

City of New York v Jones

2023 NY Slip Op 31105(U)

April 5, 2023

Supreme Court, New York County

Docket Number: Index No. 450209/2021

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NICHOLAS W. MOYNE PART 52

Justice

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THE CITY OF NEW YORK,

Plaintiff,

- v -

THOMAS STEVENSON JONES, WEED WORLD,
INC., JANE DOE(S) 1-5

Defendant.

-----X

INDEX NO. 450209/2021

MOTION DATE 06/10/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is

The City has moved for summary judgment in this civil forfeiture proceeding. For the reasons set forth below, the motion is denied.

On December 29, 2020, the New York City Department of Health and Mental Hygiene (the "Health Department") filed a petition to retain the vehicles that were seized as a result of the Health Department's issuance of summonses for vending without a license or permit and selling items without the required labeling on December 22, 2020. *See* Dkt. 19 5. Plaintiff commenced this action against Defendants with the filing of a Summons and Verified Complaint (the "Complaint") on January 29, 2021, seeking forfeiture of the vehicle that was issued civil summonses for violations of the New York City Health Code and New York City Administrative Code pending in the New York City Office of Administrative Trials and Hearings ("OATH"). *See* Dkt. 1-2. 6. Defendants served their Answer to the Complaint on or about December 2, 2021. *See* Dkt 6. 7. Following eighteen (18) settlement conferences, on June 9, 2022, the case at

OATH proceeded to trial to determine whether the Department had grounds to retain the vehicles that were seized pending the civil forfeiture action. On June 30, 2022, OATH ALJ Faye Lewis found that the Department was not entitled to retain the vehicles and ordered that they be released.

In this proceeding, the City seeks civil forfeiture of Defendants' vehicle (the "subject vehicle") in connection with civil summons issued for violations of City health code regulations. The defendants argue that this is an extraordinary and highly unusual remedy that the Court should not sanction without a full evidentiary hearing. They maintain that this is the first and only time that the New York City Department of Health and Mental Hygiene has sought seizure and forfeiture of a vehicle predicated on a civil summons for unlawful vending. In the past, seizures and forfeitures have only been effectuated by the New York City Police Department ("NYPD") and not the Health Department. The defendants also maintain that seizing a vehicle worth approximately \$40,000 based on fines in the amount of \$2,600 is excessive. Finally, the defendants argue that ALJ Lewis' decision ordering the City to turn over the subject vehicle to the defendants pending the determination of this forfeiture action is an indication that the City is unlikely to prevail in this action, and that there is no substantial risk of continued illegal operation or to public safety if the vehicle was returned to the defendants. ALJ Lewis' decision casts serious doubt as to whether the forfeiture would withstand scrutiny under the Excessive Fines Clause of the Federal and State Constitutions. She concluded that evidence would need to be submitted in order to make the determination as to whether the forfeiture was disproportionate to the relatively minor civil summonses.

Summary judgment is a drastic remedy which should not be granted where there is any doubt as to the existence of triable issues of fact (*See e.g. Andre v Pomeroy*, 35 NY2d 361

[1974]). Moreover, the moving party has the burden to set forth evidentiary facts to establish its cause sufficiently to entitle it to judgment as a matter of law (*Friends of Animals, Inc. v Associated Fur Mfrs., Inc.*, 46 NY2d 1065 [1979]). To that end, summary judgment under CPLR 3212 must only be granted if, viewing the record in the light most favorable to the non-moving party, the evidence offered demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law (*See Zuckerman v City of New York*, 49 NY 2d 557, 562 [1980]).

In this case, the Court agree with the defendants that awarding summary judgment to the plaintiff would be inappropriate at this time. There are material issues of fact that require an evidentiary hearing to resolve and preclude a determination of judgment as a matter of law. Based on the minimal record before it, the Court cannot determine whether a forfeiture would violate the State and Federal Constitutional prohibitions against excessive fines. The Court's reservations dovetail with, and are detailed in, the decision of ALJ Lewis which ordered return of the vehicle to the defendants. It is well-settled that both the Federal and State Constitutions prohibit the imposition of excessive fines (*see County of Nassau v Canavan*, 1 NY3d 134, 139 [2003]). A forfeiture is an excessive fine if it is "grossly disproportional to the gravity of the defendant's offense" (*United States v Bajakajian*, 524 US 321, 336-37 [1998]).

