

QUAN-EN YANG, et al.
On His Own Behalf and on Behalf
of All Others Similarly Situated,

Plaintiffs,

vs.

G & C GULF, INC. d/b/a
G&G TOWING

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* MONTGOMERY COUNTY, MD.
* Case No. 403885-V
* Hon. Ronald B. Rubin
* Specially Assigned
* TRACK VI

* * * * *

**PLAINTIFFS' MOTION FOR ORDER COMPELLING DISCOVERY
AND FOR PARTIAL RECONSIDERATION OF
JULY 29, 2015 ORDER QUASHING 33 SUBPOENAS**

Plaintiffs, Quan En-Yang and the putative Class, through their undersigned counsel, respectfully move: (A) pursuant to Md. Rules 2-432 for an Order compelling discovery against Defendant G&C Gulf, Inc. d/b/a G&G Towing ("G&G Towing"); and (B) for partial reconsideration of the Court's July 29, 2015 Order Quashing 33 subpoenas (Dkt. no 41).

I. Nature of Controversy and Claims Asserted

The Class Action Complaint in this case alleges violations of statutory and common law obligations governing the involuntary/nonconsensual towing of motor vehicles (also known as "trespass towing") by Defendant G&G Towing. Both Maryland's Towing or Removal of Vehicles from Parking Lots Law, Md. Code Ann., Transp. §21-10A-01 *et seq.* (the "Maryland Towing Act") and Montgomery County's Tow Ordinances, Montgomery County Code, § 30C-1, *et seq.* (the "MC Tow Law"), provide significant protections and safeguards for consumers against predatory and illegal towing practices.

The facts of this case are straightforward. Named Plaintiff – Quan en Yang ("Dr. Yang") – alleges that on December 12, 2014, G&G Towing towed his car from the Walgreen

RECEIVED

AUG 18 2015

Clerk of the Circuit Court
Montgomery County, Md.

Pharmacy's parking lot in Rockville, Maryland *while he was shopping in Walgreens*. First Amended Complaint ("FAC")(Dkt. no. 36) at ¶¶s 23-29. The FAC further alleges that following the predatory tow of Dr. Yang's vehicle, G&G Towing refused to release his vehicle without payment of the towing and storage fees. To make matters worse, in addition to the maximum towing and storage fees, G&G Towing required Dr. Yang to pay an additional fee of 3.35% because he paid G&G Towing with a credit card. Dr. Yang paid all of these fees under protest. FAC at ¶¶s 35-43.

The FAC further alleges that these facts are not unique to Dr. Yang. Rather, Plaintiffs contend that what happened to Dr. Yang has repeated itself thousands of times in Montgomery County – namely, G&G Towing uniformly and consistently: (1) engages in predatory towing of vehicles; and then, (2) following the tow, holds the vehicle for ransom, before permitting the rightful owner to “retake possession” of the vehicles as required by the law.

The FAC alleges that G&G Towing's practices violate the law in several respects. **First**, though G&G Towing consistently exercises a possessory or storage lien in connection with their trespass tows, Maryland law does not create such a lien in favor of G&G Towing – ***either by statute or at common law***. *T.R. Ltd. v. Lee*, 55 Md.App. 629 (1983); *Glenn Cade, t/a G&G Towing v. Montgomery County*, 83 Md. App. 419,427 (1990); *see also* Md. Code Ann., Transp., §21-10A-05(a)(3); MC Tow Law 30C-8(b)(8). *See* FAC, Counts II and VII.¹

¹ For its part, during the limited discovery to date, G&G Towing readily acknowledges it exercises a possessory or storage lien as part of its standard practice and protocol. Bryan Sherman (“Sherman”),

- Q: Can you describe the steps that vehicle owners have to take in order to retake possession of their vehicle after it's been towed?
- SHERMAN: They have to come down to our office and pay the towing fee and then they release the vehicle to the owner or agent.
- Q. Okay. And that's after the towing fee is paid?
- A. Correct.
- Q. What happens if the owner doesn't have the funds to pay for the tow?

