

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU: TRIAL TERM PART 25

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STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Index No.: 606797/17

Plaintiff,

-against-

M.V.B. COLLISION INC., d/b/a MID ISLAND
COLLISION,

Defendant.
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PLAINTIFF'S POST-HEARING MEMORANDUM

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PRELIMINARY STATEMENT

Plaintiff, State Farm Mutual Automobile Insurance Company ("State Farm"), submits this post-hearing memorandum in support of State Farm's position that (1) Mid Island Collision's ("MVB") lien on the subject vehicle, a 2015 Nissan Armada ("Armada"), is facially defective; (2) State Farm does not owe any additional money to MVB for the repairs and other related expenses on the final bill, therefore rendering the lien invalid; and (3) State Farm is entitled to possession of the Armada.

As explained below, the facts presented at the hearing, the applicable case law, and the relevant regulations demonstrate that MVB's lien is invalid and, therefore, State Farm is legally entitled to immediate possession of the Armada at no additional cost.¹

According to MVB's lien, the total amount of the lien is \$50,728.44. The parties do not dispute that prior to the hearing, State Farm had already paid \$28,410.76 to MVB, leaving a disputed amount of \$22,317.68. State Farm acknowledged that the deductible of \$1,000.00 should have been paid to MVB, leaving a disputed amount of \$21,231.41 when adjusted for tax.

Prior to the hearing, the parties stipulated that the only issues in dispute were the validity of specific charges on MVB's final bill and State Farm's entitlement to possession of the Armada.

¹ All relevant exhibits were introduced by either State Farm or MVB during the course of the hearing and will be referred to by exhibit number in this brief.

As it concerns the final bill presented by MVB to State Farm on June 7, 2017, the following charges were in dispute prior to the testimony:

- a. Labor rate for all repairs done at MVB;
- b. \$1280.00 fee for rental overage (line 146 of final bill)²;
- c. \$490.00 fee for Rockaway Nissan (line 147 of final bill);
- d. \$490.00 fee for certified towing (line 148 of final bill);
- e. Recycled left wheel versus two new OEM wheels;
- f. Mark up charges on final bill; and
- g. Different in final lien amount due to increased taxes based on difference in final bill.

Due to the testimony gathered during the hearing, State Farm no longer disputes charges C+D for \$490.00 for Rockaway Nissan and \$490.00 for certified towing. Via email on March 20, 2019, MVB, through counsel, indicated that they would no longer be disputing the rental charge on the final bill. State Farm maintains its challenge to the remaining charges listed above. Therefore, the disputed amount at issue is \$18,776.56, when adjusted for tax.³

² After this brief was written but before it was finalized, MVB, via email, indicated that it would not be disputing the rental charge and that the \$1280.00 plus applicable tax implications should be taken off the amount of the disputed lien.

³ This amount includes the removal of the \$1,000.00 deductible, \$490.00 towing charge, \$1,280.00 rental charge, and the \$490.00 Rockaway Nissan charge.

CASE BACKGROUND

A. Factual Background⁴

The following is a brief recitation of the undisputed facts.

1. On March 27, 2017, the Armada was damaged in a collision and taken to MVB for repair.

2. Prior to March 27, 2017, State Farm issued a policy of insurance to its insured, Courtney Pope ("Pope" or "insured"), which included both collision and comprehensive coverage for the Armada. For reference, the Armada's VIN No. is 5N1AA0NC3FN613953.

3. The Armada was owned by Pope subject to a lien in favor of TD Auto Finance, LLC ("TD"), which provided the financing for the purchase of the Armada.

4. The policy and the applicable New York regulation, 11 NYCRR 216.0, provide that State Farm will pay for any authorized and necessary repairs to the Armada.

5. The policy and the regulation further provide that if the cost of repairing the Armada is greater than 75% of the actual cash value of the vehicle, it is deemed a

⁴ Both parties have previously stipulated to the facts concerning the issuance of the insurance policy to Courtney Pope, Pope's financing agreement with TD Bank, that State Farm told Pope that they could not reach an agreed upon price with MVB, the date of the collision, the estimates/supplements conducted by State Farm estimators James Rice and Michael Thiele, the final bill submitted by MVB, and the previous payments made by State Farm to MVB.

total loss and no further repairs are covered or authorized. Instead, State Farm would pay the insured the actual cash value of the Armada and take title.

6. On March 31, 2017, State Farm sent an estimator to inspect the Armada at MVB to determine the nature and extent of damages. MVB permitted only a sight inspection of the vehicle at that time. Based upon this sight inspection, State Farm wrote an estimate of \$10,082.70 and paid \$9,082.70 to MVB.

7. MVB then contacted State Farm regarding their belief that the initial estimate was too low. State Farm sent Pope a notice of rights letter, acknowledging that they could not reach an agreed upon price and that there was a possibility Pope might be responsible for out of pocket expenses.

8. State Farm acknowledged MVB's request for a supplement and returned to MVB for an additional inspection.

9. Between March 31, 2017 and June 7, 2017, there were a total of eight supplements requested by MVB. At each re-inspection, State Farm was permitted to make sight inspections and, based upon its good faith estimates, authorized and paid MVB a total of \$28,410.76 (\$29,410.76 minus the \$1,000.00 deductible).

10. On June 5, 2017, this claim was reassigned to State Farm's Total Loss Unit, which determined that the Armada had reached the 75% threshold and, therefore, no more repairs would be covered.

11. On June 7, 2017, State Farm paid Pope and TD the actual cash value of the Armada in exchange for Pope signing title over to State Farm.

12. On June 7, 2017, MVB advised that the repairs were complete.

13. On June 15, 2017, MVB demanded an additional \$32,503.96 as condition before it would release the Armada.

14. On July 6, 2017, State Farm received, via facsimile, MVB's Notice of Lien and Sale ("lien") on the Armada, seeking an additional \$50,728.44.

B. Litigation History⁵

15. On July 12, 2017, State Farm filed a Summons and Verified Complaint alleging three separate causes of action: replevin, violation of Lien Law § 201-a, and a declaration that State Farm has no obligation to pay MVB any additional monies for its alleged work on the Armada.

1) State Farm's Order to Show Cause

16. On July 21, 2017, State Farm moved by Order to Show Cause ("OSC") for a summary order of seizure, to invalidate the improper lien, and to enjoin the auction. Alternatively, State Farm requested a preliminary injunction barring the sale of the Armada until the final disposition of this litigation or Lien Law § 201-a hearing to challenge the lien.

