

Rodriguez v Castano
2022 NY Slip Op 34054(U)
November 28, 2022
Supreme Court, New York County
Docket Number: Index No. 156458/2022
Judge: Dakota D. Ramseur
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAKOTA D. RAMSEUR PART **34M**

Justice

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JUNIL RODRIGUEZ

Plaintiff,

- v -

JASON CASTANO,

Defendant.

-----X

INDEX NO. 156458/2022
MOTION DATE 09/16/2022
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 were read on this motion to/for ORDER OF SEIZURE.

Plaintiff commenced this action for replevin seeking the alleged return of her dog, Kilo, from defendant, plaintiff's then live-in boyfriend. Plaintiff now moves pursuant to CPLR 7102 for an order of seizure of Kilo for the pendency of this action. The motion is opposed. For the following reasons, plaintiff's motion is granted in part.

According to plaintiff, her and defendant began dating in 2018 and moved in together in February 2020. Plaintiff alleges she purchased Kilo, a Yellow Miniature Australian Sheppard on June 27, 2020. On August 14, 2021, the parties got into a physical altercation, resulting in the parties' obtaining orders of protection against each other. As a result of the order of protection, plaintiff was required to leave the apartment she shared with defendant. According to plaintiff, she relocated to an apartment that did not allow dogs. Thus, plaintiff claims she had to leave the dog at the apartment with defendant. The charges against both parties were dismissed on September 23, 2021. In December 2021 the parties recommenced their romantic relationship, at which time plaintiff came into possession of Kilo for the first time since vacating the property. On July 22, 2022, the parties separated again, and on July 27, 2022, defendant vacated the shared apartment with Kilo.

In support of her motion, plaintiff argues that she has a superior right of possession of Kilo. According to plaintiff, she purchased Kilo for \$1,200. Plaintiff further alleges that she is the sole registered owner on Kilo's microchip, on his New York City license, on the service animal certificate, and as listed on Kilo's veterinary records. Plaintiff further contends that she would benefit by having Kilo as her emotional support dog. Plaintiff states that she was diagnosed with depressive disorder, generalized anxiety disorder, and post-traumatic stress disorder, and that Kilo provided her with emotional support. To this end, plaintiff submits the November 27, 2020 letter from Dr. Blanca Iris Santana, PhD, MS, LCSWR, wherein Dr. Santana recommended that plaintiff "[t]ake the steps necessary to establish your rights and continue to use an emotional support animal as we explore and address the root causes of your diagnosis"

(NYSCEF doc. no. 13). Plaintiff further argues that defendant lacks any valid defenses. Specifically, plaintiff contends that she did not abandon Kilo or otherwise signal to defendant that she was relinquishing ownership of Kilo to defendant. Plaintiff also requests that the court include a provision in permitting the New York City Sheriff to “break open, enter [defendant’s apartment] and search for Kilo” (NYSCEF doc. no. 11, mem in support).

In opposition, defendant argues that he has a superior right to possession of Kilo in that it is best for all that Kilo remain with defendant. Defendant argues that they owned Kilo together until the parties ended their relationship in August 2021. Defendant contends that he cared for Kilo from September 23, 2021 through this action. Defendant further contends that plaintiff gave up her rights to Kilo by leaving the dog with defendant after the parties separated. Defendant also argues that plaintiff’s claim that she suffers from mental disorder is misleading, to the extent that she never treated with Dr. Santana. Defendant further argues that plaintiff only obtained the certificate certifying Kilo as an emotional support dog so plaintiff could bring Kilo into establishments where dogs are usually not permitted.

“An order of seizure is not a final disposition of a matter but is a pendente lite order made in the context of a pending action where the movant has established, prima facie, a superior right in the chattel” (*Americredit Fin. Servs., Inc. v Decoteau*, 103 AD3d 761, 762 [2d Dept 2013]). On a motion for an order of seizure, a plaintiff must demonstrate a likelihood of success on its cause of action for replevin and the absence of a valid defense to its claim (*see* CPLR 7102[c], [d]; *Siemens Med. Solutions USA, Inc. v Magnetic Resonance Imaging Assoc. of Queens, P.C.*, 100 AD3d 620, 621 [2d Dept 2012]; *Great Am. Ins. Co. v Auto Mkt. of Jamaica, N.Y.*, 133 AD3d 631, 631–632 [2d Dept 2015]). “To state a cause of action for replevin, a plaintiff must establish a superior possessory right to property in a defendant’s possession” (*Reif v Nagy*, 175 AD3d 107, 120 [1st Dept 2019]).

Under New York Law, domestic pets have been viewed as personal property, or chattel (*Schrage v Hatzlacha Cab Corp.*, 13 AD3d 150 [1st Dept 2004] [pets are treated as personal property under New York Law]; *Travis v Murray*, 42 Misc 3d 447, 452 [Sup Ct, New York County 2013]).

