

Property Clerk, New York City Police Dept. v Brown
2013 NY Slip Op 33256(U)
December 19, 2013
Supreme Court, New York County
Docket Number: 451592/13
Judge: Martin Shulman
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: SHULMAN
Justice

PART 1

PROPERTY CLERK, NYC
- v -

INDEX NO. 451592/13
MOTION DATE _____
MOTION SEQ. NO. 01
MOTION CAL. NO. _____

JOHN BROWN

The following papers, numbered 1 to 2 were read on this motion to ~~the~~ enjoin

~~Notice of Motion~~/ Order to Show Cause — Affidavits — Exhibits 1-8
Answering Affidavits — Exhibits A
Repeating Affidavits _____

PAPERS NUMBERED	
1	_____
2	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the attached decision and order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: December 19, 2013

HON. MARTIN SHULMAN, J S C J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

-----X
PROPERTY CLERK, NEW YORK CITY POLICE
DEPARTMENT,

Plaintiff,

Index No: 451592/13

-against-

Decision and Order

JOHN BROWN, JOVIECE O. ROBINSON and
USAA FEDERAL SAVINGS BANK,
Defendants.

-----X
Hon. Martin Shulman, J.:

Plaintiff, Property Clerk, New York City Police Department (“Property Clerk” or “plaintiff”), commenced this action seeking the forfeiture of a 2006 Honda bearing Vehicle Identification Number 1HGFA16846L111346 (the “subject vehicle”) pursuant to N.Y.C. Adm. Code §14-140. Defendant Joviece O. Robinson (“defendant” or “Robinson”) is the registered and titled owner of the subject vehicle, which was seized from Robinson’s husband, co-defendant John Brown (“Brown”), and vouchered under Property Clerk Invoice Number 5000040438 as a result of Brown’s August 9, 2013 arrest on charges of aggravated driving while intoxicated (VTL §1192.2-a) and operating a motor vehicle while under the influence of alcohol or drugs (VTL §1192.3).

On October 1, 2013, Brown pleaded guilty to violating VTL §1192.3. Prior thereto, Robinson had requested a retention hearing before the New York City Office of Administrative Trials and Hearings (“OATH”), which issued a memorandum decision on September 24, 2013 releasing the subject vehicle to her *pendente lite*, based upon plaintiff’s failure to notify her of her right to such a hearing as required by *Krimstock v Kelly*, 306 F3d 40 (2d Cir 2002), *cert den* 539 US 969 (2003).

The Property Clerk now moves by order to show cause (“OSC”) for a preliminary injunction to enjoin Robinson from “selling, leasing, gifting, assigning, pledging or otherwise disposing of the subject vehicle or transferring [her] right, title and interest therein in any manner or from otherwise removing the subject vehicle from the jurisdiction of this Court during the pendency of the instant action”. Robinson opposes the OSC via her attorney’s affirmation in opposition, which she has verified, asserting an innocent owner defense.

To establish entitlement to a preliminary injunction in this action, plaintiff must demonstrate: (1) a likelihood of ultimate success on the merits; (2) irreparable injury if no preliminary injunction is issued; and (3) a balancing of the equities in its favor. CPLR § 6301; *Aetna Ins. Co. v Capasso*, 75 NY2d 860 (1990). The decision to grant such relief lies within this court’s sound discretion. *Weeks Woodlands Assn., Inc. v Dormitory Auth. of State of New York*, 95 AD3d 747, 759 (1st Dept 2012). The purpose of a preliminary injunction “is to maintain the status quo and to prevent any conduct which might impair the ability of the court to render final judgment.” *Putter v City of New York*, 27 AD3d 250, 253 (1st Dept 2006).

In support of the first of the foregoing elements, plaintiff cites Brown’s guilty plea. Robinson, who had not answered the complaint or otherwise interposed her innocent owner defense at the time plaintiff filed this OSC, responds in relevant part that: this was Brown’s first and only arrest for any crime; she was not at home when Brown left and took the subject vehicle; Brown does not have a drinking problem; and she was unaware of his drinking before or during his use of the subject vehicle on the day of his

arrest. Accordingly, Robinson concludes that the Property Clerk cannot establish a likelihood of success on the merits since it will be unable to prove that she knew or should have known that Brown would drink and drive on the day in question.

Notwithstanding Robinson's possible meritorious defense, plaintiff has made a *prima facie* showing that its forfeiture claim has merit. See *Gliklad v Cherney*, 97 AD3d 401, 402-403 (1st Dept 2012). The Property Clerk also establishes that it will be irreparably injured if a preliminary injunction is not granted by virtue of the fact that a monetary judgment for the value of the subject vehicle will not accomplish the goal of removing the subject vehicle from the streets as an instrumentality of crime. Finally, balancing the equities, Robinson will not suffer any significant harm by being restrained from disposing of the subject vehicle during the pendency of this action. As of now, she has the subject vehicle in her possession and is able to use it. Granting the OSC is necessary to maintain the status quo pending the final determination of this action. For all of the foregoing reasons, it is

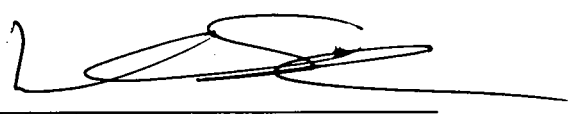
ORDERED that plaintiff's OSC for a preliminary injunction is granted; and it is further

ORDERED that Robinson is enjoined and restrained, pending the determination of this action, from selling, leasing, gifting, assigning, pledging or otherwise disposing of the subject vehicle or transferring her right, title and interest therein in any manner and from removing the subject vehicle from the jurisdiction of this court.

Counsel for the parties are directed to appear for a preliminary conference on January 14, 2014 at 9:30 a.m. at 60 Centre Street, Room 325, New York, New York.

This constitutes this court's decision and order. Courtesy copies of same have been provided to counsel for the parties.

Dated: New York, New York
December 19, 2013



HON. MARTIN SHULMAN, J.S.C.