

In the District Court
of
Geary County, Kansas

State of Kansas, ex rel.
Junction City Police Department,

Plaintiff,

v.

One 2014 Mercedes GL Class,
VIN: 4JGDF7CE0EA388179

Defendants.

Case No. GE-2023-CV-000130
JCPD 23-13831

Claimant's First Amended Answer and
Affirmative Defenses; Jury Trial Demand.

Hon. Ryan W. Rosauer (D05)

Claimant's First Amended Answer and Affirmative Defenses

Claimant Seretse Young II provides his First Amended Answer and Affirmative Defenses to the Plaintiff's Petition for Forfeiture In Rem:

1. All documents filed herein in connection with these proceedings are incorporated herein by reference and made part of this petition.

ANSWER: Paragraph 1 is not a statement which requires any response. To the extent that a response is required, denied.

2. The court has in rem jurisdiction over this matter by virtue of defendant properties' seizure in Geary County, Kansas within five (5) years of the act giving rise to such forfeiture and subject matter jurisdiction and venue pursuant to K.S.A. 60-4103.

ANSWER: Claimant only admits that jurisdiction and venue are proper under KSA § 60-4103. Claimant specifically denies that any "act giving rise to such forfeiture" occurred.

3. The defendant property is captioned above, the property and currency has an estimated value of 10,000.00.

ANSWER: Denied.

4. On or about July 9, 2023, defendant property was seized by the Junction City Police Department at 2318 Valley Drive, Junction City, Geary County, Kansas. A Notice of

Pending Forfeiture was filed on August 16, 2023, and notice was had to the known owners of the property as evidenced by the filed Certificate of Service.

ANSWER: Claimant admits that his vehicle was seized on or about July 9, 2023, and that a Notice of Pending Forfeiture was filed on August 16, 2023. Claimant lacks personal knowledge of the location of the seizure, the identity of the seizing organization, or what individuals notice was served on, therefore Claimant denies these allegations in Paragraph 4.

5. A claim has been filed by: Seretse Young II who claimed the 2014 Mercedes GL Class of the above captioned property. In response to such claim, the State files this Petition.

ANSWER: Claimant admits he filed a Petition for Recognition of Exemption under KSA § 60-4110 and has asserted ownership of the 2014 Mercedes GL Class at issue in this case. Claimant lacks personal knowledge of Plaintiff's motives for filing the Petition for Forfeiture In Rem, therefore Claimant denies these allegations in Paragraph 5.

6. He can not claim innocent owner per K.S.A. 60-4102(j).

ANSWER: Paragraph 6 states a legal conclusion to which no response is required. To the extent that an answer is required, denied. Answering further, Claimant states that to the extent that KSA § 60-4102(j) authorizes the punishment of an innocent property owner for the alleged crimes of a spouse, then KSA § 60-4102(j) violates the Kansas Constitution Bill of Rights Sections 1 and 18 and the Fourteenth Amendment to the U.S. Constitution.

7. A sworn Affidavit by law enforcement officer involved in the investigation reciting the facts of the matter is attached hereto as Exhibit A.

ANSWER: Claimant only admits that Plaintiff has attached an affidavit of a law enforcement officer as Exhibit A. Plaintiff specifically denies that the affidavit establishes "the facts of the matter."

8. No other claims were received within the time frame set out in state law and all other persons and entities should be found in default.

ANSWER: Claimant lacks personal knowledge of any other claims Plaintiff received, therefore Claimant denies these allegations in Paragraph 8.

9. No further notice in this matter is required by law and plaintiff will provide copies of this petition to claimant for his specific answer(s) thereto pursuant to K.S.A. 60-4113(d).

ANSWER: Paragraph 9 states a legal conclusion to which no response is required. To the extent that a response is required, Claimant denies any facts alleged in Paragraph 9.

10. Pursuant to K.S.A. 60-4112(h), plaintiff need not negate in this petition any potential or affirmative defense or exemption of a claimant.

ANSWER: Paragraph 10 states a legal conclusion to which no response is required. KSA § 60-4112(h) speaks for itself. To the extent that an answer is required, denied. Answering further, Claimant states that KSA § 60-4112(h) only refers to exemptions, not “potential or affirmative defenses.”

11. Because the defendant currency was located at seizure in close proximity to controlled substances, plaintiff invokes the rebuttable presumption of forfeitability contained in K.S.A. 60-4112(j).

ANSWER: Denied.

12. Pursuant to K.S.A. 60-4116(f), should the claimant fail to establish that a substantial portion of his alleged interest in the defendant property is exempt from forfeiture, it is the intent of the plaintiff to seek full reimbursement of the State’s cost and attorney fees incurred to legally extinguish the claim.

