

Vance v Wilson

2018 NY Slip Op 30475(U)

March 20, 2018

Supreme Court, New York County

Docket Number: 450914/17

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**

CYRUS R. VANCE, JR., DISTRICT ATTORNEY of the
COUNTY OF NEW YORK, in his capacity as

Plaintiff-Claiming Authority,

INDEX NO.: 450914/17

- v -

DECISION & ORDER

JEREMY WILSON,

Defendant.

MARTIN SHULMAN, J.:

In this civil forfeiture action commenced pursuant to CPLR Article 13-A, plaintiff-claiming authority, Cyrus R. Vance, Jr., District Attorney of the County of New York ("plaintiff" or the "DA") moves for summary judgment against defendant Jeremy Wilson ("defendant" or "Wilson"). The complaint's first cause of action seeks forfeiture of the sum of \$24,000.00 (the "funds"), alleged to represent the proceeds, substituted proceeds or instrumentalities of varying degrees of the felony crimes of criminal possession of stolen property, forgery and criminal possession of a forged instrument. The complaint's second cause of action seeks a money judgment in the same amount as the proceeds of the foregoing crimes.

Plaintiff's motion for summary judgment is predicated upon Wilson's conviction after trial to the foregoing crimes.¹ The funds in question were recovered from

¹ Detective Michael Dealmeida submits an affidavit detailing Wilson's crimes as follows: Defendant burglarized buildings on the campus of the Massachusetts Institute of Technology ("MIT"), stealing, computer equipment, an MIT credit card and a check issued by a local small business known as Small Design Firm, Inc. ("SDF"), drawn on SDF's account with Cambridge Trust Company ("CTC"). Utilizing the routing number

defendant at the time of his arrest. It is presently vouchered under New York City Police Department invoice number 1000746948. Wilson, who is presently incarcerated and self-represented, served a letter answer to the complaint dated August 14, 2017. It contains six arguments in opposition to the DA's claims for forfeiture, which will be deemed affirmative defenses for purposes of this motion. He also submitted a July 14, 2017 request to stay this action pending the determination of related, pending criminal charges in Massachusetts.² He has not, however, opposed the instant motion.

The proponent of a motion for summary judgment "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact." *JMD Holding Corp. v Congress Fin. Corp.*, 4 NY3d 373, 384 (2005). The movant's failure to make a prima facie showing, requires denial of the motion regardless of the sufficiency of the opposing papers. *Id.*

and account information on SDF's check, Wilson used Quicken software to forge additional checks drawn on the same account to himself using an alias. These checks were then deposited into his own account that he opened at CTC under the same alias. The moving papers state that CTC ultimately reimbursed SDF, and as such, any funds plaintiff obtains through this forfeiture action will be distributed to CTC. Among other things, defendant also used the funds to lease a BMW. His conviction is based upon possession of the stolen credit card and the stolen BMW.

² By letter dated August 18, 2017 addressed to ADA Jonathan Chananie, Wilson detailed the difficulties he had in filing his submissions with the court, which returned them to him stating that they could not be filed because this is an electronically filed case. Obviously, this is a significant impediment to an incarcerated individual's ability to defend or pursue litigation. Ultimately, a court user uploaded Wilson's letter answer and request for a stay on August 22, 2017. However, chambers was never advised that the stay request had been filed and thus was unaware that the issue needed to be addressed. Accordingly, this decision will address defendant's stay request, which the DA opposes in its moving papers.

A criminal conviction, whether by plea or after trial, is conclusive proof of its underlying facts. *Grayes v DiStasio*, 166 AD2d 261, 262-263 (1st Dept 1990).

Therefore, a defendant who pleads guilty to or is convicted of 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).

By virtue of Wilson's conviction, plaintiff has established by a preponderance of the evidence that Wilson committed the crimes of criminal possession of stolen property, forgery and criminal possession of a forged instrument. Any proceeds, substituted proceeds or instrumentalities of those crimes are thus subject to forfeiture. Here, the affidavit of Detective Michael Dealmeida (Motion at Exh. A) and the bank records annexed thereto establish that the funds were proceeds of the crimes for which Wilson was convicted.³

Defendant's answer does not specifically admit or deny each of the complaint's allegations. However, his defenses allege that: (1) the funds were not obtained through the commission of a felony; (2) the conduct underlying his conviction "would not establish the elements of any felony specified by the forfeiture statutes"; (3) the funds "could not have been obtained in the manner detailed by Prosecution at trial"; (4) "the chain of custody of the original seizure was broken"; (5) the complaint was not timely served; and (6) plaintiff is subject to sanctions because the funds were not made available to defendant to obtain criminal defense counsel.

³ The bank records include copies of four cancelled checks made payable to Wilson under his alias totaling over \$35,000, and cash withdrawals totaling \$48,000 which appear to be the source of the funds.

For the reasons set forth in the moving affidavit, the allegations contained in these defenses are insufficient to rebut the DA's prima facie showing of entitlement to summary judgment, which Wilson does not oppose. See Chananie Aff. in Supp., ¶¶ 21 through 26. Accordingly, summary judgment is granted in the DA's favor.

In light of the foregoing defendant's request for a stay is moot. Parenthetically, such relief would have been denied as meritless. Any potential acquittal in the Massachusetts criminal case will not affect Wilson's conviction in New York, nor would it impact plaintiff's right to forfeiture of the funds held in New York. Nor are defendant's Fifth Amendment rights implicated. As the DA notes, this motion is largely based on defendant's videotaped confession. Relevant portions of the transcript of his confession are included in the motion papers and confirm that he already waived his Fifth Amendment rights, having acknowledged that anything he says may be used against him in a court of law.

For the foregoing reasons, it is hereby

ORDERED that plaintiff's motion for summary judgment in the amount of \$24,000.00 against defendant Jeremy Wilson is granted in its entirety, and it is hereby;


ORDERED that the New York County Clerk is directed to enter judgment in plaintiff's favor and against defendant Jeremy Wilson in the amount of \$24,000.00 together with statutory interest from this action's commencement date (March 31, 2017).

NYSCEF DOC. NO. 10

RECEIVED NYSCEF: 03/23/2018

The foregoing constitutes this court's decision and order. A courtesy copy of this decision and order has been mailed to defendant Wilson.

Dated: March 20, 2018



Hon. Martin Shulman, J.S.C.