

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

WILMINGTON, DELAWARE 19801

John K. Welch
Judge

June 24, 2009

Christopher J. Ware
608 West Ninth Street, 3rd Floor
Wilmington, DE 19801
Pro-Se Plaintiff

Mark D. Sisk, Esquire
522 Greenhill Avenue
Wilmington, DE 19805
Attorney for Defendant

Re: Christopher J. Ware v. Ewing's Towing Service Inc.
C.A. No. 08-02-519

Date Submitted: June 4, 2009

Date Decided: June 24, 2009

LETTER OPINION

Dear Mr. Ware and Mr. Sisk:

Trial in the above captioned matter took place on June 4, 2009 in the Court of Common Pleas, New Castle County, State of Delaware. Following the receipt of documentary evidence¹ and sworn testimony, the Court reserved decision. This is the Court's Final Decision and Order.

¹ The Court received into evidence the following items: Joint Exhibit # 1 – Notice of Lienholder Sale from the Justice of the Peace Court 9 dated December 20, 2005 addressed to Ware at 215 Madison Dr. College Park, Newark, DE 19711 with the lienholder listed as Ewing's Towing; Joint Exhibit # 2 – Application to Conduct a Lien Sale filed in the Justice of the Peace Court 9 addressed to Ware at the above same address dated December 6, 2005 and signed by Cox, the lienholder; Joint Exhibit # 3 – Answer to Lienholder Claim from the Justice of the Peace Court 9 addressed to Ware at above same address and listing Ewing Towing as the lienholder not dated or signed by Ware; Joint Exhibit # 4 – A bill from Ewing Towing for Road Service dated October 25, 2004 listing a \$125.00 charge for the tow of a vehicle from Persimmons Creek Visitor Parking; Joint Exhibit # 5 – a letter from Persimmon Creek to Ewing Towing Service dated September 23, 2004 which requests towing services from Ewing Towing regarding specifically the removal of abandoned and illegally tagged vehicles in their neighborhood; Joint Exhibit # 6 – A copy of Certificate of Title from the State of Delaware issued to Ewing's Towing for a 1995 Mitsubishi Eclipse; Joint Exhibit # 7 – Letter dated April 13, 2005 from Ware to Ewing's Towing and a copy of U.S. Postal Service Certified Mail Receipt addressed to Ewing's Towing; Joint Exhibit # 8 – Document from Ewing Auto Sales stating the sale of a 1995 Mitsubishi Eclipse for \$800.00 on March 23, 2006.

I. Procedural Posture.

This is an *appeal de novo* brought pursuant to the Court of Common Pleas under 10 *Del. Code* §9570 *et seq.* from the Magistrate's Court. Plaintiff has timely perfected his appeal and Defendant has answered the Complaint.

The instant action is a replevin action for which Plaintiff claims Defendant failed to give Plaintiff proper notice of the actions involving the vehicle.

Plaintiff requests this Court award the return of his vehicle or the total value of the vehicle in the amount of \$3,500.00 plus court costs, pre-judgment and post-judgment interest.

The sole issue pending before this Court is whether Plaintiff has proved beyond a preponderance of the evidence in the trial record that notice was not proper under Delaware statutory law and is entitled to relief in the form of the return of his vehicle. In the alternative, plaintiff seeks the total value of the value in the amount of \$3,500.00 plus costs and interest. For the reasons set forth below, the Court enters judgment in favor of the Defendant. Plaintiff's claim is therefore DENIED.

II. The Facts.

Plaintiff, Christopher J. Ware (hereinafter "Ware") is a resident of the State of Delaware. Defendant, Ewing's Towing Service, Inc. (hereinafter "Ewing's") is a corporation incorporated under the laws of the State of Delaware.

