paid on 6/9/17. On that day the vehicle should have been released.

2. The defendant Ronald Parrino applied for a title for the Vehicle on 6/26/17, and it is still processing and is scheduled to be mailed out from the Mass RMV to defendant Parrino this week.

3. The defendant as refused to produce the Vehicle forthwith, and if he is able to gain possession of a new Title in his name, he can then legally dispose of the vehicle.
4. Because the defendant does not currently have a valid title for the vehicle, it should still be under his "care and storage" as required by Statute.
5. If the defendant is not ordered to immediately produce the vehicle and title forthwith, Plaintiff will suffer irreparable harm.
6. The defendant is not legally entitled to possession of the vehicle and his actions show a complete disregard for the law and rules governing liens and titles.

LEGAL ARGUMENT

Towing, Storage, and Lien

A. State Law.

7. The Vehicle was legally placed in the care of Valley, a "Public Garage", by the Methuen Police, after being involved in an accident and being towed to and stored at Valley. By law, Valley had an implied statutory and possessory lien, against the Vehicle, under G.L. c. 159B, § 6B, which allowed them to retain the vehicle to maintain perfection of its lien, until the outstanding fees were paid, up to, but not exceeding the value of the vehicle. (*see also 28 Mass. App. Ct. 195.*)

G.L. c. 159B, § 6B, provides that:

" . . . when said vehicles have been involuntarily towed or transported .
.. pursuant to accident on a public way, pursuant to [ch. 255, § 39A]

. . . . The motor vehicle storage facility **shall have a lien** for its proper transportation and storage charges due them for the towing, transportation and storage of motor vehicles, **Said lien may be enforced under the sale provisions of [ch. 255, § 39A]**

8. In Order to enforce their lien, Valley was required to follow the procedures set forth as follows:

G.L. c. 255, § 39A, provides that:

" Any motor vehicle removed from the scene of an accident and placed for storage in the care of a garage, . . . by a member of the police force of any city or town . . . shall be so stored at the prevailing rates. At the time such motor vehicle is so placed, the officer or person placing it, shall furnish the owner or operator of such garage the name and address of the registered owner of said motor vehicle; and if such information is not then available, said officer or person shall obtain such information and forthwith notify in writing the said owner or operator."

Upon receipt of such information the owner of the garage shall notify the registered owner of the motor vehicle by registered mail, return receipt requested, that such motor vehicle has been placed in his care as provided by this section, and shall inform him of the storage rates therefor, and shall inquire if he is to continue to hold the motor vehicle subject to such storage rates.

*If the registered owner of the motor vehicle assents to the continued storage of such motor vehicle, the owner of the garage shall continue to hold said motor vehicle in storage and **shall have a lien thereon, as provided in [ch. 255, § 25]** "*

9. Once Valley determined the Plaintiff was the owner, had a pending insurance claim, and assented to the continued storage, they were legally required to maintain the "storage and care" of the Vehicle, and were entitled to a lien against it for those charges.

G. L. c. 255, § 25, provides that:

"Persons maintaining public garages for the storage and care of motor vehicles. . . placed in their care by or with the consent of the owners thereof . . . **shall have a lien** upon such motor vehicles for proper charges due them for the storage, work and care of the same."

10. Their only option to enforce the lien, was to proceed to Court against the Plaintiff and/or Liberty Mutual, and for the Court to Order the sale of the Vehicle to satisfy the debt owed for the towing and storage if the Plaintiff or Insurance wouldn't pay.

G. L. c. 255, § 26, [Enforcement] provides that:

"A person who has a lien, . . . for money due to him on account of work and labor, storage, care and diligence, . . . under a contract express or implied, . . . **may bring a civil action** in the superior court or in a district court within the jurisdiction of which the plaintiff resides or has his usual place of business **to have the property sold to satisfy the debt.**"

11. Because Valley failed to follow the procedural steps prescribed by the statute (see [ch.255 § 26] requiring a suit to be filed in the District or Superior Court.), once ownership was established, continued consent for the "care and storage" and fees therefore were agreed upon, and the lien was perfected, Valley forfeited their right to pursue statutory remedy.

12. Valley, proceeding on the premise that the Plaintiff failed to respond to the certified mailings, followed the administrative procedures outlined in G.L. c. 255 § 39A, and; was able to surreptitiously avoid the required Court procedure outlined in G.L. c. 255 § 26, and; has successfully obtained Title to the Vehicle

administratively, and; has subsequently advertised the Vehicle, for auction and sale, pursuant to those procedures.

13. However, since the Plaintiff notified Valley *de facto* of an ownership claim and consent for continued storage, and Valley notified the Plaintiff of the costs and fees associated with the continued storage, and Valley agreed to continue to store the Vehicle, their only legal option to enforce their lien was to bring an action in the District or Superior Court. *see Exchange Street Auto Body v. Stockton, 1982 Mass. App. Div. 221 (1982):*

"It is elementary that the right to pursue a statutory remedy is forfeited if all the procedural steps prescribed by the statute are not followed. *St. George's Church v. Primitive Methodist Church*, 315 Mass. 202, 204 (1943).

