

COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY
CIVIL ACTION – LAW

CRETE CARRIER CORP.,

: No. S-1647-11

Plaintiff

vs.

MICHAEL GULA d/b/a TRAIL
TOWING & AUTO REPAIR, a/k/a
TRAIL TOWING,

JURY TRIAL DEMANDED

Defendant

FILED
MAR 23 10 25
SCHUYLKILL COUNTY PA

Angela N. Rainey, Esquire – for Plaintiff
Arlen R. Day, II, Esquire – for Defendant

ORDER OF COURT

DOLBIN, J.

AND NOW, this 30th day of March 2012, upon consideration of the Motion for Summary Judgment filed by the Defendant, Michael Gula d/b/a Trail Towing & Auto Repair (“Trail Towing”), and a Motion to Compel Discovery filed by the Plaintiff, Crete Carrier Corporation (“Crete Carrier”), as well as all responses thereto and after oral argument on the legal issues involved held on January 26, 2012, we HEREBY ORDER and DECREE that the Defendant’s Motion for Summary Judgment is DENIED and Plaintiff’s Motion to Compel Discovery is GRANTED, for the reasons set forth in our accompanying opinion.

BY THE COURT:

Dolbin J.
J.

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2011 MAR 30 PM 2:25
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OPINION OF COURT

DOLBIN, J.

This matter is before the Court on a Motion for Summary Judgment filed by the Defendant, Michael Gula d/b/a Trail Towing & Auto Repair (“Trail Towing”), and a Motion to Compel Discovery filed by the Plaintiff, Crete Carrier Corporation (“Crete Carrier”).

Crete Carrier commenced this action on August 1, 2011 by filing a Complaint alleging that Trail Towing is wrongfully retaining possession of Crete Carrier’s tractor and semi-trailer after they were involved in a motor vehicle accident on June 6, 2011, on Interstate 81 South around Mile Marker 124 in Schuylkill County, Pennsylvania. Crete Carrier alleges that Trail Towing refuses to release the tractor and semi-trailer until its towing and recovery fees of \$36,455.00 are paid, as well as daily storage

charges. Crete Carrier alleges that it has not paid Trail Towing's charges because they are unreasonable and unconscionable.

Crete Carrier also filed a Motion for Writ of Seizure, and a hearing was held on August 2, 2011 before the Honorable Jacqueline L. Russell in regard to that motion. At that hearing, the parties stipulated that Crete Carrier owned the vehicle in question, that Trail Towing towed the vehicle from the scene at the direction of the Pennsylvania State Police, and that Trail Towing has maintained possession of the vehicle ever since.

The parties also stipulated that Crete Carrier offered Trail Towing an amount less than the balance of \$34,455.00 claimed by Trail Towing, which amount Trail Towing refused to accept, and that Trail Towing has refused to release the vehicle to Crete Carrier until the balance due and the outstanding storage charges are paid.¹ Crete Carrier disputed that Trail Towing is entitled to a possessory lien on the vehicle, and offered to post a bond.

On August 12, 2011, Judge Russell issued an order denying Crete Carrier's motion. Judge Russell concluded that although Crete Carrier disputes the reasonableness of the value of Trail Towing's claimed services, Crete Carrier did not present reliable evidence to support its position that Trail Towing's fees were unreasonable or unrelated to Trail Towing's efforts to clear the scene of the accident and store Crete Carrier's property. Furthermore, Crete Carrier failed to introduce

¹ Trail Towing did release the cargo (spools of copper wire) to Crete Carrier within days of the accident, without requiring any payment at the time.

evidence that it offered a reasonable amount for the services provided by Trail Towing. As far as whether or not Trail Towing holds a possessory lien on the vehicle, the Court observed that a possessory lien may arise via statute or common law, and that the direct consent of Crete Carrier is not required. The Court noted that Crete Carrier did not adequately address the Pennsylvania Motor Vehicle Code, 75 Pa.C.S. § 3757 which provides towing companies with an “unqualified right to compensation” for their services when directed by a police officer to remove a vehicle or cargo at an accident scene.

Trail Towing counterclaimed seeking payment for its services. Presently before us is Trail Towing’s Motion for Summary Judgment, alleging that it is entitled to summary judgment as a matter of law based solely on the language of 75 Pa.C.S. § 3757 which gives it an “unqualified right to compensation” for its services. Trail Towing states that Crete Carrier is without any legal basis for seeking to force Trail Towing first to demonstrate that the charges are reasonable and not excessive, because of its unqualified right to compensation as stated in the statute. Trail Towing therefore asks us to dismiss Crete Carrier’s Complaint, and order Crete Carrier to pay \$36,455.00 plus daily storage fees of \$150.00 since June 6, 2011 and cargo storage fees of \$2,450.00, upon which payment Trail Towing will release Crete Carrier’s commercial truck and trailer.

