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Jason L. Levine

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***Friendly Finance Corp. v. Orbit Chrysler Plymouth Dodge Truck, Inc.:*
Garageman's Lien Has Priority Over Perfected Security Interests in a Motor
Vehicle When Lien Holder Intends to Conduct a Statutory Sale**

By: Jason Levine

The Court of Appeals of Maryland held a garageman's lien has priority over holders of perfected security interests in a motor vehicle when the lien holder intends to conduct a statutory sale. *Friendly Fin. Corp. v. Orbit Chrysler Plymouth Dodge Truck, Inc.*, 378 Md. 337, 341, 835 A.2d 1197, 1199 (2003). In so holding, the court of appeals reaffirmed the Maryland General Assembly's intent to give priority to such liens over previously perfected security interest. *Id.*

In August 2000, Israel Atkins (Atkins) purchased a used car from Orbit Chrysler Plymouth Dodge Truck (Orbit). Atkins financed the vehicle purchase with Friendly Finance (Friendly). The loan was secured by the vehicle and perfected in the District of Columbia. Thereafter, Orbit performed major repairs and maintenance on the vehicle, but was never paid for their services. Consequently, Orbit filed a garageman's lien on the vehicle pursuant to Title 16 of the Commercial Law Article. In addition, Atkins defaulted on his purchase money loan from Friendly and gave notice that Orbit had possession of the vehicle.

Upon learning that Orbit possessed the vehicle, Friendly filed a replevin action in the District Court of Maryland, sitting in Prince George's County, but refused to pay the

charges due Orbit. Orbit responded by asserting its garageman's lien and sought dismissal of the replevin action. The district court ruled that Orbit had an absolute right to possession pending sale unless the repair bill was paid or the lien was discharged through some other statutory process. Consequently, the district court dismissed Friendly's replevin action. On direct appeal, the circuit court affirmed. Friendly appealed and the Court of Appeals of Maryland granted certiorari to consider whether a garageman's lien on a motor vehicle is subordinate to a previously perfected purchase money security interest if the lien holder intends to conduct a statutory sale of the vehicle and whether the holder of a previously perfected purchase money security interest is an owner within the meaning of Section 16-208 of the Commercial Law Article.

The court first examined the rationale behind the lower courts' rulings, concluding they properly recognized the legislative intent behind Section 16-202(c) of the Commercial Law Article. *Id.* at 342, 835 A.2d at 1200. That section provides that a person who, with an owner's consent, has custody of a motor vehicle and who, at the owner's request, services that vehicle has a lien on the vehicle for any charges

incurred. *Id.* at 345, 835 A.2d at 1201 (citing Md. Code Ann. Comm. Law § 16-202(c)).

The court next concluded the lower courts correctly held that only an owner can file a replevin action and Friendly was not an owner under the statute. *Id.* In addition, the court held despite Orbit's conceded failure to follow statutory notice provisions, the only penalty for the omission was that Orbit could not recover storage charges incurred. *Id.* at 347, 835 A.2d at 1203. The lien for the repair bill, however, was unaffected by Orbit's omission. *Id.*

Friendly cited Section 16-205(b) of the Commercial Law Article to support its contention that it had the right to possess the vehicle. *Id.* at 348, 835 A.2d at 1204. That section, however, notes that a garageman's lien is subordinate to previously perfected security interests "except in the case of a motor vehicle sold under § 16-207 of this subtitle." *Id.* (emphasis added). The court, therefore, was persuaded that "the reference to § 16-207 in § 16-205(b) gives a garageman . . . priority of possession . . . when the garage intends to sell the vehicle under [that section]." *Id.* at 349, 835 A.2d at 1204.

Friendly next argued the Legislature intended to give a garageman's lien priority *only if*

the statutory sale was completed, and that in this case, it had not. *Id.* The court held, however, that “[o]n the contrary, the Legislature intended the garage to retain priority of possession throughout the process leading to a § 16-207 sale.” *Id.* The court noted the policy consideration behind its legislative interpretation, and stated “[t]he garage has added value to the vehicle. A secured interest holder would receive a windfall if it were to obtain the right to possess and sell the vehicle without first paying the garage’s repair bill.” *Id.* at 350-51, 835 A.2d at 1205.

Finally, the court disposed of Friendly’s second contention that it was the vehicle owner, holding that throughout Title 16 the Legislature treats owners and perfected secured parties quite differently. *Id.* at 352, 835 A.2d at 1206. The court also noted Atkins had sole possession of the vehicle at the time it was delivered to Orbit and he had not yet defaulted on Friendly’s loan. *Id.* at 353-54, 835 A.2d at 1207. As such, the court held Friendly had a security interest that could potentially mature into a right to possession but it did not then possess the vehicle. *Id.*

The Court of Appeals of Maryland held a garageman’s lien has priority over any holders of perfected security interests in a motor vehicle when the lien holder intends to conduct a statutory sale. In doing so, the court made clear the legislative intent behind the statutory scheme relating to garageman’s liens. Moreover, the court took an important step in protecting the rights of statutory lienors who seek to procure payment

for their services without worrying that secured creditors may deprive them of their right to recover. Through a somewhat murky path, the court navigated through the legislative scheme of Title 16 of the Commercial Law Article and settled questions that may often arise where secured creditors are forced to compete with lien holders.

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