

# LIEN ON ME

BY LAWRENCE SAVELL

Despite the best of intentions, every now and then people find themselves in a dispute with someone or some company that provided goods or services. In some situations, either by agreement or by operation of law, the provider may be given a *lien* on the customer's property involved — basically an interest in or the right to retain the property to satisfy a claimed outstanding debt due. In the context of collector car restoration, repair or storage, such a business may be given a "garageman's lien" to insure it will be paid for its efforts.

The case of *National Union Fire Insurance Company of Pittsburgh, Pa. v. Eland Motor Car Company, Inc.*, decided on October 4, 1993 by the New York Supreme Court, Appellate Division, Second Department, involved such a situation.

According to the court, International Automobiles, Ltd. was engaged in the purchase and sale of collector cars. International employed Eland — among other things — to repair and store its vehicles. International apparently ceased paying Eland for Eland's services. Eland therefore asserted a garageman's lien for the unpaid sums owed them by International.

Section 184 of the New York Lien Law provides that "[a] person keeping a garage...or place for the storage, maintenance, keeping or repair of motor vehicles...and who in connection therewith tows, stores, maintains, keeps or repairs any motor vehicle...whether or not such motor vehicle...is subject to a security interest, has a lien upon such motor vehicle...for the sum due for such towing, storing, maintaining, keeping or

repairing...and may detain such motor vehicle...at any time it may lawfully be in his possession until such sum is paid...."National Union was a creditor of International. The assets available to satisfy both Eland's and National Union's claims consisted of five collector cars in Eland's physical custody. Three of them were thereafter sold at an auction, and were purchased by Eland for \$24,000. National Union sought to satisfy its claim against the vehicles.

The trial court ruled that National Union's claim was superior to (took precedence over and would be satisfied before) Eland's lien, and ordered Eland to release the vehicles to National Union. Eland appealed.

The Appellate Division affirmed the trial court's judgment for National Union, ruling that National Union could enforce its claim against the vehicles in Eland's possession.

The appellate court noted that the New York statute granting garage operators a lien for storage/repair charges was a departure from prior case law which had not provided such a remedy. Therefore, the court said, the statute must be "strictly construed" — *i.e.*, narrowly read — in determining the persons to whom or cases to which it is applicable.

The court observed that, in this case, the relationship between Eland and International "was far more than that of a garageowner and a car owner. In addition to repairing and storing the vehicles, [Eland] would oversee and manage the car collection, for which they would receive a monthly fee. This included periodical inspections of the vehicles and even the subletting of a vehicle for repair work. Further, [Eland] assisted Inter-

national in the purchasing and selling of the vehicles, and for this service they received 10 percent of the purchase price and 10 percent of the sale price." The court concluded that, since Eland did more than just store and repair International's vehicles, the statute was inapplicable and Eland was not entitled to assert a garageowner's lien under the New York Lien Law.

As the decision in this case reflected, courts often interpret lien laws in ways that limit the entities for which or situations where a lien will be granted. The lien laws themselves often narrow the scope of their protection. For example, the New York Lien Law provides that where a business has furnished a written estimate of the cost of towing, storage, maintenance, repair, or other service on a vehicle in its possession, any lien sought by that business for such service may not exceed the amount set forth in the written estimate. It also provides that no lien under that law shall inure to the benefit of any business required to be registered as a motor vehicle repair shop pursuant to the Vehicle and Traffic Law which is not so registered.

As a lien can also be created by contract, you should always carefully read your agreement with a restoration, repair, or storage company so you know what measures you may be allowing the company to take in the event of a dispute.

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