

Brennan v Lucas
2020 NY Slip Op 32365(U)
July 17, 2020
Supreme Court, New York County
Docket Number: 450262/19
Judge: Martin J. Schulman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

BRIDGET G. BRENNAN,

Index No. 450262/19

Special Narcotics Prosecutor for the City of New York,

Plaintiff-Claiming Authority,

DECISION & ORDER

-against-

ROGELIO LUCAS and LYDIA LUCAS,

Defendants.

MARTIN SHULMAN, J.S.C.:

In this CPLR Article 13-A civil forfeiture action, plaintiff-claiming authority brings this renewed application¹ for a default judgment based upon defendants, Rogelio Lucas and Lydia Lucas' (collectively, defendants), failure to answer the complaint or otherwise appear in this action. Specifically, plaintiff seeks forfeiture of \$2,611,000,² including U.S. currency in the amount of \$624,828 which was recovered from defendants' residence at the time of their arrests. The property sought to be forfeited is alleged to be the proceeds, substituted proceeds and/or instrumentality of the felony crimes of Criminal Sale of a Prescription for a Controlled Substance and Conspiracy in the Fourth Degree. Both defendants were convicted in 2018 after a nearly one month jury trial of

¹ This court denied plaintiff's prior motion for a default judgment without prejudice based upon plaintiffs' failure to allege facts substantiating the amount sought to be forfeited and that such amount was the proceeds of defendants' crimes.

² Alternatively, plaintiff requests forfeiture of \$2,494,532 as calculated in plaintiff's counsel's supporting affirmation at paragraph 15.

29 counts of the former felony and one count of the latter. Plaintiff commenced this action in March 2019.

Defendant, Rogelio Lucas (Dr. Lucas), is a physician who maintained a medical practice in New York City. His wife, Lydia Lucas (Mrs. Lucas), worked in the practice as the office manager. The underlying criminal convictions are predicated upon claims that from at least January 2, 2009 through on or about June 4, 2015, defendants illegally wrote and sold medically unjustified prescriptions for Oxycodone, an opiate, for \$120.00 per prescription. Plaintiff estimates that defendants' "pill mill" operation grossed \$2,611,000 during this approximately 6 year period.

In support of the motion, plaintiff now submits evidence and testimony from the underlying criminal trial, as well as the People's sentencing memorandum summarizing the criminal investigation and trial record (Motion at Exh. D). Trial evidence included: prescribing data compiled by the New York State Bureau of Narcotics Enforcement (BNE) detailing thousands of Oxycodone prescriptions Dr. Lucas wrote; nearly 80 boxes of patient records; cash receipts for the illegal prescriptions in Mrs. Lucas' handwriting; pie charts and graphs prepared by plaintiff's investigative analysts, indicating drastic yearly increases in the numbers of opioid prescriptions written between 2009 and 2015, as well as the practice's steady progression to an all cash model after 2009; and defendants' income tax returns which revealed disparities between the practice's income as recorded in patient logs and the income defendants actually reported.

Defendants, who are in their eighties, oppose the motion *pro se*. They claim to have initially hired counsel to negotiate with plaintiff but when negotiations proved unsuccessful, defendants state they were unaware of any deadline to appear in this

action. Defendants deny they received the amount plaintiff is claiming from their criminal enterprise. Dr. Lucas also states that he is in the process of appealing his criminal conviction and asks for a stay of this forfeiture action until he exhausts his appellate remedies. With respect to the People's sentencing memorandum, defendants emphasize that the criminal court did not impose the sentences the People recommended. Finally, defendants indirectly contend that forfeiture is an excessive fine in violation of the Eighth and Fourteenth Amendments of the U.S. Constitution.

Plaintiff submits no reply to defendants' opposition. Subsequent to defendants' submission of their opposition, and after this motion was marked submitted, defendants submitted additional papers which court personnel uploaded to NYSCEF on March 9, 2020, shortly before the court's closure due to the Covid-19 pandemic. Plaintiff's counsel similarly did not respond to this submission and given that it was filed almost two months after the motion was submitted, the court will not consider it as part of this record.

In order for defendants to successfully oppose a motion for a default judgment, they must demonstrate a justifiable excuse for their default and a meritorious defense to the action. *Johnson v Deas*, 32 AD3d 253 (1st Dept 2006). Here, defendants' excuse that they were unaware of the deadline for answering the complaint is unavailing.

Nor do defendants establish a potentially meritorious defense. First, there is no compelling reason for this court to stay this action pending Dr. Lucas' appeal of his conviction. Indeed, defendants do not even provide any information as to whether the appeal was perfected or when it is to be heard. Second, forfeiture here would not

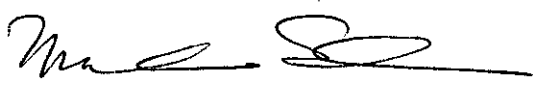
constitute an excessive fine. As the Court of Appeals stated in *County of Nassau v Canavan*, 1 NY3d 134, 140 (2003):

... a punitive forfeiture of an instrumentality of a crime "violates the Excessive Fines Clause if it is grossly disproportionate to the gravity of a defendant's offense." [citations omitted]. . . In determining gross disproportionality, we consider such factors as the seriousness of the offense, the severity of the harm caused and of the potential harm had the defendant not been caught, the relative value of the forfeited property and the maximum punishment to which defendant could have been subject for the crimes charged, and the economic circumstances of the defendant.

Here, forfeiture is not grossly disproportionate to defendants' offenses. The sentencing memorandum concludes that defendants' actions during the relevant time period caused "almost 3.2 million pills of oxycodone, with a street value of nearly \$80 million dollars, [to flood] the streets of New York City." The crimes for which defendants were convicted have serious and devastating consequences to communities and lives. It is well known that opioid abuse has become a national epidemic. Given the gravity of the crimes and defendants' convictions after a jury trial, forfeiture in this case of the proceeds of the crimes is not an excessive fine. As to the amount to be forfeited, the matter should proceed to inquest. Defendants may challenge the amount sought at that time. Accordingly, it is

ORDERED that plaintiff's motion for a default judgment against defendants is granted as to liability, and the matter shall proceed to inquest. Upon the reassignment of this action to another Justice, plaintiff's counsel shall contact the part to request a date for the inquest. Plaintiff's counsel is directed to mail copies of this decision and order with notice of entry to defendants within 30 days of its electronic filing.

Dated: New York, NY
July 17, 2020


Hon. Martin Shulman, J.S.C.