At trial, Ware presented his case-in-chief and called as a witness, Kevin J. Cox (hereinafter "Cox"). Cox is the owner and operator of Ewing's. Cox testified that he towed a 1995 Mitsubishi Eclipse from the Persimmons Creek Development in Elkton, Maryland on October 25, 2004 at the request of owner of the Persimmons Creek

Development. The owner requested the tow of the vehicle due to a parking violation in which the vehicle in question was parked in visitor parking. Once the vehicle was towed, Cox followed the standard procedure when a vehicle is towed. Cox placed the vehicle in a storage lot and called the local police, here the Cecil County Sheriff's Office, approximately fifteen (15) minutes after the vehicle was towed. The Vehicle Identification Number was processed through the Cecil County Sheriff's Office as standard protocol to ensure the vehicle was not stolen. Cox described the process he follows in order to sell a vehicle at a lienholder sale.

Cox holds the vehicle for a certain amount of time and completes an auto theft report forwarded to the state police. He then sends information to the Delaware Department of Motor Vehicles (hereinafter "DMV") in order to obtain a title search of the vehicle. Cox then receives the registered address of the vehicle owner from the title search performed by the Delaware DMV. In completing an application to conduct a lienholder sale, Cox provides the court with the registered address he received in order for the court to send correspondence to the vehicle owner. Cox testified that the sale takes place as a result of a court order. If the vehicle owner does not contest the sale then Cox is awarded title to the vehicle. Cox was awarded title to Ware's vehicle by a Magistrate after completing the requisite application and procedures.

Cox testified that notice of the sale to the vehicle owner is then sent by the court through certified letter. Cox completes the requisite application to conduct a lienholder sale and provides the court with the registered address received from a title search performed through the Delaware DMV. Cox also testified in the instant case that he sent a letter through the mail to Ware, which was stamped by the Postal Service, to the

registered address he had obtained from the title search, which was 215 Madison Drive College Park, Newark, Delaware, 19711. Cox is required by the court to use only the registered address gained from the title search from the Delaware DMV in order to send notice of the lienholder sale. A lienholder sale was effectuated February 14, 2006 in the present action.

Cox normally conducts lienholder sales more quickly than in the present case. Here, the process to conduct a lienholder sale took approximately two (2) years to complete whereas the usual amount of time the process is conducted is between ninety (90) days and four (4) months. Cox testified that the reason for the delay in the lienholder sale of Ware's vehicle was due to the receipt of a letter from Ware dated April 13, 2005 in which he expressed interest in regaining possession of his vehicle. Based upon this information, Cox held the plaintiff's vehicle in storage for approximately one (1) year from the time he received title to the vehicle and the execution of the lienholder sale. Cox testified that he extended \$300.00 in storage fees for the vehicle and recovered \$125.00 in the sale of the vehicle for parts.

On cross-examination, Cox testified that the reason the vehicle was towed from Persimmons Creek is due to a lack of tags on the vehicle. Cox testified that he received a letter from Ware in April 2005 and had no other contact with him since that time. Cox testified that the letter revealed that Ware was attempting to obtain money in order to repossess the vehicle from Cox. Cox conducted the lienholder sale on February 14, 2006. Cox stated that he obtained the registered address of Ware from the Delaware DMV in order to provide notice to him. He conducted the record search through the Delaware DMV months prior to the sale. Cox testified that he had no knowledge that Ware's

address was changed with the Delaware DMV. Cox stated that he never received any payment from Ware and had no conversations with him concerning the same. Cox concluded by testifying that he had authority pursuant to the Justice of the Peace to conduct the lienholder sale.

On direct examination by the Defense, Cox testified that he has a document from Persimmons Creek stating that he has the authority to tow vehicles from their location. Cox stated that he has towed approximately fifty vehicles in the past for Persimmons Creek and continues to tow vehicles from their location as per their direction. Cox testified that he conducted a lien search through Delaware courts though Persimmons Creek is located in Maryland, approximately one-quarter from the Delaware state line. Cox stated that he complied with every requirement known to him in order to obtain title to the vehicle and effectuate a lienholder sale. Cox testified that he normally conducts lienholder sales on vehicles that he obtains title to approximately two weeks after authorization from the court. Cox stated that he sold Ware's vehicle for parts.

