

Property Clerk, New York Police Dept. v Santagata
2015 NY Slip Op 30438(U)
March 25, 2015
Supreme Court, New York County
Docket Number: 451302/14
Judge: Martin Shulman
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART1

Property Clerk, New York City Police Department,

Plaintiff,

-against-

Thomas Santagata,

Defendant.

Index No.: 451302/14

Motion Seq. 001 & 002

**Decision, Order
and Judgment**

Hon. Martin Shulman, J.:

In this civil forfeiture proceeding commenced pursuant to NYC Adm. Code §14-140, plaintiff, Property Clerk, New York City Police Department (“plaintiff” or “Property Clerk”) seeks forfeiture of the subject vehicle, a 2000 Ford automobile bearing Vehicle Identification Number 1FAFP4044YF230624 (the “subject vehicle”), which was seized from defendant Thomas Santagata (“defendant” or “Santagata”) as a result of his May 19, 2014 arrest on charges of grand larceny, kidnaping, menacing and criminal possession of a weapon. Santagata subsequently was arraigned on charges of unlawful imprisonment, menacing and criminal possession of a weapon.

Plaintiff commenced this action by filing a summons with notice on June 12, 2014. The Property Clerk now moves for a default judgment based upon defendant’s failure to answer or appear in this action (motion sequence 001). After plaintiff’s motion was submitted without opposition, Santagata, by counsel, served and filed a separate motion to vacate his default and file a late answer (motion sequence 002). Plaintiff opposes defendant’s motion. Motion sequences 001 and 002 are consolidated for disposition.

As evidenced by defendant's request to interpose the proposed answer annexed to his moving papers, there can be no serious dispute that Santagata has not timely answered or appeared in this action. In order to successfully oppose a motion for a default judgment, a defendant must demonstrate a justifiable excuse for the default and a meritorious defense. *Johnson v Deas*, 32 AD3d 253 (1st Dept 2006).

Santagata submits a bare bones affirmation from counsel in support of his motion and in opposition to plaintiff's motion. No excuse is proffered for the failure to answer the complaint. Rather, defense counsel's affirmation focuses on the Property Clerk's allegedly improper service of its motion for a default judgment, claiming defendant was not served with the motion because he was incarcerated at the time, nor did plaintiff serve the motion upon defense counsel despite his having engaged in prior communications with plaintiff's counsel.

At the outset, defendant's counsel had not appeared in this action on defendant's behalf and thus was not entitled to notice of plaintiff's default motion. With respect to service upon Santagata, plaintiff's motion indicates it was served upon Santagata by mail at the same address where the summons and complaint were served upon him by substituted service upon his mother and subsequent mailing. That address is the same address on file with the New York State Department of Motor Vehicles ("DMV"). If Santagata changed his address, he had ten (10) days in which to notify DMV. See Vehicle & Traffic Law §505(5). His failure to do so estops him from claiming improper service. See generally *Canelas v Flores*, 112 AD3d 871, 872 (2d Dept 2013). The foregoing is insufficient to establish a justifiable excuse for the default.

Accordingly, the Property Clerk's motion must be granted and Santagata's motion denied.

Having failed to establish a reasonable excuse for his default, it is unnecessary for this court to address the merits of defendant's alleged defense. Nonetheless, Santagata's attempt to establish a meritorious defense is unavailing. Defense counsel claims only that the underlying criminal proceedings herein were dismissed on December 17, 2014. However, the dismissal of the underlying criminal proceedings against Santagata is not dispositive of this civil forfeiture action. As stated in *Property Clerk v. Ferris*, 77 NY2d 428, 430-431 (1991):

Because forfeiture is a civil proceeding, petitioner need only prove by a preponderance of the evidence that the property is subject to forfeiture (see, *Property Clerk v Hurlston*, 104 AD2d 312, 313). . . . Indeed, the outcome of the underlying criminal charges is irrelevant to the outcome of the civil forfeiture proceeding (*Property Clerk v Conca*, 148 AD2d 301, 302; *Matter of Property Clerk v Batista*, 111 AD2d 135, 136; *Property Clerk v Hurlston*, *supra*, at 313). Because of the differing degree of proof, even acquittal would not necessarily prevent a subsequent forfeiture under the Code's provisions (see, *Property Clerk v Conca*, *supra*, at 302; *cf.*, *People ex rel. Matthews v New York State Div. of Parole*, 58 NY2d 196, 202-203 [an acquittal on criminal charges ordinarily will not have collateral estoppel effect in a subsequent parole revocation proceeding evolving from those same charges, because of the higher degree of proof the People must meet in the criminal action]).

Accordingly, dismissal of the underlying criminal proceedings herein is not dispositive.

Finally, defendant does not seriously or credibly deny that the subject vehicle was the instrumentality of, and/or was used to aid and further the commission of, one or more of the underlying crime(s). Defense counsel's supporting affirmation does not address the Property Clerk's allegations, presumably because counsel lacks personal

knowledge. Similarly, the proposed answer, also verified by counsel,¹ admits paragraphs 1 (plaintiff's authority to administer money and property coming into the custody of the NYPD) and 3 (defendant's ownership of the subject vehicle) of the verified complaint, and denies paragraphs 2 (defendant's residential address) and 4 (date, time and location of defendant's arrest for allegedly brandishing a metal folding knife and demanding his victim to enter the subject vehicle). As to the complaint's remaining allegations, defendant, by counsel, incredibly responds that he "is without knowledge".

For all of the foregoing reasons, it is hereby

ORDERED that plaintiff's motion (seq. 001) for a default judgment is granted and defendant Thomas Santagata's motion (seq. 002) is denied; and it is further

ORDERED, ADJUDGED and DECREED that the subject vehicle, a 2000 Ford, bearing Vehicle Identification Number 1FAFP4044YF230624, seized from defendant Thomas Santagata and vouchered under Property Clerk Invoice Number 5000056468 is forfeited pursuant to the provisions of the Administrative Code of the City of New York §14-140; and it is further

ORDERED, ADJUDGED and DECREED that defendant may not lawfully possess the subject vehicle; and it is further

ORDERED, ADJUDGED and DECREED that the plaintiff's custody and retention of the subject vehicle is both lawful and proper.

¹ Counsel's verification states "that the foregoing answer is true upon information and belief, the sources of which are the court records in the related criminal action. Defendant, who is incarcerated may submit a verified answer through counsel."

The Clerk is directed to enter judgment accordingly.

The foregoing constitutes this court's Decision, Order and Judgment.

Dated: New York, New York
March 25, 2015



Hon. Martin Shulman, J.S.C.