

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MELISSA JENKINS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

THE COUNTY OF NASSAU and C&R
AUTOMOTIVE, INC.

Defendants.

CIVIL ACTION NO:

CLASS ACTION COMPLAINT

Plaintiff Melissa Jenkins (“Jenkins” or “Plaintiff”) brings this Complaint against Defendants The County of Nassau (“Nassau”) and C&R Automotive Inc. d/b/a “AAAA-1” (“C&R”) (collectively, “Defendants”), and alleges as follows:

INTRODUCTION

1. The Plaintiff challenges Nassau County’s “Boot and Tow” policy and program for collecting traffic and/or parking tickets from “scofflaws” – drivers who have two or more unpaid tickets. When Nassau identifies a “scofflaw” it searches for a vehicle owned by that person and seizes the vehicle by putting a mechanical boot on it. If the outstanding tickets are not resolved to Nassau’s satisfaction, the vehicle is towed away by a towing company who impresses a lien on the vehicle for the tow fee and accruing daily storage fees.

2. Nassau’s “Boot and Tow” policy does not require a warrant or Court order before seizing vehicles. Nor is there any provision for a hearing at which an owner can challenge the seizure of a vehicle or the impressment of post-seizure liens.

3. Nassau identified Jenkins as a scofflaw under its “Boot and Tow” policy and seized her 2016 Nissan Rogue.

4. Nassau and C&R then unlawfully impressed an *ex parte* lien on the vehicle for towing and storage charges which, they claimed, would supersede Jenkins's interests in that vehicle. Nassau also threatened that the vehicle may be "auctioned" unless its demands were met. Nassau and C&R then refused to release the vehicle to Jenkins unless Jenkins first presented Nassau and C&R with a hold harmless agreement in favor of Nassau and C&R. They continued to assess further storage charges which supposedly superseded Jenkins's rights, without having afforded Jenkins any opportunity for a hearing before an impartial decision-maker, with adequate notice, whereat Jenkins could protect her interests in the vehicle.

5. Nassau and C&R's actions deprived Jenkins of her right to due process as secured by the Fourteenth Amendment and its right to be free from unreasonable seizures secured by the Fourth Amendment to the United States Constitution, as well as her right to be free from unreasonable seizures secured by Article I, Section 12 of the New York State Constitution and her right to Due Process as secured by Article I, Section 6 of the New York State Constitution.

6. Nassau and C&R seize hundreds of vehicles every year and equally deprive numerous others by similarly impressing liens on those others' vehicles without notice and a hearing, contrary to both the Federal and New York State constitutions.

JURISDICTION AND VENUE

7. Plaintiff brings this civil rights action pursuant to 42 U.S.C. §1983 and §1988 for deprivation of Plaintiff's rights secured by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

8. 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.

9. 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.

10. 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.

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

PARTIES

12. Plaintiff Melissa Jenkins is a resident of Kings County, State of New York.

13. The County of Nassau is a municipal corporation organized under the laws of the State of New York.

14. Defendant C&R Towing & Recovery (hereinafter “C&R”), operating under the assumed name of AAAA-1 or AAAA-1 Auto and Towing, is upon information and belief, a corporation organized and existing under the laws of the State of New York and operating as a business engaged in the towing and storage of motor vehicles.

FACTS COMMON TO ALL COUNTS

Nassau and C&R Seized the Subject Vehicle

15. On or about January 17, 2020, Jenkins was the owner of a 2016 Nissan Rogue (“The Subject Vehicle”).

16. On or about January 17, 2020, Nassau seized the Subject Vehicle through Nassau officials acting within their duties as law enforcement officers.

17. On or about January 17, 2020, C&R was an active regular contract agent towing and detaining vehicles at the direction of Nassau law enforcement officials.

18. Upon seizing the Subject Vehicle, Nassau directed C&R to tow and detain the Subject Vehicle.

Nassau and C&R Impressed An *Ex Parte* Lien

19. Nassau and C&R demanded payment of various sums of money and other things of value as a condition for release of the Subject Vehicle and retained the Subject Vehicle to enforce payment of such sums.

20. On February 5, 2020, Nassau sent Jenkins a letter stating that “. . . the County and the designated impound yard” will pursue remedies under the Lien Law and that the Subject Vehicle would be “disposed of.”

21. Nassau and C&R’s demand for money (and other things of value) in exchange for possession of the Subject Vehicle was tantamount to asserting a *de facto* possessory lien in the Subject Vehicle superior to Jenkins’s priority rights, the assertion and impression of which constituted a deprivation without due process of law.

Nassau and C&R Refused To Return Jenkins’s Property

22. Nassau and C&R worked in concert to detain the Subject Vehicle from Jenkins by imposing a series of conditions for release.

23. Nassau would not permit Jenkins to recover the Subject Vehicle unless Jenkins paid all tickets that Nassau claim were due, and all fees demanded by C&R.

24. Nassau would not permit Jenkins to recover the Subject Vehicle unless Jenkins executed a release of liability in favor of Nassau.

25. Nassau threatened to “auction” and that the vehicle would be “disposed of” unless Jenkins complied with Nassau’s demands.

26. C&R would not permit Jenkins to recover the Subject Vehicle unless Jenkins first obtained permission from Nassau to recover the Subject Vehicle.

27. C&R would not permit Jenkins to recover the Subject Vehicle unless Jenkins paid all sums of money demanded by C&R, including a \$25.00 charge for every day C&R detained the Subject Vehicle.

28. C&R would not permit Jenkins to recover the Subject Vehicle unless Jenkins executed a release of liability and hold harmless agreement in favor of C&R.

29. There is no lawful basis to require Jenkins to comply with the demands made by Nassau and C&R, and Jenkins therefore refused to do so. Nassau and C&R continued to refuse to release the Subject Vehicle to Jenkins.

30. On or about April 3, 2020, C&R initiated a non-judicial process designed to “auction” The Subject Vehicle in order to collect towing and storage fees arising from the seizure in conjunction with Nassau.

31. C&R thereafter canceled the non-judicial sale process.

32. Nassau and C&R’s initial towing and detention of the Subject Vehicle constituted a meaningful interference with Jenkins’s possessory and property interests in the Subject Vehicle, which seizure was not effectuated pursuant to a warrant or valid exception to the warrant requirement.

33. After the initial reason for seizing the Subject Vehicle, that initial reason expired on or before the date when Nassau and C&R began demanding that Jenkins pay Nassau and C&R money and other things of value. By demanding that Jenkins pay Nassau and C&R in exchange for possession, Nassau and C&R continued to meaningfully interfere with Jenkins’s possessory and property interests in the Subject Vehicle without a warrant or valid exception to the warrant requirement,

34. Both the initial seizure and the continued detention separately constituted unreasonable seizures of the Subject Vehicle in violation of the United States and New York Constitutions.

C&R's Involvement

35. C&R seized, towed, and possessed the Subject Vehicle solely by virtue of its furtherance of Nassau's "Boot and Tow" policy. C&R detained the Subject Vehicle as joint participant with Nassau, and therefore, was acting under color of law when it seized and detained The Subject Vehicle.

Nassau and C&R Refuse to institute a Procedure for Judicial Review

36. Both before and after seizing the Subject Vehicle, Nassau and C&R did not take action to secure judicial review of the seizure.

37. Both before and after seizing the Subject Vehicle, Nassau and C&R did not take action to secure judicial review over the continued retention of the Subject Vehicle.

38. Both before and after seizing the Subject Vehicle, Nassau and C&R did not pursue judicial disposition within a reasonable amount of time.

39. Prior to impressing a lien for charges against the Subject Vehicle, Nassau and C&R had not provided any hearing before an impartial decision-maker, with adequate notice, whereat Jenkins could protect her interests in recovering the vehicle and avoiding storage charges accruing *in futuram*.

40. What notice was provided by Nassau and/or C&R were constitutionally inadequate for due process purposes.

41. Jenkins never recovered possession of her vehicle.

CLASS ALLEGATIONS

42. Jenkins brings this action on behalf of itself and those similarly situated. As detailed in this complaint, Defendants regularly and routinely seize and attach liens to vehicles under Nassau's "Boot and Tow" policy which is unconstitutional.

43. The Defendants implement this "Boot and Tow" activity over the entire geographic area of Nassau County, impacting thousands of vehicles in which persons were deprived of their property rights in seized vehicles with no notice, no due process and no compensation.

