

<b>Property Clerk, NYC Police Dept. v Harris</b>
2013 NY Slip Op 32488(U)
October 10, 2013
Supreme Court, New York County
Docket Number: 450423/2013
Judge: Martin Shulman
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: SHULMAN  
Justice

PART 1

PROPERTY CLERK, N.Y.C.  
POLICE DEPT.

INDEX NO. 450423/13

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 02

MOTION CAL. NO. \_\_\_\_\_

JOHN HARRIS JR.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

~~Notice of Motion~~/ Order to Show Cause — Affidavits — Exhibits ... 1-11

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

<u>1</u>

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: Oct. 10, 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 - NEW YORK COUNTY

PRESENT: Hon. MARTIN SHULMAN, Justice

PART 1

---

PROPERTY CLERK, NEW YORK CITY POLICE  
DEPARTMENT,

Plaintiff,

INDEX NO.: 450423/13

- v -

JOHN HARRIS, JR.,

Defendant.

DECISION, ORDER &  
JUDGMENT

---

In this civil forfeiture proceeding, plaintiff seeks forfeiture of the subject vehicle, a 2004 Audi, bearing Vehicle Identification Number WAUML44E94N025751 (the "subject vehicle"), which was seized from defendant John Harris, Jr. ("defendant" or "Harris") and vouchered under Property Clerk Invoice Number 3000085857 as a result of defendant's June 17, 2012 arrest on charges of reckless endangerment, aggravated unlicensed operation of a motor vehicle and driving while intoxicated (VTL §1192.3). Plaintiff now moves by order to show cause ("OSC") for summary judgment based upon Harris' January 8, 2013 guilty plea to violating VTL § 1192.3 (Exh. 4 annexed to OSC). In his verified answer (Exh. 9 annexed to OSC), defendant does not deny the entry of his guilty plea or that he is the registered and titled owner of the subject vehicle.

Harris, who is self-represented, has not submitted written opposition to this OSC.<sup>1</sup> Consequently, this court will address his answer's allegations to determine if his defenses raise any issues of fact sufficient to warrant denial of summary judgment in plaintiff's favor.

---

<sup>1</sup> Harris arrived in court on the return date after the OSC had been marked submitted without opposition. This court granted him an additional week to submit written opposition, however, none has been received.

Plaintiff has submitted Kings County Certificate of Disposition Number 436264, which discloses that on January 8, 2013, defendant pleaded guilty to VTL § 1192.3 (Exh. 4 annexed to OSC). A criminal conviction, whether by plea or after trial, is conclusive proof of its underlying facts. *Grayes v DiStasio*, 166 AD2d 261, 262-263 (1<sup>st</sup> Dept 1990). Therefore, a defendant who pleads guilty to a criminal charge is collaterally estopped from relitigating, in a subsequent civil action, the facts upon which the conviction is based. *Id.*; *S.T. Grand, Inc. v City of New York*, 32 NY2d 300 (1973).

There can be no dispute that the subject vehicle is the instrumentality of the crime of driving while intoxicated. As stated in *Grinberg v Safir*, 181 Misc2d 444, 694 NYS2d 316 (Sup Ct NY County, 1999), *aff'd* 266 AD2d 43 (1<sup>st</sup> Dept 1999):

Operation of a motor vehicle is a necessary element of DWI. VTL §1192(2), (3). A drunk driver's automobile is the quintessential instrumentality of a crime - the *sine qua non* without which the crime could not have been committed.

*Id.*, 181 Misc2d at 448-449, 694 NYS2d at 320.

In accordance with NYC Admin. Code §14-140 and 38-A RCNY §§ 12-35 and 12-36, plaintiff has established by a preponderance of the evidence that defendant is the registered and titled owner of the subject vehicle and that defendant used the subject vehicle as the instrumentality of committing the crime of driving while intoxicated. In his answer, Harris denies that he was intoxicated at the time of his arrest and details the circumstances of the arrest. However, his guilty plea in the underlying criminal proceeding collaterally estops defendant from asserting his innocence in the instant forfeiture action.

Defendant's answer further asserts a counterclaim for damages in the amount of \$4,000.00 based upon plaintiff's alleged unlawful seizure and retention of the subject vehicle from his June 17, 2012 arrest through March 25, 2013.<sup>2</sup> Harris claims damages in the form of lost wages, transportation costs and costs incurred as a result of his being prevented from gifting the subject vehicle. He refers to the OATH decision as having determined that the seizure of his vehicle was unlawful. However, OATH's decision releasing the subject vehicle to defendant *pendente lite* does not conclusively determine the final outcome of this civil forfeiture action. In light of defendant's plea of guilty to violating VTL §1192.3, the question of plaintiff's right to forfeit the subject vehicle must be resolved in plaintiff's favor, thereby mooting Harris' counterclaim.

As there remain no outstanding questions of fact, plaintiff's motion for summary judgment is granted. Accordingly, it is hereby

ORDERED that the motion for summary judgment is granted in plaintiff's favor; and it is further

ORDERED that defendant's counterclaim is dismissed; and it is further

---

<sup>2</sup> Presumably, Harris retrieved the subject vehicle on that date in accordance with the March 14, 2013 memorandum decision of Administrative Law Judge John B. Spooner of the City of New York Office Of Administrative Trials and Hearings (the "OATH decision"), which ordered the release of the subject vehicle to Harris pending the outcome of this forfeiture action (Exh. 7 to OSC). The OATH decision directed that the subject vehicle be returned to defendant because plaintiff failed to establish compliance with the hearing notice requirements mandated by in *Krimstock v. Kelly*, 99 Civ. 12041 (SDNY, Dec. 6, 2005) ("*Krimstock*"). To ensure that the subject vehicle would be available for forfeiture, plaintiff obtained a temporary restraining order and preliminary injunction enjoining Harris from *inter alia* disposing of the subject vehicle pending the determination of this action.

ORDERED and ADJUDGED that the subject vehicle, a 2004 Audi, bearing Vehicle Identification Number WAUML44E94N025751, seized from defendant John Harris, Jr. and vouchered under Property Clerk Invoice Number 3000085857, be forfeited pursuant to the provisions of the Administrative Code of the City of New York § 14-140; and it is further

ORDERED and ADJUDGED that defendant John Harris, Jr. may not lawfully possess the subject vehicle and shall deliver the subject vehicle into plaintiff's custody; and it is further

ORDERED and ADJUDGED that, in the event defendant John Harris, Jr. has sold, conveyed or otherwise disposed of the subject vehicle, plaintiff shall be entitled to the monetary value of the subject vehicle at the time of seizure; and it is further

ORDERED and ADJUDGED that the plaintiff's custody and retention of the subject vehicle is both lawful and proper.

Dated: October 10, 2013



Hon. Martin Shulman, J.S.C.