III. Discussion.

(A) Plaintiff's Contentions.

Plaintiff argues in the instant case that notice was improper under the Due Process Clause of the United States Constitution. Plaintiff's argument is that notice of the lienholder sale was sent to his former address after he sent a certified letter to Cox with his new address. He argues under *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652 (1950), that notice needs to be reasonably calculated under all the circumstances. Plaintiff asserts that notice was improper because the address Cox used to effectuate notice was from an old driver's license and he provided Cox with his new

address. Plaintiff cites to *Robinson v. Hanrahan*, 409 U.S. 38, 93 S.Ct. 30 (1972), to stand for the proposition that notice is improper when mail is sent to a home address when it is known by the sender that the individual is incarcerated. Plaintiff also relies upon *Frank Emmet Real Estate, Inc., v. Monroe*, 562 A.2d 134 (1989), to stand for the proposition that notice is improper in a landlord-tenant situation by posting notice on the individual's door when the sender is aware that the individual is residing out of state at that time. Ware argues that every step must be taken to contact the individual and the Defendant was aware of his correct address. Ware also argues that 25 *Del. C.* 3903 does not apply if the identity of the vehicle owner cannot be determined with reasonable certainty.

(B) Defendant's Contentions.

Defendant asserts that notice does not have to be perfect but rather reasonable. Under 25 *Del. C.* 3901 et. seq., the process for conducting a lienholder sale is articulated and the Defendant complied with each requirement. The Defendant contends that notice was required to be provided to the address of record and that a letter from Ware apprising Defendant of his new address was not the address of record, in fact, it could be nothing more than a temporary address. Furthermore, defendant contends that the vehicle was sold pursuant to judicial authorization. Defendant also asserts that a reasonable person would file a change of address if the location they reside at would be a permanent residence. Additionally, the defendant asserts that a substantial amount of time, a year, had elapsed from receipt of Ware's letter and the time of the lienholder sale to which Ware could have made contact with Cox or repossessed the vehicle.

In essence, defendant's position is that he is entitled to rely upon an address of record to effectuate notice, in this case, the address to which the title to the vehicle is registered. Defendant further contends that there is no evidence of damages in this case. Finally, the Defense argues that the Defendant complied with the requirements set forth by statute and the cases to which Ware cites are simply general statements of notice required under the Due Process Clause of the United States Constitution.

IV. The Law.

The Complaint filed in this action alleges, *inter alia*, that the vehicle was removed without legal jurisdiction from Persimmon Creek and that the Justice of the Peace Court lacked jurisdiction to authorize the lienholder sale. The Complaint also alleges, *inter alia*, that notice to Ware was not proper under the United States Constitution.

Plaintiff must prove the underlying action by a preponderance of the evidence. *See e.g., Orsini Top Soil and Frank Orsini v. Kenneth T. Carter and Lisa Carter*, 2004 Del. C.P. Lexis 10, (April 17, 2007 Welch J.).

As to Ware's claim that the Justice of the Peace Court lacked jurisdiction to authorize the lienholder sale, 25 *Del. C.* §4006: Jurisdiction states:

The Justice of the Peace Courts, Court of Common Pleas and Superior Court shall have concurrent jurisdiction over actions instituted under this chapter.

Thus, jurisdiction over abandoned personal property is established statutorily and there is no dispute that the Justice of the Peace Court had jurisdiction to authorize a lienholder sale.

Ware cites several cases in support of his case-in-chief. First, Ware cites to *Schreffler v. Board of Education of Delmar School District*, 506 F.Supp. 1300 (U.S. Dist.

Ct., D. Del. 1981), to stand for the proposition that before a person is deprived of a property interest in employment, that person must receive clear notice of the charges as required by the Fourteenth Amendment to the United States Constitution.