Crete Carrier argues that summary judgment should be denied for several reasons. First, discovery has not been concluded; in fact it has hardly begun.

Second, there is a genuine issue of material fact regarding whether Trail Towing's charges were reasonable, necessary and related to towing. Third, any interpretation of the statute to mean that Crete Carrier cannot question Trail Towing's charges would be a violation of a vehicle owner's Constitutional rights. Finally, there is a question for the finder of fact as to the amount of charges for which Crete Carrier is liable.

Crete Carrier interpreted this Court's Order dated August 12, 2011 as requiring it to proceed with discovery, and it has done so. Trail Towing has refused to comply, not surprisingly, given its position described above. On November 30, 2011 Crete Carrier filed a Motion to Compel Discovery. Trail Towing filed a response and this issue is also ripe for decision.

We agree that discovery has not yet concluded in this case; we also agree that the sole basis for Trail Towing's Motion for Summary Judgment, the legal issue of the interpretation of the statute, is dispositive and is ripe for decision, and that a decision on this issue is necessary in order for the case to move forward pursuant to Pa.R.C.P. 1035.2(1), which provides:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report[.]

Pa.R.C.P. 1035.2(a) (2012).

This issue is purely a matter of law, namely the interpretation of the statute, and appears to be one of first impression. We could not find any case law citing 75 Pa.C.S. § 3757, as amended, which became effective on May 9, 2005. In fact, we could find no cases from any other states interpreting a similar statute or similar statutory language, nor did the parties cite to any.

Title 35 of the Pennsylvania Consolidated Statutes, Chapter 37 governs Accidents and Accident Reports. 75 Pa.C.S. § 3745.1, enacted in 2004, is entitled “Accident Scene Clearance.” It provides that a police officer may direct the removal of a wrecked vehicle if the owner cannot. 75 Pa.C.S. § 3745.1 (2012). This section provides that a police officer will not be liable for any damage to the vehicle or its contents caused by such removal, nor will anyone else working at that officer’s direction absent a showing of gross negligence. 75 Pa.C.S. § 3743.1, enacted in 2006, governs spilled cargo on the roadway, and provides that a police officer “may remove or direct removal of spilled cargo,” and may direct to have the spilled cargo stored, at the expense of the owner, at a nearby location. That section also states that a police officer shall not be liable in carrying out these provisions for any damage to or loss of any portion of the cargo. 75 Pa.C.S. § 3743.1 (2012).

The statutory section we are directly concerned with here is 75 Pa.C.S. § 3757, which provides:

§ 3757. Compensation for incident removal costs

(a) General rule.--Notwithstanding any other law or regulation, any entity incurring the cost of removing a vehicle or cargo at an accident scene if the removal is authorized by a police officer shall have the unqualified right to compensation for the cost of removal and cargo storage and cleanup from the owner of:

(1) A vehicle removed.

(2) A vehicle, the cargo of which was removed in whole or in part.

(3) The cargo removed.

75 Pa.C.S. § 3757(a) (as amended on December 8, 2004). Subpart (b) of this section gives the towing company the “unqualified right to any information relevant to vehicle ownership and information affecting compensation” 75 Pa.C.S. § 3757(b).

There is no question that this section indicates that the towing company is to be paid for its services. The question is, may someone question the amount that is charged? Or, do the words “unqualified right to compensation” mean otherwise?

We must therefore attempt to discern the intent of the Legislature in enacting this statute by looking first to the plain meaning of the statutory language used. 1 Pa.C.S. § 1903 (2012)(In interpreting statutory language, “[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage[.]” The question is, does the phrase “unqualified

right to compensation” mean that a towing company, which is approved by the Pennsylvania State Police for traffic incident removals such as these, and whose rates are on file with the Pennsylvania State Police, and who has been directed by the police to remove these vehicles from the scene of an accident, may expect to be paid its charges without question?

The title of the section, “Compensation for incident removal costs,” uses the word “costs,” not unqualified costs. Webster’s New Collegiate Dictionary (1977) defines “unqualified” to mean “not modified or restricted by reservation.” As the statute is currently written, the word “unqualified” modifies the word “right” or the phrase “right to compensation.” It does not modify only the word “compensation.” If it did, it would state “unqualified compensation.”