⁵ All litigation documents are part of the E-Filed record and none of these facts are disputed.

17. On July 24, 2017, Hon. Roy S. Mahon granted State Farm a temporary restraining order preventing MVB from removing, transferring, selling, pledging, assigning, disposing of or permitting the chattel to become subject to a security interest or lien and stayed the auction of this chattel pending a hearing and determination of State Farm's application.

18. On October 12, 2017, State Farm filed a Supplemental Affirmation, including a salvage certificate which had only just become available.

19. On October 12, 2017, MVB opposed State Farm's OSC, alleging that State Farm had no standing to challenge the lien, there were questions of fact as to whether MVB's lien is proper, and State Farm's request for a Lien Law hearing was time-barred.

20. On November 2, 2017, State Farm submitted its reply, demonstrating that Pope transferred ownership of the Armada to State Farm on June 12, 2017 and the salvage certificate merely memorializes the June 12, 2017 transfer of ownership.

21. On or about December 8, 2017, it was discovered that State Farm had inadvertently uploaded the incorrect salvage certificate. Upon learning of this inadvertent error, State Farm uploaded the correct salvage certificate to the ECF record.

22. On December 8, 2017, this Court granted State Farm's application for a preliminary injunction "conditioned upon State Farm's posting of an undertaking in accordance with CPLR § 6312 in the amount of \$7,500.00" and "a hearing on the issues of State Farm's entitlement to possession of the subject vehicle, the validity of MVB's

notice of lien and sale, and the amount, if any, due to MVB for work performed on the subject vehicle.” In so holding, this Court found that “MVB was required by [Lien Law § 201] to serve a notice of lien and sale upon State Farm, which it failed to do;” “that the conflicting affidavits of the parties concerning the work that was authorized on the vehicle necessitate a hearing on the issue of ownership of the vehicle and validity of the lien;” “State Farm has established a likelihood of success on the merits and equity dictates that the status quo be preserved until the amount due to the defendant, if any, is determined;” and “State Farm has not conclusively established its entitlement to present possession of the vehicle” because the salvage certificate it annexed to its Supplemental Affirmation reflects a different VIN number than the Armada herein.

2) MVB’s Motion to Reargue and Renew

23. On December 28, 2017, MVB filed a motion pursuant to CPLR § 2221(d) to reargue this Court’s decision dated December 8, 2017, and pursuant to CPLR § 2221(e) to renew its contention that State Farm lacks standing to bring this action. See Docs. #49-57 in the ECF. In support, MVB argued that its motion should be granted because (a) neither party briefed the Court on Lien Law § 201; (b) State Farm’s notice to MVB of its interest in the Armada is inadmissible hearsay; and (c) the salvage certificate indicates that State Farm lacked standing to bring this action.

24. On January 1, 2018, MVB filed a Notice of Appeal and Request for Appellate Division Intervention.

25. On January 17, 2018, State Farm opposed MVB's motion on the grounds that MVB failed to meet the standards to reargue and renew pursuant to the CPLR in that MVB's motion was devoid of any facts or law allegedly overlooked by the Court in reaching its decision and MVB failed to offer any new facts that were not offered in the prior motion.

26. On January 22, 2018, MVB submitted its reply, arguing that re-argument is appropriate because the Court, in finding that State Farm had given MVB the requisite notice to entitle it to service of the notice of lien and sale, "did not address [the type of notice" required to receive the protections of Lien Law § 201, and that renewal is appropriate because the correct salvage certificate is dated August 2, 2017 whereas the initial erroneous salvage certificate is dated August 9, 2017 and, therefore, since the new salvage certificate is also dated after the commencement of this action—albeit a week earlier than originally believed when opposing State Farm's OSC—MVB is entitled to renew its argument that State Farm lacks standing.

27. On February 14, 2018, this Court granted MVB's motion to reargue and, upon re-argument, this Court adhered to its initial determination, finding that "there is no basis upon which to read a requirement of written notice into [Lien Law § 201]." This Court further found that MVB's opposition to State Farm's OSC raised no evidentiary objection or factual dispute [contending that State Farm's assertions of notice were inadmissible hearsay] even though the issue was presented in both State Farm's

complaint (paragraph 16) and in Ms. Cook's affidavit, and despite that MVB presented its own affidavit in opposition. "Thus, the objection is not a proper subject for reargument." This Court also held that "the issue of State Farm's standing was resolved in the court's previous order and the new salvage certificate does not warrant renewal of the motion.

3) MVB's Motion to Dismiss

28. On February 28, 2018, MVB moved pursuant to CPLR §§ 3211(1)-(3) and (7) seeking to dismiss the complaint.

29. State Farm opposed the motion and the motion was fully briefed.

30. By order, dated July 11, 2018, the Honorable Jeffrey Brown denied MVB's motion to dismiss in its entirety.

31. The matter was then advanced to depositions and the instant hearing.

ISSUES PRESENTED FOR DETERMINATION

1. Is MVB's lien on the Armada valid? It is submitted that this Honorable Court should answer the question "No."

2. Does State Farm owe any additional monies to MVB for its work on the Armada? It is submitted that this Honorable Court should answer the question "No."

3. Is State Farm entitled to possession of the Armada? It is submitted that this Honorable Court should answer the question "Yes."

HEARING

A. Witnesses

On December 11, December 12, and December 17, 2018, the parties conducted the hearing. MVB called three witnesses: Brian McGauvran ("McGauvran"), Robert Montanez ("Montanez"), and Joseph Maruca ("Maruca"). State Farm called five witnesses: James Rice ("Rice"), Michael Thiele ("Thiele"), Mark Wagner ("Wagner"), Robert Jesberger ("Jesberger"), and Scott Richer ("Richer").

The relevant portions of their testimony are summarized as follows:

B. Testimony of Brian McGauvran

McGauvran is MVB's General Manager. He runs MVB's daily operations from the moment a customer arrives at MVB until the vehicle is either repaired or turned over to the insurance company as a total loss.

As it concerns MVB's interaction with insurance companies, MVB is not enrolled in any direct repair program. MVB's obligation is to repair a vehicle to its pre-loss condition. MVB does not get to determine if a vehicle is a total loss; only the insurance company can so determine.

McGauvran testified that he first interacted with Pope on March 28, 2017. When Pope first came to MVB, Pope was required to sign a number of documents in order for MVB to accept the vehicle, specifically the repair authorization, MVB's statement that they only use original equipment in their repairs as opposed to recycled parts, an

authorization from Pope authorizing MVB to file a complaint on her behalf, and an assignment of rights letter.