Ware's reliance on *Schreffler* is misguided. In *Schreffler*, no personal notice was given to the Defendant in that matter until the morning of the School Board meeting but rather notice was provided through the placement of notice flyers in a public place a few days prior to the proceedings in the action. *Schreffler v. Board of Education of Delmar School District*, 506 F.Supp. 1300, 1304, 1307 (U.S. Dist. Ct., D. Del. 1981). The Court in *Schreffler* held that the placement of notice flyers in a public place a few days prior to court proceedings was insufficient to apprise the defendant of the pending action. *Id.* at 1307. *Schreffler's* Due Process was violated when he received no personal notice of the charges or an explanation of the evidence supporting the charges in advance but rather received notice the day of the School Board meeting. *Id.* The Court reasoned that if a jury could conclude that *Schreffler* had a property interest in his job, a jury may also conclude that he did not receive the procedural due process to which he is entitled under the 14th Amendment to the United States Constitution. *Id.*

In the present matter, *Schreffler* is distinguishable. Ware was provided with personal notice to the last known registered address.

Second, Ware cites *Robinson v. Hanrahan*, 409 U.S. 38, 40, 93 S.Ct. 30 (1972) to stand for the proposition that:

[w]here the state know that the owner of an automobile was not at address to which notice of forfeiture proceeding was mailed and knew that the owner could not get to the address since he was then confined in the county jail, the manner of service, although permissible under statute, was not reasonably calculated to apprise the owner of the

pendency of forfeiture proceedings and deprived the owner of due process of law.
409 U.S. 38 at 40.

Hanrahan is also distinguishable from the present matter. *Hanrahan* involved forfeiture proceedings by the State of Illinois of defendant's vehicle. *Robinson v. Hanrahan*, 409 U.S. 38, 93 S.Ct. 30 (1972). Defendant was arrested pursuant to other matters and incarcerated. *Id.* The State mailed notice of the pending forfeiture proceedings to the defendant's home address as was listed in the records of the Secretary of State, not to the jail facility where the defendant was incarcerated. *Id.* The Illinois Vehicle Forfeiture statute authorizes service of notice by certified mail to the address listed for the vehicle owner in the records of the Secretary of the State. *Id.* at 38-9. The Court found that notice would proper under Illinois law where notice is to be provided to the vehicle owner at the address that is registered with the Secretary of State; however, in this instance the State was aware that the vehicle owner was incarcerated. *Id.* at 40. The Court applied the *Mullane v. Central Hanover Bank & Trust* standard, which states that notice has to be reasonably calculated under all the circumstances. *Id.*

In the present matter, Ware was provided with personal notice to the address of the vehicle owner that was registered with the Delaware DMV. Though *Hanrahan* may seem analogous on its face, it is not. The State in *Hanrahan* was aware of the defendant's incarceration, likely through internal records and databases. Ewing's Towing is a private party and utilized the proper method of effectuating service upon Ware, which was to provide notice to Ware at the address registered for the title of the vehicle with the Delaware DMV. Though Ware represents that he provided his new address to

Ewing's Towing in the form of a letter dated April 13, 2005, there is no evidence in that letter or in the record stating he provided such information to Ewing's Towing.

Next, Ware cites to *Frank Emmet Real Estate, Inc. v. Monroe*, 562 A.2d 134 (Ct. App. DC, 1989), to stand for the proposition that notice was improper when a landlord was aware of a tenant's out of state address and telephone by served the tenant with notice by posting a summons for eviction action on the tenant's local premises.

