

No. 1-10-3329

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MEREDITH RIES,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Cook County
FIFTH THIRD BANK,)	
Defendant-Appellee,)	Nos. 07 CH 16018
)	07 CH 9267
<hr/> FIFTH THIRD BANK,)	
Plaintiff,)	Honorable
v.)	Stuart Palmer
MEREDITH RIES,)	Judge Presiding.
Defendant.)	

JUSTICE MURPHY delivered the judgment of the court.
Justices Neville and Salone concurred in the judgment.

ORDER

¶ 1 *HELD:* The circuit court did not err in finding that Ries had violated her agreement to keep the vehicle at issue free from all liens where a labor and storage lien attached to the vehicle upon the commencement of repair work and she allowed that lien to persist by refusing to pay the deductible or recover the vehicle.

¶ 2 Meredith Ries appeals from orders of the circuit court of Cook County denying her motion for summary judgment and granting summary judgment in favor of Fifth Third Bank

1-10-3329

(Fifth Third). On appeal, Ries contends that the court erred by finding that she had breached the contracts at issue where she did not allow a lien to attach to the vehicle at issue, she did not place the vehicle in the possession of another person, and she validly exercised her option to return the vehicle to Fifth Third in lieu of making a final balloon payment. For the reasons that follow, we affirm.

¶ 3

BACKGROUND

¶ 4 Ries filed a complaint seeking declaratory judgment and other relief against Fifth Third, Fifth Third filed a complaint for declaratory judgment against Ries, and the circuit court granted their joint motion to consolidate the cases. In her third amended complaint, Ries asked the court for declaratory judgment to determine whether Fifth Third had breached a retail installment contract to which she was a party and alleged claims of breach of contract, conversion, detinue, defamation, and tortious interference with prospective business relationships and violations of the Illinois Uniform Commercial Code (UCC) (810 ILCS 5/1-101 *et seq.* (West 2004)) and the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2004)).

¶ 5 Ries asserted that on March 25, 2003, she purchased a new 2003 Nissan Pathfinder and entered into a retail installment contract with Fletcher Jones Nissan, which assigned its rights under the contract to Fifth Third, and that she obtained damage and loss insurance for the vehicle from GEICO. On June 5, 2005, the vehicle was severely damaged in an accident and towed to a street parking spot, and on June 7, 2005, GEICO had the vehicle towed to Collision Damage Experts (Collision Damage) for repairs. Ries informed Tom Marasovich, a claims adjustor for GEICO, that she disagreed with the decision to repair the vehicle because it should have been

1-10-3329

declared a total loss, and on June 13, 2005, Ries was told that the vehicle had been towed to a Collision Damage repair facility in Lynwood, Illinois. Repairs took longer than anticipated and were not completed until late July. On August 23, 2005, Jennifer Nelson, an employee of Fifth Third, informed Ries that Collision Damage was threatening to claim a lien on the title of the vehicle for the unpaid portion of its repairs, and Ries responded that she was involved in a dispute with GEICO. Collision Damage continued to threaten to place a lien on the vehicle, and on October 12, 2005, informed Nelson that Ries was refusing to pick up the vehicle and owed it storage fees that were accruing daily and a \$500 deductible.

¶ 6 On October 18, 2005, Fifth Third repossessed the vehicle and removed it from Collision Damage's premises, and on October 31, 2005, Fifth Third sent Ries a notice of repossession in which it related that it had repossessed her vehicle "for failure to make payments on your contract with us" and a notice of its plan to sell the vehicle. Fifth Third further related to Ries that it had repossessed the vehicle to protect its security interest. In November 2005, Fifth Third reported the repossession and debt to credit reporting agencies without also reporting that the repossession and debt were being disputed by Ries. In December 2005, Ries received a letter from a law firm informing her that a balance of \$18,212.38, plus daily accruing interest, was due and owing under the contract.

