

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

AMERICAN HONDA FINANCE
CORPORATION,

Plaintiff,

v.

THE CITY OF REVERE,

Defendant.

CIVIL ACTION NO:

COMPLAINT

Plaintiff, American Honda Finance Corporation alleges as follows:

1. Plaintiff brings this action to remedy a deprivation of its long-settled and fundamental rights to be free from unreasonable seizures and to due process of law under the United States Constitution. It is beyond debate that the government cannot deprive Plaintiff (or anyone) of property by unreasonable seizure and/or without first providing for notice and a hearing. Yet, that is exactly what occurred here, and exactly what is sanctioned by an outdated, facially unconstitutional Massachusetts State statute, which does not recognize that duly perfected security interest and lien in a vehicle is a constitutionally protected property right. Here, Defendant seized, detained without warrant or exception to the warrant requirement and disposed of a motor vehicle in which Plaintiff held a duly perfected security interest and a lien without notice or a hearing, thereby extinguishing Plaintiff's lien and property interest. Plaintiff, therefore, brings this declaratory judgment/civil rights action pursuant to 42 U.S.C. §1983 and §1988 for deprivation of Plaintiff's rights secured by the Fourth and Fourteenth Amendments to the United States Constitution.

JURISDICTION AND VENUE

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§1343(a)(3) and 1343(a)(4), which provide for original jurisdiction in the Court for all suits brought pursuant to 42 U.S.C. §1983.

3. Jurisdiction is conferred on this Court by 28 U.S.C. §1331 because the cause of action rises under the Constitution and laws of the United States.

4. The supplemental jurisdiction of the District Court is invoked pursuant to 28 U.S.C. §1367 for inter-related state law claims which arise from the occurrences giving rise to the Federal claims and which have a common nucleus of operative fact.

5. Venue lies in the Court pursuant to 28 U.S.C. §1391.

PARTIES

6. Plaintiff American Honda Finance Corporation (“HONDA”) is a corporation organized and existing by virtue of laws of the State of California and the holder of the duly perfected and recorded lien and security interest in a 2016 Honda Civic vehicle identification number 19XFC2F51GE250543 (“The Subject Vehicle”). HONDA’s regular business includes providing financing for the purchase of Honda manufactured and other automobiles.

7. Defendant, the City of Revere, Massachusetts (hereinafter “REVERE”) is a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts.

INTRODUCTION

8. REVERE summarily deprived HONDA of its rights in The Subject Vehicle when REVERE seized The Subject Vehicle pursuant to its police powers, detained it without notice to HONDA and without a warrant or exception to the warrant requirement and then disposed of it pursuant to Massachusetts G.L.c. 255, §39A without notice to HONDA and without affording HONDA the opportunity for a hearing with respect for the legitimacy of these actions, either before or after their occurrence.

9. Massachusetts G.L.c. 255, §39A effectuates the Commonwealth's interest in enforcing traffic laws and in protecting the public from hazardous street conditions. The statute provides a means for the state to compensate private parties who assist the state by towing and storing vehicles at the direction of police. The statute has, however, fallen out of step with modern developments in constitutional law which confirm that a duly perfected security interest and lien in a vehicle is a constitutionally protected property right.

10. Massachusetts G.L.c. 255, §39A is unconstitutional on its face because it fails to require that the holder of a duly perfected security interest and lien in a vehicle is entitled to notice and an opportunity to protect its rights, and the statute therefore authorizes a seizure and detention without a warrant or exception to the warrant requirement, as well as the sale and concomitant destruction of the property interests of the secured party holding a recorded lien against the affected vehicle (by extinguishment of the lien) without any notice to such lienholder or any opportunity to be heard.

11. The summary deprivation of HONDA's interest occurred in furtherance of REVERE's standard practices for taking custody of vehicles as part of an arrest or investigation and as part of REVERE'S standard practice for detaining and disposing of vehicles.

12. REVERE violated HONDA's rights to Procedural Due Process because REVERE has no procedure whereby a person with a security interest or lien in a seized vehicle is afforded the opportunity for a hearing before an impartial decision-maker with adequate notice, whereat the interested person can protect its interest by challenging the seizure, detention or disposal of the impacted vehicle.

13. REVERE violated HONDA's rights to be free from unreasonable seizures and to Procedural Due Process when it failed to give HONDA any notice of the initial seizure and then detained and disposed of The Subject Vehicle after it was no longer needed for investigation, and by failing to provide HONDA with constitutionally adequate notice of procedures for the recovery of The Subject Vehicle or protection of property interests in The Subject Vehicle.