The repair authorization included a breakdown of labor rates of \$120.00 for normal labor and \$175.00 for specialized labor.

The assignment of rights letter includes the following language:

"Should you choose to assign your rights to us, you will no longer be responsible for any payment(s) to us [MVB] other than your deductible. None of these steps will delay the repair of your vehicle."

According to McGauvran and the relevant exhibits, Pope signed all these documents on March 28, 2017, prior to any estimate by State Farm and MVB. McGauvran testified that all these documents are standard operating procedure and must be signed by the owner of the vehicle or MVB will not agree to repair the vehicle.

On cross, McGauvran testified that the labor rate is theoretically up for negotiation, but Pope never attempted to negotiate the labor rate. McGauvran further acknowledged that there was an agreement between MVB and Pope were she assigned to MVB her rights to collect under the State Farm policy and MVB would stand in her shoes. **Page 123 of McGauvran's Dec 11 testimony.** He also conceded that MVB was not seeking any reimbursement directly from Pope, despite admitting that MVB's general practice is to charge the insured directly for the differences in repairs. **Page 6 of McGauvran's Dec 12 testimony.**

McGauvran also acknowledged that Pope signed a document on March 28, 2017 called an appraisal clause, which stated that “the customer was dissatisfied with the insurance companies estimating of the vehicle,” even though as of that date, State Farm had not yet performed an initial estimate on the vehicle. McGauvran acknowledged there was not an actual disagreement when the demand for appraisal was signed.

On March 31, 2017, State Farm estimator Rice performed an initial inspection of the Armada at MVB and wrote an initial estimate of \$10,082.70, which in McGauvran’s opinion was too low to repair the vehicle to its pre-loss condition, as MVB had written over \$25,000.00 in repairs. MVB never actually furnished an initial bill to State Farm at any point in the claims process.

MVB determined that State Farm’s estimates were too low compared to what they believed was needed to repair the vehicle to pre-loss condition and, therefore, Rice and Thiele had to return 10 additional times to draft supplements to the initial estimate. The final supplemental estimate from Rice on June 7, 2017 was for \$29,410.76. McGauvran testified that there were no additional damages done between March 28, 2017 and June 7, 2017 and that all work done by MVB was to repair damage from the March 27, 2017 collision.

McGauvran discussed the work performed by MVB to repair the Armada. The parties had previously stipulated that besides the issue with the two wheels, the actual repairs done and the legitimacy of them were not in dispute.

As it relates to the wheel in dispute, McGauvran testified that the vehicle required an OEM part as opposed to a recycled wheel because their certification with Nissan requires using only OEM parts and bars the use of any recycled part.

McGauvran testified that MVB placed a lien on the vehicle to “protect the balance owed to us by State Farm” and hired All New York Lien to assist with preparing the lien.

McGauvran acknowledged that it was actually “Courtney Pope who owed us the balance.” **Page 43 of McGauvran Dec 11, 2017 testimony.**

On cross-examination, McGauvran acknowledged that the amount of MVB’s lien was listed at \$50,728.44, which is more than \$14,000.00 more than the lien company MVB hired estimated to be the value of the vehicle (\$36,000.00) and more than double of MVB’s initial repair estimate of \$25,000.00. McGauvran acknowledged that, to date, including any money paid to Pope/TD for the Armada, State Farm has already paid approximately \$69,000.00 to Pope and MVB for the Armada since the date of the collision, yet MVB is still demanding an additional \$21,000.00.

MVB’s labor rate to repair the vehicle was \$120.00 an hour. The standard labor rate for MVB of \$120.00 was established in 2011 and is posted in the office. McGauvran could not testify as to the economic impact that MVB would feel if they accepted State Farm’s \$49.00/\$51.00 rate.

McGauvran was shown a number of MVB final bills and State Farm estimates for unrelated vehicles in order to testify that in other instances State Farm did authorize a labor rate exceeding the \$49.00 and \$51.00 rate offered by State Farm in the instant matter and often for less complicated work.

However, on cross-examination, McGauvran acknowledged that on many of these estimates, State Farm approved higher rates on specific repairs, not the entire repair by MVB.

As it relates to the instant matter, McGauvran testified that when he wrote a final bill, the labor rate was listed on the final bill, and there was no negotiation from State Farm. However, McGauvran was not able to describe any particular conversation with any State Farm employee concerning this apparent lack of negotiations. **Page 81-82 of McGauvran Dec 11, 2017 testimony.**

McGauvran testified that on Rice's initial estimate, they did not have any conversation about labor rate and Rice handed the estimate to an employee of MVB who then uploaded the estimate into MVB's computer system. When asked if he objected to Rice's use of the \$49/\$51 labor rate, McGauvran responded "Mr. Rice knows we have a standing objection". **Page 117 of McGauvran Dec 11, 2017 testimony.**

McGauvran could not recall either any specific conversation with Rice on March 31, 2017 about the labor rate nor any specific conversation with Thiele about the labor rate on the first supplement, written April 11, 2017.

For outsourced work (work performed at a different shop)—in this case, Rockaway Nissan or Auto Haus—MVB has to pay the other shop's rate and must guarantee the work done by other repair shops to its customer. Therefore, MVB marks up their final bill between 25% and 33% in order to cover the insurance and warranty for work done at a different repair shop.

McGauvran acknowledged that Jesberger owns both MVB and Auto Haus but was not able to discuss the breakdown of the businesses in terms of how each entity gets paid when one shop does work for the other.

On cross-examination, McGauvran acknowledged that MVB has had disputes over labor rates with other insurance companies, including Allstate and Liberty Mutual.

As it relates to the rental vehicle provided to Pope, McGauvran testified that the final bill included a charge of \$1,280.00 for the rental vehicle. However, McGauvran could not recall whether MVB provided the rental, when the rental began, when the rental ended, or the daily cost of the rental. McGauvran could also not recall if he ever provided a final bill for the rental to State Farm.

C. Testimony of Lawrence Montanez

Montanez is the owner of P&L Consultants, which consults for collision repair companies. Montanez also teaches classes on collision repair and has taught both Rice and Thiele. Montanez has been working as a consultant since 2001 but has been involved with automotive repair since 1987.

MVB is one of Montanez's clients. In his capacity as a consultant for MVB, Montanez goes over inspections and estimates and even covers MVB when McGauvran or Jesberger is not present.