¶ 7 Ries also asserted that she had never been delinquent in her monthly loan payments and had continued to make them up until March 24, 2008, even though Fifth Third repossessed the vehicle on October 18, 2005. Ries further asserted that she had a contractual option to either return the vehicle to Fifth Third on March 24, 2008, or make a final balloon payment of

1-10-3329

\$11,349.75, and that she had decided to return the vehicle because Fifth Third was already in possession of it.

¶ 8 In count I of her complaint, Ries sought declaratory judgments that Fifth Third breached the retail installment contract, had no legal or factual basis for repossessing the vehicle, violated the Illinois Consumer Fraud and Deceptive Business Practices Act, failed to give proper notice of repossession, and failed to timely apply to a court to determine if it was entitled to possession of the vehicle. In count II, Ries alleged Fifth Third breached the contract by repossessing the vehicle without a legal or factual basis for doing so and failing to check on the validity of the lien claims asserted by Collision Damage. In count III, Ries set forth a conversion claim alleging that Fifth Third had violated her right to possession of the vehicle by repossessing it without legal justification. In count IV, Ries alleged that Fifth Third violated section 9-609(b)(2) of the UCC (810 ILCS 5/9-609(b)(2) (West 2004)) by unlawfully repossessing the vehicle and thereby causing a breach of the peace. In count V, Ries alleged that Fifth Third violated section 2 of the Consumer Fraud and Deceptive Practices Act (815 ILCS 505/2 (West 2004)) by making numerous material misrepresentations to her in repossessing the vehicle. In count VI, Ries set forth a detinue claim alleging that she had a superior right to possession of the vehicle and that Fifth Third had refused to return it to her. In count VII, Ries set forth a defamation claim alleging that Fifth Third had made false reports and statements concerning her credit, the condition of her loan, and the status of the alleged debt. In count VIII, Ries set forth a claim of tortious interference with prospective business relationships alleging that Fifth Third had interfered with her ability to enter into business relationships with third parties by damaging her

1-10-3329

credit rating with its defamatory statements.

¶ 9 In its amended complaint, Fifth Third asked the court for declaratory judgment regarding the parties' rights under the contract and alleged a breach of contract claim against Ries. Fifth Third asserted that the vehicle was towed to Collision Damage at the request of Ries or GEICO for repairs following an accident in the summer of 2005. Ries refused to pay the \$500 deductible and retrieve the vehicle because she believed GEICO should have declared it a total loss and it had not been adequately repaired, and Collision Damage informed Fifth Third that it intended to enforce its lien rights in the vehicle. On October 21, 2005, Fifth Third paid the deductible and took possession of the vehicle to protect its security interest. Fifth Third later attempted to settle the matter with Ries by offering to give her possession of the vehicle and waive the deductible and storage fees, but she did not accept its offer. Fifth Third requested the court enter declaratory judgment in its favor so it could sell the vehicle to recover the costs of repossession and reduce or satisfy the balance due under the contract and alleged that Ries had breached the contract by failing to make the final payment due on March 24, 2008.

¶ 10 The circuit court entered an order allowing Fifth Third to sell the vehicle, and Fifth Third filed a motion for partial summary judgment asserting that its request for declaratory judgment had been rendered moot by the court's order and that it was entitled to summary judgment on its breach of contract claim where Ries had failed to make the final balloon payment. Fifth Third also asserted that it was entitled to summary judgment on Ries's request for declaratory judgment and claims for breach of contract, conversion, and detinue because it had the right to repossess the vehicle where Ries had breached the contract by failing to keep the vehicle free from liens

1-10-3329

and encumbrances. Fifth Third further asserted that Ries had waived her breach of contract claim by refusing to retrieve the vehicle and that it was entitled to summary judgment on her claim that it had violated the UCC because she could not allege facts showing that its repossession of the vehicle gave rise to a breach of the peace.

