

<b>Property Clerk v Hylor</b>
2016 NY Slip Op 31506(U)
August 4, 2016
Supreme Court, New York County
Docket Number: 450175/15
Judge: Martin Shulman
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. MARTIN SHULMAN, Justice

PART 1

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PROPERTY CLERK, NEW YORK CITY POLICE  
DEPARTMENT,

Plaintiff,

INDEX NO.: 450175/15

- v -

TORIN HYLOR,

Defendant.

DECISION, ORDER &  
JUDGMENT

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In this civil forfeiture proceeding, plaintiff seeks forfeiture of the subject vehicle, a 2002 BMW bearing Vehicle Identification Number WBAEV33452KL58190 (the "subject vehicle"), which was seized from defendant Torin Hylor ("defendant" or "Hylor") and vouchered under Property Clerk Invoice Number 3000437272 as a result of defendant's October 9, 2014 arrest on charges of criminal possession of marihuana in violation of Penal Law ("PL") §§ 221.25, 221.20, 221.15, 221.10 (1), 221.10 (2) and 221.05, and on the further charge of failing to signal upon turning in violation of Vehicle & Traffic Law ("VTL") § 1163(b). Plaintiff now moves for summary judgment in its favor based upon Hylor's January 5, 2016 guilty plea to violating PL § 221.25 (Criminal Possession of Marihuana in the Second Degree) and PL § 221.15 (Criminal Possession of Marihuana in the Fourth Degree). Defendant opposes the motion and cross-moves for summary judgment in his favor dismissing this action.

**Plaintiff's Motion for Summary Judgment**

In his verified answer (Exh. 1 to Motion), defendant does not deny that he is the registered and titled owner of the subject vehicle, nor does he deny his guilty plea in his opposition. Further, defendant admitted during his plea allocution that he possessed an

aggregate amount of over sixteen ounces of marihuana in the subject vehicle at the time of his arrest (see plea transcript, at Exh. 7 to Motion, pp 8-9).

It is well established that a "criminal conviction, whether by plea or after trial, is conclusive proof of its underlying facts." *Grayes v Distasio*, 166 AD2d 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 NY2d 300, 304-05 (1973).

In accordance with NYC Admin. Code § 14-140 and 38-A RCNY §§ 12-35 and 12-36, plaintiff has established by a preponderance of the evidence that defendant is the registered and titled owner of the subject vehicle and that Hylor used the subject vehicle as an instrumentality in furtherance of the crime of criminal possession of marihuana. Defendant does not deny that approximately three pounds of marihuana were recovered from the subject vehicle at the time of his arrest (Exh. 7 to Motion, pp 8-9). Thus, plaintiff has satisfied the burden of proof and established that the subject vehicle is subject to forfeiture under NYC Admin. Code § 14-140. Defendant's guilty plea in the underlying criminal proceeding collaterally estops him from asserting his innocence in the instant action.

#### **Hylor's Cross-Motion**

Hylor's affirmative defense that this action was not timely commenced is insufficient to defeat plaintiff's entitlement to summary judgment. The time in which the Property Clerk must commence a forfeiture action has been established in accordance with the decisions in *McClendon v Rosetti*, 460 F2d 111 (2d Cir 1972), *McClendon v*

*Rosetti*, 369 FSupp 1931 (SDNY 1974) and the subsequent regulations set forth in *McClendon v Rosetti*, 1993 WL 158525 (SDNY 1993) by Federal District Judge Lasker, as codified in the Rules of the City of New York ("RCNY"), Title 38, Chapter 12. Where a timely demand for the return of seized property has been made, the Property Clerk has twenty-five days within which to commence a forfeiture action. RCNY § 12-36(a). If no action is commenced, the Property Clerk must advise the claimant that it will return the property forthwith. *Id.*

In support of his cross-motion, defendant argues that plaintiff did not timely commence this forfeiture action because the summons with notice which initiated this action on February 9, 2015 (within 25 days of plaintiff's January 22, 2015 receipt of Hylor's demand for a *Krimstock* hearing) was insufficient.<sup>1</sup> Specifically, defendant argues that the summons with notice was inadequate because: (1) it contained no "notice stating the nature of the action and the relief sought" as CPLR 305(b) requires; and (2) did not "include a statement of the grounds upon which the property clerk seeks to justify the continued retention of the property" as RCNY §12-36(b) requires.

This court previously rejected Hylor's arguments regarding the summons with notice's purported insufficiency on September 1, 2015 when defendant raised it in opposition to plaintiff's order to show cause seeking a preliminary injunction enjoining defendant from disposing of the subject vehicle during this action's pendency. See

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<sup>1</sup> The summons with notice herein (Exh. 8 to Motion) states "that this is an action for forfeiture seeking a 2002 BMW bearing Vehicle Identification Number WBAEV33452KL58190" and that judgment "for the 2002 BMW" is sought. Hylor argues that the action was not effectively commenced until June 26, 2015 when plaintiff filed the verified complaint.

transcript at Exh. 10 to Motion. This court remains unpersuaded by Hylor's affirmative defense. While plaintiff could have included more information in the summons with notice, such as details regarding defendant's arrest which resulted in the subject vehicle's seizure,<sup>2</sup> such information is not essential. It is clear from the summons with notice that plaintiff seeks the subject vehicle's forfeiture, *i.e.*, to obtain permanent possession of it. Hylor necessarily was aware that plaintiff had seized the subject vehicle at the time of his arrest. Indeed, at the time the summons with notice was served upon him, defendant had requested a *Krimstock* hearing to recover possession. Under the circumstances, the timely served summons with notice provided sufficient notice to Hylor and does not warrant dismissal of this action.

For the foregoing reasons, no triable issues of fact exist and it is hereby

ORDERED that plaintiff's motion for summary judgment is granted, defendant's cross-motion is denied and defendant's affirmative defense is dismissed; and it is further

ORDERED and ADJUDGED that defendant Torin Hylor may not lawfully possess the subject vehicle seized from him pursuant to his October 9, 2014 arrest; and it is further

ORDERED and ADJUDGED that if defendant has sold or conveyed the subject vehicle, in any manner, the plaintiff is entitled to the monetary value of the subject vehicle at the time of seizure; and it is further

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<sup>2</sup> Defense counsel does not indicate what additional allegations might be sufficient for purposes of complying with CPLR 305(b) and RCNY § 12-36(b).

ORDERED and ADJUDGED that plaintiff is entitled to lawfully possess the subject vehicle, a 2002 BMW, bearing Vehicle Identification Number WBAEV33452KL58190, and that the subject vehicle is hereby forfeited pursuant to the provisions of the Admin. Code of the City of New York § 14-140.

Dated: August 4, 2016



Hon. Martin Shulman, J.S.C.