With respect to the labor rate, the \$120.00 labor rate was appropriate for the repairs done for the vehicle. The \$120.00 labor rate was determined approximately five years ago and Montanez was involved in that decision. The \$120.00 labor rate was based on the cost of equipment, cost to operate an aluminum intensive vehicle repair facility, cost of spray booths, cost of paint, cost of hazardous waste, and training.

D. Testimony of Michael Thiele

Thiele has been employed as an Auto Estimating Appraiser for the last 22 years for State Farm and, in general, for the last 25 years. Thiele has a number of I-CAR certifications, which he received by taking online classes and in-person classes. There are three levels of I-CAR certifications and Thiele is currently a level 2. The certifications assist with his day to day duties as an estimator.

Thiele is currently assigned to the Nassau County area and has been so assigned for the last 12 years. Thiele currently writes approximately 25 estimates a week at approximately 18-20 different shops. Thiele is a salaried employee. All estimates are subject to the overwrite process, which is where an estimate is looked over by a re-inspector to determine if the original estimate was good or poor. Poor is considered anything more than a 10% difference between the estimate and the re-estimate. As far as Thiele was aware, his estimates for Pope's Armada did not have a 10% gap.

In general, when Thiele makes an estimate, he looks at a vehicle, takes photographs, and looks at the VIN and mileage. Each estimate is a line by line itemized breakdown of everything that he feels is necessary to repair the vehicle to pre-loss condition and a final number is provided, which includes parts, paint, and labor.

In general, Thiele uses the labor rate supplied by State Farm and he does not determine the labor rate. He receives the labor rate from his supervisor. Labor rate can change based on location, type of vehicle, and type of repair.

In terms of recycled versus OEM parts, Thiele would never use a non-quality part just to save money; however, if the recycled part was a quality part, he would possibly use a recycled part instead of an OEM part. Any recycled part has to come from the same model vehicle. If the body shop agrees to a recycled part, the body shop would place the order and it would be delivered to the shop.

The goal of the estimate given to the repair shop is to fix the vehicle to pre-loss condition at an agreed upon price. If the repairs exceed a certain threshold, the vehicle is called a total loss. Thiele is not the person who declares a vehicle to be a total loss, but his opinion matters. In a situation where the vehicle was not initially deemed a total loss, but later is deemed a total loss due to the need for additional repairs, it's deemed a constructive total loss. Pope's Armada was a constructive total loss.

When the initial estimate or supplement is made, it is either emailed to the repair shop or directly handed to the shop representative. The repair shop is not obligated to accept that estimate and repair the car for that price. If there is a disagreement between the repair shop and the insurance company that would be considered a non-agreed price situation and Thiele would inform his claim management team.

Thiele has had issues reaching agreed upon prices with MVB for different types of vehicles and different types of repairs. He has not had any issues reaching an agreed upon price with any other repair shops in the Nassau area. **Page 82 of December 12 transcript.**

Often an initial estimate does not cover every potential damage suffered by a vehicle due to time constraints and/or if the estimator does not have access to the interior of the vehicle. If additional damage is found or determined, a supplement is requested and Thiele returns to the repair shop to write the supplement. In the instant matter, Thiele provided a total of seven supplements.

When Thiele first inspected the Armada at MVB in order to write his first supplement, he walked into MVB and Jesberger pointed him to Pope's Armada. He used the \$49.00 labor rate for sheet metal, mechanical, and refinish, and \$51.00 for frame repair, which are the standard rates State Farm provides for a standard vehicle with standard repairs. Those rates are the prevailing competitive price for traditional body refinish and frame repairs in Nassau County. Pope's Armada and the repairs done by MVB were all standard. State Farm would apply this labor rate to any Nissan similarly repaired in the Nassau County area. **Page 90 of December 12 transcript.** State Farm does offer higher labor rates for specialty vehicles and specialty repairs. However, the repairs done on this Armada would not fall into that category. **Page 91 of December 12 transcript.**

When Thiele first inspected the vehicle on April 20, 2017, neither McGauvran nor Jesberger spoke with him concerning labor rate. Thiele then uploaded his supplemental estimate, which went into MVB's system. Thiele did not believe he had any discussion with either McGauvran or Jesberger concerning labor rates until May 4, 2017, which was the third time he inspected the vehicle and wrote a supplement. Thiele testified that \$120.00 per hour was unreasonable for the repair work done on the Armada.

Thiele acknowledged that he has approved repair work performed by MVB in the past that exceeded the standard State Farm rate up to and beyond the \$120.00 rate from MVB, specifically on sublet mechanical operations. Often the sublet mechanical

operations are more technical, which allows for the higher rate. However, he has approved higher rates directly to MVB for more complicated vehicles, such as a Mercedes Benz, or more complicated repairs. There were no repairs made to Pope's Armada that would qualify as more complicated, except for the sublet work, for which he did approve the \$125.00 rate.

Of all repairs performed by MVB, Thiele only contested one actual repair done: the difference between two OEM wheels on MVB's final bill versus one recycled wheel on State Farm's final estimate. He wrote the estimate for a recycled part because it was available, cost-effective, and the same quality as the wheel that was on the vehicle prior to the loss. **Page 85 of December 12 transcript.** Thiele did not observe damage to the right-side wheel so he did not authorize a right-side wheel, recycled or otherwise. As for Nissan's general rule that recycled parts are never to be used, that is between MVB and Nissan because, regardless, State Farm is authorized to make recommendations to use a recycled part if it is a quality part.

E. Testimony of Joseph Maruca

Maruca is a service director for a Nissan dealership in Bayshore and his duties include overseeing operations. He previously worked for Infinity and Audi. He has worked in the automotive industry for approximately 45 years, with the last 40 in Long Island. MVB has been a client for many years. MVB is a certified body shop, which is a higher quality repair shop than a non-certified body shop.

At Maruca's dealership, the hourly rate is \$150.00 for mechanical work. In his opinion, the mechanical work done at Rockaway Nissan for Pope's Armada was not complicated, at least compared to the work done at MVB directly.

On cross examination, Maruca acknowledged that he has never testified for MVB prior to the instant matter, yet took time out of his busy, nine-hour day to testify for free for Jesberger, in part because they are friends. Maruca also acknowledged that he never saw the vehicle in person nor did he ever see photographs of the vehicle. He was not aware that MVB was involved in similar disputes with other insurance carriers.

