

Daimler Trust v Safeway Motors, Inc.

2013 NY Slip Op 33178(U)

December 18, 2013

Supreme Court, Albany County

Docket Number: 19822-13

Judge: Joseph C. Teresi

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

DAIMLER TRUST and DAIMLER TITLE CO.,

Petitioners,

-against-

SAFEWAY MOTORS, INC. and THE NEW YORK
STATE DEPARTMENT OF MOTOR VEHICLES

Respondents.

DECISION and ORDER
INDEX NO. 1982-13
RJI NO. 01-13-109783

Supreme Court Albany County All Purpose Term, November 22, 2013
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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New York State Office of the Attorney General
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TERESI, J.:

To obtain repairs on the 2011 Mercedes-Benz (hereinafter the "Vehicle") he was leasing, Ahmad Imadedin (hereinafter "Imadedin") delivered it to Safeway Motors, Inc. (hereinafter "Safeway"). Because Imadedin failed to pay for the repairs, Safeway asserted a Lien Law

§184(1) garageman's lien on the Vehicle.

The Vehicle's owner, Daimler Trust, and its first lienholder, Daimler Title Co. (hereinafter collectively "Petitioners"), commenced this proceeding to invalidate such garageman's lien pursuant to Lien Law §201-a. Prior to answering, Safeway moved for a change of venue and to dismiss. Petitioners opposed the motion. By Decision and Order dated August 21, 2013 (hereinafter "Decision and Order"), this Court denied Safeway's motion to dismiss and to change venue. In addition, the Decision and Order found that a triable issue of fact existed on Imadedin's authority to consent to the Vehicle's repairs (Lien Law §184[1]; Natl. Union Fire Ins. Co. of Pittsburgh, Pa. v Eland Motor Car Co., Inc., 85 NY2d 725 [1995]), and set the matter down for a hearing.

Safeway now, according to its notice of motion, moves "pursuant to CPLR §2221(e) for leave to renew, CPLR 215, 3211[a](1), (2), (5) dismissing the petition."¹ Petitioners likewise move to renew, seeking an order granting their Lien Law §201-a petition and dismissing Safeway's garageman's lien. On this record, Petitioners failed to establish their entitlement to renewal. Safeway likewise failed to demonstrate its entitlement to renew its statute of limitations motion to dismiss. (CPLR §3211[a][5]). Safeway did, however, establish its entitlement to renew its motion to dismiss based upon documentary evidence. (CPLR §3211[a][1]). Upon renewal, Safeway failed to establish its entitlement to dismissal.

"To prevail upon a motion to renew, a party must proffer both new facts not offered on

¹ Safeway's notice of motion also seeks an order changing the venue of this proceeding "pursuant to CPLR 510(3) and 511(b)." However, because Safeway supported its motion with neither factual allegations nor legal arguments relative to CPLR §§215, 3211(a)(2), 510(3) or 511(b), these portions of its motion are rejected without further analysis.

the prior motion that would change the prior determination ... and ... reasonable justification for the failure to present such facts on the prior motion.” (Webber v Scarano-Osika, 94 AD3d 1304, 1305 [3d Dept 2012], quoting CPLR §2221[e][2 and 3][internal quotation marks omitted]).

Considering first Safeway’s motion to renew its statute of limitations claim, because it offered no “reasonable justification,” its motion is denied. The Decision and Order denied the prior statute of limitations motion because “Safeway failed to demonstrate the date it served Petitioners” with its notice of sale. The lack of proof prevented this Court from determining when the statute of limitations accrued. To remedy such defect, Safeway now submits an affidavit made by Joseph Matos, the individual who served its notice of sale on Petitioners. While these new factual allegations could potentially change the Decision and Order, Safeway proffered no reasonable excuse for failing to offer such affidavit with its prior motion: Safeway’s excuse, in its entirety, reads: “It was not possible to obtain Mr. Matos’ affidavit in time to include such proof in the cross-motion dated July 23, 2013. Indeed it was not possible to obtain the affidavit until October 2, 2013 despite diligent efforts.” Such “diligent efforts” and “not possible” allegations remain unexplained. Because these wholly conclusory allegations fail to establish a “reasonable justification,” this portion of Safeway’s motion must be denied. (JPMorgan Chase Bank, N.A. v Malarkey, 65 AD3d 718 [3d Dept 2009]; Abele Tractor & Equipment Co., Inc. v RJ Valente, Inc., 79 AD3d 1331 [3d Dept 2010]; 2 North Street Corp. v Getty Saugerties Corp., 68 AD3d 1392 [3d Dept 2009]).

Accordingly, Safeway’s motion to renew its prior statute of limitations motion to dismiss, CPLR §3211(a)(5), is denied.

