

USB Leasing LT v Tucker

2023 NY Slip Op 32151(U)

June 30, 2023

Supreme Court, New York County

Docket Number: Index No. 154884/2022

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

In an action for replevin, “the plaintiff need only establish a superior possessory right in the chattel to that of the defendant” (Pivar v Graduate Sch. of Figurative Art of the N.Y. Acad. of Art, 290 AD2d 212, 213 [1st Dept 2002]) which can be satisfied through proof that a demand was made for the chattel and refused (Feld v Feld, 279 AD2d 393, 394 [1st Dept 2001]). “A demand need not use the specific word ‘demand’ so long as it clearly conveys the exclusive claim of ownership. A demand consists of an assertion that one is the owner of the property and that the one upon whom the demand is made has no rights in it other than allowed by the demander. By the same reasoning, a refusal need not use the specific word ‘refuse’ so long as it clearly conveys an intent to interfere with the demander’s possession or use of his property” (Id. at 394-95 [internal citations omitted]).

USB has provided proof of the facts constituting its claim through its submission of: (i) the Jeep’s December 10, 2021 New York State Certificate of Title, demonstrating that USB is the Jeep’s lienholder of record (See NYSCEF Doc. Nos. 11 [Certificate of Title]); (ii) the Lease Agreement, which provides that the gross capitalized cost of the Jeep was \$88,785.53, payable in equal monthly installments of \$1,477.72, and that USB is the owner of the Jeep and may take possession of the Jeep “without prior demand” in the event of defendant’s default the Lease Agreement (NYSCEF Doc. No. 10 [Agreement at §§2-4 25, 30]); (iii) the affidavit of Dale S. Armistead, an officer of USB, attesting that defendant defaulted under the Agreement by failing to make any payments after December 21, 2022 (NYSCEF Doc. No. 7 [Armistead Aff. at ¶¶4-7]); and (iv) the February 8, 2022 notice to the defendant advising him of his default under the Agreement and notifying him that USB would “take actions necessary to enforce its security interest in the [Jeep] ... including but not limited to, repossession of, or foreclosure on the [Jeep]” if amounts due under the Lease Agreement were not paid (NYSCEF Doc. No. 12 [Notice of

Default]) (See e.g., Ferrari Fin. Servs., Inc. v Freidman, 2019 WL 854594; 2019 NY Misc LEXIS 700 [Sup Ct, NY County 2019]).

USB has also satisfied the remaining requirements of CPLR §3215 through: (i) proof of service of the Summons and Verified Complaint upon defendant on June 30, 2022 (NYSCEF Doc. No. 14); (ii) proof of defendant's default (NYSCEF Doc. No. 7 [Armistead Aff. at ¶5]); and (iii) proof of the July 13, 2022 additional service of the Summons and Verified Complaint required by CPLR §3215(3)(g)(i) (NYSCEF Doc. No. 16). In light of the foregoing, plaintiff has established its entitlement to a default judgment on its replevin action.

The Court notes that, pursuant to CPLR §7108(c), in addition to the judgment of possession granted to plaintiff, an alternative monetary award of the amount of plaintiff's interest in the chattel must also be set forth herein. Although this amount is generally determined by the value of the chattel in question, under the circumstances here—in which the chattel is sought “for the retention of a security for an outstanding debt”—the appropriate alternative monetary award is based on the amount of that outstanding debt which has been established as \$101,956.59 (See Ferrari Fin. Services, Inc. v Freidman, 2019 NY Slip Op 30402[U], 2-3 [Sup Ct, NY County 2019]).

Accordingly, it is

ORDERED, ADJUDGED, and DECREED that USB Leasing LT's motion for a default judgment as against defendant Darryl Tucker for possession of the motor vehicle identified as the 2022 Jeep Wagoneer bearing VIN: 1C4SJVBTXNS112858 is hereby granted in its entirety; and it is further

ORDERED, ADJUDGED, and DECREED that all rights and title that defendant may claim and/or have in the 2022 Jeep Wagoneer bearing VIN: 1C4SJVBTXNS112858 are hereby

transferred to plaintiff; and it is further

ORDERED, ADJUDGED, and DECREED that plaintiff is entitled to immediate possession of the 2022 Jeep Wagoneer, bearing VIN: 1C4SJVBTXNS112858, or if the chattel/collateral cannot be delivered, for its value; and it is further

ORDERED that defendant Darryl Tucker and his respective spouse, servants, agents, employees, representatives and all persons acting in concert with them, are restrained and enjoined from removing, transferring, dismantling, selling, pledging, using, concealing, hiding, or otherwise disposing of, or permitting to become subject to a security interest in lien, the 2022 Jeep Wagoneer, bearing VIN: 1C4SJVBTXNS112858, in any manner inconsistent with the interest of plaintiff USB Leasing LT; and it is further

ORDERED that the defendant Darryl Tucker is directed to immediately surrender the 2022 Jeep Wagoneer bearing VIN: 1C4SJVBTXNS112858 to plaintiff; and it is further

ORDERED that in the event that the 2022 Jeep Wagoneer bearing VIN: 1C4SJVBTXNS112858 is not turned over to plaintiff within thirty days of plaintiff's service of this decision and order, with notice of entry, upon Darryl Tucker by regular first class mail, then the Sheriff for New York County—or Sheriff of any county of the State of New York wherein the collateral may be located—is directed, upon service of a certified copy of this decision and order, to place plaintiff into possession of the chattel/collateral; and it is further

ORDERED that if any person or entity served with a CPLR §5102 execution should fail or refuse to deliver the possession of the 2022 Jeep Wagoneer bearing VIN: 1C4SJVBTXNS112858 to the Sheriff or to permit the Sheriff to gain access to the chattel/collateral for the purpose of enforcing the execution, then the Sheriff shall and is hereby authorized to take

all necessary steps, including but not limited to, entry into the chattel/collateral; and it is further

ORDERED that if there be any additions, attachment, fixtures or structures placed in such proximity to the 2022 Jeep Wagoneer bearing VIN: 1C4SJVBTXNS112858, as to prevent the Sheriff from taking possession of the chattel/collateral without causing the additions, attachments, fixtures or structures to be moved, damaged or destroyed, then the Sheriff shall be, and is hereby authorized to remove, disassemble, relocate and if necessary destroy, any such additions, attachments, fixtures or structures for the purpose of taking possession of the chattel/collateral pursuant to the provisions of this order, or an execution issued pursuant to CPLR §5102; and it is further

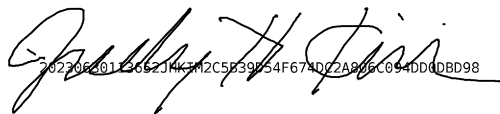
ORDERED that, in accordance with the affidavit of Dale S. Armistead, of USB Leasing LT, sworn to on October 26, 2022, there is the sum due of \$101,956.59; that in the event that the chattel/collateral cannot be recovered or is insufficient to satisfy the amounts due and owing plaintiff is awarded the amount due less any proceeds from the sale of the chattel/collateral; and it is further

ORDERED that plaintiff USB Leasing LT shall serve a copy of this decision and order, with notice of entry, upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the

“efiling” page on this court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



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6/30/2023

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED DENIED

NON-FINAL DISPOSITION

GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE