

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SPALLCO ENTERPRISES, INC.,)
a New Jersey corporation,)
Plaintiff,)
)
v.) C.A. No. 99C-08-161
)
THE CITY OF WILMINGTON,)
a municipal corporation of the State of)
Delaware,)
Defendant.)

Date Submitted: July 25, 2002
Date Decided: August 28, 2002

ORDER

UPON CROSS MOTIONS FOR SUMMARY JUDGMENT

**DEFENDANT’S MOTION GRANTED
PLAINTIFF’S MOTION DENIED**

Thomas C. Marconi, Esq. of Losco & Marconi, P.A., Wilmington, Delaware 19899,
Attorney for Plaintiff.

Rosamaria Tassone, Esq. of City of Wilmington Law Department, Wilmington, Delaware
19899, Attorney for Defendant.

ALFORD, J.

On this 28th day of August 2002, upon consideration of the Cross Motions for Summary Judgment and the record, it appears to the Court that:

(1) Spallco Enterprises, Inc. (“Spallco”) filed this declaratory judgment action on August 18, 1999 seeking to determine whether § 37-68 of the Wilmington Code, which holds that the registered owner of a motor vehicle is prima facie responsible for parking violations, is constitutional.

(2) Spallco is in the business of renting motor vehicles to individual and corporate customers on a daily and multiple day basis. Between 1989 and present, the City of Wilmington (“City”) issued numerous citations for parking violations committed on vehicles owned by Spallco and operated by Spallco customers within the City limits. The original tickets were left on the motor vehicles by the issuing officer. When the City failed to receive payment of the fine, the City notified Spallco of the delinquencies.

Despite Spallco’s contrary argument, the City did try to collect these delinquencies from Spallco. The City began collection proceedings by sending delinquency notices to Spallco. Further in April of 1999, the City “booted” one of Spallco’s vehicles pursuant to section 37-125(a) of the Wilmington City Code. Instead of paying the due fines in order to have the “boot” removed, Spallco illegally towed the vehicle and removed the “boot” itself in violation of section 37-125(c).

Spallco has offered to provide the City with the identities of the persons to whom the vehicles were rented on days the tickets were issued. The City argues that section 37-68's presumption that the registered owner is responsible cannot be rebutted and insists that Spallco pay the due fines.

(3) The City argues that the rental agency, as the registered owner of the vehicles, is strictly or vicariously liable for violations of section 37-68, thus responsible for the payment of the fines and penalties associated with the violations, notwithstanding Spallco's ability to provide the City with names of the lessees. Further, the City contends that Spallco can pursue a claim against its lessee's for the monies its pays for the parking violations under their lease agreement.

Spallco argues that section 37-68 violates its substantive due process rights by allowing the City to convict Spallco of a criminal offense when the violation was in fact committed by another party. Spallco argues that the City could learn the identity of the driver who was issued the ticket. Moreover, it argues that vicarious liability can only attach if the driver cannot be ascertained. This argument fails.

(4) Previously the Municipal Court of Wilmington as well as various other jurisdictions have held similar statutes constitutional. The Municipal Court held that registered owners are strictly or vicariously liable and responsible for the fines and/or

penalties of the vehicles they own, regardless of the owner's ability and willingness to provide the City with the names of the lessees. *The Matter of Union Park Pontiac*, Wilmington Municipal Court, Memorandum Op., Fraczkowski, J. (Nov. 7, 1994). This Municipal Court opinion is the only interpretation of section 37-68 in Delaware. It accepts the reasoning of the various other jurisdictions which have been confronted with this issue. *See City of Chicago v. Hertz Commercial Leasing Corp.*, 375 N.E. 2d 1285 (Ill. Sup. Ct. 1978); *City of Kansas City v. Hertz Corp.*, 499 S.W. 2d 449 (Mo. Supr. Ct. 1973); *Commonwealth v. Minicost Car Rental Inc.*, 242 N.E. 2d 411 (Mass. Supr. Ct. 1968); *Commonwealth v. Rudinski*, 555 A.2d 931 (Pa. Supr. Ct. 1988). This court concludes that Spallco as the registered owner of the vehicles which received the parking violations is responsible for the payment of those due fines.

(5) Spallco further contends that its procedural due process rights are violated as section 37-68 does not allow Spallco the opportunity to contest the tickets and defend itself against the offense. Spallco's procedural due process rights were not violated. An individual only has two defenses to a parking violation: (1) the vehicle was not parked illegally and (2) the individual is not the owner of the vehicle. There is no violation of due process in imposing vicarious liability on a registered owner because the owner can

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come forward with evidence controverting the City's *prima facie* case. *City of Chicago*,
375 N.E. 2d 1285.

For the aforementioned reasons, Defendant's Motion for Summary Judgment is
Hereby GRANTED and Plaintiff's Motion for Summary Judgment is Hereby DENIED.

IT IS SO ORDERED.

ALFORD, J.

Original: Prothonotary's Office - Civil Div.