

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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STEVEN NIEMANN,

Plaintiff-Appellee,

v

JENNIE SUTE and JAMES B. SUTE, individually  
and d/b/a JENNIE'S BACKYARD R.V.  
STORAGE,

Defendants-Appellants.

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UNPUBLISHED

March 9, 2001

No. 218147

Wayne Circuit Court

LC No. 97-732084

Before: Bandstra, C.J., and Wilder and Collins, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order entering judgment for plaintiff regarding damages after a previous order of partial summary disposition was also entered in plaintiff's favor. We vacate the order and reverse and remand.

In October 1992, plaintiff entered into a contract with defendants for the storage of plaintiff's 1988 Sea Ray boat. Plaintiff made payments for storage through July 31, 1994, but made no payments after that. As of October 18, 1996 plaintiff owed defendants \$734.79.

In August 1996, defendants filed an application with the Michigan Department of State to obtain a garage keeper's lien on plaintiff's boat. According to statutory requirements and the department of state's written procedures, defendants sent two certified letters to plaintiff telling him of the debt and the date that his boat would be sold if he did not pay the debt. The post office attempted delivery of each letter twice, and plaintiff received notices that there was mail for him at the post office. Each letter was later returned to defendants marked "unclaimed." According to defendant, both letters were also sent by first-class mail. On October 12, 1996, defendants sold plaintiff's boat at a sealed bid auction for \$4,500.

While plaintiff acknowledged receiving notices of the certified mail, he did not retrieve the mail from the post office. Plaintiff also remembered receiving a letter indicating that he owed \$734, but by the time he was going to pay it off, a few months after receiving the notice, he was informed by his father that defendants had already sold the boat.

Plaintiff later filed a complaint alleging violations of the garage keeper's lien act and conversion. Plaintiff was granted partial summary disposition based on the trial court's determinations as a matter of law that defendants' notice to plaintiff and the sealed bid auction did not comport with the requirements of the garage keeper's lien act, and those failures to follow the act led to an act of conversion. At a subsequent bench trial on the issue of damages, the trial court granted damages in the amount of \$12,815.21 and then trebled those damages to the amount of \$38,445.63 based on a conversion statute.<sup>1</sup>

Defendants argue that summary disposition was improper because the requirements of the garage keeper's lien act, MCL 570.301 *et seq.*; MSA 9.1711 *et seq.*, were followed, and there was no act of conversion. We agree. We review a trial court's grant or denial of a motion for summary disposition de novo. *Baker v Arbor Drugs*, 215 Mich App 198, 202; 544 NW2d 727 (1996). Summary disposition of all or part of a claim or defense may be granted when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10).

Defendants argue that they complied with the notice requirements of the garage keeper's lien act. We agree. The garage keeper's lien act in effect at the time of the sale required garage keepers to send out notices to the owner at two different times by registered or certified mail. MCL 570.302; MSA 9.1712.<sup>2</sup> In this case both notices were sent to plaintiff by certified mail. Furthermore, plaintiff had actual notice from the letters sent first-class. Plaintiff received notification that the post office had this mail for him, and he failed to retrieve his mail. Plaintiff may not shield himself from proper statutory notice simply by failing to retrieve his mail. Defendants' efforts to supply plaintiff with notice complied with the statute.

The court also found that defendants had not complied with the act when they conducted the sale by sealed bid. Under the version of the act in effect at the time of the sale, the garage keeper could "sell the vehicle at public auction." MCL 570.302; MSA 9.1712. The term "public auction" is not defined. However, the Uniform Commercial Code differentiates between a "public sale" and a "private sale:"

By "public" sale is meant a sale by auction. A "private" sale may be effected by solicitation and negotiation conducted either directly or through a broker.  
[Comment, ¶ 4, MCL 440.2706; MSA 19.2706.]

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<sup>1</sup> The case was subsequently dismissed because of a violation of the seven-day rule. MCR 2.602(B)(3). The lower court, however, reinstated the case because it found good cause. MCR 2.502(C).

<sup>2</sup> In 1998, the act was amended to (1) clarify the method by which sales may be conducted, and (2) limit its application to vehicles that travel on highways. See 1998 PA 236. Another act passed that year extended a right to marina owners and garage keepers of boats to maintain a lien for nonpayment of fees. See MCL 570.371 *et seq.*; MSA 26.426(1) *et seq.* However, the fact situation in the present case occurred before the effective dates of the new acts.

Courts of other states have recognized that a “public sale” can include auctions conducted by sealed bids. See *Bank of America v Lallana*, 960 P2d 1133, 1140 (Cal 1998). While we recognize that some cases from our sister states have differentiated between public auctions and sales by sealed bids, see, e.g., *Bishop v Bordonaro*, 20 Conn App 58, 66; 563 A2d 1049 (1989); *Goodman v Fisher*, 205 Misc 896, 899-900; 131 NYS2d 184 (1954), we note that those cases rely upon ordinances or statutes that refer separately to public auctions and sales by sealed bids, thus indicating a legislative intent to limit the scope of the term “public auction.” The statute in question in this case contains no such limitation. In fact, the Legislature, in other contexts, has provided for public sales by “open auction bidding or by sealed bids.” See MCL 257.252g(1)(b); MSA 9.1952(7)(1)(b). The linchpin of a public auction is the opportunity for the public to participate and bid. The notice to the public in the present case, and the sealed bidding process, satisfied this requirement. MCL 570.302; MSA 9.1712 required nothing more, and we decline to engraft onto the statute any further requirements. Defendants’ sale by sealed bid auction was in conformity with the statute. Because defendants complied with statutory requirements regarding both notice and sale issues, summary disposition should be granted in their favor. MCR 2.116(I)(2).

There remains, however, the question of how to dispose of the proceeds from the sale. Under MCL 570.302; MSA 9.1712, after the charges of the garage keeper have been paid, any surplus shall be returned to any lienholder who has given notice to the garagekeeper of his or her lien; following the return to any lienholder of the amount to which he is entitled, the balance shall be returned to the registered owner of the vehicle.<sup>3</sup> We conclude that, while summary disposition should have been granted in favor of defendants, plaintiff is entitled to whatever balance remains after defendants’ costs as garage keepers have been paid and all costs of sale have been deducted, and after any lienholders who gave notice in accordance with MCL 570.302; MSA 9.1712 have been paid.

Given our disposition of this case, we do not address defendants’ remaining arguments, that the court abused its discretion in allowing expert testimony as to the value of the boat, and that this case should not have been reinstated after dismissal.

Judgment for plaintiff is vacated. We reverse and remand for entry of summary disposition in favor of defendants and for proceedings in accordance with this opinion. MCR 7.216(A)(1). We do not retain jurisdiction.

/s/ Richard A. Bandstra  
/s/ Kurtis T. Wilder  
/s/ Jeffrey G. Collins

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<sup>3</sup> Because there is no evidence that defendants themselves purchased plaintiffs’ boat, any discussion of fair market value is irrelevant. The act provides for determination of fair market value of the vehicle only if the garage keeper purchases the vehicle. MCL 579.302; MSA 9.1712.