

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	
)	
ASAP TOWING & STORAGE COMPANY,)	
)	
Defendant.)	
_____)	

COMPLAINT AND DEMAND FOR JURY TRIAL
INJUNCTIVE RELIEF SOUGHT

The United States alleges as follows:

INTRODUCTION AND NATURE OF ACTION

1. This action is brought by the United States to enforce the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043, against ASAP Towing & Storage Company.
2. The purpose of the SCRA is to provide certain protections to servicemembers so that they can devote themselves fully to the Nation’s defense. One of these protections is that a towing company cannot enforce a storage lien on a servicemember’s vehicle during, or within ninety days after, a period of military service without a court order. 50 U.S.C. § 3958. This is a strict liability provision of the SCRA. Any court reviewing such a matter may delay enforcement of the storage lien or adjust the amount of the servicemember’s obligation to the towing company. *Id.* at § 3958(b).
3. When a towing company fails to obtain a court order prior to auctioning off a servicemember’s vehicle, that servicemember is deprived of his or her right to have a court

decide whether to postpone the sale or adjust the amount of the fees charged to the servicemember.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 50 U.S.C. § 4041. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2), because the events giving rise to this action occurred in this judicial district.

PARTIES

5. Defendant ASAP Towing & Storage Company is a Florida corporation in good standing with a principal address of 503 East Monroe Street in Jacksonville, Florida.

FACTUAL ALLEGATIONS

6. Lieutenant Junior Grade (“Lt.”) Zane Robert Berry is a full-time active duty member of the United States Navy who, between about February 26, 2018, and September 9, 2018, was deployed aboard the U.S.S. Florida, a naval submarine.

7. Prior to his deployment, Lt. Berry signed a one-year lease from January 2018 to January 2019 for a residential apartment at Mirador at River City, a gated apartment complex located at 13100 Broxton Bay in Jacksonville, Florida, that is managed by Olympus Property d/b/a Mirador at River City. Lt. Berry’s rental application listed the United States Navy as his employer.

8. Prior to his deployment aboard the U.S.S. Florida, Lt. Berry informed Olympus Property of his military deployment and of the fact that his PT Cruiser would be parked in front of his apartment for the duration of that deployment.

9. At all times relevant to the complaint, Lt. Berry's 2005 PT Cruiser had a parking decal from the Goose Creek Naval Nuclear Power Training Command in South Carolina, a Naval installation.

10. Prior to his deployment, Lt. Berry left a gold folder with maroon lettering face up on the passenger's seat of his 2005 PT Cruiser. The folder contained "welcome aboard" documents for the U.S.S. Florida. The front cover of the folder was embossed with "U.S.S. Florida SSGN-728."

11. Prior to his deployment, Lt. Berry left his driver's license, which included his full name and date of birth, in the glove compartment of his 2005 PT Cruiser.

12. On April 2, 2018, ASAP Towing & Storage Company towed Lt. Berry's 2005 PT Cruiser from Mirador at River City at the request of Olympus Property staff because the vehicle had developed a flat tire.

13. On about June 29, 2018, ASAP Towing & Storage Company auctioned off Lt. Berry's 2005 PT Cruiser and its contents, which included several tools, Lt. Berry's driver's license, and a compact disc holder full of music compact discs, including two that were created by Lt. Berry's deceased stepfather and held great sentimental value for Lt. Berry.

14. At no point in time between April 2, 2018, the date ASAP Towing & Storage Company towed Lt. Berry's 2005 PT Cruiser, and June 29, 2018, the date ASAP Towing and Storage sold Lt. Berry's vehicle at auction, did ASAP Towing & Storage obtain a court order allowing the company to auction off the vehicle.

15. ASAP Towing & Storage Company's written policies and procedures required employees, when a vehicle arrived at their "impound," to "look for any military decals on the vehicle . . ."

16. ASAP Towing & Storage Company's written policies and procedures required employees, when a vehicle arrived at their "impound," to "do a visual inspection of [the] interior to see if [there are] any signs of [a] military person owning it."

17. ASAP Towing & Storage Company either failed or refused to follow its written policies and procedures with respect to vehicle inspections, or took no action in response to its inspection of Lt. Berry's 2005 PT Cruiser, which had both a military parking decal on its exterior and a folder with the name of a military submarine face-up in the interior.

18. At all times relevant to this complaint, the Department of Defense provided individuals and entities seeking to comply with the SCRA a free automated database run by the Defense Manpower Data Center ("DMDC database") to check whether an individual is an SCRA protected servicemember.

19. A search of the DMDC database using Lt. Berry's name and date of birth, which were readily available to ASAP Towing & Storage Company from Lt. Berry's driver's license in the glove compartment of the 2005 PT Cruiser, would have revealed that at all times relevant to this complaint, he was in military service.

