

**Cohen v A 2006 Chevrolet, Vin. No.
2GCEC13T161226831**

2013 NY Slip Op 31972(U)

August 14, 2013

Supreme Court, Suffolk County

Docket Number: 07147/2012

Judge: Jerry Garguilo

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SHORT FORM ORDER

INDEX NO. 07147/2012

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 47 - SUFFOLK COUNTY

PRESENT:

HON. JERRY GARGUILO
 Supreme Court Justice

DENNIS M. COHEN, County Attorney for the
 COUNTY OF SUFFOLK,

Plaintiff,

-against-

A 2006 CHEVROLET, VIN NO.
 2GCEC13T161226831, and MICHAEL E.
 LAFRENIERE,

Defendant.

ORIG. RETURN DATE: 6/12/2013
 FINAL SUBMISSION DATE: 8/14/2013
 MTN. SEQ. #001
 MOTION: MG

PLAINTIFF'S ATTORNEY:

Attorney for plaintiff claiming authority
 DENNIS M. BROWN
 Suffolk County Attorney
 H. Lee Dennison Building
 100 Veterans Memorial Highway
 P.O. Box 6100
 Hauppauge, New York 11788
 (631) 853-4049

DEFENDANT PRO SE:

MICHAEL E. LAFRENIERE
 910 Tuthill Road ext
 Southold, NY 11971

The Court has considered the following in connection with its determination:

1. Plaintiff's Notice of Motion with supporting papers.

ORDERED that this unopposed motion (seq. #001) in this civil forfeiture action pursuant to Suffolk County Code Chapter 420 for an order granting plaintiff a default judgment against defendant, Michael E. Lafreniere, is **GRANTED**.

Plaintiff, Dennis M. Brown, Suffolk County Attorney, in his capacity as the "Claiming Authority" on behalf of Suffolk County, moves for a default judgment ordering defendant to forfeit to plaintiff a 2006 Chevrolet, VIN. NO. 2GCEC13T161226831, pursuant to Suffolk County Code Article II of Chapter 420, otherwise known as the "DWI Seizure Law."

Defendant was personally served with Summons and Verified Complaint on May 30, 2012 at 910 Tuthill Road, ext., Southold, New York.

On November 19, 2010, defendant was convicted of Driving While Ability Impaired by Drugs. On September 22, 2011, defendant was arrested for Driving While Ability Impaired by Drugs while he was driving the 2006 Chevrolet, seized at the time of arrest and herein sought to be forfeited as the instrumentality of the crime pursuant to Chapter 420 of the Suffolk County Code. On December 2, 2011, defendant was convicted of Driving While Ability Impaired by Drugs, the crime during which he was operating the 2006 Chevrolet.

The underlying action concerns Suffolk County's request for an order allowing the municipality to seize the vehicle in question on the ground that it was used as an instrumentality of an offense. In support of its motion, plaintiff provides copies of the Certificates of Convictions indicating defendant's prior Driving While Ability Impaired by Drugs convictions, as well as certified copies of the Certificates of Dispositions evincing these convictions, including the one which forms the basis for this forfeiture action.

Suffolk County Code § 270, Article IV, provides, in pertinent part, that the claiming authority may bring a civil action against defendants seeking to forfeit seized property which constitutes the "instrumentality of an offense" where plaintiff can prove, by clear and convincing evidence, that the property was seized in connection with the acts of an individual who has been convicted at least once of VTL §1192.

Suffolk County Code Chapter 420-7(J) provides that in order to establish a right to commence an action under Article II of the Suffolk County Code, the Claiming Authority shall demonstrate, by clear and convincing evidence, that the instrumentality of the crime is subject to forfeiture at the time of commission of the offense which precipitated the seizure without regard to the final determination of the criminal prosecution against the individual charged.

Based on the foregoing, plaintiff has demonstrated entitlement to a judgment permitting the County of Suffolk to recover from defendant all of his title and interest in the subject vehicle.

It is well settled that automobiles operated by intoxicated drivers may be seized and sold pursuant to civil forfeiture laws (see CPLR art 13-A; *Grinberg v. Sufir*, 266 A.D.2d 43; *County of Nassau v. Wildesmuth*, 295 A.D.2d 553, 554).

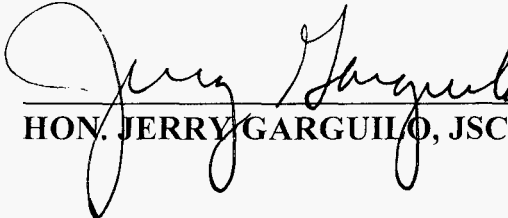
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Moreover, the motion by plaintiff is unopposed. As such, lack of opposition is tantamount to consent (see, *Tortorello v. Larry M. Carlin*, 260 A.D.2d 201).

Submitted judgment signed simultaneously herewith.

The foregoing constitutes the decision and Order of this Court.

Dated: August 14, 2013


HON. JERRY GARGUILO, JSC

At an I.A.S. part 47 of the Supreme Court of the State of New York held in and for the County of Suffolk, at the Courthouse thereof, on the 14th day of August, 2013.

P R E S E N T:

Hon: Jerry Garguilo

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

DENNIS M. COHEN, County Attorney
for the COUNTY OF SUFFOLK,

Index No.: 12-07147

Plaintiff/Claiming Authority,

- a g a i n s t -

**ORDER
and
JUDGMENT**

a 2006 CHEVROLET, VIN NO. 2GCEC13T161226831, and
MICHAEL E. LAFRENIERE,

Defendant.

The summons and complaint in the above entitled action having been served pursuant to the provision of the CPLR upon the Defendant MICHAEL E. LAFRENIERE on May 30, 2012, and the time for the Defendant MICHAEL E. LAFRENIERE to appear, answer, or raise an objection to the complaint having expired, and Defendant MICHAEL E. LAFRENIERE not having appeared, answered, or raised an objection to the complaint;

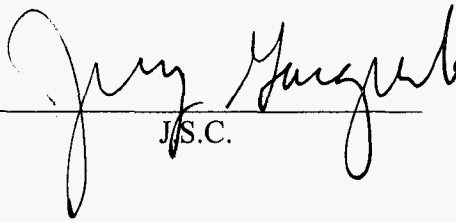
NOW, upon the summons and complaint and proof of service thereof, the Affirmation of ROBERT A. FLINK, dated May 20, 2013, and the exhibits annexed thereto, it is hereby



ORDERED, ADJUDGED AND DECREED that the Plaintiff/Claiming Authority be granted a judgment of forfeiture against the Defendant MICHAEL E. LAFRENIERE, and it is further

ORDERED, ADJUDGED AND DECREED that the plaintiff, County of Suffolk, recover of MICHAEL E. LAFRENIERE all right, title and interest presently held by MICHAEL E. LAFRENIERE in the 2006 CHEVROLET, VIN NO. 2GCEC13T161226831 seized by the Plaintiff on September 22, 2011 and that it be disposed of in accordance with the provisions of Suffolk County Code Chapter 420 and subject to any valid liens duly filed with Motor Vehicles on said vehicle.

Order and Judgment signed this 14th day of August, 2013.



J.S.C.

