Opinion issued July 17, 2018

In The

Court of Appeals

For The

First District of Texas

NO. 01-16-00945-CV

ROYCE AKERS AND JOSE LOPEZ, INDIVIDUALLY AND D/B/A 3RD KIND CUSTOMZ, Appellants

V.

PATJA, LTD. D/B/A MN AUTO FINANCE COMPANY, Appellee

On Appeal from the 113th District Court
Harris County, Texas
Trial Court Case No. 2016-28690

MEMORANDUM OPINION

This is a contest for possession of a Chrysler 300. The dispute concerns whether the lender or a mechanic has the right to possession when the owner defaulted on a loan and no party has paid for repairs to the car. The lender and appellee, Patja Ltd. d/b/a MN Auto Finance Company, claimed that it was entitled

to possession based on its title lien. The repairmen and appellants—Royce Akers and Jose Lopez, individually and d/b/a 3rd Kind Customz—claimed a worker's lien. The trial court granted summary judgment in favor of MN Auto Finance, awarding possession of the vehicle and $5,000 in attorney's fees.

In this court, the repairmen argue that the court erred because MN Auto Finance did not conclusively prove its entitlement to summary judgment. They further argue that MN Auto Finance was not entitled to attorney's fees because it should not have prevailed.

Based on the repairmen's deemed admissions in the trial court, we conclude that MN Auto Finance conclusively proved its title lien and that the repairmen had no worker's lien. Accordingly, summary judgment was proper, and we affirm.

Background

Appellee Patja, Ltd. d/b/a MN Auto Finance Company sold a 2010 Chrysler 300 to Tiffany Henderson.[1] The terms of the financing agreement required

[1] Owned by former President Barack H. Obama and many celebrities, the Chrysler 300 is a pop-culture icon. *See, e.g.*, Carlos Matias, *Gallery: The 25 Most Iconic Hip-Hop Cars*, COMPLEX (Aug. 5, 2011) http://www.complex.com/sports/2011/08/gallery-the-25-most-iconic-hip-hop-cars ("The Chrysler 300 was known as the broke man's Bentley/Rolls Royce" because of its "boxy frame and large menacing grill sans the six-figure price tag."); Dalia Dayton, *Chrysler 300: The Celebrity Owners and Promoters*, AUTO INFLUENCE (Feb. 19, 2015) http://www.autoinfluence.com/chrysler-300-celebrity-owners-promoters (noting that Snoop Dogg was one of the earliest owners of a Chrysler 300, and that the car was used by Dr. Dre and Ice Cube to promote the film

Henderson to pay MN Auto Finance $240 every two weeks. About two weeks after Henderson purchased the car, it was involved in a collision and taken to be repaired at 3rd Kind Customz.

Henderson stopped making payments on the car, and MN Auto Finance sought repossession of it from 3rd Kind Customz. The repair shop refused to release the car until storage, administrative, waste-disposal, and repair fees were paid.

MN Auto Finance filed a declaratory-judgment action against Henderson, 3rd Kind Customz, and the repair shop's proprietors, Royce Akers and Jose Lopez. The lender asserted that it had a superior claim to possession of the car, alleging that the repairmen had no valid lien. It pleaded causes of action for tortious interference with a contract, conversion, and civil conspiracy to commit fraud. MN Auto Finance sought return of the vehicle, damages, and attorney's fees.

MN Auto Finance moved for summary judgment, but because the repairmen had not yet filed a responsive pleading or answered discovery, it could "only guess the basis" for their refusal "to surrender the subject vehicle." Noting that 3rd Kind Customz had presented it with charges for storage, hazardous waste, and administration, the lender presumed that the repairmen would claim a worker's

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Straight Outta Compton); DRAKE, *Keep the Family Close*, on VIEWS (Young Money Entertainment et al. 2016) ("Always saw you for what you could've been / Ever since you met me / Like when Chrysler made that one car that looked just like the Bentley").

lien,[2] a garageman's lien,[3] or both. The lender argued that its title lien was superior because the repair shop had not complied with the statutory notice requirements in Chapter 70 of the Property Code, which specify that when a worker fails to the give the required statutory notice, "a lien recorded on the certificate of title of the motor vehicle is superior to the possessory lienholder's lien," i.e., a worker's or mechanic's lien.[4] MN Auto Finance concluded that it was entitled to summary judgment because the repairmen had "admitted as a matter of law, through deemed admissions, that they have no valid lien against the subject vehicle . . . ."

Summary-judgment evidence attached to the motion included: the sales documentation and title to the car; presuit correspondence between the parties that included a letter to the repairmen stating that they had not provided the proper statutory notices to claim a mechanic's lien; unanswered discovery requests (including requests for admissions); a business-records affidavit; and an affidavit from counsel supporting the request for attorney's fees. The requests for admission included:

> [#13] Admit or deny that you knew that Plaintiff MN AUTO had a valid lien against the title to the subject vehicle prior to May 3, 2016.

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2 TEX. PROP. CODE § 70.001.

3 *See id.* § 70.003(c).

4 *Id*. § 70.006(b-2).

. . . .

> [#16] Admit or deny that you failed to send notice to Plaintiff, by certified mail, return receipt requested, of your intent to assert a mechanic's lien for repairs made by you to the subject vehicle.

. . . .

> [#19] Admit or deny that you have failed to file any documentation with the Harris County Clerk to perfect any possessory lien on the subject vehicle.

. . . .

> [#20] Admit or deny that Defendant TIFFANY SHAWNTRICE HENDERSON did *not* authorize you to make repairs to the subject vehicle.

The summary-judgment motion was set for a hearing, and the appellants responded two days before the hearing. Their response was not accompanied by a motion for leave to file an untimely response or a motion for continuance of the hearing. They argued that their superior workers' lien was perfected by retaining possession of the car and that the notice requirements of section 70.006 pertain only to a foreclosure sale of the vehicle.

Summary-judgment evidence attached to the response included a form that the repairmen described as a "work-order authorization" for the vehicle as well as a document they described as a "repair bill."

The purported work-order authorization form included a line that read: "***FINAL REPAIR BILL*** Authorized by," followed by a signature of the name "Tiffany Henderson." The form as completed had no information about

particular repairs or costs, and many parts of the form were left blank. The response also attached photos of a Chrysler 300 in a repair shop.

The purported "repair bill" was titled "Preliminary Estimate" and identified the disputed car by vehicle identification number and the description: "2010 CHRY 300 TOURING 4D SED 6-3.5l-FI." It also included a listing of parts, with part numbers, quantities, prices, and corresponding information for various parts relating to "labor" and "paint." The "Preliminary Estimate" summarized the estimates by category and listed a "Grand Total" of $4,801.53. Beneath the summary and total of the estimates was an authorization paragraph, which was not completed or signed, which read: "I, _____ agree to allow 3rd Kind Customz to repair my vehicle along with using any necessary materials to do so. . . . An express mechanic's lien is hereby acknowledged on the above vehicle to secure the amount of the repairs thereto. . . ." There was no business-records affidavit to authenticate these documents that were attached to the response. There was no motion to withdraw the deemed admissions, upon which MN Auto Finance expressly relied in its motion for summary judgment.

The trial court granted the motion for summary judgment, finding that the lender's vehicle-lien interest "is superior to any rights in such vehicle claimed by Defendants Royce Akers and José Andres Lopez." The court ordered the repairmen to surrender the car to MN Auto Finance, and it awarded $5,000 as

reasonable attorney's fees under Property Code section 70.008. The final judgment also included the following language about the late-filed response:

> The court notes that Defendants' response to the said motion was untimely filed, was not verified or accompanied by an affidavit of any kind, and no request for an extension to late file the response or for continuance was presented. The court considered the documents on file, the argument of the parties and relevant authority.

About three weeks after the court entered final summary judgment, the repairmen, for the first time, filed an answer and a jury demand. The answer was a general denial, and there was no counterclaim for the costs of repairs. Five days later, they filed a motion for new trial alleging the discovery of new evidence. Attached to the motion were the "work-order authorization" and preliminary estimate, which previously had been attached to the late-filed response to the motion for summary judgment. In addition, the repairmen attached bills showing the accrual of a daily $25 "daily holding & security fee," and a business-records affidavit authenticating their records.

MN Auto Finance responded that the motion for new trial should be denied because the evidence was not new, and for the first time it argued that the "work-order authorization" was not a valid contract because it did not provide any terms relating to repairs. It also questioned the authenticity of Henderson's signature.

The trial court denied the motion for new trial, and a timely notice of appeal was filed.

Analysis

The repairmen contend that the trial court erred by granting summary judgment because their claim to possession of the car is superior to the lender's claim.

A movant for traditional summary judgment must establish that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law.[5] A genuine issue of material fact exists if the nonmovant produces evidence that would enable reasonable and fair-minded jurors to differ in their conclusions.[6] When a plaintiff moves for summary judgment on its own claim, it must prove conclusively all essential elements of its cause of action.[7]

We review de novo a trial court's ruling on a motion for summary judgment.[8] In our review, we consider all the evidence in the light most favorable to the nonmovant, crediting evidence favorable to the nonmovant if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could

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5 *See* TEX. R. CIV. P. 166a(c); *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215–16 (Tex. 2003).

6 *See Hamilton v. Wilson*, 249 S.W.3d 425, 426 (Tex. 2008) (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005)).

7 *See Rhone–Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999); *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979).

