

<b>Brown v A 2016 Ford, VIN No. 1FT7W2B63GEB37313</b>
2020 NY Slip Op 31965(U)
June 18, 2020
Supreme Court, Suffolk County
Docket Number: 03291/2017
Judge: William G. Ford
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SHORT FORM ORDER

INDEX NO.: 03291-2017

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 38 - SUFFOLK COUNTY

**PRESENT:**

HON. WILLIAM G. FORD  
JUSTICE of the SUPREME COURT

Motion Date: 09-11-20  
Motion Adjourn Date: 6/11/20  
Motion Seq #: 001 - MD  
002 - MG

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

Plaintiff,

-against-

a 2016 FORD, VIN NO. 1FT7W2B63GEB37313,  
BABST INC.,

-and-

TD AUTO FINANCE LLC, a lienholder and  
potential claimant with an interest in the vehicle,

Defendants.

**PLAINTIFF'S ATTORNEY:**  
DENNIS M. BROWN, COUNTY ATTORNEY  
By: Jeffrey Dayton, ACA  
100 Veterans Memorial Highway  
PO Box 6100  
Hauppauge, NY 11788

**DEFENDANTS' ATTORNEY:** Babst Inc  
ROBERT FLINK, ESQ.  
One Linden Street  
Lindenhurst, NY 11757

TD Auto Finance LLC  
RUDOLPH J. MEOLA, ESQ.  
1822 Western Avenue  
Albany, NY 12203

Read on this motion (Seq 1) seeking summary judgment pursuant to CPLR 3212 Affirmation of Jeffery Dayton Esq and exhibits; and the Cross-motion (Seq2) seeking summary judgment, the Affirmation of Rudy Meola Esq and exhibits; and the Cross motion (Seq 2) seeking summary judgment, of Robert Flink Esq and exhibits; it is

**ORDERED** that the motions and cross-motions are consolidated for the purpose of determination; and it is further

**ORDERED** that, if applicable, within 30 days of the entry of this decision and order, that defendant TD Auto Finance LLC's counsel is also hereby directed to give notice to the Suffolk County Clerk as required by CPLR 8019(c) with a copy of this decision and order and pay any fees should any be required; and it is further

**ORDERED** that the motion(s) is determined as outlined below.

**BACKGROUND**

The instant action is an *in rem* proceeding seeking civil forfeiture of a motor vehicle pursuant to Section 270-26 of the Suffolk County Code. Plaintiff Suffolk County as Claiming authority, seeks an

order granting summary judgment and extinguishing the claims of BABST Inc, the registered owner of the vehicle , and TD Auto Finance LLC (hereinafter "TD" )holder of a first priority security interest and lien. BABST Inc, and TD Auto Finance LLC both cross- move for summary judgment.

On February 25, 2017 Christopher M. Babst was arrested for a violation of VTL 1192.3 as an E felony having been convicted of a violation of VTL 1192.2 within the prior ten years. He was charged after being observed operating the subject vehicle at 9:42 PM northbound on a one-way southbound street in Patchogue, NY. Thereafter the vehicle was seized pursuant to Suffolk County Code Chapter 420. A post- seizure hearing was held at which defendant TD did not appear. The plaintiff County and BABST appearing by Ms. Jennifer Weiss, president of the Company and the fiancé of the non-party criminal defendant Christopher Babst, entered into a stipulation agreeing to the installation of an ignition interlock device in the subject vehicle and release of the vehicle to BABST INC . At the hearing Ms. Weiss testified that Mr. Babst was a vice-president of the company, and while it was her understanding that he did have permission as a corporate officer to operate the vehicle for company business, she denied that he was authorized to operate it for personal use. Her counsel at the hearing acknowledged Mr. Babst's personal use of the vehicle.

#### **STANDARD OF REVIEW**

Suffolk County Administrative Code 420-7 states

- E. A civil action may also be commenced against a noncriminal defendant to recover the property which constitutes the proceeds of an offense, the substituted proceeds of an offense, or an instrumentality of an offense, subject to the same exceptions contained in Subsections A and B of this section.
- F. All actions commenced under this article shall be governed by the procedures enumerated in Article 13-A of the New York Civil Practice Law and Rules, where not specifically outlined herein.
- G. 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. The noncriminal defendant must take all prudent steps to prevent the illegal use of his or her property, and willful disregard by the owner or lienholder of the acts giving rise to forfeiture shall not constitute a defense to such forfeiture.

#### **DISCUSSION**

##### **Claim as to TD Auto Finance**

TD claims that as a secured creditor, and non- criminal defendant in this in rem proceeding, it has established both its status as a secured creditor and as a non criminal defendant and its entitlement to summary judgment.

A creditor seeking to perfect a security interest in a motor vehicle need not resort to the filing requirements of Article 9 of the Uniform Commercial Code. States have enacted motor vehicle acts that require certificates of title to denote ownership and security interests in motor vehicles.

Generally, a creditor must have its lien noted on the certificate of title to perfect a security interest in a motor vehicle. Thus, the certificate of title serves the same purpose as a financing statement under Article 9, namely, to give notice of a party's interest, but not necessarily the extent or type of interest.

Here, TD has established that it is a secured creditor, by virtue of the retail installment contract.

