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Garageman's Lien: Application of Procedural Due Process Safeguards

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used it as the conflict basis to quash the relief afforded below. In vain have the Legislature and the lower courts attempted to provide remedies to condominium associations for patent developers' fraud and overreaching, always running afoul of curiously irrelevant decisions at this level.

The enigmatic formulation of another ill-founded decision in this area of the law only serves to put Florida further out of touch with the holdings of most jurisdictions.[47]

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GARAGEMAN'S LIEN: APPLICATION OF PROCEDURAL DUE PROCESS SAFEGUARDS

Appellant, the owner of an automobile, was served with a notice of sale advising him that in the event a bill for repairs was not paid, his car, which was in the possession of a garageman, would be sold at a public auction under the New York garageman's lien statute.[1] The owner contended that the repairs were not only unauthorized, but that the amount charged by the garageman was unreasonable. After efforts to mediate the dispute over the cost of repairs failed, appellant filed a complaint in the District Court for the Eastern District of New York seeking a declaratory judgment that the statute violated the due process clause of the fourteenth amendment, and an order enjoining the garageman from foreclosing the lien.[2] The complaint was dismissed and the automobile was sold without a prior judicial determination of the amount claimed by

47. 282 So. 2d at 634.

1. N.Y. LIEN LAW §§ 184, 200-02, 204 (McKinney Supp. 1973).

2. Hernandez v. European Auto Collision, Inc., 346 F. Supp. 313 (E.D.N.Y. 1972). The jurisdiction of the district court was invoked under 42 U.S.C. § 1983 (1970) and 28 U.S.C. § 1343(3) (1970). 42 U.S.C. § 1983 (1970) provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. § 1343(3) (1970) provides that the district court shall have original jurisdiction over any civil action:

> To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States . . . .

28 U.S.C. § 2281 (1970), providing for a three-judge court in actions challenging the constitutionality of a state law, was held inapplicable since no state officer was named as a party defendant to the law suit. Hernandez v. European Auto Collision, Inc., 346 F. Supp. 313, 316-317 (E.D.N.Y. 1972).

the garageman as a debt.[3] On appeal to the United States Court of Appeals for the Second Circuit, *held*, reversed and remanded: If appellant is able to prove the allegations of his complaint, the New York garageman's lien statute violates the fourteenth amendment, as it deprives the owner of due process of law by permitting a lien on his property to be foreclosed without an opportunity for a hearing to determine the amount of the lien. *Hernandez v. European Auto Collision, Inc.*, 487 F.2d 378 (2d Cir. 1973).

Procedural due process requires that the government afford a person notice and an opportunity to be heard before it can deprive him of his property.[4] Recently, the due process clause has been held to embrace a variety of property interests. The United States Supreme Court has applied the principles of due process to require notice and a prior adjudication before a creditor can garnish wages[5] or replevy household goods.[6] The Court has also held that a state cannot terminate welfare benefits[7] or suspend driver's licenses[8] without affording notice and a hearing prior to the deprivation of the entitlement. The application of procedural due process safeguards to the garageman's lien on an automobile follows the mandate of *Fuentes v. Shevin*, that "[a]ny significant taking of property by the State is within the purview of the Due Process Clause."[9]

The garageman's lien is an ex parte, prejudgment creditor's remedy. Section 184 of the New York Lien Law provides that a garageman has a lien upon a motor vehicle for the amount due for maintenance, storage, or repairs and "may detain such motor vehicle . . . at any time it may be lawfully in his possession until such sum is paid . . . ."[10] The enforcement provisions of the New York Lien Law authorize a garageman to extinguish an owner's title and interest in a car by selling the vehicle.[11] Before the lien can be foreclosed, however, the lienholder must serve the owner with a "notice of sale" containing a statement explaining the origin of the lien, describing the property against which the lien exists including the estimated value of the property, and verifying the amount of the lien.[12] If the debt is not paid within 10 days after service of the "notice

3. The district court issued an order temporarily restraining the sale of the automobile while it heard the case. Appellant's car was sold after the court of appeals declined to grant an extension of the restraining order pending appeal of the judgment of the district court.

4. Baldwin v. Hale, 68 U.S. (1 Wall.) 223 (1863).

5. Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969) [hereinafter referred to as *Sniadach*].