8 *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009).

not.[9] The scope of our review of a summary judgment includes a late-filed response if there is some indication in the record that the trial court considered it.[10] The final summary judgment in this case stated that the court "considered the documents on file, the arguments of the parties and relevant authority."

The evidence that MN Auto Finance attached to its motion for summary judgment included the car's sales contract and title. The title identified MN Auto Finance as lienholder, with the date of the lien on the vehicle. This established the lender's lien on the car.[11]

The repairmen argue that they have a statutory worker's lien.[12] MN Auto Finance argues that it was entitled to possession of the car even if the repairmen had a worker's lien, due to notice requirements that must be fulfilled before a worker's lienholder can foreclose on a motor vehicle.[13] It is undisputed that the repairmen did not comply with the notice requirements set forth in section 70.006, and most of the parties' arguments focus on whether that notice was required or

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9 *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006).

10 *See* TEX. R. CIV. P. 166a(c); *SP Terrace, L.P. v. Meritage Homes of Tex., LLC*, 334 S.W.3d 275, 281–82 (Tex. App.—Houston [1st Dist.] 2010, no pet.).

11 *See* TEX. TRANSP. CODE § 501.021(a)(6).

12 *See* TEX. PROP. CODE § 70.001(a).

13 *See id.* § 70.006.

that statute alters the priority of the liens when the worker's lienholder is not attempting foreclosure. We do not reach those issues, though, because section 70.006 applies to the holder of a worker's lien, and the summary-judgment evidence disproved the existence of a worker's lien.

Only work authorized by the owner of a vehicle will give rise to a worker's lien.[14] MN Auto Finance provided conclusive proof that the repairs were not authorized in the form of a deemed admission. Request for admission number 20 stated: "Admit or deny that Defendant TIFFANY SHAWNTRICE HENDERSON did *not* authorize you to make repairs to the subject vehicle." The repairmen did not respond to the discovery request.

If a response to a request for admissions "is not timely served, the request is considered admitted without the necessity of a court order."[15] MN Auto Finance expressly relied on the deemed admissions in its motion for summary judgment.

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[14] *See Drake Ins. Co. v. King*, 606 S.W.2d 812, 818 (Tex. 1980) (superseded by rule on other grounds as recognized by *Bay Area Healthcare Grp., Ltd. v. McShane*, 239 S.W.3d 231, 235 (Tex. 2007)); *Tex-On Motor Ctr. v. Transouth Fin. Corp.*, No. 14-04-00366-CV, 2006 WL 664161, at *5 (Tex. App.—Houston [14th Dist.] Mar. 16, 2006, no pet.) (mem. op.); *Sw. Inv. Co. v. Gilbreath*, 380 S.W.2d 196, 197 (Tex. Civ. App.—Amarillo 1964, no writ); *see also Hydra-Rig, Inc. v. ETF Corp.*, 707 S.W.2d 288, 290 (Tex. App.—Fort Worth 1986, writ ref'd n.r.e.) (interpreting predecessor statute and stating that "[r]epairs or improvements must have been authorized by the owners of a piece of property in order to give validity to a lien").

[15] TEX. R. CIV. P. 198.2(c); *see Marino v. King*, 355 S.W.3d 629, 633 (Tex. 2011).

However the repairmen did not object or move to withdraw the deemed admissions in their late-filed response to the summary-judgment motion or their motion for new trial, nor have they made any arguments that show good cause for withdrawing the deemed admissions or a lack of undue prejudice to the lender. As such, we consider and rely on the deemed admission on appeal. Based on the deemed admission that Henderson did not authorize the work, the summary-judgment evidence established that the repairmen did not have a worker's lien.[16]

MN Auto Finance conclusively proved that it had a title lien and disproved that the repairmen had a worker's lien. The repairmen did not argue that they had a garageman's lien. Accordingly, the trial court correctly granted summary judgment in favor of MN Auto Finance. We overrule the first issue.

The repairmen's second issue challenges the award of attorney's fees based on MN Auto Finance's status as a prevailing party. Because we have held that the court correctly granted summary judgment, we further conclude that it properly awarded attorney's fees to MN Auto Finance as a prevailing party in "a suit concerning possession of a motor vehicle . . . and a debt due on it."[17] We overrule the second issue.

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16 *See Drake Ins.*, 606 S.W.2d at 818; *Tex-On Motor Ctr.*, 2006 WL 664161, at *5; *Gilbreath*, 380 S.W.2d at 197; *see also Hydra-Rig*, 707 S.W.2d at 290; *Astraea Aviation Servs.*, 172 F.3d at 394; *Reimer*, 663 F.2d at 1325.

17 TEX. PROP. CODE § 70.008.

Conclusion

We affirm the judgment of the trial court.

Michael Massengale
Justice

Panel consists of Justices Jennings, Massengale, and Caughey.