FACTS COMMON TO ALL COUNTS

14. On or about November 2, 2016, HONDA obtained a purchase money security interest and lien in The Subject Vehicle.

15. On November 28, 2016, The Subject Vehicle was officially titled in the State of New York with Shanasia Hackworth recorded as the owner and HONDA recorded as the first priority lienholder.

16. On or about December 30, 2016, REVERE took possession and custody of The Subject Vehicle pursuant to REVERE's police officers acting in the course of their duties as law enforcement officers.

17. On or about December 30, 2016, REVERE, through its police officers acting in the cause of their duties as law enforcement officers, and pursuant to laws enacted to further official state interests, directed Mario's Service Center, Inc. to tow and detain The Subject Vehicle.

18. On or about December 30, 2016, Mario's Service Center, Inc. towed The Subject Vehicle and retained The Subject Vehicle on behalf of REVERE as part of an "investigation." *See* Exhibit "1" (communications from REVERE)

19. REVERE did not notify HONDA that The Subject Vehicle had been seized.

20. REVERE thereafter concluded its investigation. REVERE did not, thereafter, return The Subject Vehicle to HONDA or anyone else. Instead, REVERE authorized its agent, Mario's Towing Service Center, Inc., to detain and dispose of the vehicle pursuant to Massachusetts G.L.c. 255, §39A.

21. REVERE did not notify HONDA that after the investigation ended that REVERE authorized Mario's Towing Service Center, Inc. to detain and dispose of The Subject Vehicle.

22. REVERE did not ensure that its agent, Mario's Towing Service Center, Inc., notified HONDA that REVERE had authorized detention and disposal of the Subject Vehicle.

23. On or about May 18, 2017, REVERE's agent, Mario's Towing Service Center, Inc., sold The Subject Vehicle and The Subject Vehicle was retitled through the Massachusetts Department of Transportation with HONDA's lien not recorded on said title.

24. Under Massachusetts law the sale pursuant to Massachusetts G.L.c 255, §39A and subsequent retitling extinguished HONDA's property interest in The Subject Vehicle.

25. At no time prior to the sale or retitling of The Subject Vehicle did REVERE or any person provide any notice to HONDA relating to The Subject Vehicle.

26. REVERE's use of Mario's Towing Service Center, Inc. to accomplish its law enforcement objective of towing and storing The Subject Vehicle was consistent with and/or part a REVERE's regular practice for taking custody of a vehicle following an arrest of the driver thereof.

27. REVERE's authorization of Mario's Towing Service Center, Inc. to detain and dispose of The Subject Vehicle after the investigation ended was consistent with and/or part of REVERE's regular practice for detaining and disposing of a vehicle following the seizure thereof pursuant to its police powers.

28. REVERE has no procedure for providing notice at any time to the holder of a security interest or lien in a vehicle that a subject vehicle has been seized.

29. REVERE has no procedure for affording the holder of a security interest or lien in a vehicle the opportunity to be heard either before or after the time when REVERE authorizes seizure, detention and disposal of a vehicle which was taken into custody by REVERE for investigation.

COUNT I

Violation of Civil Rights Pursuant to title 42 U.S.C. §1983 (Deprivation of Property by Unreasonable Seizure and Without Due Process of Law)

30. HONDA realleges and incorporates herein by reference the allegations set forth in the above paragraphs of the complaint.

31. Prior to REVERE's involvement with The Subject Vehicle HONDA held the duly recorded lien and perfected security interest in The Subject Vehicle.

32. HONDA had the right to have its lien remain recorded on the vehicle title and the immediate right to take possession of The Subject Vehicle pursuant to the terms of HONDA's security interest.

33. REVERE acted under color of state law to deprive HONDA of valuable property interests in The Subject Vehicle in the following ways:

- a. REVERE did not at any time notify HONDA that REVERE had seized, detained or intended to dispose of The Subject Vehicle; and
- b. REVERE imposed *de facto* a lien on The Subject Vehicle for towing and storage fees;
- c. REVERE detained and disposed of The Subject Vehicle after it was no longer needed for investigation without providing any notice of procedures whereby HONDA could protect its lien interest from loss and/or protect the value of its property interest in The Subject Vehicle from loss;
- d. REVERE authorized sale of The Subject Vehicle to an unidentified third-party without having provided HONDA with any notice of such sale which sale extinguished HONDA's property interest in The Subject Vehicle; and
- e. REVERE retained the sales proceeds for its own benefit.

