

Cohen v 2019 Nissan
2024 NY Slip Op 35170(U)
August 26, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 612390/2022
Judge: James F. Quinn
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INDEX No. 612390/2022

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 41 - SUFFOLK COUNTY

PRESENT:

Hon. JAMES F. QUINN
Acting Justice of the Supreme Court

MOT. DATE 02/28/2024 (#001) and
06/04/2024 (#002)

MOT. ADJ. DATE 06/18/2024

Mot. Seq. #001-MG; #002-MD

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

Plaintiff/Claiming Authority,

- against -

a 2019 NISSAN, VIN #1N4BL4EV6KC200769,
HASSAN QAMAR,

Defendant(s),

-and-

NISSAN MOTOR ACCEPTANCE CO., LLC, a
lien holder and potential claimant with an interest
in the vehicle.

DECISION AND ORDER

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Upon the E-File document list numbered 13-27 and 30-36 read on application by Plaintiff County of Suffolk ("Plaintiff" or "County")(Mot. Seq. #001) seeking an order pursuant to CPLR §3212 granting summary judgment, dismissing the Defendant's affirmative defenses and counter-claims and entering a declaratory judgment and by Defendant Hassan Qamar ("Qamar")(Mot. Seq. #002) seeking an order for a declaratory judgment pursuant to CPLR §3001 and finding the civil forfeiture laws of Suffolk County are unconstitutional; it is hereby

ORDERED, that Plaintiff/Claiming Authority County of Suffolk's motion pursuant to CPLR §3212 for an order granting summary judgement against Defendant Hassan Qamar is **granted** for the reasons stated herein; and it is further

ORDERED, that Plaintiff/Claiming Authority County of Suffolk's application dismissing Defendant Hassan Qamar's affirmative defenses and counter-claims is **granted**; and it is further

ORDERED, Defendant Hassan Qamar's applications pursuant to CPLR §3001 for declaratory judgments are **denied**; and it is further

ORDERED, Defendant Hassan Qamar's applications seeking an order finding the civil forfeiture laws of Suffolk County unconstitutional are *denied*.

This is a civil forfeiture proceeding commenced by Plaintiff, Dennis M. Cohen, Suffolk County Attorney, in his capacity as the Claiming Authority on behalf of the County of Suffolk. The action was commenced by the filing of a summons and complaint on June 30, 2022. Issue was joined by the filing of an answer with counter-claims by the Defendant on September 7, 2022. The County filed a reply to the counter-claims on December 19, 2022. Plaintiff seeks herein an order pursuant to Suffolk County Code Chapter 420 for the forfeiture to Plaintiff of a certain 2019 Nissan motor vehicle with the VIN #1N4BL4EV6KC200769 ("the vehicle"), which was titled to Defendant Hassan Qamar as owner.

Plaintiff now moves pursuant to §3212 for summary judgment against Defendant Qamar and dismissal of Defendant's affirmative defenses and counter-claims. In support of its motion the County submits, inter alia, a copy of the pleadings, the felony complaint charging the Defendant with Aggravated DWI: Per Se-1 Prior in violation of VTL §1192.2-AA, the certified certificate of disposition of the prior conviction on April 1, 2015 of Operating Under the Influence of Drugs or Alcohol in violation of VTL §1192.3, the certified certificate of disposition of Defendant's conviction on October 19, 2022 for Aggravated DWI: Per Se-1 Prior, a copy of the certified title and registration records from the New York State Department of Motor Vehicles for the subject vehicle, notice of seizure and hearing dated February 22, 2022 and the seizure hearing determination dated March 18, 2022.

As alleged herein by Plaintiff, on February 20, 2022 at approximately 2:40am Defendant Qamar operated the subject vehicle eastbound on Pulaski Road at Park Avenue, Huntington, Town of Huntington, Suffolk County, New York when he was stopped by the Suffolk County Police after being observed driving 100mph in a 35mph zone while passing two steady red traffic control lights. Upon his arrest Qamar had a blood alcohol content of .20% (NYSCEF Doc. #20). At the time of the arrest, Qamar had one prior alcohol related conviction for Driving While Intoxicated ("DWI") on April 1, 2015. Based upon his prior conviction for DWI the subject vehicle was seized upon Qamar's arrest on February 20, 2022, pursuant to Suffolk County Code Chapter 420.

On February 21, 2022 a Notice of Seizure and Hearing was mailed to the Defendant in accordance with the Suffolk County Code and a hearing was scheduled for March 11, 2022. Plaintiff states in their papers that upon Qamar's request the hearing was adjourned until March 18, 2022. Qamar personally appeared at the hearing on March 18, 2022. At the conclusion of the hearing in a Determination by the neutral magistrate the subject vehicle was to be returned to the Defendant with specific parameters that were also encompassed in a stipulation executed by Plaintiff and Defendant on March 18, 2022, a copy of which was mailed to Qamar's attorney.