6. Fuentes v. Shevin, 407 U.S. 67 (1972) [hereinafter referred to as *Fuentes*].

7. Goldberg v. Kelly, 397 U.S. 254 (1970).

8. Bell v. Burson, 402 U.S. 535 (1971) [hereinafter cited as *Bell*].

9. 407 U.S. 67, 86 (1972). Garageman's lien statutes have been invalidated in Georgia and West Virginia as violating the due process requirements of the fourteenth amendment. Mason v. Garris, 360 F. Supp. 420 (N.D. Ga. 1973), Straley v. Gassaway Motor Co., 359 F. Supp. 902 (S.D.W. Va. 1973).

10. N.Y. Lien Law § 184 (McKinney 1966).

11. *Id.* § 200 (McKinney Supp. 1973).

12. *Id.* § 201.

of sale" on the owner,[13] the lienholder must then publish notice of the sale in a local newspaper once a week for two consecutive weeks before the automobile can be sold.[14] "An amount sufficient to satisfy his lien and the expenses of advertisement and sale" can then be retained by the lienholder from the proceeds of the sale.[15]

The garageman's statutory right to detain and impose a lien on an automobile for storage and repair charges without a prior adjudication to determine the validity of the lien was not in issue in *Hernandez*. The controversy surrounded the sale provisions of the New York Lien Law and the garageman's resulting power to foreclose a valid lien without a prior adjudication of the amount of the lien. Appellant's challenge to the garageman's right to detain the automobile was held moot. The garage acquired possession of the automobile only after appellant voluntarily surrendered it and "voluntarily incurred at least some storage charges" entitling the garage to a lien for storage expenses.[16]

Both the district court and the court of appeals in *Hernandez* held that the sale provisions of the garageman's lien were subject to the due process clause of the fourteenth amendment. But they differed as to how the principles of due process should be applied to the sale provisions of the statute. The district court relied upon its prior decision in *Magro v. Lentini Bros. Moving & Storage Co.*,[17] holding that due process of law requires only that a debtor be given notice sufficient to afford him an opportunity to seek relief in the courts.[18] This, in effect, says that the state may, in enacting a prejudgment creditor's remedy, place the burden of obtaining a hearing prior to the deprivation of property on the debtor rather than the creditor.

In *Magro*, the enforcement provisions of the New York warehouseman's lien were challenged on due process grounds. Plaintiffs' furniture and household goods were sold at a public auction after they failed to pay a bill for moving and storage fees. A self-help remedy, section 7-210 of the New York Uniform Commercial Code,[19] permits a warehouseman to execute on a lien without a prior adjudication of its amount. Before the warehouseman is authorized to execute on the lien, the owner of the goods must be notified of the intended foreclosure. The notice provisions of section 7-210 are similar to the New York garageman's lien statute.[20] The district court in *Magro* upheld the warehouseman's lien against the due process challenge: "[I]t was enough if notice was given to the person

13. *Id.*
14. *Id.* § 202.
15. *Id.* § 204.
16. 487 F.2d at 382.
17. 338 F. Supp. 464 (E.D.N.Y. 1971), *aff'd mem.*, 460 F.2d 1064 (2d Cir.), *cert. denied*, 406 U.S. 961 (1972) [hereinafter referred to as *Magro*].
18. Hernandez v. European Auto Collision, Inc., 346 F. Supp. 313 (E.D.N.Y. 1972).
19. N.Y.U.C.C. § 7-210 (McKinney 1964).
20. *See* N.Y.U.C.C. § 7-210(2) (McKinney 1964).

to be deprived and that person had the opportunity to seek relief in the courts."[21]

Following the reasoning of the *Magro* decision, the district court in *Hernandez* held that the appellant was not deprived of notice and an opportunity for a hearing.[22] The notice provisions of the garageman's lien statute allow a minimum 24 day period between the time the owner is served notice of an impending sale and the actual sale if the debt is not paid.[23] Should the owner of the car dispute the amount of the garageman's claim, he may on his own initiative challenge the garageman's right to enforce the lien. The court noted that he may bring a replevin action in a state court to challenge the detention of the automobile or seek equitable relief to forestall the sale.[24]