The Court also finds Ware's reliance upon *Monroe* is also displaced. In *Frank Emmet Real Estate, Inc. v. Monroe*, the Court held that a landlord who was expressly notified of a tenant's exact out of state address and telephone number could not properly provide notice to the tenant by posting a summons for an eviction action on the tenant's leased residence and mailing a copy of the summons to such residence. *Frank Emmet Real Estate, Inc. v. Monroe*, 562 A.2d 134 (Ct. App. DC, 1989). However, the *Monroe* Court stated that service upon the tenant could have been effectuated by mail requiring a signed receipt. *Id.* at 137. In *Monroe*, the tenant notified the landlord that he would not reside at the premises but wished to keep the lease on the premises. *Id.* at 134. The Court in *Monroe* articulated the *Mullane* standard that notice has to be reasonably calculated under all the circumstances. *Id.* at 136. The Court stated that a diligent and conscientious effort has to be made by the process server to locate the defendant and effectuate personal service as a prerequisite to the posting of notice of an eviction action. *Id.* citing *See, e.g., Parker v. Frank Emmet Real Estate*, 451 A.2d 62, 64 (D.C. 1982); *Westmoreland v. Weaver Brothers, Inc.*, 295 A.2d 506, 509, & n.12 (D.C. 1972).

Monroe is distinguishable from the present case. Ware received personal service to the registered address listed with the Delaware DMV. Ware's matter does not involve

an eviction action and thus is not analogous. Furthermore, the evidence in the record does not indicate the current address Ware argues he expressly provided to Ewing's Towing in a letter dated April 13, 2005.

Lastly, Ware cites to *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652 (1950), to state that due process requires that notice be reasonably calculated under all the circumstances to inform a party of a pending action.

Ware relies upon *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 70 S.Ct. 652 (1950), to state the proposition that notice must be reasonably calculated under all the circumstances to appraise an individual of pending litigation and afford that individual an opportunity to be heard. *Id.* at 314. *Mullane* held that publication in a local newspaper was not sufficient notice if the sender was aware of the recipient's address. *Id.* at 317. *Mullane* stated that an individual must receive notice of the pending litigation and an opportunity to be heard must be afforded to the individual that rises to the level of due process standards under the Fourteenth Amendment to the United States Constitution. *Id.* at 314. *Mullane* also indicated that personal service of written notice within the respective jurisdiction is adequate notice in any type of proceeding under the requirement of due process of the law. *Id.* at 313. *Mullane* further stated that a state may assume that an individual who has left personal property in a state has abandoned it, 339 U.S. 306 at 316 citing *cf. Anderson National Bank v. Luckkett*, 321 U.S. 233, 64 S.Ct. 599, 88 L.Ed. 692, 151 A.L.R. 391 or has left the property in the care of an individual whose duty it is to advise the individual of possible jeopardization of the property. *Id.* citing *Ballard v. Hunter*, 204 U.S. 241, 27 S.Ct. 261, 51 L.Ed. 461; *Huling v. Kaw Valley Ry. & Imp. Co.*, 130 U.S. 559, 9 S.Ct. 603, 32 L.Ed. 1045.

In the present matter, Ware received personal service of written notice within the jurisdiction, which under the reasoning of the *Mullane* Court, serves as adequate notice. Ewing's Towing satisfied the constitutional standard of notice set forth by *Mullane*, as it provided notice to the registered address of the vehicle provided by Ware to the Delaware DMV. Ware's failure to change his address with the appropriate government agencies is not a fault of Ewing's Towing. Furthermore, even if Ware had expressly provided his new address to Ewing's Towing, there was no requirement under statute or case law that Ewing's Towing send notice to Ware at that address. Ewing's Towing had no way to verify that Ware's new address was anything more than a temporary address, as official governmental records did not reflect that address.

General standards of due process are articulated as such:

Absent special circumstances, a person may not be deprived of a significant property interest without prior notice and an opportunity to be heard.

Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971); *cf. Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972).

Delaware Statutory law deals specifically with the present matter. Title 25 of the Delaware Code addresses Property. Specifically, 25 *Del. C.* Chapter 39 addresses Replevin by Owner. 25 *Del. C.* §3901 sets forth those Persons entitled to liens. 25 *Del. C.* §3901 states:

Any garage owner...or other person who keeps a...garage...for price or reward at such garage...or has the custody or care of any...motor vehicle...for the same or makes repairs, auctions, performs labor upon, furnishes services, supplies or materials for, stores, safekeeps or tows any...motor vehicle...for the same shall have a lien upon such...motor vehicle...and the right to detain the same to secure the payment of such price or reward.

