

Property Clerk, N.Y. City Police Dept. v Walker

2017 NY Slip Op 31998(U)

September 20, 2017

Supreme Court, New York County

Docket Number: 452376/17

Judge: Martin Shulman

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This opinion is uncorrected and not selected for official publication.

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: 452376/17

-against-

Decision & Order

JERMAINE S. WALKER and TEACHERS FEDERAL
CREDIT UNION,

Defendants.
-----X

Hon. Martin Shulman, J.:

Plaintiff, Property Clerk, New York City Police Department ("Property Clerk" or "plaintiff") commenced this action by filing the summons and verified complaint on August 24, 2017 seeking forfeiture of a 2013 BMW bearing Vehicle Identification Number WBA6A0C59DDZ03645 (the "subject vehicle") pursuant to N.Y.C. Adm. Code §14-140. The subject vehicle was seized from defendant Jermaine S. Walker ("defendant" or "Walker") and vouchered under Property Clerk Invoice Number 3000749871 at the time of defendant's December 23, 2016 arrest for criminal possession of a weapon, criminal mischief, criminal possession of a controlled substance, menacing and obstructing governmental administration. On June 7, 2017, Walker pleaded guilty to fourth degree criminal mischief.

The Property Clerk moves by order to show cause ("OSC") for a preliminary injunction enjoining Walker from taking possession of the subject vehicle¹ as well as

¹ Walker requested a retention hearing before the New York City Office of Administrative Trials and Hearings ("OATH"). On August 31, 2017, OATH Administrative Law Judge ("ALJ") Joycelyn McGeachy-Kuls issued a memorandum decision (the "OATH decision") directing the Property Clerk to release the subject vehicle to defendant on procedural grounds, to wit, the failure to properly serve

from "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". On September 11, 2017, this court issued a temporary restraining order ("TRO") prohibiting the foregoing acts pending the hearing of the OSC. Defendant, who is self-represented, appeared on the return date in opposition to this OSC.

Analysis

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 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). Such relief is appropriate "where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual . . ." See CPLR §6301.

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

defendant with a notice of his right to a retention hearing at the time of his arrest as required by *Krimstock v Kelly*, 306 F3d 40 (2d Cir 2002), *cert den*, 539 US 969 (2003). See Motion at Exh. 12.

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).

Plaintiff establishes a likelihood of success on the merits by virtue of defendant's guilty plea and his admission before OATH that a gun was recovered from the subject vehicle at the time of his arrest. Plaintiff similarly establishes that it will be irreparably injured if a preliminary injunction is not granted enjoining Walker from transferring or otherwise disposing of the subject vehicle, 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.

However, this court declines to enjoin defendant from regaining possession of the subject vehicle *pendente lite* as directed in the OATH decision. The preliminary injunction granted herein prohibiting Walker from disposing of the subject vehicle adequately protects plaintiff's interest in ensuring that any potential forfeiture judgment will not be rendered ineffective. See *County of Nassau v Canavan*, 1 NY3d 134, 144 (2003) (county's continued retention of defendant's car during pendency of forfeiture action is not the only means available to accomplish its goal of preventing vehicle from being sold or destroyed before forfeiture judgment is rendered; preliminary injunction prohibiting vehicle's sale or destruction accomplishes the same goal).

Accordingly, the Property Clerk will suffer no irreparable injury if the subject vehicle is released to Walker. Further, the OATH decision mandates that the subject vehicle be released. If plaintiff is aggrieved by this administrative determination it must pursue its appellate remedies, rather than attempt to circumvent the appellate process by obtaining injunctive relief in this forfeiture action.

Finally, balancing the equities, Walker will not suffer any significant harm by being restrained from disposing of the subject vehicle during the pendency of this action. However, as with the foregoing irreparable injury analysis, the Property Clerk similarly fails to establish that the equities are in its favor with respect to enjoining defendant from possessing the subject vehicle during this action's pendency.


Accordingly, for all of the foregoing reasons, it is hereby

ORDERED that plaintiff's OSC is granted to the extent that defendant Jermaine S. Walker is hereby enjoined from 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 this court's jurisdiction during the pendency of this forfeiture action; and it is further

ORDERED that plaintiff's OSC is denied to the extent it seeks to enjoin defendant from possessing the subject vehicle during the pendency of this forfeiture action, and the TRO enjoining such possession is vacated.

The foregoing constitutes this court's decision and order.

Dated: New York, New York
September 20, 2017



HON. MARTIN SHULMAN, J.S.C.