Second, the FAC charges that G&G Towing consistently: (a) fails to obtain the authorization from the parking lot owner before towing subject vehicles; (b) does not record the information required by Maryland law (Md. Code Ann., Transp., §21-10A-04 (5)); and (c) generally overcharges vehicle owners for towing, storage and other charges by tacking on a “credit card fee” that is not otherwise permitted under the law. *See* FAC, Counts I, III, IV and V.

Third, the FAC asserts that G&G Towing’s predatory practices also violate Maryland’s Consumer Protection Act, Md. Code Ann., Comm. law §12-301, *et seq.* and the common law (Money Had and Received, Trespass to Chattel and Conversion). *See* FAC, Counts VI, VIII, VIII [sic] and IX.

II. Discovery At Issue

Plaintiffs have taken a multi-prong approach to discovery.

1. **Interrogatories and Requests for Production of Documents** – On July 2, 2015 Plaintiffs served on G&G Towing (by hand delivery) a First Set of Interrogatories and First Request for Production of Documents. G&G Towing served responses to the Interrogatories and

A. Then I guess they’d have to come back in when they do have the money.
Q. So G&G holds the car until they come back with the funds?
A. Correct.
Q. What if they don’t have cash?
A. We take Visa or Mastercard, as Mr. Yang paid by Visa or Mastercard.
Q: In the event that the person doesn’t have the money and can’t pay for the tow, the vehicle is not released to them; is that correct?
A: Correct.
.....
Q: But they cannot get their vehicle back without paying?
A: That’s correct.
Q: And that is a standard practice at G&G?
A: Correct.

Deposition of Bryan Sherman (“Sherman depo”) at 62:19-65:12, attached as **Exhibit 1**. Although G&G Towing readily admits that it always asserts a possessory lien in connection with its trespass tows, it defends this case claiming that the Maryland Tow Act and MC Tow Laws impliedly created a possessory lien in favor of tow companies. *See* G&G Towing’s Motion to Dismiss the Amended Complaint. Dkt. no. 60.

RFP on August 12, 2015. *See Exhibits 2 & 3*, respectively.

As discussed below, though the parties have been able to reach an accommodation on most of their disagreements in respect of the discovery responses, and G&G Towing has agreed to supplement its responses, there is one area, where the parties have not reached an agreement – the parties disagree on the data fields of information to be provided by G&G Towing in a spreadsheet identifying each and every G&G Towing trespass tow from April 16, 2012 to the present.

2. *33 Subpoenas Served on Parking Lot Owners* – Between July 2-8, 2015, Plaintiffs served 33 subpoenas on non-parties – the parking lot owners with whom G&G Towing is believed to have contracts to tow motor vehicles. *See* Exemplar of Subpoenas attached hereto as to the Motion as **Exhibit 4**. Each subpoena requested production of two identical, though limited categories of documents: (1) all contracts and agreements with towing companies from January 1, 2005 to date, and (2) all logs, records, tow slips or other documents ***maintained by the parking lot owners*** identifying the vehicles that the parking lot owners specifically requested a towing company to tow, from June 1, 2014 to date.²

Although none of the parking lot owners objected to the subpoenas – ***not one*** – on July 17, 2015, G&G Towing filed a Motion for Protective Order to Quash Subpoenas Pursuant to Maryland Rule 2-403 (Dkt. no. 24) (“Motion to Quash”). G&G Towing argued that the 33 subpoenas requested documents that were “cumulative and duplicative” of the discovery already served by Plaintiffs on G&G Towing. Thus, the primary basis for G&G Towing’s Motion to Quash was its representation that “[s]ince the information sought can be obtained through

² The two categories of documents are tailored to discover the scope of the relationship between the parking lot owners and G&G Towing. They are also designed to determine if the parking lot owners complied with their duty to record each tow, including the identity of the person requesting the tow, as required by MC Tow Law, § 30C-5 (c).

