

County of Nassau v Singh

2008 NY Slip Op 31593(U)

May 22, 2008

Supreme Court, Nassau County

Docket Number: 7841-07/

Judge: Arthur M. Diamond

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SUPREME COURT - STATE OF NEW YORK

Present:

HON. ARTHUR M. DIAMOND
Justice Supreme Court

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COUNTY OF NASSAU

TRIAL PART: 21
NASSAU COUNTY

Plaintiff,

INDEX NO: 007841/07

-against-

MOTION SEQ. NO: 01

**JASVIR SINGH, RANJIT SINGH, and
NILT, INC.**

Defendant.

SUBMIT DATE: 4/23/08

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The following papers having been read on this motion:

- Notice of Motion..... 1**
- Opposition 2**
- Reply..... 3**

Motion by the attorneys for the defendant NILT, Inc. for an order pursuant to CPLR §3212, CPLR §7101, UCC §2-A-525(2) and CPLR §7109(b) granting summary judgment to the defendant NILT, Inc., a declaratory judgment that it has superior right of possession to the vehicle, and is entitled to the immediate possession of the vehicle is determined as hereinafter set forth.

On or about October 4, 2006, defendant Ranjit Singh executed a Motor Vehicle Lease Agreement with defendant NILT, Inc. (Lender) for the purposes of leasing a 2006 Nissan (the subject vehicle).

This is a civil forfeiture case (based on the illegal use of a vehicle) commenced by the County of Nassau regarding the vehicle leased by the defendant Lender to co-defendant Ranjit Singh. Lender is not charged with any illegal activity nor does the County of Nassau assert any claim for culpability against Lender. Lender is joined in the action solely because it is the lessor of the vehicle. Co-defendant Jasvir Singh has no interest in the vehicle.

Lender seeks an order for declaratory relief: (1) releasing the vehicle from the forfeiture

proceeding pursuant to the “innocent owner” exemption provided in Nassau County Administrative Code § 8-7.0(g)(4)(c) and (g)(4)(f); and (2) confirming Lender’s right to terminate the co-defendant Ranjit Singh’s right to possession and use of the vehicle. Lender seeks an order pursuant to UCC §2-A-525(2) and CPLR §7109(b) directing delivery of the subject vehicle by Ranjit Singh to Lender. In short, Lender wishes to terminate all competing claims to the subject vehicle, recover possession of its vehicle, liquidate the vehicle and apply the proceeds received to reduce the balance owed to Lender under the vehicle lease with co-defendant, Ranjit Singh.

In the complaint the County of Nassau alleges that on or about January 13, 2007, defendant Jasvir Singh was arrested and pled guilty for operating the subject vehicle leased from the Lender by his sister co-defendant Ranjit Singh, while intoxicated/impaired in violation of Vehicle & Traffic Law § 1192. Based on the illegal use of the vehicle, the plaintiff commenced this forfeiture action.

Nassau County Administrative Code § 8-7.0(g)(4)(f) provides an “innocent owner” defense which is available to a non-driver owner. Nassau County Administrative Code § 8-7.0(g)(4) provides that the County may commence a civil action for forfeiture of any vehicle which has been operated by a person charged with a violation of § 1192 of the Vehicle and Traffic Law and if such person is convicted or pleads guilty to any subdivision of that section, the Nassau County Administrative Code § 8-7.0(g)(4)(f) provides as follows:

[I]t shall be an affirmative defense that the owner of the vehicle other than the person arrested for violation of any provision of section eleven hundred ninety two of the Vehicle and Traffic Law did not know, or had no reason to know, that there was a reasonable likelihood that the vehicle would be used in violation of any such provision.

The County of Nassau does not oppose the lender’s application for protection of the “innocent owner” defense. Since there are no issues of fact regarding the lender’s assertion of the “innocent owner” defense, summary judgment is granted in favor of NILT, Inc. on this issue. (*Zuckerman v City of New York*, 49 NY2d 557; *Alvarez v Prospect Hosp.*, 68 NY2d 320). It is the determination of this Court that the subject vehicle shall be released from the within forfeiture proceeding pursuant to the “innocent owner” exemption provided for in the Nassau County Administrative Code.

The Court will next address the Lender's right to terminate the co-defendant Ranjit Singh's lease, right to possession, and use of the vehicle. When defendant Ranjit Singh executed the Motor Vehicle Lease Agreement with Lender for purposes of leasing the vehicle she agreed to make equal monthly lease payments of \$269.24 for the term of the lease. Defendant also agreed to comply with various terms and conditions relating to use of the vehicle in a safe manner. The Lender seeks to terminate co-defendant Ranjit Singh's right to use the vehicle based upon specific terms of the lease. Paragraph 26 of the lease states under the heading of "Damage, Loss or Potential Loss of the Vehicle" that:

If this vehicle is . . . confiscated by any governmental authority or . . .
. subject to potential loss . . . we may terminate this Lease . . .
(emphasis supplied).

The Lender asserts that the lease provision is consistent with UCC §2-A-523(3)(a) [applicable to vehicles under 2-A-103(b)] which authorizes cancellation of a lease where a default "substantially impairs the value to the lessor." It is not refuted by the Lender that defendant Ranjit Singh is up to date in the lease payments. There is no proof that the value of the vehicle to the Lender has been impaired. Ranjit Singh alleges that she was not aware that her brother defendant Jasvir Singh would operate her vehicle while under the influence. She states that she and her brother Jasvir Singh went to a restaurant together. He agreed to be the designated driver for the evening. Ranjit Singh claims she did not watch Jasvir while at the restaurant. Ranjit spent the evening socializing and drinking with her friends. She further alleges she became intoxicated and did not notice whether her brother was drinking and, upon leaving the restaurant, was not in a condition to assess his ability to drive. She asserts she had no reason to believe that Jasvir would drive the vehicle if he believed he was intoxicated, nor would she have allowed him to drive the vehicle if she realized he was intoxicated. Also, Ranjit asserts that this is Jasvir's first encounter with the criminal justice system.

Defendant Ranjit Singh, just like the Lender, is an "innocent owner" who should not suffer from the consequences of her brother's driving the subject vehicle while he was impaired. A court of equity may intervene in individual cases where "it is palpably apparent that gross unfairness is imminent. That is the law of New York." (See *Gelfert v National City Bank of New York*, 313 U.S. 221, at 234, citing *Fisher v Hersey*, 78 NY 387).

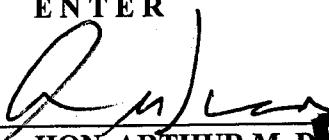
Exercising its equity powers, in the interests of justice, and no impairment to the Lender's security having been demonstrated, that part of the application by the Lender to terminate defendant Ranjit Singh's right to possession of the subject vehicle is denied.

This decision is the order of the Court and terminates all proceedings under index No. 7841/07.

This constitutes the decision and order of this Court.

DATED: May 22, 2008

ENTER


HON. ARTHUR M. DELOE
J. S.C.

ENTERED

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JUN 03 2008

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COUNTY CLERK'S OFFICE