

Brown v Rieger

2019 NY Slip Op 31013(U)

April 5, 2019

Supreme Court, Suffolk County

Docket Number: 008611/2015

Judge: James Hudson

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**Supreme Court of the County of Suffolk
State of New York - Part XL**

PRESENT:

HON. JAMES HUDSON

Acting Justice of the Supreme Court

x-----x

DENNIS M. BROWN, County Attorney for the
COUNTY OF SUFFOLK,

Plaintiff/Claiming Authority,

-against-

2007 JEEP, VIN No.1J4GL58K87W615079,
MARGOT ANITA RIEGER,

Defendant.

x-----x

INDEX NO.:008611/2015

MOT. SEQ. NO.:003-MG, CASEDISP
004-MD

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Upon the following papers numbered 1 to 21 read on this Motion/Order to Show Cause for Forfeiture; Notice of Motion/ Order to Show Cause and supporting papers 1-17; Notice of Cross Motion and supporting papers 18-21; ~~Other 9~~; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that the motion of Plaintiff/Claiming Authority ("Plaintiff") (seq. no.:003) requesting an order of summary judgment pursuant to CPLR Rule 3212, directing the entry of judgment in favor of Plaintiff and against the Defendant Margot Anita Rieger and a 2007 Jeep VIN No.:1J4GL58K87W615079 ("Defendant"), upon the grounds that the Plaintiff is entitled to judgment as a matter of law, that Defendant forfeit to the claiming authority the subject 2007 Jeep VIN No.:1J4GL59K87W615079 ("Jeep"), and that it be disposed of pursuant to the provisions of Suffolk County Code Chapter 420, is granted in its entirety; and it is further

ORDERED that the cross-motion of Defendant (seq. no.:004) requesting denial of the Plaintiff's motion for summary judgment and dismissal of the summons and complaint upon the grounds that the court lacks subject matter jurisdiction over the Jeep pursuant to CPLR

Rule 3211(a)(2),(9) and the court lacks personal jurisdiction over the person of Defendant Margot Anita Rieger pursuant to CPLR Rule 3211(a)(8) is denied in its entirety.

Subject Matter Jurisdiction - 2007 Jeep VIN No.:1J4GL59K87W615079

“Subject matter jurisdiction” speaks to the court’s competence to hear and determine subject matter in controversy during proceedings, over which the court can take cognizance (*Matter of Estate of Wiggins*, 200 AD2d 813, 606 NYS3d 423 [3d Dept 1994]). The New York State Supreme Court has jurisdiction over civil forfeiture cases (*see Dillon v. Bialostok*, 136 Misc2d 695, 519 NYS2d 186 [Cty Ct Nassau Cty 1987]). The forfeiture action is stayed until the underlying criminal case is completed CPLR §1311(1)(a). Further, there can be no forfeiture until a conviction has occurred (*Morgenthau v. Citisource*, 68 NY2d 211, 508 NYS2d 152, 500 NE2d 850 [1986]). CPLR Article 13-A provides a mechanism for the potential forfeiture of the instrumentality of a crime, which can lead to the forfeiture of a vehicle used in the commission of felonies such as felony DWI. In this regard, it is well settled that, as long as sufficient due process protections are in place, the seizure and subsequent forfeiture of a vehicle operated at the time such crime is committed is permissible (*see County of Nassau v. Canavan*, 1 NY3d 134, 138, 770 NYS2d 277, 281, 802 NE2d 616 [2003]). Forfeiture of automobiles involved in driving while intoxicated offenses is properly deemed a fine; the vehicle was the instrumentality of the charged crime, forfeiture was not disproportionate to the seriousness of the crime, and forfeiture of the car as an instrumentality of the crime was not greater in relation to the offense than other instrumentality forfeitures (*Grinberg v. Safir*, 181 Misc2d 444, 694 NYS2d 316 [Sup Ct New York Cty 1999]; *aff’d*, 266 AD2d 43, 698 NYS2d 218 [1st Dept 1999]).

On November 5th, 2014, at or around 12:28 am, the 2007 Jeep (“subject vehicle”) was operated on the public roads known as the corner of Montauk Highway and Ackerson Boulevard, Bay Shore, Suffolk County, New York. The subject vehicle was used on that date, time and location in the commission of the crime of driving while intoxicated, VTL §1192.3 which resulted in an accident causing damage to private property, striking a tree and a fence, and the Jeep being seized by the Suffolk County Police Department pursuant to Suffolk County Code Chapter 420, Article II. The Jeep was seized as the instrumentality of the noted crime. The driver of the subject vehicle was Defendant’s daughter, Denise A. Deluca. Ms. Deluca was previously convicted of DWI pursuant to VTL §1192.2 on August 5th, 2010, causing the 2014 DWI to be a felony charge. It is the practice in Suffolk County, New York to seize the vehicle involved in such a crime as forfeit.

Defendant, in her cross-motion (seq. no.:004) mistakenly relies upon the fact that the subject vehicle is now outside the territorial jurisdiction of the State of New York as her basis for contending the Court lacks subject matter jurisdiction over the 2007 Jeep. Same vehicle

was released to Defendant on December 5th, 2014 at a post-seizure retention hearing. At that time the 2007 Jeep, which was the instrumentality of a crime committed within Suffolk County, New York, was impounded by Suffolk County and held in Suffolk County. The neutral magistrate ordered the temporary return of the Jeep to Defendant with conditions until resolution of the instant civil forfeiture proceeding. Suffolk County has not relinquished jurisdiction or control over the 2007 Jeep. Suffolk County has merely set conditions under which Defendant can operate said vehicle pending the outcome of the related criminal prosecution.

On November 5th, 2014, Denise A. Deluca, operated the subject vehicle at the noted time and place alleged by the criminal information/indictment. On November 5th, 2015, Ms. Deluca was convicted of Felony Driving While Intoxicated in violation of VTL §1192.3.

Defendant contends that the subject vehicle does not belong to Ms. Deluca, being titled to Defendant Margot Anita Rieger. It is uncontroverted that Ms. Deluca is Defendant's daughter. It is noted that Suffolk County Code Chapter 420, Article II §420-7(G) provides that the property of a non-criminal defendant may be forfeited where the non-criminal defendant "engaged in affirmative acts which aided, abetted or facilitated the conduct of the criminal defendant." At the December 5th, 2014 post retention hearing, Magistrate Tschiember determined that Ms. Rieger facilitated the use of the subject 2007 Jeep by her daughter, Denise A. Deluca. Ms. Deluca has been found guilty of a crime in which the subject vehicle was a criminal instrumentality. That vehicle, the noted 2007 Jeep, was used in the commission of a crime in New York. It is irrelevant as to where the Defendant has geographically relocated that subject vehicle during her period of temporary custody and use pending the outcome of the case.

The Court has subject matter jurisdiction over the 2007 Jeep. That portion of Defendant's cross-motion (seq. 004) which contends otherwise pursuant to CPLR Rule 3211(a)(2) and (9) is denied.

Personal Jurisdiction - Defendant Margot Anita Rieger

Defendant Margot Anita Rieger conferred personal jurisdiction to the Court by her appearance in the instant case in Suffolk County, New York (*see National Loan Investors, L.P. v. Piscitello*, 21 AD3d 537, 801 NYS2d 331 [2d Dept 2005]). Defendant has also filed an answer in the case.

The appearance by Defendant before Magistrate Tschiember and Defendant's filed answer constitute her waiver of any claim that the Court lacked personal jurisdiction over her (*see Ohio Sav. Bank v. Munsey*, 34 AD3d 659, 826 NYS2d 321 [2d Dept 2006]).

The argument of Defendant in her instant cross-motion (seq. no.:004) that the Court lacks personal jurisdiction over her and for that reason the matter should be dismissed pursuant to CPLR Rule 3211(a)(8), CPLR §306, CPLR §314 is without merit in fact or law and is denied.