Defendant itself, there is no reason for this Court to permit Plaintiff[s] to harm G&G's business relationships." Motion to Quash at 9.

On July 29, 2015, Defendant presented the Motions to Quash to the Chamber's Judge, Hon. Terrence J. McGann. The Court granted the motion. Dkt. no. 41.

As set forth below, however, G&G Towing has not, and in fact cannot produce the second category of documents subpoenaed from the parking lot owners, namely:

2. For the time period June 1, 2014 to the present, produce all records, logs, photographs, tow slips or other documents (whether in paper form or electronic) memorializing, identifying or documenting the vehicles that you have authorized or requested a towing company (including, but limited to G & C Gulf, Inc. d/b/a G&G Towing) to tow from property(s) owned or managed by you in the State of Maryland.

See **Exhibit 4** at p.2.

III. Request for An Order Compelling G&G Towing to Produce a Comprehensive Spreadsheet

Interrogatories Nos. 6 & 7, and RFP No. 1 requested that G&G Towing produce the following information and documents:

Interrogatory 6: Identify all persons who, between April 16, 2003 and the present, were charged any towing, release or storage fees to recover Vehicles from You.

ANSWER: Objection. The information sought is overbroad in scope and it seeks discovery relating to persons who were towed well beyond the applicable statute of limitations in this case. For this reason, the request seeks information that is not relevant to this proceeding nor would the discovery of information lead to admissible evidence. Without waiving this objection, Defendant is producing a 513 page Call Listing of trespass tows from October 1, 2012 through August 7, 2015 and copies of invoices related thereto.

Interrogatory 7: For those persons identified in response to Interrogatory No. 6, identify each person who [was] charged a fee by You for using a credit card.

ANSWER: See, Response to Interrogatory Number 6.

RFP 1: All documents identified or referred to in your answers to the Plaintiff's First Set of Interrogatories to Defendant served contemporaneously with these request for documents.

The 513 page "Call Listing" produced by G&G Towing in response – produced in a non-searchable pdf format – contains the following data fields: Date, Call #, Invoice #, PO#, Customer, Location, Destination, Vehicle and Driver. See Page 1 of "Call Listing" attached hereto as **Exhibit 5**.

The "Call Listing" is deficient in several respects. **First**, to the extent that the data on the "Call Listing" is available in an electronic format, it must be produced as a searchable spreadsheet. Indeed, Md. Rule 2-422(d) requires that ESI be produced "*in the form in which it is ordinarily maintained or in a form that is reasonably usable.*" See also RFP, Instruction (b).³

The testimony in this case to date confirms that G&G Towing maintains **all** of the data relating to **all** of its trespass tows in an electronic format. G&G Towing captures the data using an off-the-shelf software program, *In Tow Management*, which is easily accessed and downloaded into an Excel spreadsheet. In fact, during his deposition, Bryan Sherman, G&G Towing's Manager, when asked whether all of the information relating to the tow is captured and maintained in *In Tow Management*, testified that:

SHERMAN. It is.

³ In addition, the discovery requests themselves require that G&G Towing produce the requested data in a usable format, such as an Excel spreadsheet. Definition (C) of the RFP defines any "document(s)" to include "electronically stored information ("ESI") or data maintained electronically, such as in a computer." Similarly, the Interrogatories, definition (A) defines "document" as follows:

- (a) "Document" includes a writing, drawing, graph, chart, photograph, recording, electronically stored information and other data compilation from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form.

See also *Hagenbuch v. 3B6 Sistemi Elettronici Industriali S.R.L.*, 2006 WL 665005 (N.D.Ill. 2006)(production in non-searchable TIFF format unacceptable).

- Q. Is it stored there?
A. It is.
Q. So for example, if I asked you to do a printout for me of the last three years of tows by G&G you would be able to do that?
A. I'd be able to produce a list for you.
Q. Would it be an Excel spreadsheet kind of list with the various fields of information?
A. Yes, sir.
Q. So the information is ascertainable?
SHERMAN. Correct.