Under 25 *Del. C.* §3901, Ewing's Towing had custody of Ware's vehicle through the tow of the motor vehicle, thus establishing a lien on the motor vehicle. Ewing's Towing detained Ware's motor vehicle and no payment was ever rendered to Ewing's Towing.

Twenty-five *Del. C.* §3903 addresses the sale of the property in order to satisfy a lien. 25 *Del. C.* §3903 states:

a) If a lienholder under § 3901 or § 3902 of this title is not paid the amount due, and for which the lien is given within 30 days after the same or any part thereof became due, then the lienholder may proceed to sell the property, or so much thereof as may be necessary, to satisfy the lien and costs of sale pursuant to § 3905 of this title if:

(1) An authorization to conduct a lien sale has been issued pursuant to this section;

(2) A judgment has been entered in favor of the lienholder on the claim which gives rise to the lien; or

(3) The owners and any secured parties of record or known lienholders of the property have signed, after the lien has arisen, a release of any interest in the property in the form prescribed by § 3904 of this title.

(b) A lienholder may apply to a justice of the peace in the county in which the lienholder's business establishment is situated for the issuance of any authorization to conduct a lien sale under § 3905 of this title. The application shall be executed under penalty of perjury and shall include all of the following:

(1) A description of the property.

(2) The names and addresses of the owners of the property and the names and addresses of any other persons who the lienholder knows claim an interest in the property.

(3) A statement of the amount of the lien and facts concerning the claim which gives rise to the lien. If

compensation for storage is claimed, the per diem rate of storage shall be shown.

(4) The date, time and place that the property will be sold if the authorization to conduct a lien sale is issued.

(c) Upon receipt of an application which is made pursuant to subsection (b) of this section, the justice of the peace shall send a notice and a copy of the application by certified mail or registered mail, return receipt requested, to the owners, secured parties of record and any known lienholders and any other persons whose names and addresses are listed in the application. If the identity of the last registered owner or secured party cannot be determined with reasonable certainty, § 3905 of this title shall have the same effect as notice sent by certified or registered mail. The notice shall include all of the following:

(1) A statement that an application has been made with the justice of the peace for the issuance of an authorization to conduct a lien sale.

(2) A statement that the person has a legal right to a hearing in court; if a hearing in court is desired, the enclosed declaration under penalty of perjury must be signed and returned and if the declaration is signed and returned, the lienholder will be allowed to sell the vehicle only if he obtains a judgment in court or obtains a release from the owners and any known lienholders.

(3) A statement that if the declaration is signed and returned, a hearing will be promptly scheduled and the owners may then appear to contest the claim of the lienholder.

(4) A statement of the date, time and place that the property will be sold if the authorization to conduct a lien sale is issued.

(5) A statement that the justice of the peace will issue the authorization to conduct a lien sale unless the person signs and returns, within 20 days after the date on which the notice was mailed, the enclosed declaration stating that the person desires to contest the claim which gives rise to the lien.

(6) A statement that the person shall be liable for costs if a judgment is entered in favor of the lienholder on the claim which gives rise to the lien.

(7) A declaration which may be executed by the person under penalty of perjury stating that he desires to contest the claim which gives rise to the lien and that he has a valid defense to the claim and he shall furnish names and addresses where official notice may be received of any person or persons including himself known to claim an interest in the property of the hearing date.