¶ 11 Ries then filed a motion for summary judgment on all counts of both complaints asserting that she had not breached any contract where she exercised her option to return the vehicle to Fifth Third in lieu of making the final balloon payment and did not allow a lien to attach to the vehicle or transfer possession of it. Ries also asserted that Fifth Third had breached the contract by repossessing the vehicle without a legal or factual basis for doing so, failing to follow statutory procedure, falsely citing her failure to pay her premium as the reason it repossessed the vehicle, and falsely reporting that she had failed to pay her premium and final payment to credit reporting agencies. Ries further asserted that she had the superior right to maintain possession of the vehicle and that Fifth Third used deceptive practices to repossess it and made false reports regarding the reason for repossession to various credit reporting agencies.

¶ 12 Numerous documents were attached to the parties' complaints and motions for summary judgment, including copies of the retail installment contract and future value guaranty agreement between Ries and Fifth Third and various letters and e-mails sent between Ries and employees of GEICO, Collision Damage, and Fifth Third. The record shows that the retail installment contract provided Fifth Third with a security interest in the vehicle until all payments had been made and required Ries to make 59 monthly installment payments of \$412.38 to Fifth Third beginning on April 24, 2003, and a final installment of \$11,349.75 on March 24, 2008. Ries was also required

1-10-3329

to obtain motor vehicle damage or loss insurance and keep the vehicle free from all liens. In addition, Ries was prohibited from selling, leasing, or encumbering the vehicle or placing it in another person's possession. The contract also contained an acceleration clause allowing Fifth Third to declare all unpaid installments and other indebtedness immediately due and payable if Ries defaulted on a payment or failed to perform any agreement or warranty made therein, or if the vehicle was lost, stolen, substantially damaged, destroyed, sold, encumbered, or levied upon. The contract further provided that upon the occurrence of any default by Ries, Fifth Third could pursue its rights and remedies under Article 9 of the UCC, including the right to take immediate possession of the vehicle, with or without judicial process.

¶ 13 The future value guaranty, which was entered into by Ries and Fifth Third on March 25, 2003, provided that Ries could keep the vehicle by paying off the remaining balance of principal, interest, and other charges or refinancing the remaining balance due. Ries could also return the vehicle to Fifth Third in lieu of the final payment if all conditions of the guaranty had been met and she had paid all charges due and any difference between the future value and adjusted future value at the time she returned the vehicle.

¶ 14 The correspondence attached to the complaints and motions included a fax Ries sent to Marasovich on July 30, 2005, relating that she was concerned about the accuracy of his estimate, the severity of the damage to the vehicle, and the services rendered by Collision Damage and that repairs had begun without her consent before she had the opportunity to review the estimate or pursue her options. Also included is a letter from Collision Damage to GEICO relating that Ries had not picked up the vehicle or paid the deductible, that storage costs were accruing, and that

1-10-3329

Collision Damage was going to put a mechanic's lien on the vehicle.

¶ 15 Following responses by the parties and a hearing on the motions, the circuit court entered an order granting Fifth Third's partial motion for summary judgment on its claim for breach of contract, finding that Ries had breached the retail installment contract by failing to make the final balloon payment on March 24, 2008, and leaving the vehicle in Collision Damage's possession. The court explained that by refusing to recover the vehicle from Collision Damage, Ries allowed a lien to attach to the vehicle and violated the contract's provision that she not place the vehicle in another's possession without the written consent of Fifth Third. The court noted that the issue of whether Ries had consented to the repairs to the vehicle was not relevant to its decision and that Fifth Third had rightfully repossessed the vehicle and exercised the acceleration clause in the contract where Ries had failed to keep the vehicle free from liens. The court also denied Ries's motion for summary judgment, finding that she had breached the contract prior to exercising her option to return the vehicle under the future value guaranty and had not made the required payments prior to doing so. Ries then filed a motion to reconsider, which was denied by the court.

¶ 16 Fifth Third subsequently filed a motion for summary judgment on the remaining counts of Ries's complaint asserting that the court's prior determinations and findings eliminated all factual issues regarding those counts. The court then entered a memorandum opinion and order granting summary judgment on all remaining counts of Ries's complaint in favor of Fifth Third and awarding Fifth Third \$5,977.78 in damages and \$11,736.21 in attorney fees and costs. In doing so, the court adopted the findings set forth in its previous order and found that there were

1-10-3329

no issues of material fact and that Fifth Third was entitled to judgment as a matter of law on all counts.

