

Vance v Green

2018 NY Slip Op 32616(U)

October 15, 2018

Supreme Court, New York County

Docket Number: 452151/16

Judge: Martin Shulman

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

Index No.: 452151/16

Plaintiff-Claiming Authority,

DECISION & ORDER

- against -

WAYNE GREEN, et al,

Defendants.

-----X
HON. MARTIN SHULMAN, J.S.C.:

In this civil forfeiture action, plaintiff-claiming authority renews its prior applications for default judgments against defendants Wayne Green (Green), Ruben Gonzalez (Gonzalez) and Rasheen Hamlet (Hamlet) (collectively, defendants). The defendants have failed to answer the complaint or otherwise appear in this action. Only Green opposes this motion.

The property sought to be forfeited is alleged to be the proceeds and/or substituted proceeds of various felony crimes related to a narcotics trafficking operation. On May 15, 2017, Green and Gonzalez pled guilty to the felony crime of Operating as a Major Trafficker in violation of Penal Law (PL) §220.77(1)¹ and other related offenses. They were sentenced on June 5, 2017. On December 5, 2017, Hamlet pled guilty to Second Degree Conspiracy in violation of PL §105.15 and was sentenced on January 9, 2018.

¹ In pleading guilty to Operating as a Major Trafficker in violation of PL §220.77(1), Green and Gonzalez expressly admitted generating proceeds of at least \$75,000, an element of that crime (see also guilty plea transcript, at Exh. D to motion).

Defendant Green

By decision and order dated February 6, 2018 and entered on February 13, 2018 (2/6/18 order), this court *inter alia* denied plaintiff's prior motion for a default judgment without prejudice as to Green. Plaintiff's prior default motion sought forfeiture of U.S. currency in the amount of \$135,901 and multiple watches and jewelry (personal property) which were recovered from Green's residence at the time of his March 9, 2016 arrest, as well as U.S. currency in the amount of \$2,622.38 recovered from a bank account. The DA seeks forfeiture of the same property in this renewed motion.

This court's 2/6/18 order notes that plaintiff appeared to rely upon CPLR §1311 (3) (d)'s² rebuttable presumption to establish that the personal property and funds seized at the time of Green's arrest were the proceeds of his crimes. The motion was denied without prejudice as to Green because, despite the fact that \$135,901 was recovered in the vicinity of his home address at the time of his arrest, there was no allegation that Green possessed any controlled substance on that date. As such, the DA failed to satisfy the CPLR §1311 (3) (d)'s "close proximity" requirement and this

² CPLR §1311 (3) (d) provides:

In a forfeiture action commenced by a claiming authority against a defendant, the following rebuttable presumption shall apply: all currency or negotiable instruments payable to the bearer shall be presumed to be the proceeds of a pre-conviction forfeiture crime when such currency or negotiable instruments are (i) found in close proximity to a controlled substance unlawfully possessed by the defendant in an amount sufficient to constitute a violation of section 220.18 or 220.21 of the penal law, or (ii) found in close proximity to any quantity of a controlled substance or marihuana unlawfully possessed by such defendant in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, distribute, package or otherwise prepare for sale such controlled substance or marihuana.

court was unable to conclusively determine that the currency to be forfeited was the proceeds of Green's crimes. As to his personal property, the 2/6/18 order noted that CPLR §1311 (3) (d) did not apply to personal property and the DA failed to allege any facts linking such property to the crimes in question.

In the present motion for a default judgment, plaintiff does not rely upon CPLR §1311 (3) (d) but rather submits affidavits from two detectives who investigated defendants' drug trafficking enterprise for approximately 20 months prior to their arrests. Based upon his investigation, Detective Liam McLoughlin³ avers that the following indicate that the currency and personal property in question are proceeds and/or substituted proceeds of defendants' crimes:

- the denominations of the currency recovered from Green's residence were consistent with a "king-pin level narcotics business" (specifically, of 2,073 bills recovered, 1,090 were \$100s, 704 were \$20s, 255 were 50s, etc.);
- although the exact amount of money generated by defendants' enterprise is unknown, based upon wiretapped telephone conversations wherein Green arranged sales of 200 grams of heroin over a six day period, and wherein Gonzalez told an unknown heroin purchaser that Green charged \$58 per gram, even a low estimate of the total proceeds of Green's narcotics operation would be greater than the amounts recovered;
- based upon observations of Green's daily routines during the investigation and data obtained from a GPS tracking device on his car, Green (as well as Gonzalez and Hamlet) had little to no source of income other than drug trafficking (i.e., there was nothing indicating that he was legitimately employed);

³ Detective McLoughlin was the lead detective in this investigation and is employed by the New York City Police Department (NYPD). He has been assigned to the NYPD Narcotics Bureau Manhattan North (NBMN) Major Case Squad since 1997. He has been employed by the NYPD for 26 years and has been a detective for 22 years.

- despite the amount of currency and value of the personal property recovered at his residence, Green was represented in the criminal action by counsel assigned to him pursuant to Article 18-B of the County Law, which representation is only available to indigent criminal defendants;
- as to the seized personal property, drug dealers such as Green and Gonzalez, who were at the top level of their organization's hierarchy, typically purchase such luxury items to flaunt their success; and
- Green paid \$21,000 in cash for one of the watches recovered, as evidence by a receipt found in his residence and conversations with the jeweler who sold him the watch.