However, New York courts have developed a separate analysis for determining “superior right to possessory interest” where a domestic pet is the personal property at issue. In *Raymond v Lachmann* (264 AD2d 340 [1st Dept 1999]), the court, taking into consideration “[t]he cherished status accorded to pets in our society, the strong emotions engendered by disputes of this nature, and the limited ability of the courts to resolve them satisfactorily,” applied a “best for all concerned” analysis in determining the ownership of a ten-year-old cat. In *Travis v Murray*, a matrimonial dispute, the court refined the “best for all concerned” analysis, by taking “[i]nto consideration, and [giving] paramount importance to, the intangible, highly subjective factors that are called into play when a cherished pet is the property at issue” (*Travis*, 42 Misc 3d at 455). This approach takes into consideration “[i]ntangible factors such as why each party would benefit from having the dog in his or her life and why the dog has a better chance of prospering, loving and being loved in the care of one party or the other” and which party is in the best position to meet the dog’s daily physical and emotional needs (*Mitchell v Snider*, 51 Misc 3d 1229[A] [Civ Ct, New York County 2016]).

Here, the court finds that plaintiff is entitled to a preliminary order entitling her to possession of Kilo for the pendency of this action under either standard. Initially, it is clear from the documents submitted to the court that plaintiff is Kilo's owner, to wit, proof that plaintiff paid for Kilo and that Kilo was shipped to plaintiff. Plaintiff also submits documentation suggesting that plaintiff has superior possessory right to Kilo, including that plaintiff is listed as a client on Kilo's veterinary records, a microchip proof of ownership listing plaintiff as the account holder, Kilo's November 7, 2020 "service animal . . . certificate of registration" listing plaintiff as his owner, and the "New York City license" approval listing plaintiff as the owner (*Caputo v Assante*, 42 Misc 3d 133[A], 2014 NY Slip Op 50054[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2014] [finding that plaintiff's submission, including veterinarian's bills all addressed to plaintiff and listing plaintiff as client, a microchip proof of ownership card listing plaintiff's name, and her testimony that she, rather than defendant, was the owner, constituted sufficient evidence to support the finding that plaintiff proved a superior possessory right to the dog]).

Plaintiff also demonstrates her likelihood of success on the merits when applying the "best for all concerned" test. Considering the above proof of purchase and related undertakings by plaintiff on behalf of Kilo, plaintiff is active in Kilo's life and concerned with Kilo's well-being. Plaintiff also demonstrates her ability to care for Kilo's physical and emotional needs by demonstrating that she would normally spend time with Kilo for several hours during the day, which defendant does not refute (NYSCEF doc. no. 12, pla aff at ¶ 25). Moreover, in light of plaintiff's diagnosis and Dr. Santana's recommendation that plaintiff continue to utilize Kilo as plaintiff's emotional support dog, plaintiff benefits from Kilo as her emotional support dog.

To the extent defendant argues that plaintiff abandoned Kilo, "[a]bandonment is not a defense" to plaintiff's claim for replevin (*LeConte v Lee*, 35 Misc 3d 286, 288 [Civ Ct, New York County 2011] [finding that the limited abandonment of the chattel, a two year old dog named Bubkas, is not a valid defense in the context of a motion to determine the superior possessory right to chattel], citing *Valenza v Valenza*, 67 AD2d 879 [1st Dept 1979]). Defendant does not cite to any caselaw supporting his argument that plaintiff relinquished her possessory rights as to Kilo or otherwise claim that plaintiff affirmatively relinquished her rights as to Kilo to defendant. Moreover, defendant does not dispute that plaintiff attempted to contact him after the restraining order was dismissed, to no avail. Further, the parties do not dispute that plaintiff was required to vacate the apartment where the parties resided as a result of the cross-restraining orders between them and that plaintiff was prohibited from contacting defendant, making it nearly impossible for plaintiff to contact defendant until the protective orders were dismissed. Thus, there is no basis to conclude that plaintiff abandoned Kilo or otherwise relinquished her possessory interest in Kilo. In light of the above, plaintiff also establishes that defendant lacks a valid defense to plaintiff's claim for replevin.

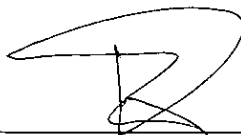
Accordingly, it is hereby

ORDERED that plaintiff's motion is granted to the extent that plaintiff is granted possession of Kilo pending the determination of this action; and it is further

ORDERED that, within fourteen (14) days, the parties shall meet and confer concerning the transfer of Kilo from defendant to plaintiff. In the event the parties are unable to form an agreement, the parties shall email the court indicating as much within three (3) days thereafter (dpalmisa@nycourts.gov); and it is further

ORDERED that the parties shall appear for a preliminary conference and to address any outstanding motions on January 24, 2023 at 11:00 a.m.

This constitutes the decision and order of the Court.



<u>11/28/2022</u>			<u>DAKOTA D. RAMSEUR, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE