

Vance v Brown

2016 NY Slip Op 32002(U)

October 13, 2016

Supreme Court, New York County

Docket Number: 450191/14

Judge: Martin Shulman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

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CYRUS R. VANCE, JR.,
DISTRICT ATTORNEY of the
COUNTY OF NEW YORK, in his capacity as

Index No: 450191/14

Plaintiff-Claiming Authority,

Decision and Order

-against-

Motion Seq. 002

SEAN BROWN, a/k/a LEON BROWN,

Criminal Defendant.
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Hon. Martin Shulman, J.S.C.:

In this CPLR Article 13-A forfeiture action, Cyrus R. Vance, Jr., District Attorney of the County of New York, in his capacity as plaintiff-claiming authority ("plaintiff" or "DA"), moves for partial summary judgment on the first, third and fourth causes of action alleged in the verified complaint herein. On the first and fourth causes of action, plaintiff's motion seeks forfeiture of \$209,993 (the "recovered cash") and on the third cause of action plaintiff seeks forfeiture of a 2004 BMW automobile (the "BMW").¹

By decision and order dated April 17, 2015 (the "prior order") this court denied the DA's prior motion for a default judgment without prejudice due to lack of sufficient supporting proof linking the BMW and the recovered cash to the crimes for which defendant was convicted. The present motion seeks partial summary judgment;

¹ The verified complaint's first and fourth causes of action actually seek to recover \$352,825 from defendant Sean Brown a/k/a Leon Brown ("defendant" or "Brown") as the estimated proceeds of his crimes or a money judgment in that amount. The instant motion seeks judgment on these causes of action in the lesser amount of the recovered cash, which was recovered from the BMW and a safe in Brown's residence during the execution of a search warrant on February 23, 2012. Both the recovered cash and the BMW are presently being held by the New York City Police Department ("NYPD") Property Clerk.

however, such relief is inappropriate as defendant has not joined issue by interposing an answer to the verified complaint or otherwise appearing in this action. See CPLR 3212(a). Nonetheless, in its discretion this court shall treat plaintiff's motion as a renewed motion for a default judgment, which the prior order expressly permitted the DA to bring. Despite Brown's prior correspondence with this court in connection with plaintiff's prior default judgment motion,² this court has received no opposition or other communications from defendant with respect to the present motion.

As summarized in the prior order, on August 27, 2013 Brown was convicted after a jury trial of the felony crimes of sex trafficking, promoting prostitution and criminal contempt. He is presently incarcerated, having been sentenced on September 16, 2013 to a number of concurrent indeterminate terms of incarceration, the longest of which is ten to twenty (10-20) years.

On this record the DA now meets its burden of establishing its entitlement to a judgment of forfeiture on default to the extent sought. Plaintiff submits an affidavit from NYPD Detective Jessica Sterling, the primary investigating officer in the criminal case against Brown, together with supporting documentation which includes evidence introduced at the criminal trial. Such proof confirms that defendant is the titled owner of the BMW and that defendant used it as an instrumentality of his crimes to recruit prostitutes and transport them to various work locations.

With respect to the recovered cash, Detective Sterling avers that she was present when the search warrant (see fn 1, *supra*) was executed. The circumstances

² As detailed in the prior order, defendant wrote to the court requesting extensions of time to oppose that motion and/or to retain counsel.

under which this large amount of cash was found, together with documentary evidence indicating that Brown had no legitimate means of income and witness testimony as to the amounts defendant's victims were forced to charged and hand over to him for engaging in prostitution, all indicate that the recovered cash is in fact merely a portion of the proceeds of defendant's crimes of sex trafficking and promoting prostitution. Accordingly, plaintiff is entitled to a default judgment against Brown on the first, third and fourth causes of action seeking forfeiture of the recovered cash and the BMW.

Finally, on these papers, it is unclear whether the DA intends to abandon the verified complaint's claims for the full amount sought (see first, second and fourth causes of action) and for the value of a Cadillac automobile also allegedly owned by defendant and used as an instrumentality of his crimes (see third and fourth causes of action). In submitting a proposed judgment and order (see decretal paragraphs below) for this court's signature, plaintiff's counsel is directed to indicate whether such claims are to be severed and continued or voluntarily discontinued.

For the foregoing reasons, it is hereby

ORDERED that plaintiff's motion is granted to the extent that plaintiff is awarded judgment on default against defendant on the first, third and fourth causes of action as set forth herein above, and the motion is otherwise denied.

The Clerk is directed to enter judgment in plaintiff's favor on the first, third and fourth causes of action in accordance with this decision and order.

Plaintiff's counsel is directed to submit an appropriate judgment and order to chambers, directing the NYPD's Property Clerk to release the recovered cash to plaintiff, to auction the BMW forthwith, and to transfer the proceeds of such auction,

less any liens and expenses, to plaintiff. In the event plaintiff opts not to pursue the verified complaint's remaining causes of action and/or claims, the proposed judgment and order shall provide for their voluntary discontinuance.

This foregoing is this court's decision and order. Plaintiff's counsel is directed to serve a copy of this decision and order with notice of entry upon defendant.

Dated: New York, New York
October 13, 2016



HON. MARTIN SHULMAN, J.S.C.