44. Accordingly, this action is ideally situated for class-wide resolution, including injunction and/or declaratory relief.

45. The class is defined as all vehicle owners whose vehicles were seized under Nassau's Boot and Tow Policy.

46. The Class is properly brought and should be maintained as a class action under Federal Rule 23 (b) satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

47. **Numerosity**: Class Members are so numerous that joinder of all members is impracticable. Plaintiff believes that there are thousands of instances where persons have been deprived of their rights by implementation of "Boot and Tow" policy.

48. **Commonality**: The questions of law and fact common to the Class Members which predominate over any questions which may affect individual Class Members include, but are not limited to:

- a. Whether Defendants are responsible for violation of constitutional rights via Nassau's "Boot and Tow" policy;
- b. Whether Plaintiff and the Class are entitled to damages and injunctive relief;
- c. Whether Plaintiff and the Class are entitled to money damages under and causes of action delineated below as to other Class Members.

49. **Typicality:** Plaintiff is a member of the Class. Plaintiffs' claims are typical of the claims of each Class Member in that every member of the Class was susceptible to the same injury when Defendants seized vehicles under "Boot and Tow" policy. Plaintiff is entitled to relief under the same causes of action as the other Class Members.

50. **Adequacy:** Plaintiff is an adequate Class representative because her interests do not conflict with the interests of the Class Members she seeks to represent; her 42 U.S.C. 1983 claims are common to all members of the class and she has a strong interest in vindicating its rights; she has retained counsel competent and experienced in Section 1983 claims based upon deprivation of rights in seized vehicles and class action litigation and they intend to vigorously prosecute this action. Plaintiff has no interests which conflict with those of the Class. The Class Members' interests will be fairly and adequately protected by Plaintiff and its counsel.

51. Defendants have acted in a manner generally applicable to the Class, making relief appropriate with respect to Plaintiff and the Class Members. The prosecution of separate actions by individual Class Members would create a risk of inconsistent and varying adjudications.

52. The Class is properly brought and should be maintained as a class action because a class action is superior to traditional litigation of this controversy.

53. Common issues of law and fact predominate over any other questions affecting only individual members of the Class. The Class issues fully predominate over any individual issue because no inquiry into individual conduct is necessary; all that is required is a narrow focus on Defendants' concerted action in enforcing Nassau's "Boot and Tow" policy.

54. **Superiority:** A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

- a. The joinder of numerous individual Class Members with thousands of claims is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;

- b. The individual claims of the Class Members may be relatively modest compared with the expense of litigating the claim, thereby making it impracticable, unduly burdensome, and expensive-if not totally impossible-to justify individual actions;
- c. When Defendants' liability has been adjudicated, all Class Members' claims can be determined by the Class and administered efficiently in a manner far less burdensome and expensive than if it were attempted through filing, discovery, and trial of all individual cases;
- d. This class action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of Class claims;
- e. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action;
- f. This class action will assure uniformity of decisions among Class Members;
- g. The Class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation;
- h. Class Members' interests in individually controlling the prosecution of separate actions is outweighed by their interest in efficient resolution by single class action; and
- i. It would be desirable to concentrate in this single venue the litigation of all plaintiffs who were deprived of their rights by Nassau's enforcement of its "Boot and Tow" policy.

55. Accordingly, this Class is properly brought and should be maintained as a class action under Fed. Rule Civ. Pro. 23 (b) because questions of law or fact common to Class Members predominate over any questions affecting only individual members, and because a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

INJUNCTIVE AND DECLARATORY CLASS RELIEF

56. Fed. Rule Civ. Pro. 23 (b) contemplate a class action for purposes of seeking class wide injunctive and declaratory relief.

57. Here, Defendants have engaged in conduct that deprives persons of their civil rights by destroying personal property with no constitutional safeguards whatsoever. Since Nassau's "Boot and Tow" program has been uniformly directed at all such vehicles within Nassau County, New

York, and the conduct continues presently, injunctive relief on a class-wide basis is a viable and suitable solution to remedy Defendants' continuing misconduct.

58. The injunctive and declaratory relief Class is properly brought and should be maintained as a class action, satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy.

