

Islam v Dover Dodge Chrysler Jeep, Inc.

2009 NY Slip Op 32994(U)

December 4, 2009

Supreme Court, New York County

Docket Number: 114201/2007

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. EILEEN A. RAKOWER

PRESENT: _____

PART 5

Index Number : 114021/2007

ISLAM, MOHAMMED SAIFUL

vs

DOVER DODGE CHRYSLER

Sequence Number : 001

DISMISS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were filed in support of his motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1
2
3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

FILED

DEC 16 2009
NEW YORK COUNTY CLERK'S OFFICE

Dated: 12/7/05


HON. EILEEN A. RAKOWER
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X
MOHAMMED SAIFUL ISLAM,

Plaintiffs,

Index. No.
114021/2007

- against -

DOVER DODGE CHRYSLER JEEP, INC.,
DTG OPERATIONS, INC./DOLLAR RENT A CAR,
HATFIELD AUTO AUCTION, CITY OF NEW YORK
and POLICE DEPARTMENT OF THE CITY OF NEW
YORK,

**DECISION
and ORDER**

Mot. Seq.
001

FILED
DEC 16 2009
NEW YORK
COUNTY CLERK'S OFFICE

Defendants.

-----X
HON. EILEEN A. RAKOWER

Plaintiff Mohammed Saiful Islam ("Plaintiff") brings this action against the New York City Police Department ("NYPD") and the City of New York ("City") for the alleged false arrest of Plaintiff on October 26, 2007 for Criminal Possession of Stolen Property and Unauthorized Use of a Vehicle. The City and NYPD now move for summary judgment pursuant to CPLR §3212, claiming that the complaint must be dismissed as against them because Plaintiff's arrest was supported by probable cause as a matter of law.

On June 12, 2007, Plaintiff purchased a blue 2006 Dodge Grand Caravan with VIN number 1D4GP24R46B665319 ("the vehicle") from Dover Dodge Chrysler Jeep, Inc. ("Dover Dodge") in Rockaway, New Jersey, as evidenced by the Bill of Sale for the vehicle. On September 26, 2007 at about 3:00 p.m., two investigators from the New York State Department of Motor Vehicles ("DMV") came to Plaintiff's home, where they were met by Plaintiff's brother. The DMV investigators told Plaintiff's brother that the vehicle was stolen. After speaking with his brother, Plaintiff called Dover Dodge, which confirmed to Plaintiff that the car was not stolen. According to the deposition testimony of one of the DMV investigators, his DMV office received information from the Albany office that the

vehicle was registered to Plaintiff and had previously been reported stolen and not yet recovered.

The DMV investigators spoke with Plaintiff via telephone, and Plaintiff agreed to meet them in front of his store at 94 Rivington Street in New York, New York. Plaintiff arrived in the vehicle. After identifying themselves, the DMV investigators inspected the vehicle, and observed that the VIN plate on the dashboard matched the NCIC report, confirming that the vehicle was the subject of a stolen vehicle alarm. Plaintiff showed the DMV investigators the Bill of Sale and other documentation demonstrating that he was the rightful owner of the vehicle. However, the DMV investigators advised Plaintiff that they were going to impound the vehicle since it was reported as stolen. One of the DMV investigators testified that, although they are empowered to effectuate arrests, they did not believe Plaintiff had stolen the vehicle, based upon the documentation Plaintiff showed them.

Not wanting the DMV agents to impound the vehicle, Plaintiff testified that he had his brother call the NYPD. Seven NYPD officers responded to the scene. The DMV investigators advised the NYPD officers that they did not believe that Plaintiff was the person who stole the vehicle, based upon his documentation. NYPD Officer Angela Sarcone was the first police officer to respond to the scene, and spoke with Plaintiff. Both Plaintiff and Officer Sarcone testified that Plaintiff showed her the Bill of Sale, his registration, his insurance information, and his driver's license. Further, Plaintiff testified that he again called the car dealership, and that a representative from the dealership wanted to speak with Officer Sarcone. However, Officer Sarcone declined to speak with the person from the car dealership, saying "I don't want to talk to anybody."

Officer Sarcone arrested Plaintiff at approximately 6:45 p.m. for Criminal Possession of Stolen Property and Unauthorized Use of a Motor Vehicle. Plaintiff was released from custody in the Criminal Court Central Booking holding pen at about 8:30 p.m. on September 27, 2007.

"To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (*Di Menna & Sons v. City of New York*, 301 N.Y. 118 [1950]). This drastic remedy should not be granted where there is any doubt as to the existence of such issues (*Braun v. Carey*, 280 App.Div. 1019 [3rd Dept. 1952]), or where the appeal is "arguable" (*Barrett v. Jacobs*, 255 N.Y. 520, 522

[1931]); “issue-finding, rather than issue-determination, is the key to the procedure” (*Esteve v. Abad*, 271 App.Div. 725, 727 [1st Dept. 1947]).’ (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404 [1957]).” (*Ramsammy v. City of New York*, 216 A.D.2d 234, 236-237 [1st Dept. 1995].)

In order to assert a common law claim for false arrest, a plaintiff must demonstrate that (1) the defendant intentionally confined the plaintiff; (2) the plaintiff was aware of the confinement; (3) he or she did not consent to the confinement; and (4) the confinement was not otherwise privileged. The existence of probable cause is a complete defense to an action for false arrest. Probable cause to arrest exists where there is information sufficient to support a reasonable belief that an offense has been or is being committed. To determine whether a police officer has probable cause to arrest, the court looks to the totality of the circumstances at the time of the arrest (*Marrero v. City of New York*, 33 A.D.3d 556, 556-57 [1st Dept. 2006]).

A person is guilty of criminal possession of stolen property in the third degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof.... (Penal Law §§165.40, 45, 50, 52, 54).

A person is guilty of unauthorized use of a vehicle in the third degree when:

1. Knowing that he does not have the consent of the owner, he takes, operates, exercises control over, rides in or otherwise uses a vehicle. A person who engages in any such conduct without the consent of the owner is presumed to know that he does not have such consent.... (Penal Law §165.05).

Based upon the foregoing, the court cannot conclude that probable cause to arrest Plaintiff existed as a matter of law. A rational factfinder could reasonably conclude that Officer Sarcone did not have probable cause to suspect Plaintiff of either knowingly possessing stolen property, or using another person’s vehicle without his or her consent, where Plaintiff supplied the NYPD with documentation which evidenced his status as a bona fide purchaser of the vehicle from a reputable car dealership. The cases cited by the NYPD and the City in support of the

proposition that the NYPD had probable cause to arrest Plaintiff based upon the computer check which indicated that the vehicle was stolen are distinguishable, in that there is no indication that the criminal defendants therein provided the arresting officers with proof demonstrating that they were the lawful owners of the vehicles they were driving.

Wherefore, it is hereby

ORDERED that the NYPD and the City's motion for summary judgment is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: December 4, 2009



EILEEN A. RAKOWER, J.S.C.

FILED
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COUNTY CLERK'S OFFICE