After detaining Ware's vehicle for approximately one (1) year with no payment received from Ware, Ewing's Towing moved under 25 *Del. C.* §3903 to conduct a lienholder sale. Ewing's Towing completed the requisite paperwork in the Justice of the Peace Court No. 9, primarily the Application to Conduct a Lienholder Sale filed 12-6-05.² Ewing's Towing provided Ware's name and address to the Justice of the Peace Court No. 9 as he obtained that information from the Delaware DMV. Ewing's Towing received approval from the Justice of the Peace Court No. 9 on 12-20-05 pursuant to 25 *Del. C.* 3903(a)(1) to conduct the lienholder sale.³

Ware argues that in a letter dated April 13, 2005 addressed to Ewing's Towing⁴ he provided his current address to Ewing's Towing. However, the body of the letter states that his address is mentioned on the envelope. A copy of the envelope was never submitted into evidence at trial. The body of the letter fails to state the current address Ware claims. Ware failed to indicate in the letter to Ewing's Towing that the address was his new or current address or even the address to which to send all correspondence to from that point forward.

² See Joint Exhibit 2

³ See Joint Exhibit 1

⁴ See Joint Exhibit 7

Title 25, Chapter 40 of the *Delaware Code* specifically provides the process through which a lienholder may effectuate a sale. Title 25, Chapter 40 of the *Delaware Code* addresses rights and title to abandoned personal property. 25 *Del. C.* §4001:

Definition of Abandoned Personal Property states:

“abandoned personal property” shall be deemed to be tangible personal property which the rightful owner has left in the care or custody of another person and has failed to maintain, pay for the storage of, exercise dominion or control over, and has failed to otherwise assert or declare the ownership rights to the tangible personal property for a period of 1 year.

25 *Del. C.* §4002: Right and Title to Abandoned Personal Property states:

any person who holds, stores, safekeeps or otherwise is left with possession of any abandoned personal property, including but not limited to automobiles...which has been abandoned by the owner as defined in § 4001 of this title, shall be vested with complete and absolute title to said abandoned personal property and shall have all right to sell...or otherwise dispose of the said abandoned personal property

25 *Del. C.* §4003: Procedure to Obtain Title states:

(a) Any person who holds, stores, safekeeps or otherwise is left with possession of any abandoned personal property may be vested with complete right and title to said abandoned personal property upon application to a court of competent jurisdiction. The petition filed pursuant to this subsection shall be executed under oath and penalty of perjury and shall include the following:

- (1) A complete description of the property including all identification and registration numbers if applicable;
- (2) The name and last known address of the owner or owners of the property;
- (3) The names and addresses of any persons who claim to or have an interest or lien in the subject property;

(4) A statement that the petitioner has conducted a lien search concerning the subject property for any liens filed with the Delaware Secretary of State and, if applicable, that the petitioner has conducted a title and lien search with the Division of Motor Vehicles concerning any lienholders that may have an interest in any motor vehicle, and the reports of the Secretary of State and the Division of Motor Vehicles resulting from the searches shall be attached to the petition;

(5) If a motor vehicle, a statement that the petitioner has had the vehicle examined and approved for sale by the auto theft unit or a civilian auto theft technician of the Delaware State Police;

(6) A statement of the value of the subject property.

(b) Upon receipt of a petition which is made pursuant to subsection (b) of this section, the court shall send a notice and a copy of the petition and a Request for Information Form requesting the party who receives the notice and petition to provide all information concerning the identification and address of all other owners and/or lienholders of said abandoned property by certified mail or registered mail, return receipt requested, to the owners, secured parties of record, any known lienholder of the property, and any other persons whose names and addresses are listed in the petition.

(c) If the court receives an answer described in paragraph (b)(3) of this section, the court shall notify the petitioner and all parties of the hearing date to determine ownership of the subject property. If no answer is filed pursuant to paragraph (b)(3) of this section and there are no lienholders or other interested party, then the court shall issue an order declaring that the petitioner has full right, title and interest to the said abandoned property.

25 *Del. C.* §4005: Motor Vehicles states:

In the case of motor vehicles, the court shall enter an order requiring the Division of Motor Vehicles to issue title to the vehicle in the name of the petitioner or other person who has purchased the vehicle through sheriff's or constable's sale, and the petitioner or other person to whom title to the vehicle is to be issued shall present to the Division of

Motor Vehicles a copy of the order of the court with the court's seal affixed thereto. Upon receipt of the Certified Order, the Division of Motor Vehicles shall issue title as directed by the court.

