UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:	)	Case No.: 03-38878
	)	
Charles R. Rogers and Anna Rogers,	)	Chapter 7
	)	
Debtors.	)	Adv. Pro. No. 04-3089
	)	
Patricia A. Kovacs, Trustee,	)	Hon. Mary Ann Whipple
	)	
Plaintiff/Counter-Defendant/Third-Party Plaintiff,	)	
v.	)	
	)	
Midway, Inc.,	)	
	)	
Defendant/Counter-Claimant/	)	
	)	
and	)	
	)	
Shane R. Rogers,	)	
	)	
Third-Party Defendant.	)	

MEMORANDUM OF DECISION AND ORDER REGARDING CROSS-MOTIONS FOR SUMMARY JUDGMENT

On February 18, 2005, Midway, Inc. ("Midway"), filed a Motion for Summary Judgment and Patricia A. Kovacs ("Trustee"), the trustee of the bankruptcy estate of Charles R. Rogers and Anna Rogers ("Debtors"), filed Plaintiff Patricia A. Kovacs' Motion for Summary Judgment as Against Defendant Midway, Inc. After reviewing the motions, the memoranda in support of and in opposition thereto, and the affidavit submitted by Midway, the court will grant each motion in part and deny each motion in part.

The court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and (e) the general order of reference entered in this district. Actions to turn over property of the estate are core proceedings that this court may hear and decide. 28 U.S.C. § 157(b)(1) and (b)(2)(E).

FACTUAL AND PROCEDURAL BACKGROUND

The undisputed facts material to the claims between Trustee and Midway are as follows. On November 3, 2003, Debtors filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. Among the items listed on Debtors' Schedule B (Personal Property) was a 1999 Volvo semi tractor/truck (the "Truck") with a value of $17,000, in which Debtors did not claim an exemption. According to Debtors' Schedule D (Creditors Holding Secured Claims), the Truck was encumbered by a security interest granted to Dart Transit, securing a debt in the amount of $2,700.

On or about January 15, 2004, the Truck was involved in an accident. Shortly thereafter, it was towed to Midway's place of business in Monroeville, Ohio, for repairs. Midway repaired the Truck, and the total charge for parts and labor, including the towing charges of $2,188.67 (which Midway paid) was $7,506.49. Midway has submitted an affidavit expressing an opinion that the value of the Truck prior to the repairs was $6,000-$8,000.

On March 19, 2004, Trustee filed the complaint initiating this adversary proceeding, which sought the turnover of the Truck. On March 23, 2004, the court entered an *ex parte* order requiring the turnover of possession of the Truck, with any lien held by Midway to be transferred to the proceeds of sale. On May 21, 2004, Midway filed an Answer and Counterclaim, which asserted an artisan's lien on the Truck in the amount of $7,506.49. On June 25, 2004, Trustee filed a reply to Midway's counterclaim, and a third-party complaint against Shane R. Rogers alleging that Mr. Rogers received $14,000 in insurance proceeds but failed to remit those funds to Midway in payment for the repairs.[1] On October 23, 2004, Trustee sold the Truck at auction for $18,920.

LAW AND ANALYSIS

[1] A summons was issued to Shane Rogers on July 1, 2004, and process was served on him by mail on July 7, 2004. Mr. Rogers has not to date responded to the third-party complaint.

"In Ohio, it is clearly established that an auto mechanic has a lien upon an automobile for any labor and parts expended upon it. The voluntary surrender of exclusive possession of that automobile to its owner can destroy such lien, but if the surrender is not voluntary, the lien is not destroyed." *City of Toledo v. Miller*, No. L-76-295, 1977 WL 198542, at *2 (Ohio Ct. App. July 15, 1977) (citing *Jones v. Ironton Garage Co.*, 9 Ohio App. 431 (1918); *Ohio Fin. Co. v. Middleton*, 14 Ohio App. 43 (1921)). The surrender of the vehicle when the owner files a bankruptcy petition is not "voluntary," so the "artisan's lien remains intact." *In re Cox*, 133 B.R. 198, 200 (Bankr. N.D. Ohio 1991); *Bavely v. Powell (In re Baskett)*, No. 96-13531, 1999 WL 1038266, at *9 (Bankr. S.D. Ohio Aug. 11, 1999). "The artisan's lien as it affects automobiles remains a common-law lien" and, under the common law, the lien is limited to the cost of labor and materials imparting or conferring value upon the vehicle. *Candler v. Ash*, 53 Ohio App. 2d 134, 136 (1976). Thus, "[a]t common law, a garage keeper acquires no lien for storage or towing services for an automobile." *Id.*; *accord*, *Doughman v. Long*, 42 Ohio App. 3d 17, 22 (1987).

Trustee does not dispute that Midway imparted value on the Truck. Rather, she contends that Midway does not hold a lien because it was not the owner who entrusted the Truck to it and contracted for the repairs.[2] What Ohio law requires, however, is only that "the repairs were made at the instance of a party having lawful possession of the property," *Middleton*, 14 Ohio App. 43, 1921 WL 1087, at *2, and Trustee does not dispute that Shane Rogers (who she contends, albeit without any evidentiary support, had the Truck towed to Midway for repairs) had lawful possession of the Truck.[3] Moreover, there is no genuine issue that the value Midway conferred on the Truck was in excess of its charges. However, because the towing of the Truck did not itself impart any value, the charge therefor is not secured by the lien under Ohio

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[2] In her memorandum in opposition to Midway's motion, Trustee argues that Midway should not recover under an unjust enrichment theory because it has not exhausted its remedies against the person who allegedly contracted with Midway for the repairs. But the court understands Midway's counterclaim to be limited to an *in rem* claim against the Truck or its proceeds.

[3] Trustee has not sought to avoid the lien under 11 U.S.C. § 549 as an unauthorized postpetition transfer and, even if she had, 11 U.S.C. § 550(e) would confer a lien on Midway that would be coextensive with the artisan's lien.

law. The court holds, therefore, that Midway has a valid artisan's lien on the proceeds of the sale of the Truck in the amount of $5,317.82.

THEREFORE, for the foregoing reasons,

IT IS ORDERED that Midway's Motion for Summary Judgment [Doc. #38] is granted to the extent of $5,317.82 and otherwise denied, and that Plaintiff Patricia A. Kovacs' Motion for Summary Judgment as Against Defendant Midway, Inc. [Doc. #39] is granted to the extent of $2,188.67 and otherwise denied. It is

FURTHER ORDERED that a separate judgment will be entered, and that the judgment ordered hereby is without prejudice to Midway's right to assert a priority or non-priority unsecured claim for the towing charge, *but see PBGC v. Sunarhauserman, Inc. (In re Sunarhauserman, Inc.)*, 126 F.3d 811, 816 (6th Cir. 1997) (administrative expense claim must arise from transaction with estate) (citing *Employee Transfer Corp. v. Grigsby (In re White Motor Corp.)*, 831 F.2d 106, 110 (6th Cir. 1987)), or to Trustee's right to proceed with her third-party complaint.

Mary Ann Whipple
United States Bankruptcy Judge