Plaintiff's Motion for Summary Judgment (Seq. No.:003)

It has been established that a motion for summary judgment is an extreme request for relief: "summary judgment is a drastic remedy and should not be granted where there is any doubt of a triable issue" (*Moskowitz v. Garlock*, 23 AD2d 943, 259 NYS2d 1003 [3d Dept 1965]). The granting of a summary judgment motion is the "procedural equivalent of a trial" (*Crowley's Milk Co. v. Klein*, 24 AD2d 920, 264 NYS2d 680 [3d Dept 1965]). "...a party does not carry its burden in moving for summary judgment by pointing to gaps in its opponent's proof, but must affirmatively demonstrate the merit of its claim or defense" (*Red River Living Center, LLC v. ADL Data Systems, Inc.*, 98 AD3d 724, 725-726, 950 NYS2d 179, 181 [2d Dept 2012]). When a party seeks summary judgment it must affirmatively establish its entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact (*see Voss v. Netherlands Insurance Co.*, 22 NY3d 728, 985 NYS2d 448, 8 NE3d 828 [2014]; *Vega v. Restani Construction Corp.*, 18 NY3d 499, 942 NYS2d 13, 965 NE2d 240 [2012]; *Yun Tung Chow v. Reckitt & Coleman, Inc.*, 17 NY3d 29, 926 NYS2d 377, 950 NE2d 113 [2011]).

In the case at bar, it is uncontroverted that the Defendant is the owner of the subject 2007 Jeep and that the Defendant left same with her daughter, Denise A. Deluca at Ms. Deluca's residence for approximately eight (8) years and provided Ms. Deluca with a set of keys to the 2007 Jeep. Defendant has admitted knowledge of Ms. Deluca's prior NYS convictions for alcohol related driving offenses. Magistrate Tschiember, conducting the post seizure due process hearing, found Defendant's testimony that she had not provided the 2007 Jeep to her daughter for Ms. Deluca's use to be incredible. Additionally, Magistrate Tschiember found that Defendant's testimony of "surviving on social security" while being able to afford, insure and maintain two (2) vehicles (Defendant's 2006 Mercury Marquis and the subject 2007 Jeep) to be financially unsupportable.

Further testimony by Defendant at that 2014 seizure hearing led to disclosure by Defendant that she is driven by another person when she visits Ms. Deluca in Bay Shore, and that Defendant only drives short distances. Defendant, when questioned by the Court in that hearing as to whether Ms. Deluca was permitted to use the 2007 Jeep, responded evasively "not really" and then failed to elaborate. The Court surmised that Defendant insured the car in Defendant's name because Ms. Deluca, with prior DWI conviction, would find car insurance in her own name to be unaffordable.

Magistrate Tschember concluded by stating: "Now, the County may still want to go after that car...". Defendant is clearly aware that the return of the subject 2007 Jeep to Defendant was temporary.

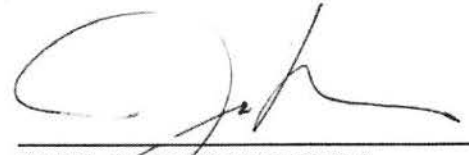
The Court has examined the affirmative defenses which Defendant has asserted in her answer in this case. The Court finds no merit in the stated affirmative defenses. Suffolk County has not failed to join necessary defendants in this case. The Court has established personal jurisdiction over the Defendant. Suffolk County has met its burden of demonstrating that there are no triable issues of fact to support denial of summary judgment to the Plaintiff/Claiming Authority.

The relief requested by Plaintiff in its motion for summary judgment (seq. no.:003) is granted in its entirety.

The proposed Order and Judgment will be signed simultaneously with this Decision.

The foregoing decision constitutes the Order of the Court.

DATED: APRIL 5th, 2019
RIVERHEAD, NY



HON. JAMES HUDSON
Acting Justice of the Supreme Court