

County of Nassau v Gonzalez

2009 NY Slip Op 32019(U)

August 27, 2009

Supreme Court, Nassau County

Docket Number: 13857/06

Judge: William R. LaMarca

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SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - PART 15**

**Present: HON. WILLIAM R. LaMARCA
Justice**

COUNTY OF NASSAU,

Plaintiff,

-against-

LIANNE GONZALEZ,

Defendant.

**Motion Sequence #2, #3
Submitted May 1, 2009
XXX**

INDEX NO: 13857/06

The following papers were read on these motions:

| | |
|---|----------|
| Notice of Motion..... | 1 |
| COUNTY Notice of Cross-Motion..... | 2 |
| Affidavit in Opposition to Cross-Motion and in further Support of Motion in Chief..... | 3 |

Defendant, LIANNE GONZALEZ, moves for an order, pursuant to CPLR §3212, dismissing the complaint in this forfeiture action, on the ground that the interest that she presently holds in the vehicle subject to forfeiture is different from that which she held at the time of her arrest for violation of Vehicle and Traffic Law §1192. Plaintiff, COUNTY OF NASSAU, (hereinafter referred to as the "COUNTY"), opposes the motion and cross-moves for summary judgment denying GONZALEZ' motion in chief and granting the COUNTY title and possession of the subject vehicle and an award of costs and disbursements. The motion and cross-motion are determined as follows:

Initially, the Court notes that, on a prior motion for summary judgment by the former lessor and owner of the subject vehicle, defendant DCFS TRUST (hereinafter referred to as "DCFS", against which the action has since been discontinued), the Court found that DCFS could not be found to be an "innocent owner" entitled to possession of the leased vehicle, as defined by Nassau County Administrative Code § 8-7.0(g)(4)(f), and with a superior possessory right to the vehicle that is the subject of this forfeiture action, specifically a 2003 Jeep Liberty bearing Vehicle Identification Number IJ4G;58K43W500781, because, at the time of the motion, DCFS had been paid in full under the lease, which expired on October 25, 2006. In the Short Form Order, dated August 15, 2008, the Court noted that the COUNTY acknowledged that, on or about October 26, 2006, after the natural expiration of the lease with DCFS, GONZALEZ financed the subject vehicle from Daimler Chrysler Financial Services Americas, LLC. (hereinafter referred to as "Chrysler"), a separate entity from DCFS, at which time title to the vehicle was transferred from DCFS to GONZALEZ, and Chrysler was added to the title as a lienholder of the subject vehicle. The Court rejected the COUNTY's position, who joined in support of DCFS' then motion, that because GONZALEZ was arrested while the car was under the lease with DCFS, GONZALEZ defaulted under the lease and the then leaseholder, DCFS was an "innocent owner" within the definition of NAC § 8-7.0(g)(4), entitled to possession of the vehicle by the terms of the contract with GONZALEZ. The Court found that DCFS had not made a *prima facie* showing of its entitlement to possession of the vehicle and that questions remained as to the rights to the vehicle by the financing company, Chrysler, an entity that was not a party to the action. After said

decision, the COUNTY discontinued the action against DCFS.

On the instant motion, counsel for GONZALEZ alleges that Nassau County Administrative Code §8-7.0(g) authorizes the COUNTY to obtain a judgment of civil forfeiture against a person having an ownership interest in the motor vehicle described herein. Counsel argues that, at the time of her arrest, May 6, 2006, GONZALEZ' only interest in the vehicle was that of a lessee, not as an owner, and thus she did not have an interest that was subject to forfeiture when the action was commenced on August 25, 2006. Counsel for GONZALEZ relates that, on October 25, 2006, the lease term expired and GONZALEZ' agreement with DCFS terminated by its terms, unrelated to the forfeiture action. It is GONZALEZ' position that, upon termination of the lease, any claim against GONZALEZ should have been discontinued because the COUNTY could no longer in good faith assert an action against her because she no longer possessed any interest in the vehicle. Counsel contends that, the fact that GONZALES subsequently purchased the same vehicle and entered into a Security Agreement with Chrysler should have no bearing on the instant motion, as there would be no pending claim against defendant had she chosen to purchase any other vehicle on that date. Counsel for GONZALES states that the pertinent sections of the Nassau Administrative Code do not give the COUNTY authority to seize property acquired by the defendant months after her arrest. Counsel urges that the action be dismissed as there is no basis for the action to presently remain against her.

In opposition to the motion, and in support of the cross-motion, counsel for the COUNTY states that, at the time of her arrest and, again, by certified mail on July 19, 2006, GONZALEZ and DCFS were advised that the vehicle might be the subject of a

forfeiture action and, after GONZALEZ pled guilty on May 26, 2006 to a violation of VTL §1192.1, Driving While Impaired, the instant forfeiture action was commenced on or about August 25, 2006. As detailed above, subsequent thereto, the GONZALEZ lease expired with DCFS and she purchased the subject vehicle and used financing from Chrysler, at which time title to the vehicle was transferred from DCFS to GONZALEZ, without any notification to the COUNTY, and Chrysler was added as a lienholder of the vehicle. Although the COUNTY concedes that DCFS and Chrysler are two (2) separate entities, counsel states that both entities are represented by the same counsel and seems to suggest notice on the part of Chrysler of the underlying forfeiture action. Following the Court's denial of DCFS' motion for summary judgment as an "innocent owner", the COUNTY wrote to Chrysler inviting it to intervene in the instant action, however it appears that Chrysler chose not to appear.

It is the COUNTY's position that there are no issues of fact in this case. The COUNTY argues that GONZALEZ was convicted of Driving While Intoxicated, that she is collaterally estopped from relitigating said conviction in the instant forfeiture action, that the COUNTY is authorized to obtain a judgment of civil forfeiture against any person having an interest in the motor vehicle used as an instrumentality of the crime of driving under the influence of alcohol and, having given the required notices, the COUNTY is entitled to judgment as a matter of law, citing *County of Nassau v Rojas*, Index No 15607/04 (Alpert, J.), *affd*, 49 AD3d 487, 856 NYS2d 124 (2nd Dept. 2008), *appeal denied* 11 NY3d 729 (C.A. 2008); *County of Nassau v Evans*, Index No 2835/05 (Murphy, J.), and *County of Nassau v Gallagher*, Index No. 3938/05 (LaMarca, J.), *affd*. 43 AD3d 972, 841 NYS2d 696

(2nd Dept. 2006), *appeal denied* 10 NY3d 711 (C.A. 2008). The COUNTY contends that GONZALEZ was the “registered owner” of the subject vehicle during the lease because the registration for the car was in her name and is still the registered owner of the car and, therefore, has a forfeitable interest in the vehicle to date. The COUNTY argues that GONZALEZ voluntarily chose to purchase this vehicle off the lease, after being advised that it was subject to forfeiture, and said purchase was at her own risk, with full knowledge of the within action. The COUNTY urges that the vehicle was the instrumentality of a crime and that the COUNTY is entitled to summary judgment and possession of the vehicle.

The seriousness of the danger posed by the crime of drunk driving was recognized by the Nassau County Legislature. The Statement of Legislative Intent issued by the Legislature states that “[t]he Legislature finds that vehicles operated by such persons are potential instruments of death and destruction and that removing vehicles from such persons saves lives and prevents serious injuries and damage to property: NCAC §8-7.0(g)(4) creates “a legislative mechanism whereby the County may commence a civil forfeiture proceeding against a person arrested for a misdemeanor or petty offense that employs his property as an instrument in the commission of a crime”. See, *County of Nassau v Ferraco*, *Index No. 16585/04* (Bucaria., J), 2005 NY Misc. LEXIS 3393, 233 NYLJ 123)(emphasis supplied). However, the interests of a lienholder are not subject to forfeiture, and the owner of the vehicle, if other than the driver arrested for the violation, may petition the Court for relief from the forfeiture based upon their lack of knowledge that the vehicle would be used in violation of law. NCAC §8-7.0(g)(4) .

Summary judgment is the procedural equivalent of a trial (*Capelin Assoc., Inc. v Globe Mfg. Corp.*, 34 NY2d 338, 357 NYS2d 478, 313 NE2d 776 [C.A. 1974]). The function of the court in deciding a motion for summary judgment is to determine if triable issues of fact exist (*Matter of Suffolk Cty Dept. of Social Services on behalf of Michael V. v James M.*, 83 NY2d 178, 608 NYS2d 940 [C.A. 1984]). The proponent must make a *prima facie* showing of entitlement to judgment as a matter of law (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 760 NYS2d 397, 790 NE2d 772 [C.A. 2003]); *Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923, 501 NE2d 572 [C.A. 1986]). Once a *prima facie* case has been made, the party opposing the motion must come forward with proof in evidentiary form establishing the existence of triable issues of fact or an acceptable excuse for its failure to do so (*Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595, 404 NE2d 718 [C.A. 1980]). Summary judgment will not be defeated by mere conclusions or unsubstantiated allegations (*Zuckerman v City of New York, supra*).

After a careful reading of the submission herein, the Court finds that GONZALEZ has established a *prima facie* right for summary judgment and the COUNTY has not raised issues of fact that require a trial. It appears that all of the cases cited by the COUNTY in support of its argument that forfeiture is warranted in the present case can be distinguished because, at the time of the arrests in *Evans, Rojas* and *Gallagher*, the defendants were the titled owners of the cars. In the case at bar, at the time of her arrest, GONZALEZ was not the title owner of the car and it is the judgment of the Court that she did not have a forfeitable interest that can be reached by the COUNTY. The "registered owner" for the purposes of obtaining license plates and insurance, is not the same as the title owner and

the Court finds that GONZALEZ' subsequent purchase of the subject vehicle cannot form the basis for the present forfeiture of the automobile.

Accordingly, it is hereby

ORDERED, that the GONZALEZ motion for summary judgment dismissing the action is granted; and it is further

ORDERED, that the COUNTY's cross-motion for summary judgment is denied.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court.

Dated: August 27, 2009

WILLIAM R. TAMARCA, L.S.C.
ENTERED

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AUG 31 2009
**NASSAU COUNTY
COUNTY CLERK'S OFFICE**