Courts have concluded that state motor vehicle acts may be read in light of UCC § 9-402(8).5 Therefore, “[a]bsolute compliance with the requirements of the Certificate of Title Acts is not necessary to perfect a security interest in a vehicle.” *In re Circus Time*, 641 F.2d 39 at 42. Rather, substantial compliance is sufficient to perfect a security interest. A security interest is perfected when a certificate of title gives clear notice to potential creditors about the existence of a lien on the motor vehicle. See, *In re Load-It, Inc.*, 744 F. 2d 1077.

TD claims that as a non-criminal defendant, the plaintiff County must show *prima facie* that TD engaged in some affirmative acts that aided, abetted or facilitated the acts of the criminal defendant.

Pursuant to SCC § 420-7 (E), the County may commence a civil action against a noncriminal defendant to recover property which constitutes the proceeds of an offense, the substituted proceeds of an offense, or the instrumentality of an offense, as those terms are defined in SCC § 420-5.

For the County to “establish its case in any action commenced under [article II], the County shall demonstrate, by clear and convincing evidence, that the property in question is subject to forfeiture at the time of commission of the offense . . . which precipitated the seizure or the commencement of an action for the seizure of the property without regard to the final determination of any criminal actions brought against the individual for such offense” (SCC § 420-7 [J] [emphasis added]).

As for noncriminal defendants, the Code states, “No property shall be forfeited under [SCC chapter 420] unless the [County] produces clear and convincing evidence that the noncriminal defendant engaged in affirmative acts which aided, abetted or facilitated the conduct of the criminal defendant” (SCC § 420-7 [G] [emphasis added]). In this regard, the “noncriminal defendant must take all prudent steps to prevent the illegal use of his or her property, and willful disregard by the owner or lienholder of the acts giving rise to forfeiture shall not constitute a defense to such forfeiture” (SCC § 420-7 [G]).

Once the County has met its burden of proof by clear and convincing evidence, the “noncriminal defendant shall then have the burden of proving a lack of knowledge or lack of consent on behalf of said noncriminal defendant sufficient to constitute a defense to such forfeiture” (SCC § 420-7 [J]). Here, the County has failed to submit any evidence (much less clear and convincing evidence) that the noncriminal defendant, TD Auto Finance LLC “engaged in affirmative acts which aided, abetted or facilitated the conduct of the criminal [nonparty] defendant,”

Here, the County has not alleged any acts on the part of TD that meet the statutory threshold, and accordingly this court finds that the County has failed to carry its *prima facie* burden as to TD for

Cty of Suffolk v 2016 Ford, Babst et al

Index Number: 03291-17

Page 4

summary judgment and has failed to raise a question of fact in opposition to the cross motion of TD.

### **Claim as to BABST**

As to BABST, TD claims that BABST has breached the security agreement between the parties. Specifically, TD claims breach of paragraph 2. Your other promises to us” Sub b. “Using the Vehicle”: states that the vehicle may not be exposed to misuse, seizure, confiscation, or involuntary transfer”. Babst in opposition is silent as to any breach of the agreement, by the fact of this proceeding, which is against the subject vehicle, and seeks seizure of it TD has met its prima facie burden.

Babst argues that the County has failed to meet its *prima facie* burden for summary judgment as against Babst, and that Babst did not facilitate the actions of the criminal defendant. Babst is silent as to the claim of TD and does not address either the priority of TD’s security interest or any rights TD might have as a secured creditor. More important, BABST does not contest the claim of TD that it is in breach of the Retail Installment Agreement.

Generally, where a defendant has defaulted in appearing or answering a complaint, he or she will be “deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Mortgage Elec. Registration Sys., Inc. v. Smith*, 111 AD3d 804, 806, 975 NYS2d 121 [citations and internal quotation marks omitted]; *Boudine v Goldmaker, Inc.*, 130 AD3d 553, 554, 14 NYS3d 405, 407 [2d Dept 2015]).

### **CONCLUSION**

Based upon a review of the motion papers the Court concludes that the defendant TD Auto Finance has established its entitlement to summary judgment . In addition, defendant TD Auto Finance LLC has made a prima facie showing of its entitlement to judgment as a matter of law to extinguish the claim of BABST in the subject vehicle, and established TD’s entitlement for the release of the subject vehicle. The plaintiff has failed to proffer clear and convincing evidence that the noncriminal defendant engaged in affirmative acts which aided, abetted or facilitated the conduct of the criminal defendant. Moreover, defendant BABST INC has failed to raise a question of fact as against TD. Therefore the motion by defendant TD Auto Finance LLC for summary judgment is granted; and it is further

**ORDERED** that defendant TD Auto Finance LLC’s motion for a default as to BABST is granted; and it is further

**ORDERED** that the motion of the plaintiff County is denied in all respects; and it is further

**ORDERED** that the motion of BABST INC., is denied in all respects; and it is further

**ORDERED** that counsel for defendant TD Auto Finance is hereby directed to serve a copy of this decision and order with Notice of Entry on all parties forthwith; and it is further

**Cty of Suffolk v 2016 Ford, Babst et al**  
**Index Number: 03291-17**  
**Page 5**

**ORDERED** that the plaintiff is directed to return possession of the subject vehicle to TD Auto Finance within 45 days of receipt of this order with notice of entry.

The foregoing constitutes the Decision and Order of this Court.

Dated: June 18, 2020  
Riverhead, New York



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**WILLIAM G. FORD, J.S.C.**

  **X**   **FINAL DISPOSITION**

\_\_\_\_ **NON-FINAL DISPOSITION**