STATE OF NEW YORK COUNTY OF ALBANY
CITY OF ALBANY CITY COURT, CIVIL PART

William S. Ritter, Jr.,

Plaintiff,

-against-

INDEX NO. SC 135-19
DECISION and ORDER

Dott's Garage,

Defendant.

William S. Ritter, Jr.
Plaintiff
45 Dover Drive
Delmar, NY 12054

Dott's Garage
Defendant
1177 Central Avenue
Albany, NY 12205

HON. WILLIAM KELLY JR.

This matter was originally heard in Small Claims Part on May 23, 2019. The Court dismissed this action in favor of defendant at first appearance upon finding that there were no triable issues of fact to proceed. Plaintiff timely appealed and a Decision and Order was issued dated November 21, 2019 which reversed the May 23, 2019 judgement and remitted the case to this Court for a new trial based on this Court's failure to administer an oath or affirmation to witnesses. Pursuant to the County Court's decision, a new trial was held on February 5, 2020. On that day, an oath or affirmation was administered to all witnesses and the Court reserved decision. Defendant was granted leave to submit proof of any state or local licensing until March 6, 2020. Plaintiff was

granted leave to reply to Defendant's submission until March 11, 2020. On March 3, 2020 Defendant timely filed proof of the state licenses requested. No further submissions were made by Plaintiff. The record was closed and the matter is now before this Court for decision.

Plaintiff seeks to recover the cost of the tow, costs and disbursements arguing that the placement of the paid receipt on the rear dashboard of the car was in accordance with the regulations for the use of the lot, and therefore the tow was improper. Alternatively, Plaintiff argues that Defendant lacked the authority to tow Plaintiff's vehicle because Defendant failed to comply with §353-60 of the Code of the City of Albany by not informing the Albany Police Department as to the reason and authorization of the tow prior to removing the vehicle. Plaintiff equates Defendant's actions with a trespass to chattel and therefore claims that Defendant is liable for tortious injury.

The Court determines the following:

On or about 6:23 PM on April 11, 2019 the driver of Plaintiff's automobile, a 2009 Silver Toyota Corolla, parked said automobile in a private parking lot located at 215 Lancaster Street, City of Albany. The driver of the vehicle used the parking kiosk to pay the parking fee for the use of the lot. Driver of Plaintiff's vehicle was issued a receipt and the subject vehicle was parked nose first into a designated parking spot. The parking receipt was displayed through the rear windshield by having been placed on the rear dashboard. (Plaintiff's Exh. 4). The vehicle was subsequently towed later that evening by an employee of Defendant because "No ticket was displayed." (Plaintiff's Exh. 7). Plaintiff's vehicle was subsequently returned upon payment of a towing fee of $189.00. (Plaintiff's Exh. 6)

The parking receipt purchased by Plaintiff's driver contains multiple images stating "PLACE ON DASH FACE UP," while the back of the ticket contains the language "OTHER SIDE

UP," "THIS TICKET PERMITS YOU TO PARK IN ACCORDANCE WITH THE REGULATIONS" and "THIS TICKET MUST BE DISPLAYED CLEARLY ON YOUR VEHICLE DASHBOARD AND THE VEHICLE PARKED CORRECTLY." (Plaintiff's Exhs. 1 - 2).

The parking kiosk where the receipt was purchased contains two different size images regarding the display of parking receipts. The larger one states, "PAY AND DISPLAY PARKING, "DISPLAY RECEIPT FACE UP ON THE DASHBOARD." (Plaintiff's Exh.1). Between these two statements is the image through the front windshield area of an automobile with an arrow pointing to a location on the dashboard at an image presumed to represent a valid parking receipt. Id. The second notice states "VISIBLY DISPLAY RECEIPT INSIDE OF VEHICLE ON DASHBOARD FACE UP." Id. This warning also displays the same front windshield image indicated prior. Id.

In this matter, it is undisputed that the parking receipt offered by Plaintiff was placed under the rear windshield of Plaintiff's automobile rather than the front windshield as directed. Therefore, the Court finds that the receipt was not displayed in accordance with the posted parking lot regulations. Plaintiff's claim is denied based on this ground.

Section §353-60 of the Code of the City of Albany allows for the towing of unauthorized vehicles from private properties. The Private Tow section of the Codes states:

"All privately owned parking lots having a capacity of five or more motor vehicles from which unauthorized motor vehicles will be towed shall post a sign at the entrance to said lot or in a conspicuous location indicating that unauthorized vehicles will be towed. Where applicable, said signs must be posted at intervals of every 30 parking spaces. If the owner/operator of such lot(s) contracts with a towing company or companies for the removal of such vehicles, the signage shall also contain the name, location and telephone number of such towing company(ies), the costs of towing and the telephone number of the Albany Police Department Traffic Safety Division. All sign lettering shall be at least two inches in height. Each towing company shall provide the City with a copy of the service agreement entered into between each privately owned parking lot and said towing company. The Police Department shall be advised by the towing company of any tow

from a private lot before said towing. Before said towing occurs, the towing company shall provide the Police Department with the reason for the tow and the party authorizing said tow." (ACC §353-60).

Plaintiff asserts that Defendant's actions were a trespass to chattel simply because Defendant failed to inform the Police Department as to the reason and authorization of the tow prior to removing the vehicle. In support of this claim, Plaintiff cites Sweeney v. Bruckner Plaza Assocs., LP, where the Appellate Court confirmed that Defendant towing company lacked authority to remove Plaintiff's vehicle because there was no sign posted regarding parking restrictions. (20 AD3d 371 (App. Div. 1st 2005). This Court notes that there was no claim or assertion that Defendant failed to post a sign that unauthorized vehicles will be towed. Plaintiff's own evidence shows that the parking rules were posted in at least 2 different places, on the ticket and on the kiosk machine. (See Plaintiff's Exhs. 1-3). Plaintiff's reliance on Sweeny is misplaced because Defendant's alleged lack of prior contact with the police before towing has no bearing on whether Plaintiff's vehicle was parked in accordance with the lot regulations and therefore subject to tow. In order to prevail in an action for trespass of chattel, a person must wrongfully interfere with the use and enjoyment of another's personal property. See, NY Pattern Jury Instructions 3:9. Here, the substantial evidence shows there was no wrongful interference with Plaintiff's property but instead that Plaintiff's vehicle was parked in violation of the conspicuously posted instructions and therefore rightfully towed.

The Albany County Court also noted in dicta that this Court failed to make a UCCA §1804 assessment in the previous proceeding. The County Court refers to Thorne v. Alleyne, 54 Misc.3d 38 [App Term 2016] in making this determination. Pursuant to UCCA §1804 "[i]n every small claims action, where the claim arises out of the conduct of the defendant's business at the hearing on the matter, the judge or arbitrator shall determine the appropriate state or local licensing or

certifying authority and any business or professional association of which the defendant is a member." In Thorne, Plaintiff commenced a small claims action to recover damages representing the price that Defendant had allegedly agreed to pay Plaintiff for the installation of flooring in Defendant's house. 54 Misc. 3d 38. In Thorne, the Appellate Court remanded the case back to the trial court because the trial court failed to inquire whether Plaintiff was licensed to complete the work in question. Id. However, the claim at hand is that of trespass of chattel not one arising out of the quality of work produced by Defendant. There was no allegation that Defendant was an illegal towing company or that Plaintiff's vehicle was damaged due to negligent towing, therefore an inquiry of Defendant's licensure to tow is irrelevant. Nonetheless, Defendant provided the Court with a copy of an official business certificate issued by the NYS Department of Motor Vehicles showing the Defendant is registered as an Itinerant Vehicle Collector from May 17, 2018 to May 31, 2020 which covers the time the incident in question arose (Defendant's Exh. 1).

Based on the foregoing the Court determines that Plaintiff has failed to prove that he complied with the rules and regulations posted in the subject parking lot and failed to present sufficient evidence to prove trespass of chattel.

Plaintiff's claim is dismissed.

So ordered.

Dated at Albany, New York
June 10, 2020

William Kelly Jr.
Albany City Court Judge