The Court finds that Ewing's Towing, after waiting for approximately one (1) year from the tow of Ware's vehicle, completed the requisite paperwork in the Justice of the Peace Court No. 9 to effectuate a lienholder sale of Ware's vehicle. Justice of the Peace Court No. 9 approved the lienholder sale of Ware's vehicle. Ewing's Towing, at Ware's request to repossess his vehicle, waited a substantial amount of time before applying for and conducting the lienholder sale. Ware did contact Ewing's Towing on April 13, 2005 but failed to pursue the repossession of his vehicle. Ewing's Towing provided notice to Ware under the requirements of the statute. Notice to Ware was reasonable and the Court does not find that notice was improper under Delaware statutory law and under constitutional due process requirements.

In *Elcorta, Inc. v. Summit Aviation, Inc.* (1998 WL 67764 (Del. Super.)), the matter involved proceedings conducted under 25 *Delaware Code* Ch. 39, in which a claim for personal property was contested by the non-moving party. *Elcorta, Inc. v. Summit Aviation, Inc.* (1998 WL 67764 (Del. Super.) at *1). An Order was issued to conduct a lien sale, which resulted in the personal property, in this case, an airplane being sold. *Id.* The non-moving party filed a motion to set aside the sale on the ground that notice of the sale was inadequate. The Court stated that:

The statute (25 *Del. C.* §3903(c)(4) requires the court to notify interested parties "of the date, time, and place that the property will be sold if the authorization to conduct a lien sale is issued." The statute also requires the court to notify interested parties of their right to contest the claim of the lienholder.

Id.

In *Dumler v. Mabe* (1979 WL 193424 (Del. Super.)), the matter involved a petition by purchasers of property disposed of through a foreclosure sale to void the sale and have their deposit returned. The Court noted that:

The Supreme Court advised that because lienholders have a significant property interest in land subject to a foreclosure sale, they must be given prior notice of the sale. Failure to comply with this procedure would result in deprivation of property in violation of constitutional standards of due process.

Dumler v. Mabe (1979 WL 193424 (Del. Super.) at *1) citing *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L.Ed.2d 556 (1972); *Brown v. Federal National Mortgage Association*, Del. Supr., 359 A.2d 661 (1976).

The Court in *Summit Aviation* set aside the lienholder sale and held that failure of the court to provide the non-moving party with the date of sale was a substantial deficiency. *Id.* at *1, * 2.

In the present case, there was no deficiency in the Justice of the Peace notification to Ware. Notification to Ware, under 25 *Del. C.* §3903 is the procedure required to notify him of the lienholder sale and action needed on his part to contest the claim of the lienholder. Ware failed to provide an Answer to the Court to contest his claim. Ewing's Towing provided the Justice of the Peace Court No. 9 with the registered address of the vehicle owner as obtained from the Delaware DMV, which satisfied the statutory and constitutional requirements of due process.

V. Opinion And Order.

Based upon the totality of evidence received into the record at trial including the oral testimony of all witnesses and stipulated exhibits entered by both parties, this Court finds that the plaintiff has not proven beyond a preponderance of the evidence that notice

of a lienholder sale of his vehicle was improper. Ewing's Towing obtained Ware's vehicle through legal means and received authorization from Justice of the Peace Court No. 9 to effectuate a lienholder sale of Ware's vehicle. Notice was proper as provided to Ware at his registered address for the title of the vehicle as listed with the Delaware DMV.

Based on the foregoing facts and analysis discussed *supra*, the Court finds that the record is insufficient to support Plaintiff's Replevin action against Defendant. The action is simply not supported by a preponderance of the evidence. Thus, the Court enters judgment in favor of the Defendant and finds no liability against the Defendant. Each party shall bear their own costs.

IT IS SO ORDERED this 24th day of June, 2009.

John K. Welch
Judge

/jb

cc: LuAnn Smith, Court Clerk
CCP, Civil Division