

**Property Clerk, New York City Police Dept. v  
Miranda**

2010 NY Slip Op 32496(U)

September 13, 2010

Sup Ct, NY County

Docket Number: 401697/10

Judge: Martin Shulman

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

MARTIN SHULMAN

PRESENT: J.S.C.

PART 1

Index Number : 401697/2010  
 PROPERTY CLERK  
 VS.  
 MIRANDA, DIRK  
 SEQUENCE NUMBER : 002  
 STRIKE ANSWER

INDEX NO. 401697/10  
 MOTION DATE \_\_\_\_\_  
 MOTION SEQ. NO. 002  
 MOTION CAL. NO. \_\_\_\_\_

in this motion to/for \_\_\_\_\_

Notice of Motion/ ~~Order to Show Cause~~ — Affidavits — Exhibits ... 1-10 | PAPERS NUMBERED 1  
 Answering Affidavits — Exhibits \_\_\_\_\_  
 Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion is decided in accordance with the attached decision, order and judgment.

**UNFILED JUDGMENT**  
 This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: Sept. 13, 2010

MARTIN SHULMAN J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
 Check if appropriate:  DO NOT POST  REFERENCE  
 SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

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

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

-----X  
PROPERTY CLERK, NEW YORK CITY POLICE  
DEPARTMENT,

Plaintiff,

Index No: 401697/10

-against-

Decision, Order & Judgment

DIRK MIRANDA,

**UNFILED JUDGMENT**  
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Defendant  
Hon. Martin Shulman, J.:

In motion sequence number 001, plaintiff, Property Clerk, New York City Police Department ("Property Clerk" or "plaintiff") moves by order to show cause ("OSC") for a preliminary injunction to stay defendant Dirk Miranda ("Miranda" or "defendant") from "selling, leasing, gifting, assigning, pledging or otherwise disposing of" one 1998 Honda automobile bearing Vehicle Identification Number 1N4AL21E78N404001 (the "subject vehicle") "or transferring his right, title and interest therein . . . or from otherwise removing the subject vehicle from the jurisdiction of this Court during the pendency of the instant action".<sup>1</sup> On July 15, 2010, this court issued a temporary restraining order ("TRO"). Miranda, appearing *pro se*, opposes this motion by submitting "Defendant's Answer to Complaint, Motion to Dismiss in the Alternative Affirmative Defenses" (the "answer").

In motion sequence number 002, which was submitted approximately two weeks after the OSC, the Property Clerk moves for summary judgment on its complaint

\_\_\_\_\_  
<sup>1</sup> The branch of the OSC seeking to enjoin defendant from taking possession of the subject vehicle was rendered moot inasmuch as it is undisputed that defendant retrieved the subject vehicle.

seeking forfeiture of the subject vehicle pursuant to N.Y.C. Adm. Code §14-140.

Plaintiff bases its motion for summary judgment upon defendant's guilty plea to violating Penal Law §265.01 (criminal possession of a weapon in the fourth degree). Miranda has not filed any opposition to the motion for summary judgment.

### **Plaintiff's Motion for Summary Judgment**

Plaintiff's verified complaint alleges and defendant does not dispute that he is the registered owner of the subject vehicle.<sup>2</sup> Plaintiff further alleges *inter alia* that a firearm was recovered from the subject vehicle at the time of defendant's arrest. This allegation is corroborated by the sworn criminal complaint wherein the arresting officer details the circumstances of Miranda's arrest. See Ex. 3 to motion. The Property Clerk also submits Certified Queens County Certificate of Disposition Number 148952, which discloses that on April 8, 2010, defendant pleaded guilty to violating Penal Law §265.01 (Ex. 5 to motion).

It is well settled that a criminal conviction, whether by plea or after trial, is conclusive proof of its underlying facts. *Grayes v. DiStasio*, 166 A.D.2d 261, 262-263 (1<sup>st</sup> Dept. 1990). Therefore, a defendant who pleads guilty to a criminal charge is collaterally estopped from relitigating, in a subsequent civil action, the facts upon which the conviction is based. *Id.*; *S.T. Grand, Inc. v. City of New York*, 32 N.Y.2d 300 (1973). Miranda thus cannot deny he possessed a firearm at the time he was arrested.

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<sup>2</sup> Defendant's answer (Ex. 8 to motion) does not address paragraph 7 of the complaint alleging he owns the subject vehicle, and as such, it is deemed admitted. CPLR §3018(a).

However, his guilty plea to possessing a weapon does not foreclose the claim that the subject vehicle was not the instrumentality of and/or used to aid or further the commission of that particular crime. Defendant's answer specifically denies this allegation (see complaint at Exh. 6 to motion, ¶¶ 9 and 11) as well as paragraph 6 of the complaint, which alleges that a firearm and knife were recovered from the subject vehicle at the time of Miranda's arrest. See answer at ¶2. Notwithstanding these denials, a careful review of defendant's answer reveals they are patently incredible.

Specifically, Miranda responds to paragraphs 1 through 5 of the complaint by stating: "Defendant neither agrees nor denies the allegations" in these paragraphs.

This response is not authorized by CPLR §3018, which provides in relevant part:

(a) Denials. A party shall deny those statements known or believed by him to be untrue. He shall specify those statements as to the truth of which he lacks knowledge or information sufficient to form a belief and this shall have the effect of a denial. All other statements of a pleading are deemed admitted . . .

Paragraphs 2 through 5 of the complaint allege: defendant's address (complaint at ¶2), the date of his arrest and specific charges against him (*Id.* at ¶3), his guilty plea (*Id.* at ¶4), his operation of the subject vehicle at the time of the arrest and its seizure (*Id.* at ¶5). See answer at ¶1. Clearly, defendant cannot claim lack of knowledge of these basic factual allegations and must either admit or deny them. Having failed to do so via a carefully worded answer, the allegations must be deemed admitted. See CPLR §3018(a).

Here, there is no issue of fact as to whether the subject vehicle was the instrumentality of and/or used to aid the commission of the admitted crime of fourth degree weapons possession. It is undisputed that at the time of his arrest defendant

possessed a firearm and was in control of the subject vehicle, which the police seized. Miranda offers no explanation for the proximity of the firearm to the subject vehicle at the time of his arrest.

Further, the asserted affirmative defenses lack merit and dismissal of the complaint is unwarranted. First, Miranda concedes his guilty plea but notes that he pled guilty only to a misdemeanor and not a felony as required for forfeiture under CPLR §1311. See answer at ¶5. This forfeiture action, however, was commenced pursuant to NYC Admin. Code §14-140, which, unlike CPLR Article 13-A, does not require a felony conviction.

As a further defense and/or ground for dismissal, Miranda cites plaintiff's admitted failure to properly serve him with a notice of his right to a retention hearing pursuant to *Krimstock v. Kelly*, 306 F.3d 40 (2d Cir. 2002), *cert. den.* 539 U.S. 969 (2003) ("*Krimstock*"). Under *Krimstock*, persons whose vehicles are seized under NYC Admin. Code §14-140 as alleged instrumentalities of crime must be given an opportunity in a prompt post-seizure retention hearing to test the probable validity of continued deprivation of their vehicle *pendente lite*. However, obtaining the release of the subject vehicle *pendente lite* does not conclusively determine the final outcome of a civil forfeiture action. For all of the foregoing reasons, Miranda's defenses are insufficient to defeat summary judgment and the question of plaintiff's right to forfeit the subject vehicle must be resolved in plaintiff's favor.

### Preliminary Injunction

In light of the final determination of this action by this court's granting the Property Clerk's motion for summary judgment, the motion for preliminary injunctive relief is denied as moot. Accordingly, it is hereby

(1) ORDERED that plaintiff's motion (seq. 001) is denied; and it is further

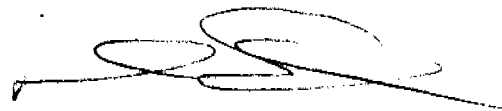
(2) ORDERED that plaintiff's motion for summary judgment (seq. 002) is granted in plaintiff's favor; and it is further

(3) ORDERED and ADJUDGED that defendant Dirk Miranda may not lawfully possess the subject vehicle, a 1998 Honda, bearing Vehicle Identification Number 1N4AL21E78N404001, seized from defendant Dirk Miranda and vouchered under Property Clerk Invoice Number B319907V, and defendant must immediately surrender the subject vehicle into plaintiff's custody; and it is further

(4) ORDERED and ADJUDGED that plaintiff is entitled to lawfully possess the subject vehicle and that the subject vehicle is hereby forfeited pursuant to the provisions of the Administrative Code of the City of New York §14-140.

This constitutes this court's decision, order and judgment. Courtesy copies of same have been provided to the parties.

Dated: New York, New York  
September 13, 2010



HON. MARTIN SHULMAN, J.S.C.

### UNFILED JUDGMENT

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