

Vance v Green

2018 NY Slip Op 30216(U)

February 6, 2018

Supreme Court, New York County

Docket Number: 452151/16

Judge: Martin Shulman

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This opinion is uncorrected and not selected for official publication.

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

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CYRUS R. VANCE, JR., DISTRICT ATTORNEY
of the COUNTY OF NEW YORK, in his capacity as
Plaintiff-Claiming Authority,

Index No.: 452151/16

DECISION & ORDER

- against -
WAYNE GREEN, et al,
Defendants.

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

In this civil forfeiture action, plaintiff-claiming authority moves for a default judgment based upon defendants Wayne Green (Green) and Ruben Gonzalez's (Gonzalez) failure to answer the complaint or otherwise appear in this action. With respect to Green, plaintiff seeks forfeiture of U.S. currency in the amount of \$135,901 and multiple watches and jewelry, all of which were recovered from Green's residence at the time of his March 9, 2016 arrest, and U.S. currency in the amount of \$2,622.38 recovered from Green's bank account. As to Gonzalez, the DA seeks forfeiture of U.S. currency in the amount of \$56,220 and a Rolex wristwatch, both of which were recovered from Green's residence at the time of his March 9, 2016 arrest. The property sought to be forfeited is alleged to be the proceeds of the felony crime of Operating as a Major Trafficker in violation of Penal Law §220.77(1) and other related offenses, to which both defendants pleaded guilty on May 15, 2017 and were sentenced on June 5, 2017.

Neither the moving papers nor the complaint provides details as to the circumstances surrounding the recovery of each defendant's property, or as to the estimated amount of money the defendants' drug trafficking enterprise generated during the period in question (September 10, 2014 through March 9, 2016). Plaintiff

appears to rely upon CPLR §1311(3)(d)'s rebuttable presumption to establish that the seized funds are the proceeds of defendants' crimes.

CPLR §1311(3)(d) provides:

In a forfeiture action commenced by a claiming authority against a defendant, the following rebuttable presumption shall apply: all currency or negotiable instruments payable to the bearer shall be presumed to be the proceeds of a pre-conviction forfeiture crime when such currency or negotiable instruments are (i) found in close proximity to a controlled substance unlawfully possessed by the defendant in an amount sufficient to constitute a violation of section 220.18 or 220.21 of the penal law, or (ii) found in close proximity to any quantity of a controlled substance or marihuana unlawfully possessed by such defendant in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, distribute, package or otherwise prepare for sale such controlled substance or marihuana.

With respect to Green, the motion is denied without prejudice. As can be gleaned from the indictment, on the day of his arrest approximately \$135,000 was recovered in the vicinity of his home address and he was in possession of a loaded firearm in the vicinity thereof (Motion at Exh. C, ¶147; Eleventh and Twelfth Counts). There is no allegation in the moving papers, complaint or indictment that Green possessed any controlled substance on that date. As such, the DA fails to satisfy the statute's "close proximity" requirement. Without further allegations, this court cannot conclusively determine that the currency to be forfeited was the proceeds of Green's crimes.

With respect to Gonzalez, the motion for a default judgment is granted with respect to the recovered currency. The indictment indicates that CPLR §1311(3)(d)'s elements are satisfied. Specifically, on the arrest date, the currency plaintiff seeks to forfeit was in the vicinity of Gonzalez's residence and he possessed narcotics (1250

milligrams of PCP), which were found in a vehicle also at that location (*id.* at ¶49, 25). Plaintiff thus establishes the currency was in close proximity to the unlawfully possessed controlled substance.

As to both defendants' watches and jewelry, no facts linking these items to their crimes are alleged and CPLR §1311(3)(d)'s rebuttable presumption applies only to currency and negotiable instruments. Accordingly, the motion for a default judgment must be denied without prejudice as to this property. It is hereby

ORDERED that the branch of plaintiff's motion for a default judgment against defendant Green is denied without prejudice to plaintiff's submission of a further motion upon proper papers; and it is further

ORDERED that the branch of plaintiff's motion for a default judgment against defendant Gonzalez is granted to the extent that plaintiff is entitled to forfeiture of the U.S. currency in the amount of \$56,220 (fifty-six thousand two-hundred twenty dollars), and the motion is otherwise denied as to defendant Gonzalez, without prejudice to plaintiff's submission of a further motion upon proper papers.

Plaintiff's counsel is directed to submit an appropriate judgment and order to chambers, directing the New York City Police Department Property Clerk to release the U.S. currency in the amount of \$56,220 (fifty-six thousand two-hundred twenty dollars) and vouchered under invoice number 1000771509 to plaintiff.

Within 90 days of the electronic filing of this decision and order, plaintiff's counsel shall move for a default judgment as contemplated herein and shall advise this court as to the status of this action with respect to the remaining defendants.

NYSCEF DOC. NO. 12

RECEIVED NYSCEF: 02/13/2018

The foregoing constitutes the Decision and Order of this Court.

Dated: February 6, 2018
New York, New York



Hon. Martin Shulman, J.S.C.