Macura testified that MVB is the only Nissan-certified repair shop in Nassau County. However, he was unaware that there were several other Nissan-certified collision repair shops in Nassau County, including Master Collision at 525 Lakeview Avenue in Rockville Centre, Finish Line Collision Inc. at 21 Railroad Avenue in Valley Stream, Touch of Class Collision, and twenty-two others on the Nissan Website for Nassau County. Macura was also unaware that all of the other certified collision repair shops accepted, without issue, the \$49/\$51 labor rate offered by State Farm for repair work on Nissans. **Page 27-29 of December 17 testimony.**

F. Testimony of James Rice

Rice is an Auto Estimating Appraiser for State Farm and has been for the last four years. He has been with State Farm for approximately 21 years. He is ASE-certified in

all aspects of collision repair. He was similarly certified as of March 2017 when he prepared the initial estimate on Pope's Armada.

Rice was not aware of any overwrites for his estimates related to the Armada.

Rice is currently assigned to Nassau County. He writes approximately 20-25 estimates a week at approximately 20 different repair shops, including MVB.

State Farm management sets the labor rates for estimators. Rice does not deviate from the management labor rate unless the vehicle is a specialty vehicle or specialized repairs are involved, at which point he would speak with his manager to get authorization.

In general, Rice gets agreed upon prices at all the other repair shops in Nassau County for different types of vehicles and different types of repairs. Rice often has issues getting an agreed upon price from MVB, including for Pope's Armada.

Rice first got involved in the case on March 31, 2017, when he wrote the initial estimate for the Armada. He acknowledged having no issues with MVB in terms of viewing the vehicle and drafting his initial estimate. When he first viewed the Armada, it had not been taken apart for Rice to view interior damage, so he wrote the estimate based on viewing exterior damage only.

On the day of the first estimate, Rice did not have any conversations with Jesberger or McGauvran concerning labor rate. Rice handed his estimate to the front desk at MVB then left. He did not return to MVB with respect to the Armada until early

June for the final supplement. The Armada was not there initially because it was at the dealership. While waiting for the vehicle, he went over the stack of invoices from MVB. He wanted to go over the invoices with either McGauvran or Jesberger, but both were gone, so he left. Rice did not have any conversations with McGauvran or Jesberger concerning labor rate at any time. Rice's initial estimate and final supplement all use the \$49/\$51 labor rate.

On cross examination, Rice acknowledged that his initial estimate of \$10,082.70 was not sufficient to repair the Armada to its pre-loss condition.

G. Testimony of Mark Wagner

Wagner is an Estimatics Team Manager ("ETM") for State Farm and has worked for State Farm for approximately 25 years. He has been an ETM for the Nassau County area for approximately three years after previously working in other markets. He is Rice's supervisor. He is not Thiele's supervisor, but does know him.

Wagner began his career at State Farm as an appraiser, and was subsequently promoted to property claim trainer, then re-inspector, then property team manager, and then ETM. His daily responsibilities include file reviews of his estimators' work products and discussing claims with the claims department.

Labor rates can change based on geography, type of vehicle, and type of repair. In general, if State Farm has a disagreement with a body shop concerning labor rate and cannot come to an agreement, State Farm notifies the owner of the vehicle, informs the

owner of his or her rights under Regulation 64 and sends them a Reservation of Rights letter. The letter indicates that if the owner continues with their repairs at the repair shop, which is their right, they might be responsible for out-of-pocket expense. All of these steps were taken in this claim.

Wagner is personally aware of approximately 30 cases involving disputes between MVB and State Farm where labor rate was at issue.

Wagner personally got involved in the instant claim on June 28, 2017 after the Armada's total loss determination. Wagner looked at the photographs, estimates, and final bill and determined that Pope's Armada needed no specialized repairs. That opinion was based on his extensive experience in the estimatics field. It was also his opinion that no work done by MVB on Pope's Armada required an increase in labor rate from the \$49/\$51 used on the State Farm estimates. **P.60 of December 17 transcript.**

State Farm's only obligation if there was no agreed upon price is to the owner of the vehicle. There is no requirement that State Farm raise their price to the demands of the repair shop.

MVB is a part of Nissan's certified collision repair network. A certified collision repair network is a network of body shops that are willing to repair that particular manufacturer's vehicle. The individual shop must meet basic standards and have certain required tools. There are approximately 30-40 repair shops within a 25 mile

radius of MVB that are in the Nissan Certified Collision Repair Network, which means 30-40 other repair shops in that vicinity had the ability to fix Pope's Armada. To Wagner's knowledge, State Farm was able to reach an agreed upon price with all the other Nissan-certified repair shops for the \$49/\$51 labor rate. **P. 63 of December 17 transcript.**

In terms of sublets, State Farm often offers a higher labor rate due to the complexity of the repairs. When there is a sublet, such as Auto Haus or Rockaway Armada in this instance, State Farm pays the list price, which is more than the sublet shop charges MVB.

H. Testimony of Robert Jesberger

Jesberger is the sole owner of MVB. He opened MVB in 1987. He owns other automobile repair and mechanic businesses, including Auto Haus.

MVB is involved in numerous lawsuits with State Farm, All State, and other insurance companies and in many cases, the issue is labor rate.

Jesberger testified that the posted labor rate is \$175.00 per hour.

When Rice did his initial estimate, Jesberger was at MVB. The initial estimate was given to Nicky, who works at MVB's front desk. Jesberger told Rice on the first day that the labor rate was \$175.00, but Jesberger would accept \$120.00. **P.81 of December 17 testimony.**

However, Jesberger later testified that “we have an agreement not to get into certain conversations” and that State Farm knows our labor rate. **Page 82-83 of December 17 testimony.**

Jesberger acknowledged that MVB had already agreed to the \$120.00 labor rate with Pope based on the authorization to repair Pope signed on March 28, 2017.

Jesberger acknowledged that on the preliminary estimate, **marked as plaintiff’s 16**, he wrote to James Rice that he was a cheat and a fraudster.

I. Testimony of Scott Richer

Richer has worked for State Farm for 23 years. He is currently a Claims Specialist and his responsibilities include investigating, negotiating, and settling claims.

Richer first got involved in this claim in June 2018 due to the on-going litigation.

As it relates to total losses, if the repairs equal 75 percent of the value of the vehicle, the claim specialist will deem it a total loss. In this instance, the vehicle was declared a total loss on June 7, 2017. State Farm both called MVB and left a message, as well as sent a total loss letter to MVB via fax. Both the phone call and the faxing of the total loss letter were noted in the claim file **(Plaintiff’s 12)**.

In general, once the vehicle has been deemed a total loss, there are certain steps that State Farm is required to take.