Qamar pled guilty to Aggravated DWI pursuant to VTL §1192.2-AA on October 19, 2022 and was sentenced to five (5) years probation, his license was revoked for eighteen (18) months and applicable fines and surcharges.

Suffolk County Code §420-6 states “Any property which constitutes the proceeds of an offense, the substituted proceeds of an offense or an instrumentality of an offense shall be seized by any peace officer acting pursuant to his or her special duties or police officer upon probable cause to believe that an offense, as defined in this article, has been committed, and may be forfeited as hereinafter provided.” Section 420-5 of the Suffolk County Code defines the instrumentality of an offense as “Any property whose use contributed directly and materially to the commission of an offense as defined in this article.” “A violation of New York Vehicle and Traffic Law § 1192, Operating a motor vehicle under the influence of alcohol or drugs, Subdivision 2, 2-a, 3, 4, or 4-a, or § 1192-a, Operating a motor vehicle after having consumed alcohol; under the age of 21; per se...” are qualifying offenses (SC Code §420).

Further, Suffolk County Code §420-7(J) states in pertinent part:

“In order to establish its case in any action commenced under this article, 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, as defined in this article, 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.”

A party moving for summary judgment “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v. Prospect Hosp.*, 68 NY2d 320). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853). Once a prima facie showing has been made, the burden shifts to the party opposing the summary judgment motion to produce evidence sufficient to establish the existence of a material issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d at 324, 508 NYS2d 923, *citing Zuckerman v City of New York*, 49 NY2d at 562, 427 NYS2d 595). To defeat a motion for summary judgment, a party opposing such motion must lay bare his proof in evidentiary form; conclusory allegations are insufficient to raise a triable issue of fact (*see Friends of Animals, Inc. v Associated Fur Mfrs.*, 46 NY2d 1065, 416 NYS2d 790; *Burns v City of Poughkeepsie*, 293 AD2d 435, 739 NYS2d 458 [2d Dept 2002]). Here, Plaintiff established, prima facie, its entitlement to forfeiture of the vehicle as stated above.

The Court has examined the affirmative defenses asserted by Defendant’s answer and finds they lack merit. Moreover, the counter-claims asserted sounding in violations of due process and unlawful deprivation of property are unfounded (*see Malafi v 2002 Dodge, Vin No. ID7HU18Z92J206663*, 14 Misc3d 1214(A), 836 NYS2d 486 [Sup. Ct. Suffolk Cty. 2006]). It is well settled that, where, as here, sufficient due process protections are in place, the seizure and subsequent forfeiture of a vehicle operated at the time such crime is committed is permissible (*see County of Nassau v Canavan*, 1 NY3d 134, 138, 770 NYS2d 277, 281 [2003]). Forfeiture of automobiles involved in driving while intoxicated offenses is properly deemed a fine; the vehicle was the instrumentality of the charged crime, forfeiture was not disproportionate to the seriousness of the crime, and forfeiture of the car as an instrumentality of the crime was not greater in relation to the offense than other instrumentality forfeitures (*Brown v 2007 Jeep*, 2019 WL 1780290 [Sup. Ct. Suffolk Cty. Apr. 05, 2019] *citing Grinberg v Safir*, 181 Misc2d 444, 694 NYS2d 316 [Sup. Ct. New York Cty. 1999]; *aff’d* 266 AD2d 43, 698 NYS2d 218 [1st Dept 1999]; *see also, Malafi v A 1967 Chevrolet*, 63 AD3d 1112, 883 NYS2d 84 [2d Dept 2009]). On the facts of this case

the Court finds that the forfeiture of the Defendant’s car is not disproportionate to the severity of his crime. “Grievous harm to innocent victims could have been caused by defendant’s driving with a blood alcohol level of” .20% while speeding 100mph in a 35mph speed zone while passing through two steady red lights (*County of Nassau v Canavan, supra*). “Given the gravity of the crime of drunk driving, it is difficult to imagine that forfeiture of an automobile for such a crime could ever be excessive. Surely it [is] not here” (*Id.*). The Court notes that Defendant’s constitutional arguments have been repeatedly addressed by the United States Supreme Court, as recently as May 24, 2024, ten days before Defendant filed his cross-motion (*see, Culley v Marshall*, 601 U.S. 377, 144 S. Ct. 1142, 218 L.Ed.2d 372 [2024]). The Court has considered the remaining arguments of the Defendant and finds that they lack merit.

Accordingly, it is hereby

ORDERED, Plaintiff/Claiming Authority County of Suffolk’s motion for summary judgment is granted; and it is further

ORDERED, Defendant’s affirmative defenses and counter-claims are dismissed; and it is further

ORDERED, Plaintiff/Claiming Authority County of Suffolk shall submit a Judgment.

The foregoing constitutes the **Decision and Order** of this Court.

Dated: August 26, 2024
Riverhead, New York



HON. JAMES F. QUINN, A.J.S.C.

___ FINAL DISPOSITION XX NON-FINAL DISPOSITION