34. REVERE's conduct in causing such deprivations violated HONDA's right to Due Process under the Fourteenth Amendment of the United States Constitution because:

- a. REVERE has no procedure whereby HONDA (or any person with a security interest in a seized vehicle) could have been afforded the opportunity for a hearing before an impartial decision-maker, with adequate notice, whereat HONDA or any other lienholder could protect its interest by challenging the deprivation of property or by recovering the impacted vehicle;
- b. REVERE has no procedure for notifying HONDA (or any person with a security interest in a seized vehicle) of methods which could be utilized to recover the impacted vehicle or protects its lien therein from loss; and
- c. REVERE's detention and authorization for sale and concomitant extinguishment of HONDA's lien in The Subject Vehicle without any notice to HONDA was without any reasonably acceptable justification.

35. REVERE's conduct in seizing The Subject Vehicle without providing any post-seizure notice to HONDA of the initial seizure and in detaining and in authorizing sale of The Subject Vehicle after it was no longer needed for investigation without any notice to HONDA, violated HONDA's right to be free from unreasonable seizures under the Fourth Amendment to the United States Constitution because seizure without any post-seizure notice is unreasonable and once The Subject Vehicle was no longer needed for investigation REVERE had no warrant allowing detention and disposal of The Subject Vehicle, and no exception to the prohibition against warrantless seizures applied.

36. REVERE knew or should have known that it was unlawful and unconstitutional to deny possession, seize and detain without warrant or exception to the warrant requirement, and assert a lien for towing and storage fees, sell the vehicle, extinguish HONDA's lien and keep the proceeds, where notice and a hearing upon the validity of such deprivations had not been afforded to HONDA, a person with duly perfected and recorded property interests in The Subject Vehicle.

37. As a direct and proximate result of REVERE's violation of HONDA's rights under the Fourth and Fourteenth Amendments to the United States Constitution HONDA has suffered general and special monetary damages based upon the lost value of The Subject Vehicle, the income stream due to HONDA relative thereto and the sales proceeds and is entitled to relief under 42 U.S.C. §1983 and 42 U.S.C. 1988.

38. The conduct of REVERE in not seeking to have a prompt impartial review of its seizure, detention, lien creation, sale, extinguishment of HONDA's lien and conversion of proceeds of such sale was consistent with and part of the standard procedure and policy utilized by REVERE for vehicles seized held in investigation, and then disposed of once the investigation is concluded.

39. The conduct of REVERE in not notifying HONDA of REVERE's actions relative to The Subject Vehicle is consistent with and part of the standard procedure and policy utilized by REVERE for vehicles seized, held in investigation and then disposed of once the investigation is concluded.

40. REVERE does not maintain any procedural mechanism for providing a notice of seizure to lienholders after a vehicle is seized.

41. REVERE does not maintain any procedural mechanism for providing hearings to parties holding security interests or liens in such seized vehicles.

42. The failure by official REVERE policy makers to properly train or supervise subordinates regarding the constitutional requirements due in conjunction with the seizure, detention and assertion of charges and liens against vehicles, and sales thereof, and extinguishment of liens therein is contrary to well-settled constitutional law and REVERE policy makers' failure to train or supervise subordinates in the face of this law amounts to deliberate indifference to the rights of persons who have security interests or liens in vehicles that are seized, detained, subjected to charges and lien by and sold under the authority of REVERE.

43. But for REVERE's deprivational policy, decisions, practices and failures above described, HONDA would have had the right to recover and would have recovered The Subject Vehicle without delay or with minimal delay by reason of measures that preserve legitimate interests but are less intrusive than continued detention or disposal of the vehicle, and extinguishment of HONDA's lien, without incurring liability for or loss due to towing and storage charges impressed *ex parte*, and without incurring liability for or loss due to further storage charges continually accruing daily, and without loss by extinguishment of its lien in The Subject Vehicle.

COUNT II

**Violation of Massachusetts Constitution Article 10
(Deprivation of Property Without Due Process of Law) and Violation of Massachusetts
Constitution, Article 14 (Prohibition Against Unreasonable Seizures)**

44. HONDA realleges and incorporates herein by reference the allegations set forth in the above paragraphs of the complaint.