The court of appeals rejected this argument. Judge Wyzanski, speaking for the appellate court, tersely stated that the availability of a replevin action or an equitable remedy in the state courts did not validate the sale provisions of the New York garageman's lien statute so as to allow appellant's car to be sold without "judicial ascertainment of the amount owed"[25] to the defendant. In remanding the case to the district court for a trial on the merits, the court of appeals concluded that appellant's challenge to the sale provisions of the garageman's lien statute should be examined in the light of the doctrines established in *Fuentes v. Shevin*,[26] *Bell v. Burson*[27] and *Sniadach v. Family Finance Corp.*[28]

A careful scrutiny of the language of the Court in *Fuentes* would seem to indicate that the state may not place the burden of obtaining a hearing, prior to a deprivation of his property, on the debtor. Prior notice of an imminent deprivation of property without a formal opportunity to be heard is not consistent with the underlying rationale of *Fuentes*: "The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decisionmaking when it acts to

21. Magro v. Lentini Bros. Moving & Storage Co., 338 F. Supp. 464, 467 (E.D.N.Y. 1971), *aff'd mem.*, 460 F.2d 1064 (2d Cir.), *cert. denied*, 406 U.S. 961 (1972) (citing Anderson Nat'l Bank v. Luckett, 321 U.S. 233 (1944)). *Magro* was decided after *Sniadach* but prior to *Fuentes*. The district court in *Magro* interpreted *Sniadach* as applying only to specialized types of property "the deprivation of which will drive the debtor 'to the wall.'" 338 F. Supp. at 468. In a concurring opinion in *Hernandez*, Judge Timbers of the court of appeals noted that *Fuentes* eliminated any distinction between specialized types of property and property in general within the meaning of the due process clause. Judge Timbers believed that *Magro* was of questionable validity after the *Fuentes* decision was rendered.

22. Hernandez v. European Auto Collision, Inc., 346 F. Supp. 313 (E.D.N.Y. 1972).

23. N.Y. LIEN LAW § 201 (McKinney Supp. 1973). The district court in *Hernandez* at 319, relied on *Lindsey v. Normet*, 405 U.S. 56 (1972). In *Lindsey v. Normet* the Supreme Court upheld Oregon's Forcible Entry and Detainer Statute which required a tenant to defend in an eviction proceeding within four days after a landlord filed an action. The Court held that the statute which had been challenged on due process grounds provided the tenant an opportunity to be heard prior to eviction, albeit a limited opportunity.

24. Hernandez v. European Auto Collision, Inc., 346 F. Supp. 313, 319 (E.D.N.Y. 1971).

25. 487 F.2d at 383.

26. 407 U.S. 67 (1972).

27. 402 U.S. 535 (1971).

28. 395 U.S. 337 (1969).

deprive a person of his possessions."[29] If the state may, consistent with the due process clause, shift the burden of obtaining a hearing to the debtor whose property is threatened by the application of a creditor's remedy, then the creditor benefits from a procedural advantage in what is supposed to be a fair process of decision making. The Court in *Fuentes* seems to have rejected the notion that the debtor's opportunity to be heard prior to a deprivation of property is dependent upon his willingness to initiate a law suit. Reviewing the wage garnishment statute in *Sniadach* and the driver's license suspension procedure in *Bell*, the Court noted that "these were deprivations of property that had to be preceded by a fair hearing."[30]

The district court in *Hernandez* was also unwilling to interpret the due process safeguards, established in *Sniadach* and *Fuentes*, as applicable to creditor's remedies such as the garageman's lien statute, since a sharp distinction could be drawn between the garnishment and replevin statutes struck down in *Sniadach* and *Fuentes* and the New York garageman's lien statute.[31] Appellant voluntarily parted with his car; there was no seizure of property as in the garnishment and replevin cases. The majority opinion of the court of appeals, written by Judge Wyzanski, did not discuss the point. However, Judge Timbers, in a concurring opinion, emphasized that the voluntariness of the transfer of property to the garageman was not a pivotal distinction upon which the state could bypass the requirement of providing a hearing before sanctioning a deprivation of property. While it is true that appellant voluntarily transferred possession of his car to the repairman, the transfer was for a limited purpose and was never intended to be a voluntary relinquishment of his property interest in the vehicle.[32]

Comparing the garageman's lien statute to the replevin statutes struck down in *Fuentes*, Judge Timbers concluded that "there would appear to be an even greater disregard for the basic elements of due process" in the former because the garageman's power to foreclose a lien "completely extinguishes the possibility of any right of repossession in the event of ultimate success on the merits . . . ."[33] It is true that replevin

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29. Fuentes v. Shevin, 407 U.S. 67, 80 (1972).