59. The injunctive and declaratory relief Class is properly brought and should be maintained as a class action because Plaintiff seeks injunctive relief on behalf of the Class Members on grounds generally applicable to the entire injunctive Class. Certification is appropriate because Defendants have acted or refused to act in a manner that applies generally to the injunctive Class (i.e. Defendants continue to enforce the unconstitutional aspects of Nassau's "Boot and Tow" policy and program).

60. Any final injunctive relief or declaratory relief would benefit the entire Injunctive Class as Defendants would be prevented from continuing its unconstitutional and deprivational seizure and destruction of vehicles.

COUNT I
Violation of Civil Rights Pursuant to title 42 U.S.C. 1983
(Deprivation of Property by Unreasonable Seizure)

61. Jenkins realleges and incorporates herein by reference the allegations set forth in the prior paragraphs herein..

62. Jenkins is the holder of a protectible property interest in The Subject Vehicle.

63. Defendants meaningfully interfered with Jenkins' protectible interest in the Vehicle by towing it, detaining it, subjecting it to a lien and threatening to sell it to enforce such lien.

64. By these actions, Defendants acted under color of law to seize The Subject Vehicle within the meaning of the Fourth Amendment to the United States' Constitution.

65. Defendants' seizure of The Subject Vehicle was unaccompanied by a warrant.

66. Defendants' seizure of The Subject Vehicle was unaccompanied by any legitimate exception to the warrant requirement. Alternatively, to the extent the initial seizure was accompanied by any arguably legitimate exception to the warrant requirement, it was carried out in an unreasonable manner of execution insofar as the detention of The Subject Vehicle and encumbering of The Subject Vehicle with a lien exceeded the scope necessary to complete any legitimate task associated with the purported warrant exception for which the vehicle was seized.

67. Defendants' seizure of The Subject Vehicle was therefore unreasonable in violation of the Fourth Amendment to the United States Constitution.

68. Defendants' unreasonable seizure of The Subject Vehicle was accomplished in accordance with the Defendants' standard policy and/or custom under Nassau's "Boot and Tow" policy and program.

69. As a direct and proximate result of Defendant's violation of Jenkins' Constitutional right to be free from unreasonable seizures, Jenkins has suffered damages based upon the lost value of The Subject Vehicle and loss of use of The Subject Vehicle.

70. Jenkins is, therefore, entitled to relief under 42 U.S.C. 1983.

WHEREFORE, Jenkins prays for judgment against Defendants, jointly and severally, for actual damages, consequential damages, punitive damages (as to C&R only), statutory damages, fees and costs of suit, including reasonable attorneys' fees pursuant to 42 U.S.C. 1988, and such other and further relief as the Court deems just and proper.

COUNT II

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

71. Jenkins realleges and incorporates herein by reference the allegations set forth in the prior paragraphs herein.

72. Jenkins is the holder of a protectible property interest in The Subject Vehicle.

73. Defendant's actions resulted in the deprivation of Jenkins' protectible property interests in The Subject Vehicle.

74. Defendants had no mechanism for, nor did they secure, review of any of Defendant's actions in relation to The Subject Vehicle before a judge or other neutral decisionmaker.

75. Defendants did not provided Jenkins an opportunity to be heard in relation to any of Defendants' actions in relation to The Subject Vehicle in any venue at any time.

76. Because Defendants provided no mechanism for, nor did either secure, review of any of Defendant's actions in relation to The Subject Vehicle by a judge or other neutral decisionmaker, Defendant's failed to provide Jenkins with constitutionally adequate notice of that non-existent hearing procedure.

77. Defendants' deprivation of Jenkins' rights in The Subject Vehicle was therefore accomplished without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

78. Defendants' deprivations of Jenkins' rights in The Subject Vehicle were accomplished in accordance with the Defendants' standard policy and/or custom under Nassau's "Boot and Tow" policy and program.

79. As a direct and proximate result of Defendant's violation of Jenkins' Constitutional right to be free from deprivations without due process of law, Jenkins has suffered damages based upon the lost value of The Subject Vehicle, loss of use of The Subject Vehicle, and other damages.

80. Jenkins is, therefore, entitled to relief under 42 U.S.C. 1983.

WHEREFORE, Jenkins prays for judgment against Defendants, jointly and severally, for actual damages, consequential damages, punitive damages (as to C&R only), statutory damages, fees and costs of suit, including reasonable attorneys' fees pursuant to 42 U.S.C. 1988, and such other and further relief as the Court deems just and proper.