Sherman depo at 78-79, **Exhibit 1**.

Second, to the extent that the "Call Listing" only contains a limited number of fields captured by the *In Tow Management* program, it is incomplete. The clear testimony in this case is the *In Tow Management* software captures and stores all of the information relating to each tow including the following: the name of the person paying for tow, the VIN No., License Plate No., the towing and storage fees paid, credit card fees paid, date of the tow, make, model and year of the vehicle, etc.... *Id.* at 66-81.

Moreover, the Stipulated Order Regarding Electronically Stored Information, entered on August 10, 2015, describes the *In Tow Management* software as follows:

The information accessible through *In Tow Management* includes data and information regarding each trespass tow undertaken by G&G Towing since 2005 including the identification of vehicles towed (description, VINs in most instances and license plate numbers), the date of the tow, the identity of the G&G Towing personnel involved in the tow, the identity of the parking lot owner, the location of the tow, and amounts charged for and/or paid in connection with the tow.

Dkt. no. 55. All of this information, including all amounts charged to and paid by the owner or authorized agent of the towed vehicle, are printed by G&G Towing on the invoice given to the vehicle owner. *See* Dr. Yang's G&G Towing Invoice, attached as **Exhibit 6** (highlighting added).

Although, G&G Towing has now agreed to produce a readable Excel spreadsheet of the

data fields contained on the 513 page “Call Listing” – Date, Call #, Invoice #, PO#, Customer, Location, Destination, Vehicle and Driver – it will not agree to include the other data fields that are stored and maintained in the *In Tow Management* program. See Cert. of Good Faith at ¶ 7.

Because this additional information is necessary for the Plaintiffs to: (1) identify the class members in this case; (2) calculate the statutory damages; and (3) analyze information about each transaction, Plaintiffs request that the Court compel G&G Towing to produce a comprehensive and complete spreadsheet – in a readable, Excel format – containing all of the data fields captured by the *In Tow Management* program, without restriction.

IV. Request for Partial Reconsideration of Court’s July 29, 2015 Order Quashing 33 Subpoenas

Plaintiffs also request that the Court reconsider the portion of the July 29, 2015 Order Quashing the 33 Subpoenas that would have required the parking lot owners to provide the following documents:

2. For the time period June 1, 2014 to the present, produce all records, logs, photographs, tow slips or other documents (whether in paper form or electronic) memorializing, identifying or documenting the vehicles that you have authorized or requested a towing company (including, but limited to G & C Gulf, Inc. d/b/a G&G Towing) to tow from property(s) owned or managed by you in the State of Maryland.

See **Exhibit 4**. As noted above, the MC Tow Law imposes a duty on the parking lot owners to compile and maintain these documents MC Tow Law, § 30C-5 (c).

Although G&G Towing now admits that it does not have the documents required by Request no. 2, see Cert. of Good Faith at ¶ 8, it convinced the Court to grant the Order Quashing the 33 Subpoenas the Court by representing that the subpoenas were “cumulative and duplicative” of the Plaintiffs’ discovery directed to G&G Towing. See e.g., Defendant G&C Gulf’s Reply to Plaintiff’s Opposition to Motion for Protective Order and to Quash Subpoenas at

1, Dkt. no. 39. Even assigning the best motives to G&G Towing's representation, G&G Towing was plainly incorrect.

The fact is that the documents requested in document category no. 2 of the subpoenas are uniquely maintained by the parking lot owners, not G&G Towing. Accordingly, Plaintiffs respectfully request that the Court reconsider the Motion to Quash and require the parking lot owners to produce the documents requested in document category no. 2.

Moreover, because the Motion to Quash was granted based upon incorrect and inaccurate representations by G&G Towing, Plaintiffs request that the Court require G&G Towing to bear the burden and expense of communicating to the parking lot owners that the Court reconsidered the Order Quashing the Subpoenas.

