

Property Clerk, New York City Police Dept. v Walker
2018 NY Slip Op 30217(U)
February 7, 2018
Supreme Court, New York County
Docket Number: 452376/2017
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

PROPERTY CLERK, NEW YORK CITY POLICE DEPARTMENT,

Plaintiff,

INDEX NO.: 452376/2017

- v -

JERMAINE S. WALKER and TEACHERS FEDERAL CREDIT UNION,

DECISION, ORDER & JUDGMENT

Defendants.

In this civil forfeiture proceeding, plaintiff seeks forfeiture of the subject vehicle, a 2013 BMW, bearing Vehicle Identification Number WBA6A0C59DDZ03645 (the "subject vehicle"), which was seized from defendant Jermaine S. Walker ("defendant" or "Walker") and vouchered under Property Clerk Invoice Number 3000749871 as a result of defendant's December 3, 2016 arrest on charges of 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 only to violating Penal Law §145.00(01) (criminal mischief in the fourth degree - intentional damage to property).

In his unverified answer (Exh. 13 annexed to motion), defendant appears *pro se* and generally denies the complaint's allegations and asserts various affirmative defenses. He does not deny the entry of his guilty plea or that he is the registered and titled owner of the subject vehicle.

Plaintiff now moves for summary judgment in its favor for forfeiture of the subject vehicle as the instrumentality of a crime. Both Walker and Teachers Federal Credit Union ("TFCU"), the subject vehicle's lienholder, submit responses to the motion.

Walker's Opposition

In opposition to the motion, Walker argues in his unsworn "reply in response" that plaintiff failed to provide him notice of his right to a retention hearing.¹ After an August 24, 2017 hearing held before the City of New York Office Of Administrative Trials and Hearings ("OATH"), Administrative Law Judge Joycelyn McGeachy-Kuls issued a memorandum decision on August 31, 2017 releasing the subject vehicle to defendant pending the outcome of any forfeiture action brought by plaintiff based upon plaintiff's failure to comply with Krimstock's notice requirements.

As previously stated, defendant does not deny his guilty plea. A criminal conviction, whether by plea or after trial, is conclusive proof of its underlying facts. *Graves v DiStasio*, 166 AD2d 261, 262-263 (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).

Here, there can be no dispute that the subject vehicle is the instrumentality of the crime of fourth degree criminal mischief.² Defendant only generally denies the complaint's allegations. However, it is well settled that general denials are insufficient

¹ Though not cited by defendant, *Krimstock v Kelly*, 99 Civ 12041 (SDNY, Dec. 6, 2005) ("*Krimstock*"), sets forth the notice requirements which must be given to persons whose vehicles are seized under NYC Admin. Code §14-140 as alleged instrumentalities of crime, so that they are given an opportunity in a prompt post-seizure retention hearing to test the probable validity of continued deprivation of their vehicle *pendente lite*.

² Apparently defendant was involved in an altercation wherein he punched and shattered a taxi cab window, then fled the scene of the offense in the subject vehicle.

to raise issues of fact on a summary judgment motion. *Offset Paperback Mfrs., Inc. v Banner Press, Inc.*, 47 AD2d 733 (1st Dept 1975); *landoli v Lange*, 35 AD2d 793 (1st Dept 1970). By failing to deny the complaint's allegations they are deemed admitted. CPLR §3018(a).

Further, the complaint's first, second and fifth causes of action are predicated upon unlawful possession of a weapon. Although Walker was not convicted for weapons possession, he admitted during the OATH hearing that a loaded firearm was recovered from the subject vehicle at the time of his arrest. Exh. 10 to motion.

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 defendant used the subject vehicle as the instrumentality of committing the crimes of criminal mischief and unlawful possession of a weapon. Defendant's guilty plea in the underlying criminal proceeding collaterally estops defendant from asserting his innocence in the instant proceeding.

With respect to Walker's *Krimstock* defense, plaintiff's failure to comply with *Krimstock's* notice requirements and OATH's release of the vehicle to Walker *pendente lite* does not conclusively determine the final outcome of this civil forfeiture action. The OATH decision merely permits defendant to possess the subject vehicle during this forfeiture action's pendency. In light of defendant's guilty plea and his admissions the question of plaintiff's right to forfeit the subject vehicle must be resolved in plaintiff's favor as against Walker.

TFCU'S Opposition

In an unexpected twist, TFCU advises that it repossessed the subject vehicle on November 7, 2017 based upon Walker's default under the Loan and Security Agreement and intends to liquidate it in accordance therewith. Counsel for TFCU states that she contacted plaintiff's counsel and was advised that plaintiff had no objection to the repossession as long as it was consistent with the Loan and Security Agreement.

TFCU does not object to this court granting summary judgment as against Walker with respect to his interest in the subject vehicle. However, TFCU requests that any order granting summary judgment take into account and recognize: (1) its security interest in the subject vehicle as lienholder; (2) the fact that TFCU is presently in possession thereof; and (3) plaintiff's claim for forfeiture does not supersede TFCU's ability to sell the subject vehicle and apply the proceeds of the sale to any outstanding amounts Walker owes. Plaintiff does not respond to the foregoing and as such TFCU's this decision, order and judgment granting summary judgment is limited to defendant Walker and applies only with respect to his interest, if any, in the subject vehicle.

Accordingly, it is hereby

ORDERED that the motion for summary judgment is granted in plaintiff's favor solely as to defendant Jermaine S. Walker and any interest he may have in the subject vehicle; and it is further

ORDERED that this action is dismissed as to nominal defendant Teachers Federal Credit Union.

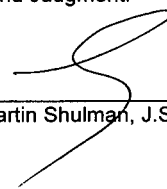
The Clerk is directed to enter judgment accordingly.

NYSCEF DOC. NO. 71

RECEIVED NYSCEF: 02/13/2018

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

Dated: February 7, 2018



Hon. Martin Shulman, J.S.C.