COUNT III
Violation of Civil Rights Pursuant to title 42 U.S.C. 1983
(Taking of Property Without Just Compensation)
(as against Nassau)

81. Jenkins realleges and incorporates herein by reference the allegations set forth in the prior paragraphs herein.

82. Jenkins is the holder of a protectible property interest in The Subject Vehicle.

83. Nassau compensated C&R, in whole or in part, by turning over possession of The Subject Vehicle to C&R, who lawfully possessed The Subject Vehicle only by virtue of having obtained it from Nassau.

84. C&R accepted The Subject Vehicle as compensation, in whole or in part, for the services it provided to Nassau, namely the towing and detention of The Subject Vehicle.

85. Nassau damaged Jenkins' property interests in The Subject Vehicle, and her possessory rights, by turning over The Subject Vehicle to C&R.

86. Nassau thereby took Jenkins' interests in The Subject Vehicle—her right to the value of The Subject Vehicle and the right to possession—for a public use.

87. Nassau did not compensate Jenkins for the taking of her interests in The Subject Vehicle.

88. Nassau therefore took Jenkins' property for public use without just compensation in violation of the takings clause of the Fifth Amendment to the United States' Constitution.

89. Nassau's taking of Jenkins' rights in The Subject Vehicle was accomplished in accordance with Nassau's standard policy and/or custom under Nassau's "Boot and Tow" policy and program.

90. As a direct and proximate result of Nassau's violation of Jenkins' Constitutional right to be free from takings without just compensation, Jenkins has suffered damages based upon the lost value of The Subject Vehicle, loss of use of The Subject Vehicle, and other damages.

91. Jenkins is, therefore, entitled to relief under 42 U.S.C. 1983.

WHEREFORE, Jenkins prays for judgment against Defendant Nassau for actual damages, consequential damages, statutory damages, fees and costs of suit, including reasonable attorney's fees pursuant to 42 U.S.C. 1988, and such other and further relief as the Court deems just and proper.

COUNT IV
Violation of New York Constitution

92. Jenkins realleges and incorporates herein by reference to the allegations set forth in the prior paragraphs herein.

93. Nassau and C&R's actions also violate the corresponding protection of the New York State Constitution as set forth above.

WHEREFORE, Jenkins prays for judgment against Defendant Nassau and C&R, jointly and severally, for actual damages, consequential damages, punitive damages, statutory damages, fees and costs of suit, including reasonable attorney's fees pursuant to 42 U.S.C. 1988, and such other and further relief as the Court deems just and proper.

COUNT V
Conversion
(as Against C&R only)

94. Jenkins incorporates herein by reference the allegations set forth in the above paragraphs, as if fully set forth herein.

95. Jenkins owned The Subject Vehicle, and in accordance with her rights was entitled to immediate possession of The Subject Vehicle.

96. C&R has unlawfully interfered with Jenkins' right to possess The Subject Vehicle by refusing to release it to her unless she complied with conditions.

97. By these actions, C&R has purposefully, knowingly and/or intentionally exercised dominion and control over The Subject Vehicle, wrongfully interfering with Jenkins' rights to possession of The Subject Vehicle.

98. Jenkins has suffered, and continues to suffer, damages as a result of C&R actions.

WHEREFORE, Jenkins prays for judgment against Defendant C&R for actual damages, consequential damages, punitive damages, fees and costs of suit, including reasonable attorneys' fees, and such other and further relief as the Court deems just and proper.

COUNT VI
Tortious Interference
(as Against C&R only)

99. Jenkins incorporates herein by reference the allegations set forth in the above paragraphs, as if fully set forth herein.

100. C&R wrongful actions as set forth above constitute a knowing and intentional tortious interference with Jenkins' contractual relations and/or prospective economic advantage with respect to The Subject Vehicle.

101. Jenkins has suffered, and continues to suffer, damages as a result of C&R actions.

WHEREFORE, Jenkins prays for judgment against Defendant C&R for actual damages, consequential damages, punitive damages, fees and costs of suit, including reasonable attorneys' fees, and such other and further relief as the Court deems just and proper.

Dated: February 6, 2023

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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Nassau County 'Boot and Tow' Policy Is Unconstitutional](#)
