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James J. Lynch, Esq., UNION COUNTY LEGAL SERVICES CORP.
1034 E. Jersey Street - Tel. 354-4340
Elizabeth, New Jersey 07201
Attorney for Plaintiff

SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY - CHANCERY DIV.

DOCKET NO. _____

PATRICIA WHITMORE, individually
and on behalf of all others
similarly situated,

Plaintiff,

vs

NEW JERSEY DIVISION OF MOTOR VEHICLES &
JOHN A. MADDINGTON, Director, New Jersey
Division of Motor Vehicles

Defendants.

Civil Action

"COMPLAINT"

PATRICIA WHITMORE, residing at 10 Bertha Avenue, in
the Township of Union, County of Union, State of New Jersey,
individually, and on behalf of all others similarly situated,
by way of Complaint says:

1. Plaintiff, Patricia Whitmore, is and at all times
mentioned herein was a citizen of the Township of Union, County
of Union, State of New Jersey.

2. An actual controversy relating to the rights and duties

of the parties exists with respect to the constitutionality on its face and as applied herein of New Jersey's "Garage Keepers and Automobile Repairmen Act, N.J.S.A. 2A:44-20 et seq. Plaintiff, on behalf of herself and all other similarly situated, claims and contends that N.J.S.A. 2A:44-20 et seq. and the conduct of Defendant and its agents thereunder and also pursuant to N.J.S.A. 39:10-1 et seqs. as set forth below, constitute a taking of Plaintiff's property, her 1968 Pontiac Automobile, Vehicle ID No. B-2953786 614847, without due process of law, and that said taking without a judicial hearing is in violation of the Fourteenth Amendment of the United States Constitution and the Fifth Amendment of the New Jersey State Constitution.

3. Plaintiff brings this action against the Defendants, Division of Motor Vehicles, John A. Waddington, as Director and Chief agent of the N. J. Division of Motor Vehicles, seeking a declaratory judgment that any and all actions on the part of the Division of Motor Vehicles and its agents which assist automobile repairment in obtaining certificates of ownership for automobiles being held and sold pursuant to New Jersey's "Garage Keeper's and Automobile Repairmen Act," N.J.S.A. 2A:44-20 et seq without a judicial hearing are unconstitutional.

4. Plaintiff brings this action on her own behalf and on behalf of all others similarly situated, pursuant to RR.4:32-1 et seq. The members of the class similarly situated to Plaintiff are all persons whose automobiles are being held or may be

held by garage keepers or automobile repairmen pursuant to
N.J.S.A. 2A:44-20 et seq.

5. This action is a proper class action and is necessary because; the members of the class are so numerous that joinder of all members is impractical, there are questions of law and/or fact common to the class, and Plaintiff's claims are typical of the claims of the entire class. Plaintiff represents the members of the class and she can fairly and adequately protect the interests of the class. Defendant has acted and refused to act on grounds applicable to the class plaintiff represents.

6. During all times mentioned herein, Defendant, N. J. Division of Motor Vehicles was and is a state governmental agency within the Department of Law and Public Safety with its principal place of business located in the City of Trenton, County of Mercer, and State of New Jersey.

7. At all times mentioned herein, Plaintiff owned a 1968 Pontiac Vehicle ID No. B-235378G614847, N. J., Plate No. 918AEL. Said ownership was subject to a secured interest in Beneficial Finance Company of Springfield which lien was noted on the vehicle registration.

8. Plaintiff is a student at William Patterson College in Wayne, New Jersey. This 1968 Pontiac automobile is the only motor vehicle owned by Plaintiff and is her primary means of transportation.

9. Plaintiff had her automobile repaired at Sakovan, Inc., located at 100 Welton Street, New Brunswick, N. J., for \$450. Pursuant to work order #1223, dated June 10, 1974, Sakovan, Inc., increased the cost of repairs to \$550 when Plaintiff went to pick her car up and the car was held pursuant to New Jersey "Garage Keepers and Automobile Repairment Act," N.J.S.A. 2A:44-20 et seq. which act Plaintiff maintains is unconstitutional in that it deprived Plaintiff the use of her property, without due process of law.

10. At some time between July, 1974, and Feb. 25, 1975, Sakovan, Inc., requested and received a certificate of Title for said auto from the Defendant, the New Jersey Division of Motor Vehicles so that Sakovan, Inc., could sell said auto pursuant to the allegedly unconstitutional mechanics lien statute, to wit: N.J.S.A. 2A:44-20 et seq.

11. The State of New Jersey by and through the actions of the Defendant, New Jersey Division of Motor Vehicles, encouraged and fostered the alleged unconstitutional act by playing a significant role in the violation of Plaintiff's due process rights. Thus, the Defendant acting under the color of law, to wit: New Jersey's Garage Keepers and Automobile Repairmen's Act, N.J.S.A. 2A:44-20 et seq. and New Jersey Division of Motor Vehicles regulations under N.J.S.A. 39:10-1 et seq. has formed a symbiotic relationship with leinors to deny Plaintiff and the class she represents, their constitutional rights of due process.

12. At a time unknown to Plaintiff, the Defendant, New Jersey Department of Motor Vehicles, requested and obtained a relinquishment of secured interest from Beneficial Finance Co., of Springfield and delivered to Sakovan, Inc., a clear Certificate of Title, thereby allowing Sakovan, Inc., to sell Plaintiff's car and permanently deprive her of the car without a judicial hearing or notice.

13. Said actions on the part of the Defendant were substantial state action involvement that worked to deprive Plaintiff of her constitutional right not to be deprived of her property without due process of law in violation of Fourteenth Amendment of the United States Constitution, and the Fifth Amendment of the New Jersey Constitution.