Detective Juancarlo Ramos⁴ reiterates much of the foregoing and with respect to Green, adds that:

- the manner in which the currency in Green's residence was cached in bundles, and the fact that much of it was found in a cardboard shoe box, was consistent with narcotics trafficking; and
- unlike lower level drug dealers, higher level traffickers such as Green typically do not store narcotics in their homes.

As previously stated, Green opposes this motion. There is no dispute that he has defaulted in answering the complaint.⁵ In order to successfully oppose a motion for a default judgment, a defendant must demonstrate a justifiable excuse for his default and a meritorious defense. *Johnson v Deas*, 32 AD3d 253 (1st Dept 2006). Here, there is no need for this court to address whether or not Green establishes a

⁴ Detective Ramos is assigned to the Criminal Enterprise Division, Asset Forfeiture Unit of the NYPD. He has been employed by the NYPD for 22 years and has been in his current command for seven years. He states that he is a Certified Fraud Examiner and assisted the NBMN in identifying and seizing the property sought to be forfeited.

⁵ While Green designates his submission as being both opposition to the motion and a verified answer, it cannot be deemed an answer because it does not specifically admit or deny the allegations in each paragraph of the complaint. See CPLR §3018(a).

meritorious defense because he does not offer any excuse for his default. Accordingly, upon establishing its prima facie case, the DA is entitled to a default judgment against Green.

Turning to whether or not the DA has now met its prima facie burden of linking the property to be forfeited to Green's crimes, this court finds that the detailed affidavits from seasoned detectives, as summarized above, sufficiently link the currency and personal property to his crimes. Green's opposition fails to rebut this showing.

Specifically, Green denies that the currency and personal property in question are the proceeds and/or substituted proceeds of his crimes. However, rather than specifically addressing the detailed allegations contained in the detectives' affidavits, he vaguely argues that the DA lacks evidentiary proof. He further characterizes the detectives' statements as being "based upon hypothetical conclusions, and self-serving assumption" and unsupported by "any social, scientific, or criminology study that finds that 'the manner in which a person maintains his personal property, and monetary assets in his home' can be defined as being associated with illegal drug activity."

Green goes on to aver that the currency and personal property recovered from his residence, as well as the money in his bank account, were derived from settlement proceeds from two prior law-suits which exceeded \$150,000. From those funds, Green states that he "started to earn income through family investments in music promotion parties." Omitted are any supporting facts regarding such lawsuits or when the settlements were received.

Green's opposition is insufficient to rebut the DA's prima facie showing of entitlement to forfeiture. He fails to contest the detectives' estimated calculation of the

minimum amount of proceeds his criminal activities generated, or the allegations that he had no legitimate source of income, other than to vaguely refer to investments in music promotion parties. Notwithstanding his possession of a substantial amount of cash and several expensive pieces of jewelry, Green does not explain how he qualified as indigent for purposes of obtaining legal representation in the criminal proceeding pursuant to County Law Article 18-B.

While Green's opposition emphasizes that CPLR §1311 (d) (3)'s "close proximity" element is not met, plaintiff does not rely upon this presumption to establish its prima facie case. Rather, the DA meets its burden by instead relying on the unrefuted affidavits of the investigating detectives who have personal knowledge of the lengthy investigation into defendants' activities. It is therefore of no moment that the currency in question was not found in close proximity to any controlled substance. Accordingly, the DA is entitled to forfeiture of the currency and personal property sought.

Defendant Gonzalez

As to Gonzalez, the DA's renewed application for a default judgment seeks forfeiture of a Rolex wristwatch recovered from his residence at the time of his March 9, 2016 arrest.⁶ Like Green, the detectives' investigation revealed no legitimate means of

⁶ The 2/6/18 order granted the portion of plaintiff's prior motion seeking forfeiture of currency in the amount of \$56,220 from Gonzalez.

income which would allow him to purchase such a luxury item.⁷ Accordingly, forfeiture of the watch in question is granted.

Defendant Hamlet

By decision and order dated and entered on March 13, 2018 (3/13/18 order), this court denied the DA's prior motion for a default judgment against Hamlet without prejudice. As in its prior motion, plaintiff again seeks forfeiture from Hamlet of U.S. currency in the amount of \$11,198 which was recovered from Hamlet's residence at the time of his March 9, 2016 arrest.

The 3/13/18 order was predicated upon the DA's failure to establish the "close proximity" element of CPLR §1311 (d) (3). As stated above, in this motion plaintiff does not rely this statute's rebuttable presumption. As set forth in Detective McLoughlin's affidavit, the currency in question consisted of small denominations. Specifically, of 520 bills recovered, 386 were \$20s. And as with Green, surveillance found no evidence that Hamlet was employed or had any legitimate source of income. For the reasons set forth above with respect to Green, the DA's motion is granted with respect to Hamlet, and the currency in question is subject to forfeiture.

Accordingly it is

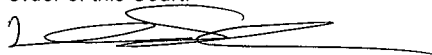
ORDERED that plaintiff's motion for a default judgment against defendants Green, Gonzalez and Hamlet is granted in its entirety.

⁷ Parenthetically, in pleading guilty to violating PL §220.77(1), Gonzalez expressly admitted generating proceeds of at least \$75,000, an element of that crime. Plaintiff would clearly be entitled to a money judgment against him for at least that amount, and would no doubt enforce any such judgment against this property in accordance with CPLR Article 52.

Plaintiff's counsel is directed to submit an appropriate judgment and order to chambers.

The foregoing constitutes the Decision and Order of this Court.

Dated: October 15, 2018
New York, New York



Hon. Martin Shulman, J.S.C.