

In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)
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KENNETH J. JORDAN)
(Chapter 13 Case 99-41316))
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 Debtor)
)
)
)
KENNETH J. JORDAN)
)
 Plaintiff)
)
)
v.)
)
GERMAN AUTO WORKS, INC.)
a/k/a German Auto Service)
)
 Defendant)

Adversary Proceeding
Number 99-4089

FILED
at 12 O'clock & 10 min PM
Date 9/23/99

MICHAEL F. McHUGH, CLERK
United States Bankruptcy Court
Savannah, Georgia



MEMORANDUM AND ORDER

Trial of the above-captioned case was conducted on August 19, 1999, on Debtor's action to force turnover of a vehicle being held in the possession of the Defendant after it performed substantial repairs to the vehicle. Following the trial of the case the Court conducted a settlement conference attempting to resolve the issue prior to a ruling and counsel for both parties have subsequently communicated with the Court that the Plaintiff has withdrawn his request to force turnover of the vehicle. However, the parties

cannot agree on the amount, if any, which Defendant should be allowed to assert as a claim for storage expenses in the Debtor's Chapter 13 case. Counsel for both parties have further requested that the Court rule on this one remaining contested issue and I therefore make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In November 1997 the Debtor delivered to Defendant a 1976 BMW automobile which had been wrecked. The Defendant undertook repairs to the vehicle and Debtor paid \$2,000.00 toward those repair costs. In December 1998 Defendant notified Debtor that an additional \$2,395.00 was due for the repairs which the Debtor was unable to pay in full, but offered a down payment and monthly installments to satisfy the obligation. The parties were unable to agree on terms and Defendant continued to hold the vehicle in its possession.

The Defendant asserts an entitlement to storage charges from January 1998 through the date of the Court's ruling at a rate of \$7.00 per day. Debtor contends that because the vehicle, when repairs are completed, will be worth more than the outstanding repair bill that no storage claim should be allowed. The maximum legal rate for storage permissible is \$14.00 per day. Notice that the Defendant intended to charge storage at a rate of \$7.00 per day was given to the Debtor on or about September 9, 1998.

At trial the Court ruled that a mechanic's right to assert a lien on a vehicle for storage did not accrue until written notice of his intent to do so is given to the account debtor. O.C.G.A. § 44-14-363 provides in part that mechanics have lien "on personal property for work done and material furnished in manufacturing or repairing the personal property and for storage of the personal property after its manufacture or repair, which storage begins accruing after 30 days' written notice to the owner of the fact that storage is accruing and of the daily dollar amount thereof." O.C.G.A. §44-14-363 (1997). I therefore concluded that no claim for storage could be asserted for the period prior to October 9, 1998, thirty (30) days after notice was given.

From the date the notice was given through the date of trial 310 days elapsed and at a rate of \$7.00 per day to bring the total storage amount to \$2,170.00. If there were value in the vehicle to cover that amount, the Defendant would be entitled to a secured claim in the amount of \$2,170.00. However, because Debtor is now surrendering the vehicle to the mechanic the secured claim is subsumed into the Defendant's possession of the vehicle and its right to dispose of it and reimburse itself for unpaid costs of repair and storage costs. Accordingly, Defendant will be allowed an unsecured claim in this case of \$2,170.00 which represents unpaid storage at the rate of \$7.00 per day from October 9, 1998, through the date of trial.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that Defendant, German Auto Works, Inc., a/k/a German Auto Service, is allowed an unsecured claim in the amount of \$2,170.00 which represents unpaid storage at the rate of \$7.00 per day from October 9, 1998, through the date of trial.

Defendant IS FURTHER ORDERED to file an amended claim upon disposal of the vehicle in the event that the price received on disposition exceeds the unpaid balance of the repairs which were performed.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 23rd day of September, 1999.