V. Conclusion

For the reasons set forth above, Plaintiffs respectfully request that the Court: (1) compel G&G Towing to produce a comprehensive and complete Excel spreadsheet containing all of the data fields available in the *In Tow Management* software program; (2) reconsider the Court's July 29, 2015 Order Quashing 33 Subpoenas; and (3) require the entities served with the 33 Subpoenas which were the subject of the July 29, 2015 Order to produce documents responsive to Request no. 2 in Exhibit A to those subpoenas within fifteen (15) days of the date of the Order. In addition, Plaintiffs request that G&G Towing bear the burden and expense of communicating the Court's Order to the entities served with the 33 Subpoenas, together with a cover letter (agreed to by Plaintiffs) indicating that the Court has required them each to produce the documents set forth in document Request no. 2 in Exhibit A to the subpoena.

Respectfully submitted,

Dated: August 18, 2015

Richard S. Gordon
rgordon@GWCfirm.com
Benjamin H. Carney

bcarney@GWCfirm.com
GORDON, WOLF & CARNEY, CHTD.
102 West Pennsylvania Ave., St. 402
Baltimore, Maryland 21204
(410) 825-2300
(410) 825-0066 (facsimile)

Attorneys for Named Plaintiff and the Class

By:


Richard S. Gordon

RULE 2-431 CERTIFICATE OF GOOD FAITH

1. On July 2, 2015, Plaintiffs served on G&G Towing (by hand delivery) a First Set of Interrogatories and First Request for Production of Documents.

2. Between July 2-8, 2015, Plaintiffs served 33 subpoenas on non-parties – the parking lot owners with whom G&G Towing is believed to have contracts to tow motor vehicles.

3. On July 17, 2015, G&G Towing filed a Motion for Protective Order to Quash Subpoenas Pursuant to Maryland Rule 2-403 (Dkt. no. 24) (“Motion to Quash”). G&G Towing argued that the 33 subpoenas requested documents were cumulative and duplicative of the discovery already served by Plaintiffs on G&G Towing. G&G Towing further argued that it would be producing all of the documents requested by the 33 subpoenas.

4. On July 29, 2015, the Court granted the Motion to Quash.

5. G&G Towing served responses to the Interrogatories and RFP on August 12, 2015.

6. Because Plaintiffs considered the Interrogatory Answers and RFP Responses incomplete, and because G&G Towing did not produce any documents requested by category no. 2 of the subpoenas, Plaintiffs wrote to G&G Towing on August 13 and 14 in an effort to resolve the discovery dispute.

7. On August 14, 2015, counsel for Plaintiffs and G&G Towing spoke by telephone regarding the discovery dispute. During that call, counsel were able to narrow the areas of disagreement. In particular, G&G Towing during that call agreed to produce a readable Excel spreadsheet containing some, but not all of the data requested by Plaintiffs.

8. During the call on August 14, 2015, counsel for G&G Towing also acknowledged that G&G Towing did not have – and could not produce – the documents requested by category

no. 2 of the subpoenas. Counsel further acknowledged that the representation in the Motion to Quash that the request was “cumulative and duplicative” was incorrect.

9. Counsel for the Parties again spoke by telephone on August 18, 2015 and further narrowed the issues in dispute. Regardless, the issues set forth in this Motion remain unresolved.

August 18, 2015


Richard S. Gordon

CERTIFICATE OF SERVICE

I hereby certify, this 18th day of August 2015 that I served a copy of the foregoing Plaintiffs’ Motion to Compel Discovery and for Partial Reconsideration of Court’s July 29, 2015 Order Quashing 33 Subpoenas by hand delivery and electronic mail on the following:

Ronald S. Canter
The Law Offices of Ronald S. Canter, LLC
200A Monroe Street, Suite 104
Rockville, Maryland 20850

Frederic J. Einhorn
27 West Jefferson Street, Suite 204
Rockville, Maryland 20850


Richard S. Gordon