With respect to the statutory notice requirement, the obvious purpose of written notifications under § 39A is both to apprise a motor vehicle owner that his property is being held by a garageman at a certain storage rate and to elicit the owner's response as to the continuation or cessation of this arrangement.

The report herein states that the defendant was actually and directly notified in person by the plaintiff as to the applicable charges for the continued storage of his vehicle, and that the defendant assented thereto.

In view of the de facto notice to, and assent by, the defendant to the plaintiff's continued storage of the vehicle, a denial of the plaintiff's claim for a G.L.c. 255, § 39A lien for storage charges because of the absence of the formal statutory written notification by registered mail would elevate procedure over substance and would contravene the intent of the statute."

B. Mass RMV Policy.

14. The Mass RMV sets forth policy and procedures for the administration of Laws and Rules regarding motor vehicles. The policy applicable to involuntary tows, storage, liens, and transfers of ownership can be found in the Mass RMV Information Policy Portal, under the following section:

Title Policy > Transfer of Ownership > Repossessions, Bankruptcies, Divorce Orders, and Similar Transfers.

1. Police Ordered Tows:

Pursuant to [ch. 159B § 6B], a police department or other public authority may order a vehicle to be towed and stored. If the owner does not come to collect the vehicle in a reasonable amount of time, the towing company may acquire ownership of the vehicle and sell it to satisfy a lien for non-payment of storage fees, but only after all of the requirements of [ch. 255 § 39A] are met. The following documents are required:

- Affidavit of Sale for Involuntarily Towed Vehicle - Mass RMV Form 21516
- Certified Letter to owner's last known address
- Newspaper advertisement that appeared for one day per week for three consecutive weeks in the city or town where the vehicle is stored
- Letter to Police Chief detailing the facts and indicating the intent to sell
- Bill of Sale to purchaser

Note: *If the owner of the vehicle agrees to the continued storage or repairs of the vehicle, then the garage must follow the procedures outlined in the Mechanic's Garage and Stored Vehicle Liens section.*

15. If the owner agrees to the continued storage, Valley must proceed under a Mechanic's Garage and Stored Vehicle Lien.

2. Mechanic's Garage and Stored Vehicle Liens

A vehicle may be acquired and sold by a mechanic's garage, public parking garage and storage entities for non-payment of repair or storage fees. The documents required to transfer ownership may vary according to the instructions set out in the Court Order. For example, a judge may order the garage or storage facility to either keep the vehicle in lieu of payment, sell the vehicle to recoup losses, or have the Sheriff seize the vehicle and sell it at public auction.

*To transfer ownership, a copy of the **Court Order** is **always required**.* Depending on the details of the order, other documents may be required, such as a copy of the Execution or a Sheriff's Bill of Sale, will also be required.

For more information on liens by garage and storage entities, please see [ch. 255 § 25]. For more information on the enforcement of these liens, please see [ch. 255 § 26]

16. The Mass RMV Policy clearly states that to transfer ownership in the case of a Mechanic's Garage and Stored Vehicle Lien, a Court Order is Always Required.

C. Possession Required for valid Lien.

17. The implied lien, set forth by statute, is a possessory one requiring the uninterrupted possession of the Vehicle by the defendant.

North End Auto Park, Inc. v. Petringa Trucking Co., Inc.
337 Mass. 618 (1958)

"the petitioner had no lien because it did not retain uninterrupted possession of the trucks . . . the lien of the garage keeper like that of the keeper of animals essentially is a possessory lien and is divested by a complete and voluntary loss of possession. Restatement: Security, Section 80. . . a complete voluntary loss of possession would doubtless defeat the lien."

18. For the period after 5/18/17, Valley had no lien because it did not retain uninterrupted possession of the vehicle after selling it to Fram's Auto.

PRAYER

For the foregoing reasons I respectfully request the following relief:

1. The Court hereby enjoins defendant Parrino from causing or permitting the stripping, impairing, selling, transferring, assigning, encumbering, removing, concealing, destroying or disposing of the Plaintiff's Vehicle and Title thereof; and
2. The Court hereby Orders that Defendant Parrino produce the and deliver the Vehicle, forthwith to the Plaintiff; and
3. The Court hereby Orders that Defendant Parrino, produce and deliver the Title of the Plaintiff's vehicle, forthwith to the Plaintiff; and
4. For such further relief as may be equitable and just.

DATED: 7/10/17

Christopher F. Nesbitt, *Pro Se*
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X_____

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Certificate of Service

I hereby certify that a copy of this motion and attached affidavit have been forwarded to all defendants, via first class mail, postage prepaid, on this day.

DATED: 7/10/17

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