

Property Clerk, N.Y. City Police Dept. v Lewis

2016 NY Slip Op 32003(U)

October 13, 2016

Supreme Court, New York County

Docket Number: 451470/15

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

Property Clerk, New York City Police Department,

Plaintiff,

-against-

Ricardo Lewis, Tiara Nyla Edmonds Lawrence, and
"John Doe" and "Jane Doe", fictitiously named parties,
true names unknown, the parties intended being any
lienholder, leaseholder, or any party claiming any
rights or interest in a 2010 Land Rover bearing Vehicle
Identification Number SALFT2BN3AH158611,
Defendants.

Index No.: 451470/15

Motion Seq. No.: 002

**Decision, Order
and Judgment**

Hon. Martin Shulman, J.:

In this civil forfeiture proceeding commenced pursuant to NYC Adm. Code §14-140, plaintiff, Property Clerk, New York City Police Department ("plaintiff" or "Property Clerk") seeks forfeiture of the subject vehicle, a 2010 Land Rover automobile bearing Vehicle Identification Number SALFT2BN3AH158611 (the "subject vehicle"), which was seized from defendant Ricardo Lewis ("Ricardo") as a result of his March 18, 2015 arrest on charges of violating Penal Law ("PL") §170.25 (second degree criminal possession of a forged instrument), PL §190.81 (third degree unlawful possession of personal identification), PL §190.23 (false personation), Vehicle and Traffic Law ("VTL") §511(3) (first degree aggravated unlicensed operation of a motor vehicle) and VTL §1212 (reckless driving). The subject vehicle is owned by co-defendant Tiara Nyla Edmonds Lawrence ("Tiara" or "defendant"). On September 15, 2015, Ricardo pleaded guilty to second degree criminal possession of a forged instrument, false personation and first degree aggravated unlicensed operation of a motor vehicle.

Plaintiff previously moved for a default judgment based upon both defendants' failure to answer and/or appear¹ in this action. Although that motion was unopposed, by decision/order dated March 11, 2016 in motion sequence number 001, this court denied the Property Clerk's motion without prejudice based upon the failure to submit current non-military affidavits for defendants.

Plaintiff now renews its application for a default judgment, supporting its motion with *inter alia* current non-military affidavits. Defendants, by counsel, respond by attorney's affirmation electronically filed on June 24, 2016, which includes a proposed answer. Defense counsel electronically filed this same affirmation on June 30, 2016 together with an amended answer now including verifications from both defendants, but otherwise identical to the June 24, 2016 answer.

In response to the present motion, defense counsel's affirmation summarizes the procedural background of the criminal action against Ricardo (¶¶ 2 through 6) and alleges, upon information and belief, that Tiara is the subject vehicle's titled and registered owner (¶7). The only argument raised in opposition to the motion is that the subject vehicle should be returned to its owner since "[t]here is no evidence that other than Vehicle and Traffic Laws, that the [subject vehicle] was used in the commission of any crime." (¶¶ 8 through 9).

¹ Tiara electronically filed a *pro se* response to the complaint on April 29, 2015 (see motion at Exh. 7), which plaintiff deems to be a notice of appearance. This response, which was timely filed, states only that Tiara "would like a motion to dismiss this case due to the vehicle not belonging to Ricardo Lewis", who was merely driving the subject vehicle at the time of his arrest, and because the summons and complaint served upon her did not contain a Notice Regarding Availability of Electronic Filing form. However, despite plaintiff's June 18, 2015 letter advising Tiara of the need to answer the complaint (*id.* at Exh. 8), she failed to do so.

Defendants' proposed amended answer denies virtually every allegation in the complaint. Certain denials are demonstrably false, notwithstanding the amended answer's inclusion of sworn verifications from both defendants. For example, despite defense counsel's admission that Tiara owns the subject vehicle, defendants deny the complaint's allegation at paragraph 16 that she is its registered owner. Defendants also deny the complaint's allegations that the subject vehicle was used in the commission of the crimes to which Ricardo specifically pleaded guilty (see fifth, seventh and ninth causes of action).

In order to successfully oppose a motion for a default judgment, a defendant must demonstrate a justifiable excuse for the default and a meritorious defense. *Johnson v Deas*, 32 AD3d 253 (1st Dept 2006). Here, defendants fail to give any reason whatsoever for their default of almost one year.

Defendants having failed to establish any excuse, reasonable or otherwise, for their default, it is unnecessary for this court to address the merits of their purported defenses. Nonetheless, as to defense counsel's argument that there is no evidence that the subject vehicle was used to commit any non-VTL offenses, the conviction for aggravated unlicensed operation of a motor vehicle is sufficient by itself to support a forfeiture judgment. As to Tiara's attempt to establish an innocent owner defense, she only proffers her proposed amended verified answer summarily denying the complaint's allegations that she "consented, suffered and/or permitted [Ricardo] to use the subject vehicle and knew or should have known of [his] likely or intended illegal use." Conspicuously absent is an affidavit from her alleging any corroborating facts. Indeed, nothing is even alleged as to the nature of Tiara's relationship with Ricardo, leaving this

court unable to evaluate the credibility of such a denial. Accordingly, defendants also fail to establish a meritorious defense on this record.

For all of the foregoing reasons, it is hereby

ORDERED that plaintiff's motion for a default judgment is granted; and it is further

ORDERED, ADJUDGED and DECREED that the subject vehicle, a 2010 Land Rover, bearing Vehicle Identification Number SALFT2BN3AH158611, seized from defendant Ricardo Lewis and vouchered under Property Clerk Invoice Number 1000620768 is forfeited pursuant to the provisions of the Administrative Code of the City of New York §14-140; and it is further

ORDERED, ADJUDGED and DECREED that defendants may not lawfully possess the subject vehicle; and it is further

ORDERED, ADJUDGED and DECREED that the plaintiff's custody and retention of the subject vehicle is both lawful and proper.

The Clerk is directed to enter judgment accordingly.

The foregoing constitutes this court's Decision, Order and Judgment.

Dated: New York, New York
October 13, 2016



Hon. Martin Shulman, J.S.C.