

Brown v 2012 Jeep Vin No. 1C4NJRFB4CD698142

2019 NY Slip Op 31471(U)

May 21, 2019

Supreme Court, Suffolk County

Docket Number: 008453/2015

Judge: James Hudson

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.

Short Form Order

COPY

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-

a 2012 JEEP VIN NO. 1C4NJRFB4CD698142;
JENNIFER L. NELSON,

Defendant.

x-----x

INDEX NO.:008453/2015

MOT. SEQ. NO.:002-MG; CASEDISP
003-MD

DENNIS M. BROWN
Suffolk County Attorney
Plaintiff/Claiming Authority
100 Veterans Memorial Highway
P.O. Box 6100
Hauppauge, NY 11788

LAW OFFICES OF ROBERT A. FLINK, ESQ.
Attorneys for Defendant Jennifer L. Nelson
1 Linden Street
Lindenhurst, NY 11757

Upon the following papers numbered 1 to 28 read on this motion for; Notice of Motion/ Order to Show Cause and supporting papers for Summary Judgment 1-10; Notice of Cross Motion and supporting papers to Renew and Reargue 11-26; Answering Affidavits and supporting papers 27-28; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion of Defendant Jennifer L. Nelson (“Defendant”) (seq. no.:002) requesting an order granting summary judgment to Defendant pursuant to CPLR Rule 3212; dismissing the complaint of Plaintiff/Claiming Authority is granted in its entirety; and it is further

ORDERED that the cross-motion of Plaintiff/Claiming Authority (seq. no.:003) requesting renewal of a request pursuant to CPLR §2221(e) on the basis of new evidence heretofore unavailable to Plaintiff/Claiming Authority for an order of summary judgment in its favor and against Defendant Jennifer L. Nelson pursuant to CPLR Rule 3212 that Plaintiff is entitled to judgment as a matter of law pursuant to Suffolk County Code Article II of Chapter 420 awarding civil forfeiture to the Plaintiff/Claiming Authority of the subject 2012 Jeep motor vehicle, VIN No. 1C4NJRFB4CD698142 (“Jeep”), is denied in its entirety.

Defendant moves (seq. no.:002) for an order of summary judgment against Plaintiff/Claiming Authority and dismissing Plaintiff/claiming Authority's complaint seeking forfeiture of the subject 2012 Jeep from Defendant.

Plaintiff/Claiming Authority ("Plaintiff") cross-moves (seq. no.:003) herein for renewal (CPLR §2221[e] , of its motion (seq. no.:001)for an order of summary judgment against Defendant and forfeiture of the subject vehicle, one noted 2012 Jeep. Plaintiff contends that the basis for its instant cross-motion is additional evidence acquired through discovery subsequent to the denial of its prior motion (seq. no.:001) which requested identical relief. Plaintiff's prior motion (seq. no.:001) was previously denied by the Court on July 7th, 2016.

Defendant's Cross-Motion for Renewal Pursuant to CPLR §2221(e) (Mot. Seq. No.:003)

Plaintiff, in its Complaint, alleges that Defendant has violated Suffolk County Code Article II, Chapter 420-7(G), in that Defendant has acted as a non-criminal facilitator of one Jane Nelson. Plaintiff alleges that Defendant Jennifer L. Nelson engaged in affirmative acts which aided, abetted, or facilitated Jane Nelson in committing the criminal offense of VTL §1192, Driving While Intoxicated as a Felony. On July 7th, 2016 the Court, denied of Plaintiff's prior summary judgment motion (seq. no.:001) that no issue of material fact existed that Defendant had so aided, abetted, or facilitated Jane Nelson in the commission of her Felony DWI. It is noted that the instrumentality of that crime is the subject 2012 Jeep.

Plaintiff now cross-moves (seq. no.:003) to renew that summary judgment motion pursuant to CPLR §2221(e).

The statute relied upon by Plaintiff in its instant cross-motion requires:

- “(e) A motion for leave to renew:
1. shall be identified as such;
 2. shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and
 3. shall contain reasonable justification for the failure to present such facts on the prior motion...” McKinney's CPLR §2221(e) [2019].

Plaintiff, in its instant cross-motion does not allege a change in the law to support renewal (*Dinallo v. DAL Electric*, 60 AD3d 620, 874 NYS2d 246 [2d Dept 2009]).

The “new facts” offered by Plaintiff consists of deposition testimony (Examination Before Trial (“EBT”), of Defendant which occurred on September 29th, 2016. Plaintiff cites to and quotes from that EBT testimony in its cross-motion. In sum, Plaintiff offers statements made by Defendant in that EBT, in which Defendant states that she purchased the subject 2012 Jeep with funds from herself and her mother (Jane Nelson), that she and her mother resided in the same house in separate units during times pertinent to the case, that Defendant has another vehicle, and that both Defendant and Jane Nelson have keys to operate the subject Jeep. Further, Defendant states that she was aware that her mother had Defendant’s permission to “use the car [Jeep] in support of her daily activities which included going to her rehabilitation groups, AA meetings, whichever it was, as well as daily functions of life like errands, supermarket and that was the sole use of the car for her...” (cross-motion paragraph 15, quoting portions of 9/29/16 EBT testimony of Jennifer L. Nelson). Defendant further testified that she last observed her mother drink an alcoholic beverage “years ago,”... “over five years ago, over seven possibly.”

The Court notes that in its prior decision (seq. no.:001), it was noted that Defendant had conceded knowledge of her mother’s prior intoxication in the February 20th, 2015 preliminary forfeiture hearing before the Hon. Peter Dounias. Defendant in that hearing also admitted knowledge of her mother’s prior conviction for an alcohol-related offense.

Plaintiff offers nothing in its cross-motion that it did not already know and allege in its prior motion (seq. no.:001) for summary judgment relief. The sole distinction is that following the Court denying Plaintiff summary judgment on July 7th, 2016, the Defendant in her September 29th, 2016 repeated statements already known to Plaintiff and used by Plaintiff in its prior (seq. no.:001) summary judgment motion. No new evidence was garnered by that quoted EBT testimony nor offered by Plaintiff in its instant cross-motion (seq. no.:003), beyond that which was previously known, considered by the Court and found to be insufficient as a basis for Plaintiff’s request for summary judgment against Defendant. The fact that the same information which was previously known to Plaintiff and the Court was repeated to Plaintiff during an EBT two weeks after the prior denial (seq. no.:001) of Plaintiff’s first request for summary judgment fails to rise to the level of new facts that would change the prior determination.

The Second Department has consistently ruled that “the Supreme Court lacks discretion to grant renewal where the moving party omits a reasonable justification for failing to present the new facts on the original motion” (*Sobin v. Tylutki*, 59 AD3d 701, 873 NYS2d 743 [2d Dept 2009]; citing *Worrell v. Parkway Estates, LLC*, 43 AD3d 436, 437, 840 NYS2d 817, 818 [2d Dept 2007]).

In the case at bar, the Court is presented with the same facts as in the previous motion (seq. no.:001). The sole justification for the cross-motion (seq. no.:003) is that the same facts that were presented and considered during motion seq. no.: 001 were elicited two weeks after the denial of Plaintiff's motion seq. no.: 001 and are now repeated in Plaintiff's cross-motion seq. no.: 003. Plaintiff has failed to meet its burden in its cross-motion (seq. no.:003). The Court gave careful consideration to the law and facts presented by Plaintiff in its prior motion for summary judgment (seq. no.:001) and denied that request. The Court sees no reason to repeat its prior decision herein. Plaintiff's request to renew its motion for summary judgment pursuant to CPLR §2221(e) and CPLR Rule 3212 in the instant cross-motion (seq. no.:003) is denied.

Defendant's Motion for Summary Judgment Pursuant to CPLR Rule 3212 (Mot. 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, the statute under which provisions Plaintiff has charged the Defendant provides that:

"No property shall be forfeited under this article unless the claiming authority produces clear and convincing evidence that the noncriminal defendant engaged in affirmative acts which aided, abetted or facilitated the conduct of the criminal defendant" (*Suffolk County Code Article II Chapter 420(G)* [2019]).

Plaintiff has failed to prove that no issue of material fact exists to deny Plaintiff summary judgment.


Defendant has affirmatively demonstrated the merits of her defense, that Defendant did not aid, abet, or facilitate the criminal conduct of Jane Nelson by affording her access to Defendant's 2012 Jeep. Defendant has testified in support of her nonculpability that Defendant knew her mother, Jane Nelson to have avoided the consumption of alcohol for a period of years and that her mother was a member of Alcoholics Anonymous and in support groups/treatment. Defendant has asserted that she knew that her mother used the Jeep for limited local travel to accomplish the necessities of daily living. Plaintiff has offered nothing in evidence to prove by clear and convincing evidence that Defendant's contentions are false, nor that Defendant aided, abetted or facilitated the criminal conduct of Jane Nelson. Defendant has demonstrated that no material issue of fact exists to deny Defendant summary judgment against Plaintiff.

The relief requested by Defendant Jennifer L. Nelson in her motion-in-chief (seq. no.:002) is granted in its entirety.

Upon receipt and filing of Notice of Entry of this Order by Defendant, Plaintiff/Claiming Authority will immediately release the subject 2012 Jeep motor vehicle, VIN No. 1C4NJRFB4CD698142 to Jennifer L. Nelson, Titled and Registered owner, and have no further claim nor recourse against said vehicle as the result of this action.

The foregoing constitutes the Order of this Court.

DATED: May 21st, 2019
RIVERHEAD, NY



HON. JAMES HUDSON
Acting Justice of the Supreme Court