Plaintiff's argument in support of summary judgment principally relies on its assertion that constitutional concerns are simply not implicated by its seizure of the subject vehicle because the fines at issue relate to an *in rem* forfeiture, which is not predicated upon a conviction or finding of guilt in a criminal proceeding and which it claims is non-punitive. *See* Pl. Mem. of Law, at p. 11. As Plaintiff summarizes, "[i]nsofar as the forfeiture provision at question in these actions sets forth a traditional, in rem forfeiture proceeding, which is directed toward the

instrumentality of the violation of the health provisions governing the selling of food to the public, it is not subject to analysis under the 8th Amendment and therefore cannot violate the constitutional rights of defendants.” Pl. Mem. of Law, at p. 13. This misstates the issue. The issue is not whether the forfeiture is *in rem* or *in personam*, civil or criminal. A modern statutory forfeiture is a fine for Eighth Amendment purposes if it constitutes punishment even in part, regardless of the nature of the underlying proceeding (*see Bajakajian*, 524 US at 331, n.6). In *Canavan*, the Court of Appeals addressed Nassau County’s civil forfeiture statute which was utilized to effectuate civil forfeitures of vehicles used during drunk driving arrests. Echoing *Bajakajian*, the court held that “[f]orfeitures—payments in kind—are ‘fines’ if they constitute punishment for an offense” and that “the civil forfeiture at issue here [forfeiture of the car that was used as an instrumentation of the drunk driving offense] serves, at least in part, deterrent and retributive purposes and is thus punitive and subject to the Excessive Fines Clauses” (*Canavan*, 1 NY3d at 139-40). The court also observed that Nassau County’s forfeiture statute was broadly written to authorize forfeiture beyond drunk driving offenses, including for “petty offenses” (including traffic infractions) and that “forfeiture of an automobile for a minor traffic infraction such as driving with a broken taillight or failing to signal would surely be grossly disproportional to the gravity of a defendant’s offense” (*Id.* at 140).

Here, there is at least some evidence that the proposed punishment is, at least in part, punitive and meant as a deterrence, rather than simply remedial. As such, the Excessive Fines Clauses govern. Seeking the forfeiture of an expensive vehicle based on the collection of civil fines totaling only \$2,600.00, when there is no evidence that this has ever occurred in other similar circumstances, is a clear indication that the seizure is a punishment and/or meant to serve as a deterrence. No criminal violations were issued against the food truck, nor did the Health

Department seek to test any of the food being sold to determine if its contents posed a danger to the public. Nor is there any evidence that the Health Department ever received any complaints about the selling of spoiled or tainted food being sold from the defendants' vehicle. No evidence has been submitted by plaintiff demonstrating that the Health Department had decided that public safety required this truck to be forfeited, nor has evidence been set forth regarding the frequency with which the Department commences civil forfeitures in other circumstances where food vendors are issued a summons for the first time. Moreover, no evidence has been submitted that the proceeds of the forfeiture will be distributed to any unidentified "victims" in this case.

As such, there is a clearly a punitive nature to the proposed forfeiture in this case. As ALJ Lewis found in her decision, the punitive nature of the proposed forfeiture clearly raises constitutional questions as to whether it is excessive and/or beyond the City's powers. In order to rule on whether the proposed forfeiture should be permitted to go forward, the Court would have to weigh numerous factors, including, *inter alia*, such factors as the seriousness of the offense, the severity of the harm caused and of the potential harm had the defendants not been caught, the relative value of the forfeited property and the maximum punishment to which the defendants could have been subject for the crimes charged, and the economic circumstances of the defendants (*see Canavan*, 1 NY3d at 140). The Court cannot properly weigh these factors or determine whether the proposed forfeiture is grossly disproportional to the offense without further development and expansion of the factual record. Accordingly, the motion for summary judgment should be denied and the matter set down for a hearing to determine whether the proposed forfeiture of the vehicle is an excessive fine forbidden by the State and Federal Constitutions.

For the reasons set forth herein, it is hereby

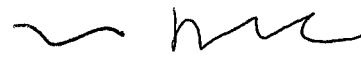
ORDERED that the plaintiff's motion for summary judgment is DENIED; and it is further

ORDERED that the parties shall appear for a hearing to determine if the proposed forfeiture of the vehicle is an excessive fine forbidden by the State and Federal Constitutions in Supreme Court, Part 52, room 307, at 80 Centre Street, New York, NY 10013 on May 17, 2023, at 10:00 AM.

This constitutes the decision and order of the court.

4/5/2023

DATE



NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE