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## California Garageman's Liens: Procedural Due Process Restored

Recently there has developed a trend which is expanding the protection afforded by procedural due process under the Fourteenth Amendment to the United States Constitution. On April 10, 1974, the Supreme Court of California, sitting *en banc*, took another step forward in this movement. In *Adams v. Department of Motor Vehicles*<sup>1</sup> the court held that the state's involvement in imposition and enforcement of garageman's liens constituted "state action" for due process purposes, that provision for interim retention in the absence of prior notice or hearing, pending payment or sale of the car did not deny owners due process, and that provisions which permitted involuntary sale and transfer of vehicles without affording owner an opportunity for a hearing did deny owners due process.<sup>2</sup>

In *Adams*, petitioner Isabell Adams challenged the constitutionality of the California garageman's labor and materials lien, Civil Code 3068 (a), 3071, 3072, 3073, and 3074. These statutes authorized the garageman to a lien on the vehicles, upon which he had made repairs, as well as permitting him to retain and eventually sell them. Then upon proof of the lien sale and notice to the owner, the California Department of Motor Vehicles was required to transfer registration of the car to the purchaser without a prior hearing.

Petitioner Adams had disputed the amount of a repair bill for labor and materials supplied by real party in interest Anthony Stellato on petitioner's car. After Adams refused to pay, Stellato pursuant to statute,<sup>3</sup> retained possession of the auto and later sold it. Whereupon the buyer of said auto, Moseley, filed an "Application for Registration of Vehicle Sold at Lien Sale" with the Department of Motor Vehicles. The petitioner sought to restrain the Department from recording transfer of title on her car purchased through such lien sale.

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1. 11 Cal. 3d 146, 520 P.2d 961, 113 Cal. Rptr. 145 (1974) [hereinafter cited as *Adams*].

2. *Id.*

3. CAL. CIV. CODE § 3071 (West 1974).

## DISPOSITION BY THE COURT

The court's first task was to establish sufficient state action in seizing and selling the property of petitioner Adams by Stellato. Admitting that the seizure and sale were not directly effected by state officers or court process, the court stated, pursuant to a host of cases<sup>4</sup> that:

[Direct] involvement is not necessary to a determination of state action, for private conduct may become so entwined with governmental action as to become subject to the constitutional limitations placed on state action by the Fourteenth Amendment to the United States Constitution and Article I, section 13, of the California Constitution.<sup>5</sup>

In this case, not only was the procedure for enforcement of the vehicle service lien created and governed by statute, but the Department of Motor Vehicles was required to transfer and record title to the buyer of the auto at the lien sale. The court specified that the repair contract did not, by its own terms, provide for seizure or sale. Therefore, although Stellato, a private individual retained and sold the car, he was able to do so only by statutes which authorized him to proceed in such a manner. This statutory method authorizing Stellato to act, constituted state action.<sup>6</sup>

Having dispensed with the question of state action, the court seized upon the basic issue of due process. The California Supreme Court, relying on a series of federal and California cases, concluded that, "procedural due process requires . . . the giving of notice and an opportunity for a hearing before the state, in aid of a creditor, may deprive a debtor of a significant property interest, including temporary use and enjoyment."<sup>7</sup> The court also stated that exceptions to this principle would be justifiable only in "extraordinary circumstances".<sup>8</sup>

Examples of such extraordinary circumstances where summary procedures alone may satisfy the requirements of due process were outlined in *Fuentes v. Shevin*.<sup>9</sup>

[The] Court has allowed summary seizure of property to collect the internal revenue of the United States, to meet the needs of a national war effort, to protect against the economic disaster of a

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4. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970); *Reitman v. Mulkey*, 387 U.S. 369 (1969); *Evans v. Newton*, 382 U.S. 296 (1966); *Burton v. Wilmington Port Authority*, 365 U.S. 715 (1961).

5. 11 Cal. 3d at 152, 520 P.2d at 964, 113 Cal. Rptr. at 148-49.

6. *Id.* at 153, 520 P.2d at 965, 113 Cal. Rptr. at 149.

7. *Id.* at 153, 520 P.2d at 964, 113 Cal. Rptr. at 148.

8. *Fuentes v. Shevin*, 407 U.S. 67, 90 (1972).

9. 407 U.S. 67 (1972).

bank failure, and to protect the public from misbranded drugs and contaminated food.<sup>10</sup>

The California court categorically rejected any comparison between the garageman's lien law, which applies to the furnishing of labor and materials in repair of motor vehicles, and such limited situations as those enumerated above. In support of the necessity for more than mere summary procedures, the court mentioned five cases which had invalidated statutes providing for wage garnishment,<sup>11</sup> claim and delivery,<sup>12</sup> prejudgment attachment of checking accounts<sup>13</sup> and replevin of household goods.<sup>14</sup> Thus, the general rule established by these cases beginning with *Sniadach v. Family Finance*<sup>15</sup> and clarified by *Fuentes v. Shevin*,<sup>16</sup> is that except in extraordinary situations, any prejudgment remedy violated procedural due process if it does not provide notice and opportunity for hearing before a person is deprived of a significant property or possessory interest.

In determining whether the lien law as applied in the instant case violated procedural due process, the court discussed two distinct possibilities. The first possible violation was the lien law permitting the garageman interim retention of the auto without prior notice or hearing pending payment or sale of the car.<sup>17</sup> The court distinguished the above five cases led by *Sniadach* with the case under discussion in two respects. In *Adams*, the possessory interest of the garageman was not the general claim of an attaching or garnisheeing creditor unrelated to the certain property seized. Rather, it was a claim in which the creditor-garageman added his own labor and materials to the specific property which he retained.

However, the court was not willing to uphold the garageman's interim retention solely on the superiority of his interest to that of an attaching or garnisheeing creditor. Therefor, Justice Clarke,

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10. *Id.* at 91-92.

11. *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); *McCallop v. Carberry*, 1 Cal. 3d 903, 464 P.2d 122, 83 Cal. Rptr. 666 (1970).

12. *Blair v. Pitchess*, 5 Cal. 3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971).

13. *Randone v. Appellate Department*, 5 Cal. 3d 536, 488 P.2d 13, 96 Cal. Rptr. 709 (1971).

14. *Fuentes v. Shevin*, 407 U.S. 67 (1972).

15. 395 U.S. 337 (1969).

16. 407 U.S. 67 (1972).

17. 11 Cal. 3d at 154, 520 P.2d at 966, 113 Cal. Rptr. at 150.

speaking for the court emphasized that the creditor here was in rightful possession at the time he asserted his lien.

To strike down the garageman's possessory lien would be to alter the status quo in favor of an opposing claimant; the garageman would be deprived of his possessory interest precisely as were the debtors in *Shevin* and *Blair*.<sup>18</sup>

These two cases adhered to the policy that a possessory right vested in possession until such conflicting claims to possession of the property were judicially settled.<sup>19</sup> Since the auto was in Stellato's possession at the time the dispute arose, by following the above principle, he had the right to retain the vehicle temporarily.

As to the question of whether permanent retention and sale pursuant to statute violated due process, the California Supreme Court focused its discussion on the adequacy of the form of legal procedures granted by Civil Code 3071, 3072, 3073, and 3074 if the original owner refused to pay. The lienholder, if not paid within 10 days after the amount becomes due, could proceed to sell the property at public auction.<sup>20</sup> These sections also provided for at least 10 days but not more than 20 days notice to the public of such sale and 20 days notice to owners by registered mail. This period for notice could be reduced to 10 days if the lienholder was able to certify, under penalty of perjury, that the vehicle is worth less than \$200.00.<sup>21</sup> Then, a right of redemption was allowed the original owner if, within 20 days after the lien sale, he paid the costs and expenses of the sale and repairs plus interest.<sup>22</sup>

The court concluded after reviewing these statutes, that within 30 days after the owner's initial refusal to pay (or 20 days if the value of the car was less than \$200.00), a lien sale could be held.<sup>23</sup>

Furthermore, the owner's right to redeem his vehicle, an additional grace period of 20 days, could only be utilized if the vehicle was worth more than \$200.00.

In response to the suggestion that petitioner Adams, though having no right to a prior hearing pursuant to statute, did have an "opportunity to institute a civil action against the garageman to contest the propriety of the sale of the car,"<sup>24</sup> the court ascertained that such was not sufficient. The court stressed that only a slight

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18. *Id.* at 155, 520 P.2d at 966, 113 Cal. Rptr. at 150.

19. *Id.*

20. CAL. CIV. CODE § 3071 (West 1974).

21. CAL. CIV. CODE §§ 3072-73 (West 1974).

22. CAL. CIV. CODE § 3074 (West 1974).

23. 11 Cal. 3d at 155-56, 520 P.2d at 967, 113 Cal. Rptr. at 151.

24. *Id.*

possibility existed that trial of a contested lien claim would be held within the period before title was transferred to the buyer. Under California Rules of Court rules 220 and 509, the trial may be set as much as 12 weeks from the pretrial conference.<sup>25</sup> Inasmuch as California law has no provision for accelerated hearings of contested lien claims,<sup>26</sup> a debtor's only recourse would be to an injunction or temporary restraining order. Both injunction and temporary restraining orders have long been regarded as extraordinary remedies only to be granted with caution.<sup>27</sup> Both of these remedies therefor, lacked the assurance that a hearing prior to sale of the vehicle would definitely occur.

Of course, the owner Adams, might have sought a motion to specifically set the trial date as well as possibly bringing a suit in conversion of the auto. Yet neither of these courses of action would be adequate to secure due process for the owner. Under the former, the granting of such motion is again not a matter of right, but instead lies within the discretion of the court.<sup>28</sup> Whereas, only by proceeding in small claims court under conversion (where the amount of the vehicle would be limited to \$500.00), could the owner, if he acted at once upon assertion of the garageman's lien secure his rights.<sup>29</sup> Still, if the car were valued at less than \$200.00 no assurance of due process would be available since the owner has no right of redemption after the 10 days notice following his initial payment period.<sup>30</sup>

Relying on the above facts and rationale, the California Supreme Court invalidated sections 3071, 3072, 3073, and 3074 of the Civil Code because they deprived the owner of a vehicle due process of law. The Court, however, clearly limited its decision stating in no uncertain terms that it has not reached the validity of creditors remedies provided by private agreements, foreclosure under a deed, private repossession by contract, or any other form of artisan's lien provided by statute in California.<sup>31</sup> Nor was the entire statutory

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25. CAL. CT. R. 151, 188 (West 1974).

26. 11 Cal. 3d at 156, 520 P.2d at 967, 113 Cal. Rptr. at 151.

27. 2 Witkin, CAL. PROC. § 78 at 1516 (2d ed. 1970).

28. CAL. CT. R., 225, 513 (West 1974).

29. 11 Cal. 3d at 156, 520 P.2d at 967, 113 Cal. Rptr. at 151.

30. CAL. CIV. CODE § 3074 (West 1974).

31. 11 Cal. 3d at 157, 520 P.2d at 968, 113 Cal. Rptr. at 152.

scheme invalid. A garageman could still retain possession of a vehicle when the owner refuses to pay for its repair. But, as a result of the instant case, the garageman can no longer sell the car to satisfy his claim. "The parties are relegated to such remedies as are provided by common law or statute consonant with requirements of due process."<sup>32</sup> It is interesting to note that the court chose the more restrained approach by stressing common law and statutory remedies, rather than requiring the Department of Motor Vehicles itself to provide the hearing as is necessary in certain license suspension situations.<sup>33</sup>

As one may perceive from the California Supreme Court's disposition of *Adams*, the due process clause since *Sniadach v. Family Finance Corporation*<sup>34</sup> in 1969, has developed into an expanded and reinforced right insuring debtors against a variety of statutory prejudgment remedies throughout the nation. In California, *Adams* by invalidating sections 3071, 3072, 3073, and 3074 of the Civil Code, takes one more thrust forward by securing adequate protection of a debtor's right to property under both the federal and state constitutions.<sup>35</sup>

#### STATUTORY REFORM BY THE LEGISLATURE

The court, holding these sections unconstitutional, provided the legislature with an immediate opportunity to restore procedural due process to the statutory scheme of sale and transfer under a garageman's lien. The concrete effect of the California Supreme Court's ruling in *Adams* materialized during the 1973-1974 regular session of the State Legislature with the amendment of sections 3071, 3072, and the addition of 3071.5.

The pertinent provisions of Civil Code 3071 as now amended allow a lien holder, if not paid the amount due, to sell the property pursuant to section 3072 and 3073 only if:

- (1) [An] authorization to conduct a lien sale has been issued by the Department of Motor Vehicles pursuant to this section, (2) a judgment has been entered in favor of the lienholder on the claim

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32. *Id.* Under common law, any attempt to foreclose a lien by sale by the lienholder in possession was regarded as conversion. The remedy permitted to a lienholder was to bring an action based on his claim and secure a writ of execution upon obtaining a judgment.

33. See CAL. VEH. CODE § 14100 (West 1971) and *Lacy v. Orr*, 276 Cal. App. 2d 198, 81 Cal. Rptr. 276 (1969).

34. 395 U.S. 337 (1969).

35. This seems to follow the Court's basis for similar decisions, relating to the denial of procedural due process, by using both the California and Federal Constitutions.

which gives rise to the lien or (3) the registered and legal owner of the vehicle has signed, after the lien has arisen, a release of any interest in the vehicle in the form prescribed in 3071.5<sup>36</sup>

No longer may a garageman sell a vehicle unless allowance has been made for notice and opportunity for a hearing to the debtor. The authorization to conduct the lien sale is to be issued by the Department only after receipt of an application pursuant to section 3071 of the Civil Code. Once received, notice will then be prepared and sent to the debtor which will state that such application for lien sale has been received and that:

(i) [The] person has a legal right to a hearing in court (ii) if a hearing in court is desired, the enclosed declaration under penalty of perjury must be signed and returned, and (iii) if the declaration is signed and returned, the lien-holder will be allowed to sell the vehicle only if he obtains a judgement in court or obtains a release from the registered and legal owner.<sup>37</sup>

The release mentioned is an alternative to a judgment, which will permit a lien sale. It must be in at least 12 point type, contain a statement that the person releasing the interest, understands that he has a legal right to a hearing in court prior to any sale and that he is giving up the right to contest the claim.<sup>38</sup> It must also include a statement that the person releasing gives up any interest in the vehicle and the lienholder now has permission to sell the vehicle.<sup>39</sup>

Sections 3071 and 3071.5 of the Civil Code as amended, together with the remainder of the statutory scheme, crystallize the impact of the California Supreme Court's disposition of *Adams* guaranteeing procedural due process in the enforcement of the garageman's lien. Taking its cue from *Adams*, the legislature has effectively succeeded in providing for the parties a remedy "By . . . statute consonant with requirements of due process."<sup>40</sup>

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36. CAL. CIV. CODE § 3071 (West Supp. 1975).

37. CAL. CIV. CODE § 3071(c) (2) (West Supp. 1975).

38. CAL. CIV. CODE § 3071.5 (West Supp. 1975).

39. CAL. CIV. CODE § 3071.5(b) (5) (West Supp. 1975).

40. 11 Cal. 3d at 157, 520 P.2d at 968, 113 Cal. Rptr. at 152.