

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

The Citizens Banking Company

Court of Appeals No. E-14-106

Appellee

Trial Court No. 2014-CV-0034

v.

Ott's Body Shop

DECISION AND JUDGMENT

Appellant

Decided: March 13, 2015

* * * * *

Curtis J. Koch, for appellee.

Richard R. Gillum, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an accelerated appeal from a July 14, 2014 judgment of the Erie County Court of Common Pleas, which granted summary judgment in favor of appellee, Citizens Banking Company (“Citizens”) and against appellant, Ott’s Body Shop (“Ott’s”) in connection to a 1970 Pontiac GTO in which Citizens possessed a perfected security

interest notated on the subject motor vehicle title and Ott's subsequently claimed a competing common law artisan interest. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant sets forth the following single assignment of error:

The trial court erred as a matter of law when it ruled the pre-existing artisan[s] lien did not have priority over a subsequently created statutory lien.

{¶ 3} The following undisputed facts are relevant to this appeal. In December 2007, John Lee II took his 1970 Pontiac GTO to appellant's bodyshop in order to have various repairs and restoration work performed upon the vintage motor vehicle. In conjunction with this, Citizens loaned money to Lee with the vehicle serving as collateral.

{¶ 4} On July 27, 2011, Citizens' interest in the vehicle was formally recorded on the vehicle's certificate of title, thereby perfecting the security interest in the event of competing order of priority disputes. Lee ultimately breached his agreement with Citizens. Accordingly, Citizens obtained a judgment against Lee for approximately \$80,000.

{¶ 5} Ott's performed various work upon the vehicle for which it invoiced Lee in an amount totaling \$15,176.88. Ott's was paid a total of \$4,128.00 towards the invoice. The balance of \$11,048.88 owed by Lee remained unpaid.

{¶ 6} On January 21, 2014, Citizens filed a complaint for replevin of the subject vehicle, thereby requesting a court order awarding possession of the vehicle to Citizens based upon its security interest perfected in 2011. On February 25, 2014, Ott's filed an appearance in the matter and a competing motion for possession of the subject vehicle.

{¶ 7} On May 30, 2014, Citizens filed for summary judgment. On June 4, 2014, Ott's also filed for summary judgment. On July 14, 2014, the trial court ruled in favor of Citizens, determining that its recorded security interest prevails against Ott's unrecorded common law claimed artisan lien. The trial court held in pertinent part, "[T]he Ohio Supreme Court has decided this priority issue in favor of the party which recorded the security interest on the Certificate of Title with the clerk as valid against other general artisan liens." Accordingly, summary judgment on the replevin complaint and possession of the subject vehicle was awarded to appellee. This appeal ensued.

{¶ 8} In the single assignment of error, appellant maintains that the trial court erred in granting summary judgment to Citizens. Although appellant concedes that a lien creditor with a perfected security interest possesses priority against competing parties, it simultaneously claims that its non-filed common-law artisan lien should nevertheless be found superior to Citizens' filed security interest because the final work performed on the vehicle by Ott's was completed several months prior to the July 27, 2011 filing and perfection of the opposing creditor security interest. We do not concur.

{¶ 9} It is well-settled that an appellate court reviews a trial court's granting of summary judgment de novo, applying the same standard utilized by the trial court.

Lorain Natl. Bank v. Saratoga Apts., 61 Ohio App.3d 127, 129, 572 N.E.2d 241 (9th Dist. 1996). Summary judgment will be granted when there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶ 10} In conjunction with the above controlling parameters, our review of the relevant Ohio revised code provisions pertinent to this dispute makes clear that the trial court correctly found in favor of Citizens. R.C. 1333.41(E) expressly establishes that artisan liens connected to motor vehicles, such as the dispute underlying this case, are specifically excluded from application of the Uniform Commercial Code (“UCC”). As such, Ott’s claimed common-law artisan lien does not constitute a recognized competing UCC lien so as to arguably be found to be a lien with prevailing priority over Citizens’ perfected UCC security interest.

{¶ 11} Notably, even assuming arguendo that Ott’s common law claim can properly be considered against Citizens’ recorded UCC security interest, Citizens nevertheless prevails. Notably, the language chiefly relied upon by appellant in the 2012 case of *Leesburg Fed. Savs. Bank v. McMurray*, 12th Dist. Fayette No. 12-002, 2012-Ohio-5435, suggesting that Ott’s common law lien could prevail was dicta and was rejected by the court. *Leesburg* at ¶9-10.

{¶ 12} Of further significance, the dicta argument relied upon by appellant makes clear that an artisan lien attempting to take priority over a UCC based security interest

would have to adhere to R.C. 4505.13(B), so as to have the claimed lien filed and placed on the title of the motor vehicle. *Id.* at ¶ 9. Ott's did not do so in this case. Regardless, R.C. 1333.41(E) explicitly excludes claimed artisan liens against motor vehicles from UCC order of priority consideration. Wherefore, we find appellant's assignment of error not well-taken.

{¶ 13} The judgment of the Erie County Court of Common Pleas is hereby affirmed. Appellant is ordered to pay the cost of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.