¶ 17

ANALYSIS

¶ 18 On appeal, Ries contends that the circuit court erred in granting summary judgment in favor of Fifth Third and denying her motion for summary judgment because she did not breach the retail installment contract or future value guaranty. A party is entitled to summary judgment where the pleadings, depositions, admissions, affidavits, and exhibits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Kajima Construction Services, Inc. v. St. Paul Fire & Marine Insurance Co.*, 227 Ill. 2d 102, 106 (2007). A triable issue of fact exists where there is a dispute as to a material fact, or where reasonable people might differ in drawing inferences from facts which are not in dispute. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163-64 (2007). "Where parties file cross-motions for summary judgment, they invite the court to decide the issues as questions of law, and entry of summary judgment for one party or the other may be proper." *Falcon Funding, LLC v. City of Elgin*, 399 Ill. App. 3d 142, 147 (2010). We review the circuit court's rulings on the parties' motions for summary judgment *de novo*. *Abrams v. City of Chicago*, 211 Ill. 2d 251, 258 (2004).

¶ 19 Ries asserts that she did not breach the retail installment contract because she did not allow a lien to attach to the vehicle. Ries maintains that a lien could not have attached to the vehicle because she did not consent to the repairs made by Collision Damage and such consent was required to create a lien and notes that Collision Damage did not file a lien notice. Fifth

1-10-3329

Third responds that Ries's consent to the repairs was not necessary to create a lien, and that a lien attached to the vehicle automatically when Collision Damage began working on it.

¶ 20 The Labor and Storage Lien Act provides that:

"[e]very person, firm or corporation who has expended labor, skill or materials upon any chattel, or has furnished storage for said chattel, at the request of its owner, reputed owner, or authorized agent of the owner, or lawful possessor thereof, shall have a lien upon such chattel beginning on the date of the commencement of such expenditure of labor, skill and materials or of such storage." 770 ILCS 45/1 (West 2004).

Such a lien shall expire 60 days after the chattel is returned to its owner or duly authorized agent unless the lien claimant files a verified lien notice. 770 ILCS 45/2 (West 2004). Thus, a vehicle owner's consent to repair work is not a requirement for the creation of a labor and storage lien where such a lien attaches automatically upon the commencement of work expended at the request of a reputed owner of the vehicle, an authorized agent of the owner, or a lawful possessor of the vehicle.

¶ 21 In this case, GEICO, Ries's auto insurance provider, arranged for the vehicle to be transported to Collision Damage's facility for repairs, and at no point has Ries asserted that it was not in lawful possession of the vehicle when it did so. Thus, a labor and storage lien attached to the vehicle on the date Collision Damage began making repairs, and Ries allowed that lien to persist by refusing to pay the deductible and pick up the vehicle in violation of her agreement to keep it free from all liens. In addition, while Collision Damage did not file a lien notice, such a

1-10-3329

filing is not required to create a lien and would have only become necessary if Collision Damage had sought to maintain the lien more than 60 days beyond the date upon which the vehicle was returned to Fifth Third. We therefore conclude that the circuit court did not err in finding that Ries violated her contractual agreement to keep the vehicle free from all liens.

¶ 22 Ries also asserts that she did not breach the contract by placing the vehicle in the possession of another person where she did not consent to Collision Damage's possession of the vehicle and Collision Damage is not a "person." Ries further asserts that because she did not breach the contract, her option to return the vehicle to Fifth Third under the future value guaranty was available to her and properly exercised and she was entitled to summary judgment on all counts of her complaint where Fifth Third improperly repossessed the vehicle and reported her to credit reporting agencies. However, we need not consider these additional issues because they are all based on the assumption that the circuit court erred in finding that Ries had failed to keep the vehicle free from all liens and we have concluded that the court's finding was not erroneous for the reasons stated above.

¶ 23

CONCLUSION

¶ 24 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.