First, State Farm must inform its insured of the total loss determination. State Farm determines the market value for the vehicle in its pre-loss condition and offers

market value to the insured/lienholder if one exists. State Farm then sends a total loss package to the insured/lienholder. If there is a lienholder, State Farm also sends a cover letter to the lienholder to get the lien released. Once the lien is released, State Farm hires Insurance Auto Auctions to process the retitling of the vehicle. In most cases, the owner will then send the title to State Farm.

In the instant matter, all the above was followed, except for getting the physical title, because MVB still has the vehicle. State Farm did receive the salvage certificate. The salvage certificate was not received until August 2, 2017, which is after the lien was filed.

To date, State Farm paid MVB almost \$29,000 on this claim via check and MVB cashed all checks, as well as paid over \$40,000 to TD.

No more witnesses were called and both sides rested.

ARGUMENT

ISSUE ONE:

IS THE LIEN FACIALLY DEFECTIVE?

The first issue is whether MVB's lien on the Armada is facially defective due to the listed lien being \$50,728.44, while MVB's own estimated value of the Armada is only \$36,000.00.

State Farm has maintained throughout the pendency of this action that MVB's lien is invalid on its face. Lien Law § 201 permits a Court to enter a judgment cancelling

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the lien if the amount exceeds the reasonable value of the services performed by the lienor. See also, Munro v. Autosports Designs, Inc., 185 Misc. 2d 821, 714 N.Y.S.2d 415 (S.Ct. Nassau, 2000). The Munro Court held that if the reasonableness of the amount charged cannot be gleaned from the papers submitted, a hearing is needed to determine the total sum owed. Therefore, where the amount charged is unreasonable on its face, as is the case here, the Court can issue a judgment invalidating the lien.

In this claim, the lien amount of \$50,728.44 far exceeds MVB's estimated value of the Armada, listed as \$36,000.00, and is unreasonable. Therefore, this Court should cancel MVB's lien.⁶

ISSUE 2:

DID MVB MEET ITS BURDEN TO VALIDATE THE LIEN?

While it remains State Farm's position that the lien is facially defective, if the Court decides to judicially lower the lien amount from \$50,728.44 to the disputed amount of \$18,776.56, then the next issue is whether MVB can validate the lien by proving the reasonableness of the disputed charges.

In order to assert a valid lien on the Armada, MVB must prove four things: (1) it was the bailee of the motor vehicle; (2) it performed garage services or stored the Armada with the owner's consent; (3) there was an agreed upon price or, if no

⁶ Plaintiff did request this relief at multiple points during the hearing. Due to the nature of the hearing, the court ruled it would consider the requested relief post-hearing.

agreement on price had been reached, that the charges were reasonable for the services supplied; and (4) the garage is a duly registered motor vehicle repair shop. Matter of Santander Consumer USA, Inc v. A-1 Towing Inc., 163 A.D.3d 1330, 82 N.Y.S.3d 629 (3rd Dep't 2018); Matter of National Union Fire Ins. Co. of Pittsburgh, Pa v. Eland Motor Car., 85 N.Y.2d 725, 651 N.E.2d 1257 (1995); Lien Law § 184.

The parties have stipulated that MVB was the bailee of the motor vehicle; it performed garage services and stored the Armada with consent; and MVB is a duly registered motor vehicle repair shop. There is no agreed upon price as it relates to the disputed portions of the bill and the labor rate for all of MVB's repairs. Therefore, the validity of the lien will rest on whether or not MVB meets its burden of proving the reasonableness of the disputed charges and labor rate.

It is State Farm's position that the disputed charges—specifically, the recycled wheel versus the installation of two OEM wheels, the mark-up from Auto-Haus, and the rental charge—are not reasonable. Additionally, the labor rate used by MVB is not reasonable given the make and model of vehicle and the type of repairs needed to return the vehicle to its pre-loss condition.

New York State Regulation 64 (11 NYCRR § 216.7) is applicable to the instant claim and sets forth the standards for prompt, fair and equitable settlement of claims between repair shops and insurance companies arising out of motor vehicle collision coverage. The most pertinent provision of the regulation as it relates to the instant

proceeding is section 7, which states when and how an insurer reserves its right to inspect the vehicle prior to authorizing any repairs and that “negotiations must be conducted in good faith, with the basic goal of promptly arriving at an agreed price with the insured or the insured’s designated representative.”

New York State Insurance Law prohibits an insurer from recommending a repair shop or steering its insured to or away from a certain shop. There is no allegation from MVB that State Farm ever told Pope to use a different repair shop.

New York courts have held that “where the parties cannot reach an agreed price, the insured or their designative representative bears the burden of establishing the reasonable cost of repairs necessary to bring the vehicle to its condition prior to the loss. Rizzo v. Merchs. & Businessmen’s Mut. Ins. Co., 188 Misc. 2d 180, 182, 727 N.Y.S.2d 250, 252 (2nd Dep’t, 2001); Mass v. Melymont, 1 Misc 3d 906(A), 781 N.Y.S.2d 625 (NY Dist. Ct. 2003).

As a whole, it is State Farm’s contention that MVB has not met their burden. The market value for the vehicle based on MVB’s own valuation was \$36,000.00. Yet their repair estimate, including money already paid, is \$50,728.44 including storage from June 15, 2017 through June 30, 2017, which is after State Farm made its initial demand for the return of the Armada. On its face, it is patently unreasonable to demand a dollar amount for repairs that exceeds the value of the vehicle, let alone \$14,728.44 more than the amount the vehicle was valued at by the defendant’s own valuation company. If

the demand is patently unreasonable, which it clearly is, then MVB cannot show that their charges that begat the total amount were reasonable. Barring the court dismissing the lien outright, which it can and should, each of the disputed charges should be found unreasonable and therefore the lien should be invalidated.

LABOR RATES:

As clearly evinced by all the testimony, the crucial determination to be made concerning the validity of the lien is the labor rate charged by MVB on its final bill versus the labor rate offered for general repairs by State Farm. It is MVB's burden to prove that the repairs, including labor rate, were reasonable. It is State Farm's position that the \$120.00 rate for all repairs done at MVB was unreasonable and that MVB did not meet its burden. State Farm's position is based on the following:

- a. Rice, Thiele, and Wagner, all of whom have been involved in the automobile estimatics fields for more than twenty years all testified that none of the repairs done at MVB were of the specialized nature that requires a higher labor rate and the Armada itself is not classified as a specialized vehicle that requires a higher labor rate.
- b. The State Farm witnesses all testified that all the other repairs shops in the Nassau area regularly and routinely accept the \$49.00/\$51.00 rate for similar vehicles and similar repairs. While State Farm acknowledges the difference between a certified repair shop, such as MVB, and an uncertified repair shop,

Mark Wagner testified that there are approximately 30-40 certified repair shops within the Nissan collision repair network in Nassau County and all of them except for MVB accept the \$49.00/\$51.00 rate.

c. The testimony of Macura, who admitted to being friends with Jesberger and testifying on his behalf free of charge, should be completely discounted as it concerns the reasonableness of MVB's labor rate. In fact, his testimony actually shows that MVB's \$120.00 was unreasonable for the type of vehicle and type of repair. Macura testified that MVB was the only certified repair shop in the Nissan network in the Nassau area, which is why MVB deserved a labor rate of \$120.00. However, Macura was somehow unaware that there are actually 30-40 certified repair shops in the Nissan network in the Nassau area and that they each accepted the \$49.00/\$51.00 labor rate for similar repairs.

d. While MVB's witnesses spent considerable time describing the cost to run MVB, those expenses are the cost of doing business for the repair shop and do not change the insurance companies obligations. Randolph v. Liberty Mut. Ins. Co, 16 Misc. 3d 1131, 847 N.Y.S.2d 904 (NY Dist. Ct, 2007). It is not State Farm's responsibility to make MVB profitable.

e. The State Farm witnesses acknowledged that on this estimate and in the other estimates for non-related vehicles brought out by MVB on both McGauvran's, that they did pay \$125.00 and up for specialty repairs and often

paid more than the typical rate for certain types of vehicles. This is evidence that State Farm is not simply giving MVB a “take it or leave it” labor rate without any significance given to the type of vehicle or type of repair, including paying a higher labor rate on the sublets.

f. None of MVB’s witnesses testified with specificity as to why any of the repairs done at MVB were complex, required specialized equipment, or required specialized techniques. Instead, MVB’s assertions about the repairs done were conclusory and unsupported, which is not sufficient to meet their burden. Gapud v. Kaur, 15 Misc. 3d 1105(A), 836 N.Y.S.2d 499 (NY Dist. Ct, 2007).

g. Jesberger acknowledged that MVB is currently engaged in a number of lawsuits against a number of different insurance companies, many of which stem from labor rate disputes. This begs the question of who is being unreasonable if multiple different insurance carriers are questioning the labor rate.

It is clear from the testimony that MVB did not act in a reasonable manner and geared up for litigation from the second Pope’s Armada was brought into MVB. MVB had Pope sign a document indicating that she was dissatisfied with the vehicle estimate before an estimate had been done and had her assign her rights to MVB immediately. McGauvran also testified that State Farm knows MVB has a standing objection to the labor rate and Jesberger testified that “we have an agreement not to get into certain

conversations" and that "State Farm knows what the labor rate is", which certainly does not sound like a person going into an open and reasonable negotiation.

MVB also offered contradictory testimony as to the labor rate and their conversations with State Farm. McGauvran testified that the rate was \$120.00 and that Pope agreed to the \$120.00 rate when she signed her initial documents on March 28, 2017, which was before any estimates were generated or repairs were done. How can MVB argue that it was entitled to a higher labor rate because the repairs done were specialized, when the labor rate was determined prior to MVB doing their own internal evaluation of the eventual repairs?

Jesberger testified that the posted labor rate is \$175.00 and that he agreed to lower the labor rate on this particular repair to \$120.00 when he spoke to Rice on March 31, 2017. This testimony is clearly false as Pope had already signed the authorization to \$120.00 per hour for labor rate. This detail is important because it completely saps any credibility Jesberger had when testifying about when he first discussed labor rates with anybody from State Farm.

Furthermore, McGauvran would not recall any specific conversation with any State Farm estimator about labor rate despite his admission that MVB received the initial estimates and supplements with the State Farm labor rate.

Lastly, Jesberger admitted to writing a crude and unnecessary insult about Rice on the initial estimate, calling him a "cheap bastard" and other vile insults. Between

those threats and his bullying persona, Jesberger, as owner of MVB, clearly did not act reasonably.

RENTAL COVERAGE:

MVB's final bill included a charge of \$1280.00 for a rental vehicle provided to Pope. However, McGauvran was unable to testify when the rental began, when the rental ended, where the rental came from, or the make and model of the rental. McGauvran testified that he believes the paperwork exists somewhere, but no paperwork related to the rental was ever produced as an exhibit.

Additionally, on the final bill there is an indication that the rental vehicle was furnished to Pope based on "State Farm's negligence." There exists no testimony explaining how State Farm was negligent in its handling of the claim or how its negligence led to MVB having to provide Pope a rental vehicle. Therefore, it is clear that MVB has not established the validity of the \$1280.00 rental charge on the final bill.

OEM/RECYCLED PART:

The only actual conflict concerning an actual repair is for the 20-inch aluminum wheels. The MVB final bill, which includes the Auto Haus bill, lists two OEM 20" alloy aluminum wheels for a total of \$1823.76. The final State Farm estimate lists one recycled wheel for \$300.00. As previously stated, it is MVB's burden to show that each charge was reasonable. It is State Farm's contention that MVB has not met that burden. Both

Thiele and Rice testified that it is customary practice to use recycled parts as long as the quality of the part written is within State Farm standards. Both testified that they would never write for a recycled part that was in poor condition or would create any safety hazard and both testified that they maintained that standard for the Armada.

McGauvran testified that it was a Nissan recommendation that no recycled parts be used during repair and therefore were bound by Nissan's recommendation for the Armada. However, State Farm should not bear the burden of MVB's belief of their obligations to another party. New York Courts have held that certain expenses are the cost of doing business for the repair shop and do not change the insurance company's obligations. Randolph v. Liberty Mut. Ins. Co., 16 Misc. 3d 1131, 847 N.Y.S.2d 904 (NY Dist. Ct, 2007).

New York State law permits insurers to use the cost of non-OEM parts in their estimates as long as the part equals or exceeds the comparable OEM crash part in terms of fit, form, finish, quality, and performance. Nick's Garage, Inc. v. Progressive Cas. Ins. Co., 875 F.3d 107, 2017 U.S.App Lexis 22357 (2^d Cir. 2017). It is State Farm's argument that Thiele and Rice's testimony was sufficient to show that the recycled part they recommended for the left wheel was equal to the OEM part actually used by MVB and the testimony from MVBs witnesses was generally conclusory about the work in general did not rebut that testimony.