14. Members of the class which Plaintiff represents have and will continue to have their constitutional rights, not to be deprived of their property without due process of law, violated.

15. Plaintiff has sent the required Notice of Claim pursuant to N.J.S.A. 59:8-4 (See Exhibit (a) attached hereto)

WHEREFORE, Plaintiff respectfully prays that this Court:

- a) Enter a declaratory judgment declaring that the New Jersey Garage Keepers Lien Act, N.J.S.A. 2A:46-20 et seq. is unconstitutional and contrary to the Fourteenth Amendment to the United States Constitution and the Fifth Amendment to the New Jersey Constitution.

- b) Enter a declaratory judgment declaring that any and all actions on the part of the New Jersey Division of Motor Vehicles and its agents which further the retention or sale of automobiles without a judicial hearing and Notice pursuant to N.J.S.A. 2A:44-26, et seq. by private garage keepers and automobile repairmen, are unconstitutional and contrary to the Fourteenth Amendment of the United States Constitution and the Fifth Amendment of the New Jersey Constitution.
- c) Enjoin the defendant and its agents from obtaining or effectuating transfers of Certificates of Ownership pursuant to N.J.S.A. 2A 44-26 et seq. N.J.S.A. 39:10-1 et seq or any other authority which allows defendant to transfer title of any vehicle to the detriment of any person holding a possessory interest in such vehicle without a judicial hearing. And further enjoining any actions on the part of the Defendant which furthers the retention and sale of a vehicle pursuant to N.J.S.A. 2A:44-20 without having had such right to detain or sell the vehicle judicially determined.
- d) Award Plaintiff damages for the loss of use, and possession of her automobile and all other actual damages proximately caused by the actions of the N.J. Division of Motor Vehicles.

- e) Award Plaintiff damages for the violation of her rights of due process by which she was permanently deprived of her automobile.
- g) For Counsel fees, and costs of this suit, if any.


JAMES J. LYNCH, ESQ.
Attorney for Plaintiff

Elizabeth

June 25, 1975

New Jersey Division of Motor Vehicles
25 South Montgomery Street
Trenton, New Jersey 08666

Attn: John A. Haddington, Director

Re: Notice of Claim
Pursuant to N.J.S.A. 59:13-4
Pontiac 68
Ser #235 378 6614847

Dear Sir:

Please be advised that Patricia Whitmore residing at 10 Bertha Avenue, Vauxhall Union, Union County, New Jersey, is represented by Union County Legal Services Corp., in the attempt to establish claim for damages against the New Jersey Division of Motor Vehicles.

Please send any future notices to Union County Legal Services Corp., 1034 E. Jersey Street, Elizabeth, N. J., Attn: James J. Lynch, Esq., Staff Attorney.

The occurrence or transaction which gave rise to Patricia Whitmore's claim and all these claimants in a class which she intends to represent is the Division of Motor Vehicle's involvement in obtaining certificates of ownership for garage keepers and automobile number plates, thereby assisting them in violating the constitutional rights of said automobile owners not to be deprived of their property (the auto) without due process of law.

In the specific case of Patricia Whitmore, her automobile was sold by Sakovan, Inc., located at 100 Melton St., New Brunswick, New Jersey. Sakovan, Inc., requested and received assistance by the Division of Motor Vehicles in obtaining a clear certificate of ownership of this car on or about November 14, 1974. Because of said actions on the part of the Division of Motor Vehicles, Patricia Whitmore was deprived of the use, possession and now ownership of her 1968 Pontiac, Serial No. 8-23 53 78 66 14847.

Also, Patricia Whitmore did not receive any written demand as owner

Div. Division of Motor Vehicles

Re: Patricia Whitmore

of record of said auto for surrender of same. Also, the Division of Motor Vehicles interfered into the relationship that existed between Patricia Whitmore and her secured Creditor, Beneficial Finance Company of Springfield, at Irvington, N. J., to her detriment by requesting the release of a security interest.

At this time it seems very hard to determine the monetary value of the damages proximately caused by the unconstitutional and tortious behavior of the Division of Motor Vehicles but it includes the deprivation of use and ownership of Ms. Patricia Whitmore's 1968 Pontiac automobile for about one year to date, as well as the violation of her Due Process Right under the Federal and State Constitutions not to be deprived of her property without due process of law.

Claimant is at a loss for an explanation of the basis of computation of the amount claimed at this time but estimates that the total amount claimed to be \$50,000.00.

Claimant states that the reason for delay of this notice is that Claimant first became actually aware that the Division of Motor Vehicles was involved in the alleged detainer and sale of her auto on June 23, 1975 when Counsel for claimant received answers to Interrogatories from Joseph J. Jankowski, Esq., of 459 Amboy Avenue, Woodbridge, N. J. attorney of Defendants, Sakovan, Inc. in a Middlesex County District Court Action, Docket No. 209866. Claimant maintains that no substantial prejudice has been caused by the fact that this notice is being sent at this time.

Patricia Whitmore as a representative of a class of similarly situated individuals is unable at this time to give the Division of Motor Vehicles information as to the time and place of the transaction that give rise to claims to other members of the class that she represents but does maintain that this information is within the knowledge and control of the Division of Motor Vehicles.

Very truly yours,

Patricia Whitmore
Patricia Whitmore, Claimant
and representative of a
similarly situated class of claimants.

Joseph J. Lynch
Joseph J. Lynch, Esq.,
Union County Legal Services Corp.
Staff Attorney

cc: City

cc: Dept. of Law & Public
Safety
State House Annex
Trenton, New Jersey