Furthermore, the statute defines compensation as being “for the cost of removal and cargo storage and cleanup from the owner” 75 Pa.C.S. § 3757(a). The word “cost” is not further defined by the statute.

We must also look to the legislative history of the statute in our attempt to discern the legislative intent behind its passage. 1 Pa.C.S. § 1921 (2012). The legislative history of the amendment of the statute is brief. The remarks by Senator Connie Williams of Montgomery County, Pennsylvania on the date of its passage do not address the meaning of the statutory language “unqualified right to compensation.” However, she did address the purpose behind the amendment:

We have been working with State Police and
with the local police, and this amendment deals

with some of the issues we have on incident management. I believe this amendment . . . will . . . have immunity for towing and removing personnel if a vehicle or cargo is damaged when the police officer tells it to move, absent gross negligence, so that if we can get any noninjury accidents off the road, there is a provision in it that towers get paid, and there is a provision to ensure that if there is cargo associated with it, somebody is responsible for storing the salvageable cargo

Remarks of Senator Williams on H.B. 873, Senate Legislative Journal at 2417

(Dec. 8, 2004). These remarks confirm our interpretation, that an approved towing company has an absolute right to be paid if the Pennsylvania State Police direct them to remove a vehicle from the roadway. The remarks are silent as to the amount of the payment or its reasonableness.

From both the plain meaning of the words and phrases used in the statute and their grammatical context, as well as the brief legislative history available, we believe that in passing this legislation, it was the Legislature's intent to ensure that motor vehicles involved in a noninjury accident are quickly cleared at the direction of a police officer from our roadways by towing companies, who then have an absolute right to be paid for their costs in doing so by the vehicle owner. We do not believe, however, that the Legislature intended for the vehicle owner to have to pay any charge, no matter how unreasonable or excessive, to the towing company. We, therefore, hold that the Legislature intended to give approved towing companies an absolute, unqualified right to be compensated, but not an absolute, unqualified right to the amount of compensation charged without

question. Our interpretation in this regard is the most reasonable reading of a difficult statute.

Trail Towing argues that it is an “approved” towing company by the Pennsylvania State Police, and that its rates are “on file” with them and therefore “reasonable.” Trail Towing’s rates are not the only item that Crete Carrier is questioning about its bill. Crete Carrier questions the necessity of the amount of towing vehicles and manpower Trail Towing allegedly sent to and used at the scene, and then billed it for, in removing its tractor trailer and cargo from the roadway. Crete Carrier also questions the amount it is being charged compared to the amounts Trail Towing charged to the other vehicle owners involved in the accident. We believe these are fair questions to which Crete Carrier is entitled to receive answers.

Some states in enacting similar “quick clearance” or “authority removal” laws have more specifically defined the compensation a towing company is entitled to when towing a disabled vehicle from an accident scene, and some have not.

For example, Rhode Island absorbs the cost of removal of a disabled vehicle, at no cost to the owner. “Traffic Incident Management Quick Clearance Laws: A National Review of Best Practices,” www.ops.fhwa.dot.gov/publications/fhwahop09005/auth_removal.html, at 10-11. Tennessee has discretion over whether to require the owner/carrier to pay for removal. *Id.* at 11. Virginia requires the owner/carrier to reimburse it “for all costs

incurred in the removal and subsequent disposition of such property.” Id. South Carolina, Texas and Wisconsin require the owner/carrier to pay “a reasonable charge” or the “reasonable costs” of removal. Id.

It appears to us that the Pennsylvania Legislature may have simply used the very same language used in the Model Ordinance discussed in the above article, in enacting this legislation.

There is no question that Trail Towing is entitled to payment. The question is, what amount of payment. We believe that under the United States and Pennsylvania Constitutions, Crete Carrier has the Constitutional right to due process of law to question the amount being charged for the towing, as well as the amount of the services provided in relation to an accident. A towing company should provide only those services necessary to fulfill the statutory requirements for accident clearance. If a towing company is alleged to have “padded the bill” by sending extra trucks or manpower, or by charging the commercial carrier for the expense of removing other vehicles not owned by it, the vehicle owner must be given the right to challenge it. In other words, the vehicle owner is entitled to its day in court.

Because discovery has not yet been completed as to the reasonableness of the towing charges and services in this matter, we, therefore, must deny Defendant’s motion for summary judgment. We will also grant the Plaintiff’s Motion to Compel Discovery. Accordingly, we enter the following: