

## A MATTER OF APPEAL

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**Y**ou don't have to be a lawyer to understand and appreciate the concept of an "appeal." In our childhood, we learned that if one parent did not render a decision in our favor, we could attempt to appeal to the other parent. (Actually, that was more like a "second opinion" than an appeal.) Whether in a family, office, or other context, we've often asked a "higher authority" to pass judgment on a "ruling" with which we didn't agree.

The law, in its search for justice, similarly recognizes the benefits of reviewing decisions in certain cases. Sometimes one has the right to an appeal; in other situations, one has to obtain the higher court's permission to go forward. An example of the latter is a writ of certiorari to the United States Supreme Court, which that court has the discretion to grant or deny.

(The cases discussed in this column tend to be appellate decisions, as such opinions are generally more likely to be published in printed form or available online, and tend to contain more detailed analysis than rulings of trial courts.)

Although you may normally think of an appeal as a review of a decision of a trial court, in many jurisdictions there are two levels of appellate courts, such that one may be allowed to appeal a decision of the intermediate appellate court to the highest court. This is just what recently happened in a case we discussed in the August 1994 column, *National Union Fire Insurance Company of Pittsburgh, Pa. v. Eland Motor Car Company, Inc.* The decision we discussed, rendered by a New York intermediate appellate court, was subsequently appealed, and was recently reversed by the Court of Appeals, New

York's highest court.

As you may recall, the Eland case involved the rules regarding a lien — an interest in or the right to retain property to satisfy a claimed outstanding debt due. In Eland, the issue was whether a garage owner's performance of certain non-repair services for an automobile owner precluded the garage owner from asserting a lien on the vehicles for the amount owed for maintenance, repair and storage of the vehicles. These additional services reportedly included overseeing and managing the customer's car collection, and entailed periodic inspections of the vehicles and assisting in purchasing and selling them, for which Eland received a share of the purchase and sale prices.

In its opinion of October 4, 1993 (which we reported on), the New York Supreme Court, Appellate Division, Second Department (the intermediate appellate court) ruled in favor of the automobile owner. However, on June 7, 1995, the Court of Appeals reversed, ruling that the garage owner's performance of the additional services did not defeat its right to assert a lien.

The Court of Appeals noted that the New York Lien Law protects a garage owner who proves: (1) the garage was originally in possession of a motor vehicle the owner deposited with it (i.e., it was a "bailee"); (2) it performed services on or stored the car with the vehicle owner's consent; (3) there was an agreed-on price for the work (or, if not, the charges for the services were reasonable); and (4) the garage was a duly registered vehicle repair shop. That court disagreed with the intermediate appellate court's finding that Eland had not met this test.

The Court of Appeals noted that Eland did not have any ownership interest in the vehicles, nor was it a partner with the vehicles' owner. Moreover, the management fees to be paid to Eland were entirely separate from the fees Eland was seeking for its garage services. Thus, the Court of Appeals ruled that Eland was entitled to "just compensation" for the garage and storage services regarding the collector cars. As it explained, "No language is contained in the statute or the case law which would indicate that a garage owner should be penalized simply because the shop was also engaged in a business relationship with the owner of multiple vehicles."

Because the lower courts erroneously determined that Eland did not have the right to assert a lien, they had failed to determine the amount of the outstanding debt owed to Eland for its restoration, repair, and storage services. The court thus "remanded" (sent back) the case to the trial court to ascertain the amount owed for each of the collector cars.

As Yogi Berra once aptly said, "It ain't over 'til it's over." In legal circles, a case ain't over 'til the highest court of possible appeal either renders a decision or refuses to hear the appeal. And, actually, even then it really may not yet be over, because a party can still try to ask that court to reconsider its ruling. And then it's really over. Maybe.

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