It must be noted that there were 127 different itemized charges on MVB's final bill. Excluding the rental and the two tows, which are not actually repair-orientated charges, State Farm did not contest any of the remaining 126 charges, despite testimony that they disagreed with certain repairs or the nature of those repairs. It certainly cannot be said that State Farm is being unreasonable when it approved payment on 126 of 127 charges (not including the labor rate disagreement that flows through each charge).

MARK-UPS

Part of MVB's final bill was \$2,171.77 for a 33% mark-up, which both McGauvran and Jesberger admitted were from the Auto Haus Bill. While State Farm acknowledges that a mark-up is regular practice, in this particular case, there are two important differences:

a. Jesberger owns both Auto-Haus and MVB. As explained by Wagner, each sublet bill has two prices: A list price and a net price. The net price is the charge the sublet issues to the repair shop, while the list price is the price paid by the insurance company. The Auto-Haus final bill of \$5601.23 was the total "list price" of the sublet, meaning that State Farm already paid Jesberger/MVB \$5601.12 for sublet repair done at Auto-Haus, even though MVB, which is owed by the same principle as Auto Haus paid Auto-Haus a significantly less amount. Standing alone, this is understandable, because

MVB has personal responsibility to the insured for any work done by a sublet. However, in this particular instance, the sublet is owed by the same entity, which means that Jesberger is getting paid an increased amount through Auto-Haus.

b. Jesberger, through MVB, is insisting on a mark-up for something for which he has already been paid. State Farm paid \$5,601.23 to Auto Haus using the list price and paying \$125.00 an hour, when MVB had to pay Auto-Haus a lower sum using the net price. Then, after State Farm paid the list price to MVB, MVB still placed a 33% mark up on the list price from Auto-Haus for a total of \$2,171.77. Therefore, if this charge is allowed to stand, Jesberger, as sole owner of MVB, will in reality receive both the benefit of the net versus list price increase and the mark-up for work done by another shop he owes. That is the definition of unreasonable.

STORAGE

While not listed as a point of dispute, the \$800.00 storage fee listed on the lien should be deemed invalid if the court rules that the lien itself is invalid, as there was clear testimony that State Farm had requested the Armada be released from MVB as early as June 7, 2017 due to the total loss determination and the payments already issued to MVB.

ISSUE 3: IS STATE FARM ENTITLED TO POSSESSION OF THE ARMADA

The final question is whether State Farm is entitled to possession of the Armada upon the final determination of the validity of the lien. On this question, the answer is

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clearly in the affirmative as State Farm has established that it is currently the rightful owner of the Armada, having undertaken all the appropriate and allowable steps with Pope and TD Bank.

Richer testified that after a vehicle is deemed a total loss, there are certain steps State Farm must take. The first is letting the repair shop know that the vehicle is being declared a total loss, with a total loss being defined as when the repairs equal to 75 percent of the value of the vehicle. Richer testified that MVB was declared a total loss on June 7, 2017 and that State Farm both called MVB on the phone and left a message and sent a fax copy. Additionally, McGauvran acknowledged that MVB was told on June 7, 2017 that the Armada was deemed a total loss. There is no allegation from either side that work was done after that date and MVB's final bill was issued on June 7, 2017.

State Farm must let the insured know the vehicle is being deemed a total, which was done in this instance. State Farm then must determine the market value for the vehicle in its pre-loss condition and offer market value to the insured/owner (or the lien holder if there is one). Richer testified that State Farm determined the market value of the Armada to be \$40,306.09 and issued a check to the Armada's lien holder, TD Bank, in that amount. State Farm then sends a total loss package to the insured/owner, which was done in this instance and sends a letter to the lien holder to get the lien release, which again was done here. Once the lien is released, a third party company, in

this instance Insurance Auto Auctions, is hired to retitle the vehicle to State Farm. The insured/owner or lien holder is supposed to then send the title to State Farm.

All the appropriate steps were followed in this claim, except for State Farm not receiving the title. The only reason State Farm could not get the title was because of the lien filed by MVB. State Farm was able to get a salvage certificate and the salvage certificate, which names State Farm as the current owner of the vehicle, was introduced into evidence during the hearing.

Any argument by MVB that State Farm's action under lien law 210-a should be dismissed because it did not have the title or salvage certificate at the time the action was instituted should be disregarded. MVB has already attempted this tactic in two different motions for this claim and Honorable Jeffrey Brown denied MVB's motion in its entirety.

RELATIONSHIP BETWEEN INSURANCE COMPANY, INSURED AND MVB.

In addition to the issues discussed previously, the court requested that this brief discuss the relationship between State Farm and MVB, the relationship between State Farm and Pope and the relationship between MVB and Pope.

McGauvran testified that in the normal situation, the agreement to repair a damaged vehicle is between MVB and the owner of the vehicle. In its initial paperwork, MVB had the owner sign a document indicating that if MVB and the insurance

company cannot reach an agreed upon price, then the owner will be responsible for the excess charges. If the owner was required to go out of pocket for repairs, he or she could then sue the insurance company for breach of contract.

In this instance however, McGauvran acknowledged that it signed an agreement with Pope that if there was a failure to reach an agreed upon price with State Farm that it would not go after Pope for any excess money as long as Pope signed a document naming MVB as an assignee. Because Pope is an insured under a valid State Farm policy, MVB is allowed to step into Pope's shoes in a breach of contract action, which MVB has undertaken against State Farm under Index Number 611724/18.⁷ As the court astutely pointed out, the breach of contract action likely should have been undertaken and heard prior to the lien hearing, but was not.

The crucial aspect of a lien is that it follows the property, in this case the Armada, and not the person/entity. Therefore, while it is State Farm's position that it is now the rightful owner of the Armada, State Farm acknowledges that a determination of the validity of the lien is required before it can get the vehicle back.

⁷ If Pope was not a State Farm insured and instead owned a vehicle damaged in a collision with a State Farm insured being repaired by MVB, then Pope would not be able to assign her rights to MVB as no contractual relationship would exist between her and State Farm.

CONCLUSION

Accordingly, based on the hearing testimony and the applicable case law and regulations, it is clear that MVB did not validate the lien as it did not substantiate the disputed charges or sufficiently prove its entitlement to its requested labor rate. Furthermore, it is clear that State Farm sufficiently established its entitlement to possession of the Armada. Therefore, this court should find that MVB's lien is invalid and that State Farm, as clear current owners of the Armada, is entitled to possession of the Armada at no additional cost.

DATED: New York, New York
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Yours etc.,

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