Petitioners’ motion for renewal is similarly defective. Their “new facts” consist of an

affidavit made by Daimler Trust's "duly authorized agent" and its lease agreement with Imadedin. Petitioners offer no proof that the affidavit of one of their duly authorized agents could not have been submitted on the prior motion. Nor do Petitioners justify their failure to previously offer the lease, which they presumably possessed when they brought this proceeding. Because Petitioners offered no "reasonable justification" for failing to previously submit the affidavit and lease, they are not entitled to renewal. (State v Williams, 73 AD3d 1401, 1403 [3d Dept 2010]).

Accordingly, Petitioners' motion is denied.

Lastly, while Safeway established its entitlement to renew its CPLR §3211(a)(1) motion to dismiss, it failed to demonstrate its entitlement to dismissal on such ground.

In support of its motion, Safeway submitted new documentary evidence and provided a reasonable excuse for not previously submitting it. Safeway's new evidence consists solely of Daimler Trust's lease agreement with Imadedin. Its previous non-submission caused, in part, this Court to find that an issue of fact existed. (Decision and Order, at 5). As such, if the lease had been submitted on the prior motion then the Decision and Order's determination would necessarily have changed.² In addition, because Safeway neither possessed nor had access to the lease prior to Petitioners turning it over in accord with the Decision and Order's directive, Safeway established a reasonable excuse for not previously submitting it.

On Safeway's renewed CPLR §3211(a)(1) motion, it failed to establish its entitlement to dismissal of the petition. This "motion to dismiss on the ground that the action is barred by

² Although the Decision and Order would have changed, the change would not necessarily have been in Safeway's favor.

documentary evidence... may be appropriately granted only where the documentary evidence utterly refutes [Petitioners'] factual allegations, conclusively establishing a defense as a matter of law." (State Farm Fire & Cas. Co. v Main Bros. Oil Co., 101 AD3d 1575, 1576-77 [3d Dept 2012], quoting Mason v First proprietorship. Natl. Life Ins. Co. of N.Y., 86 AD3d 854 [3d Dept 2011]). The Decision and Order explicitly found that Safeway made a prima facie showing that it serviced the Vehicle, but that an issue of fact existed on "Imadedin's authority to consent" to such services on behalf of the owner, Daimler Trust. The lease agreement does not conclusively establish such authority. Its provision that obligates Imadedin to "maintain, service and repair the vehicle" is substantially similar to the lease provision considered in General Motors Acceptance Corporation v Anthony J. Minervini, Inc., 301 AD2d 940 [3d Dept 2003]). The General Motors Acceptance Corporation Court did not hold that such lease provision authorized the lessee to consent to repairs on the owner's behalf. Rather, it found a triable issue of fact on the consent issue and denied summary judgment. Moreover, just last week the Appellate Division - Third Department cited to General Motors Acceptance Corporation and held, in a closely analogous proceeding, that the lessee had no "authority to enter into a transaction as an owner, so as to permit the creation of a garagekeeper's lien." (Daimler Trust and Daimler Tit. Co. v SG Autobody LLC, __ AD3d __ [3d Dept 2013]).

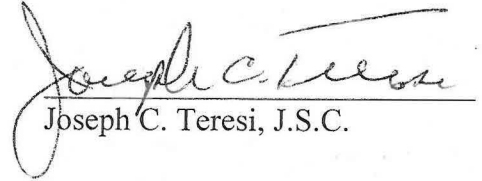
Accordingly, upon renewal of Safeway's CPLR §3211(a)(1) motion to dismiss, it is denied.

This Decision and Order is being returned to the attorney for Petitioners. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute

entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
December 18, 2013


Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Order to Show Cause, dated April 5, 2013; Undertaking, dated March 26, 2013; Petition, dated March 28, 2013, with attached Exhibits A-B; Affirmation of Rudolph J. Meola, dated April 3, 2013, with attached unnumbered Exhibit.
2. Notice of Cross-Motion, dated July 23, 2013; Affirmation of Jeffrey A. Barr, dated July 23, 2013, with attached Exhibit A; Affidavit of Robert Zelazny, dated July 23, 2013, with attached exhibits A-E.
3. Affirmation of Rudolph J. Meola, dated July 24, 2013, with attached Exhibits 1-13.
4. Letter of David L. Fruchter, dated April 22, 2013.
5. Notice of Motion, dated October 11, 2013; Affirmation of Jeffrey A. Barr, dated October 11, 2013, with attached Exhibits A; Affidavit of Joseph Matos, dated October 2, 2013, with attached unnumbered exhibits.
6. Notice of Cross Motion, dated November 8, 2013; Affirmation of Rudolph J. Meola, dated November 8, 2013; Affirmation of Rudolph J. Meola, dated November 8, 2013, with attached Exhibits 1-6; Affidavit of Juan Orellana, dated November 8, 2013, with attached Exhibits 1-2.
7. Affidavit of Joseph Matos, dated November 20, 2013; Affirmation of Jeffrey A. Barr, dated November 20, 2013, with attached Exhibits A-C.