

Property Clerk, New York City Police Dept. v Verdecia
2017 NY Slip Op 30268(U)
February 6, 2017
Supreme Court, New York County
Docket Number: 452720/15
Judge: Martin Shulman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

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

Plaintiff,

Index No: 452720/15

-against-

Decision and Order

ORLANDO VERDECIA a/k/a ORLANDO
VERDECIA-AVILA, et al,
Defendants.

-----X
Hon. Martin Shulman, J.:

Plaintiff, Property Clerk, New York City Police Department (Property Clerk or plaintiff), commenced this action seeking the forfeiture of a 1995 Peterbilt tractor bearing Vehicle Identification Number 1XP5PB8X6SD384285 and an attached 2000 Wilson trailer bearing Vehicle Identification Number 4WWBGB6B9YM604013 (collectively, the subject vehicle) pursuant to N.Y.C. Adm. Code §14-140. Defendant Orlando Verdecia a/k/a Orlando Verdecia-Avila (defendant or Verdecia) is the registered and titled owner of the subject vehicle, which was seized from him and vouchered under Property Clerk Invoice Number 4000109899 as a result of his January 17, 2013 arrest on charges of *inter alia* first degree criminal possession of a controlled substance (Penal Law §220.21[1]). On October 29, 2014, defendant pleaded guilty to second degree criminal possession of a controlled substance (Penal Law §220.18).

The Property Clerk now moves by order to show cause ("OSC") for a preliminary injunction to enjoin Verdecia from "taking possession of the subject vehicle" and "selling, leasing, gifting, assigning, pledging or otherwise disposing of the subject vehicle or transferring his right, title and interest therein in any manner or from otherwise removing the subject vehicle from the jurisdiction of this Court during the

pendency of the instant action". In signing the OSC, this court issued a temporary restraining order (TRO) enjoining the foregoing acts.

Verdecia appeared *pro se* on the return date of plaintiff's OSC and opposed the OSC on the grounds that the terms of his guilty plea provided for the release of the subject vehicle. This court adjourned the OSC without date pending the outcome of an upcoming retention hearing before the Office of Administrative Trials and Hearings ("OATH") and instructed defendant to submit a copy of the transcript of his guilty plea before the criminal court. The TRO was also extended pending the determination of this OSC.

Defendant ultimately defaulted in appearing before OATH. In the interim, the Property Clerk has corresponded with Verdecia reminding him of his obligation to obtain the transcript. Such correspondence alleges that defendant either refused or was unable to pay the attendant fee for the transcript. By letter dated January 30, 2017, plaintiff forwarded a copy of the long awaited transcript to this court which, contrary to Verdecia's representations, does not indicate that his plea included release of the subject vehicle. In fact, it indicates the opposite, the Assistant District Attorney having advised Justice Barry Kron that "there is a forfeiture."¹

To establish entitlement to a preliminary injunction in this action, plaintiff must demonstrate: (1) a likelihood of ultimate success on the merits; (2) irreparable injury if

¹ This court does not imply any intentional deception on Verdecia's part inasmuch as he requires the assistance of a Spanish interpreter and likely did not understand the ADA's reference during the plea proceedings to a District Attorney's Release being issued, which merely indicates that the prosecution no longer needs to retain the subject vehicle as evidence.

no preliminary injunction is issued; and (3) a balancing of the equities in its favor. CPLR § 6301; *Aetna Ins. Co. v Capasso*, 75 NY2d 860 (1990). The decision to grant such relief lies within this court's sound discretion. *Weeks Woodlands Assn., Inc. v Dormitory Auth. of State of New York*, 95 AD3d 747, 759 (1st Dept 2012). The purpose of a preliminary injunction "is to maintain the status quo and to prevent any conduct which might impair the ability of the court to render final judgment." *Putter v City of New York*, 27 AD3d 250, 253 (1st Dept 2006).

In support of the first of the foregoing elements, plaintiff cites defendant's guilty plea. Given Verdecia's guilty plea, plaintiff establishes a likelihood of success on the merits of this forfeiture action. A criminal conviction, whether by plea or after trial, is conclusive proof of its underlying facts. *Graves v DiStasio*, 166 AD2d 261, 262-263 636 (1st 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 (1973).

The Property Clerk also establishes that it will be irreparably injured if a preliminary injunction is not granted by virtue of the fact that a monetary judgment for the value of the subject vehicle will not accomplish the goal of removing the subject vehicle from the streets as an instrumentality of crime. Further, the subject vehicle is registered in Arizona, where Verdecia maintains an address, thus indicating a substantial risk that it may be removed from this court's jurisdiction or transferred.

Finally, balancing the equities, the subject vehicle was operated and used for illicit purposes, to wit, narcotics trafficking. The violent and dangerous nature of the

foregoing offense implicates public safety concerns. Further, this court can discern no prejudice to Verdecia in restraining him from disposing of the subject vehicle during the pendency of this action. Granting the OSC is necessary to maintain the status quo pending the final determination herein. For all of the foregoing reasons, it is

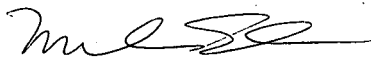
ORDERED that plaintiff's OSC for a preliminary injunction is granted; and it is further

ORDERED that Verdecia is enjoined and restrained, pending the determination of this action, from selling, leasing, gifting, assigning, pledging or otherwise disposing of the subject vehicle or transferring his right, title and interest therein in any manner and from removing the subject vehicle from the jurisdiction of this court.

The parties are directed to appear for a preliminary conference on March 28, 2017 at 9:30 a.m. at 60 Centre Street, Room 325, New York, New York.

This constitutes this court's decision and order. Courtesy copies of same have been provided to plaintiff's counsel and Verdecia.

Dated: New York, New York
February 6, 2017



HON. MARTIN SHULMAN, J.S.C.