30. *Id.* at 85. *Fuentes* may conceivably be interpreted to mean that procedural due process only requires an opportunity to be heard if the debtor initiates an action in court to contest a creditor's claim against him. Support for the argument can be found in the Court's statements that "we deal here only with the right to an *opportunity* to be heard." *Id.* at 92 n.29 (emphasis in original); and, *quoting* Sniadach v. Family Fin. Corp., 395 U.S. 337, 343 (1969), that "due process is afforded only by the kinds of 'notice' and 'hearing' which are aimed at establishing the validity, or at least probable validity, of the underlying claim against the alleged debtor *before* he can be deprived of his property. . . ." 407 U.S. at 97 (emphasis in original).

31. Hernandez v. European Auto Collision, Inc., 346 F. Supp. 313, 318 (E.D.N.Y. 1972).

32. 487 F.2d at 385.

33. 487 F.2d at 385.

involves a seizure of property rather than a voluntary transfer as in the lien cases. However, replevin is a "provisional remedy" providing for an eventual hearing after seizure of the goods.[34]

The court of appeals was not asked to determine whether there is state action in the enforcement of the New York garageman's lien statute. The district court, having determined that no federal claim was stated upon which relief could be granted in appellant's complaint, left open the question whether there was state action in the enactment of a statute which allows a private individual to foreclose a garageman's lien by self help. However, by way of dictum, the district court indicated that state action, which is a necessary predicate to federal jurisdiction under title 42 of the United States Code, section 1983 and title 28 of the United States Code, section 1343 seemed to be manifest in the instant case. "Though he is a private individual, the lienor through the public auctioneer it has retained is performing a traditionally public function pursuant to a right accorded it by a state statute."[35]

There are strong policy considerations in favor of extending the protection of the right to notice and a formal hearing to the enforcement provisions of the garageman's lien statute. Without an opportunity for a prior judicial determination of the amount of the debt claimed as a lien by a garageman, the statute gives the garageman an economic leverage over the car owner who questions the value of his services. If the owner's only opportunity to challenge a dubious or even fraudulent claim is by bringing a law suit, the garageman has a procedural advantage over the car owner. The time and money spent on hiring a lawyer are a real deterrent to the car owner whose challenge to the garageman's claim may be legitimate.[36] It may be cheaper for the car owner to passively acquiesce in the garageman's determination of the amount of the debt than to contest it.

By conditioning the enforcement of the garageman's remedy upon the requirement that the owner of the car must be afforded an opportunity for a prior adjudication after notice and hearing of a threatened deprivation of his property, the possibility of economic coercion is elimi-

34. *See, e.g.*, FLA. STAT. ch 78 (1969). The Florida replevin statute struck down in *Fuentes* provided for an opportunity for a hearing after seizure of the goods.

35. Hernandez v. European Auto Collision, Inc., 346 F. Supp. 313, 317 n.4 (E.D.N.Y. 1972). Judge Timbers of the court of appeals observed in his concurring opinion in *Hernandez* that the absence of an opportunity for a prior judicial determination of the amount of the lien "makes the statute a party to the deprivation of a significant property interest without the right to the basic protection of the Fourteenth Amendment." 487 F.2d at 386.

See Klim v. Jones, 315 F. Supp. 109 (N.D. Cal. 1970) (state action present in enactment of innkeeper's lien statute); Collins v. Viceroy Hotel Corp., 338 F. Supp. 390 (N.D. Ill. 1972) (state action present in innkeeper's lien statute); Adams v. Egley, 332 F. Supp. 614 (S.D. Cal. 1972), *rev'd* Adams v. Southern Cal. First Nat'l Bank, 113 UCC REP. SERV. 161 (9th Cir. 1973) (presence of state action in enactment of Cal. Commercial Code §§ 9503, 9504).

36. *See*, Comment, *The Application of Sniadach to Banker's and Garageman's Liens*, 4 SW. U.L. REV. 285 (1972).