20. At all times relevant to this complaint, ASAP Towing & Storage Company policies and procedures did not include checking the DMDC database to determine a vehicle owner's military status prior to auctioning off or otherwise disposing of the vehicle without a court order.

21. At all times relevant to this complaint, ASAP Towing & Storage Company policies and procedures did not include using any commercially available databases to match vehicle identification numbers to current owners and registrants prior to auctioning off or otherwise disposing of their vehicles without court orders.

22. At all times relevant to this complaint, ASAP Towing & Storage Company had no written policies requiring it to obtain a court order before auctioning off or otherwise disposing of a servicemember's vehicle.

23. At all times relevant to this complaint, it was ASAP Towing & Storage Company's practice not to seek or obtain court orders to comply with the SCRA prior to enforcing storage liens.

24. Jacksonville, Florida, where ASAP Towing & Storage Company is based, has the third largest military population in the United States, and is home to Naval Station Mayport, Naval Hospital Jacksonville, and Naval Air Station Jacksonville.

25. From January 30, 2013 through the date of the filing of this complaint, ASAP Towing & Storage Company has auctioned off motor vehicles, without court orders, belonging to at least 33 SCRA-protected servicemembers without first obtaining court orders.

SERVICEMEMBER CIVIL RELIEF ACT VIOLATIONS

26. The SCRA provides that “[a] person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects *without a court order granted before the foreclosure or enforcement.*” 50 U.S.C. § 3958(a)(1) (emphasis added). There is no requirement that a servicemember inform the lien holder of his or her military service.

27. For purposes of 50 U.S.C. § 3958(a)(1), “the term ‘lien’ includes a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason.” 50 U.S.C. § 3958(a)(2).

28. ASAP Towing & Storage Company's actions in auctioning off the vehicles of at least 33 servicemembers, including Lt. Berry, without court orders are violations of the SCRA that raise an issue of significant public importance under 50 U.S.C. § 4041(a)(2).

29. ASAP Towing & Storage Company has engaged in a pattern or practice of violating Section 3958 of the SCRA, 50 U.S.C. § 3958, by auctioning off vehicles belonging to at least 33 SCRA-protected servicemembers, including Lt. Berry, without first obtaining court orders.

30. Lt. Berry and the other servicemembers whose motor vehicles were auctioned off during periods of military service without court orders in violation of the SCRA are "person[s] aggrieved" pursuant to 50 U.S.C. § 4041(b)(2) and have suffered damages as a result of ASAP Towing & Storage Company's conduct.

31. Lt. Berry brought an individual action against ASAP Towing & Storage Company in state court seeking to vindicate his own SCRA rights. *Berry v. Breit Olympus MF FL Venture, LLC*, No. 16-2018-CA-8346 (Fla. Cir. Ct. Jan. 30, 2019), ECF No. 1. That action, however, does not involve any claim for the other servicemembers' rights impacted by ASAP Towing & Storage Company's misconduct.

32. In the state action, ASAP Towing & Storage Company, through its counsel, admitted that it sold Lt. Berry's vehicle without obtaining a court order, but argued that "[r]equiring every vehicle in every city and state to be the subject of a court order before the enforcement of a statutory towing and storage lien, on the chance that the owner is a service member, is an unreasonable burden" Answer to Compl. at 2, 4, *Berry v. Breit Olympus MF FL Venture*, ECF No. 17.

33. ASAP Towing & Storage Company's conduct was intentional, willful, and taken in reckless disregard for the rights of servicemembers.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an order that:

1. Declares that ASAP Towing & Storage Company's conduct violated the SCRA;
2. Enjoins ASAP Towing & Storage Company, its agents, employees, and successors, and all other persons and entities in active concert or participation with them, from:
 - a. auctioning off or otherwise disposing of the motor vehicles of SCRA-protected servicemembers without court orders, in violation of the SCRA, 50 U.S.C. § 3958;
 - b. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, each identifiable victim of ASAP Towing & Storage Company's illegal conduct to the position he or she would have been in but for that illegal conduct; and
 - c. failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any illegal conduct in the future and to eliminate, to the extent practicable, the effects of ASAP Towing & Storage Company's illegal conduct;
3. Awards appropriate monetary damages to each identifiable victim of ASAP Towing & Storage Company's violations of the SCRA, pursuant to 50 U.S.C. § 4041(b)(2); and
4. Assesses civil penalties against ASAP Towing & Storage Company in order to vindicate the public interest, pursuant to 50 U.S.C. § 4041(b)(3).

The United States further prays for such additional relief as the interests of justice may require.

Dated: September 10, 2020.

Respectfully submitted,

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