45. REVERE's violations of the Fourteenth Amendment to the U.S. Constitution as aforesaid constitute violations under Massachusetts Constitution, Article 10.

46. REVERE's violations of the Fourth Amendment to the U.S. Constitution aforesaid constitute violations under Massachusetts Constitution, Article 14.

COUNT III
Declaratory Relief

47. HONDA realleges and incorporates herein by reference the allegations set forth in the above paragraphs of the complaint.

48. An actual controversy has arisen and now exists between HONDA and REVERE warranting declaratory relief pursuant to 28 U.S.C. 2201.

49. HONDA seeks a declaration that REVERE's conduct as detailed herein violated HONDA's rights to be free from unreasonable seizures and Due Process under the Constitutions of the United States and Massachusetts.

50. HONDA seeks a declaration that REVERE is liable to HONDA pursuant to 42 U.S.C. 1983 and 42 U.S.C. 1988 for all damages and attorney's fees suffered and incurred by HONDA.

51. HONDA seeks a declaration that Massachusetts G.L.c. 255, §39A is unconstitutional in that it authorizes an unreasonable seizure without warrant or exception to the

warrant requirement and deprivation of the property rights of a party holding a security interest and lien in a vehicle without any notice to the secured party/lienholder and without any hearing before a neutral decision maker.

52. The towing, seizure and detention and sale of motor vehicles, and extinguishment of liens therein when carried out in accordance with Section 39A's provisions, deprives affected vehicle owners and lienholders of property in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Articles 10 and 14 of the Massachusetts Constitution.

53. Section 39A allows an unreasonable warrantless seizure and does not grant an affected owner or lienholder the right to a hearing with respect to the legitimacy of these acts, either before or after their occurrence. Nor does any other provision of Massachusetts law. HONDA seeks a declaration that Section 39A is so grossly and flagrantly unconstitutional, in that it fails to recognize that a duly perfected security interest and lien in a vehicle is a constitutionally protected property right, that any person of reasonable prudence would be bound to see this flaw.

54. HONDA seeks a declaration that REVERE's conduct constituting the deprivations described herein was null and void ab initio.

COUNT IV
Conversion Under Massachusetts Common Law

55. HONDA realleges and incorporates herein by reference the allegations set forth in the above paragraphs of the complaint.

56. REVERE exercised unlawful dominion and control of The Subject Vehicle to the exclusion of HONDA's rights when it authorized and participated in the creation of a lien for towing and storage fees for The Subject Vehicle which supposedly took priority over HONDA's lien without notice to HONDA.

57. REVERE exercised unlawful dominion and control over The Subject Vehicle to the exclusion of HONDA's rights when REVERE seized and detained The Subject Vehicle after REVERE's investigation ended without notice to HONDA.

58. REVERE exercised unlawful dominion and control over The Subject Vehicle when it authorized its agent to dispose of The Subject Vehicle under Massachusetts G.L.c. 255 §39A without notice to HONDA.

59. REVERE exercised unlawful dominion and control over the sale proceeds derived from sale of The Subject Vehicle when REVERE retained said proceeds and failed to remit said funds to HONDA.

60. REVERE's acts of conversion as indicated caused HONDA actual damages, as well as attorney's fees.

PRAYERS FOR RELIEF

WHEREFORE, HONDA requests that this Court:

- a. Grant judgment in favor of HONDA and against REVERE on all causes of action asserted herein;
- b. Declare that REVERE violated HONDA's rights to be free from unreasonable searches and Due Process under the United States and Massachusetts Constitutions;
- c. Declare that Massachusetts G.L.c. 255, §39A is unconstitutional in that it fails to recognize that a duly perfect and recorded security interest and lien in a vehicle is a constitutionally protected property right in violation of the Fourth and Fourteenth Amendments to the United State Constitution;
- d. Award HONDA nominal damages and actual damages;
- e. Award HONDA the cost of prosecuting this action together with attorney's fees pursuant to 42 U.S.C. §1988; and
- f. Declare a permanent injunction against REVERE prohibiting the above-described unconstitutional practices;
- g. Award such other and different relief that the Court, in the exercise of its discretion, deems just and proper.

Dated: Brookline, Massachusetts
February 12, 2019

Lushan, McCarthy & Goonan

By: /s/ Michael Lushan

Michael Lushan

BBO#307990

4 Cypress Street

Brookline, MA 02445

617-739-0700

lushan@lushlaw.com

Counsel for American Honda Finance Corp.