ANSWER: Claimant lacks personal knowledge of Plaintiff’s intentions, therefore, Claimant denies Paragraph 12. To the extent that an answer is required, denied. Answering further, to the extent that KSA § 60-4116(f) forces property owners to choose between either surrendering their property to the government or risking a ruinous attorney fee award to the government, KSA § 60-4116(f) is unconstitutional under at least the following provisions: due process of law clause of the Fourteenth Amendment to the U.S. Constitution; due course of law clause of Section 18 of the Kansas Constitution Bill of Rights; the petition clause of the First Amendment to the U.S. Constitution and Section 3 of the Kansas Constitution Bill of Rights; and the excessive fines clause of the Eighth Amendment to the U.S. Constitution and Section 9 of the Kansas Constitution Bill of Rights.

In further compliance with KSA § 60-4113(d), Claimant states the following:

1. Claimant, Seretse K. Young II, is the lawful registered owner of the 2014 Mercedes GL Class, VIN: 4JGDF7CE0EA388179, that was seized by Plaintiff on or about July 9, 2023.
2. Claimant will accept service through his attorney, Kansas Justice Institute, 12980 Metcalf Avenue, Suite 130, Overland Park, Kansas, 66213.
3. Claimant is the sole owner of the 2014 Mercedes GL Class, VIN: 4JGDF7CE0EA388179, subject to a security interest held by Heartland Credit Union.
4. Claimant is the only individual with authority to convey ownership of the 2014 Mercedes GL Class, VIN: 4JGDF7CE0EA388179.
5. Claimant purchased the 2014 Mercedes GL Class, VIN: 4JGDF7CE0EA388179, in December 2021, with an auto loan from Heartland Credit Union and a \$10,000.00 down payment.
6. The cash for the down payment came from a payment from Claimant's auto insurance provider, United Services Automobile Association (USAA), in the amount of \$13,041.06, following the totaling of Claimant's previous vehicle.
7. The monthly payments on the auto loan are paid for with Claimant's salary as an employee of the United States Department of Veterans Affairs and from disability payments Claimant receives as a disabled U.S. Army veteran.
8. A copy of the Registration Receipt from the Kansas Department of Revenue, Division of Vehicles, listing Mr. Young as the sole owner is attached as Exhibit A.
9. A copy of the auto loan application, sales contract, and supporting documents, listing Mr. Young as the sole purchaser and borrower is attached as exhibit B, with personally identifiable information redacted. An unredacted copy will be made available upon request if necessary.

Affirmative Defenses

First Affirmative Defense

Kansas Constitution Bill of Rights Sections 1 and 18 Innocent Owner

1. Claimant Seretse Young II is an innocent owner under KSA § 60-4106(a)(3) and his property is exempt from forfeiture because he did not know and could not have reasonably known of the alleged act or omission giving rise to the forfeiture and he did not know that it was likely to occur. Plaintiff has not alleged facts showing that Mr. Young has engaged in any conduct that would give rise to the forfeiture of his vehicle. Plaintiff has not alleged facts showing that Mr. Young solicited, authorized, knew about, or could have prevented the alleged criminal conduct. To the extent that Plaintiff believes that KSA § 60-4102(j) authorizes the punishment of an innocent property owner for the alleged crimes of his spouse, then KSA § 60-4102(j) violates the Kansas Constitution Bill of Rights Sections 1 and 18.

Second Affirmative Defense

United States Constitution Fourteenth Amendment Innocent Owner

2. Claimant Seretse Young II is an innocent owner under KSA § 60-4106(a)(3) and his property is exempt from forfeiture because he did not know and could not have reasonably known of the alleged act or omission giving rise to the forfeiture and he did not know that it was likely to occur. Plaintiff has not alleged facts showing that Mr. Young has engaged in any conduct that would give rise to the forfeiture of his vehicle. Plaintiff has not alleged facts showing that Mr. Young solicited, authorized, knew about, or could have prevented the alleged criminal conduct. To the extent that Plaintiff believes that KSA § 60-4102(j) authorizes the punishment of an innocent property owner for the alleged crimes of his spouse, then KSA § 60-4102(j) violates the Fourteenth Amendment to the United States Constitution. Claimant acknowledges that the case of *Bennis v. Michigan*, 516 U.S. 442 (1996) may foreclose this defense, but Claimant presents a good faith argument for an extension, modification, or reversal of existing law – that the Due Process Clause of the Fourteenth Amendment prohibits the punishment of innocent property owners through civil forfeiture. Claimant presents this good faith argument to preserve the issue for appeal.

Third Affirmative Defense

Statutory Excessive Fines

3. KSA § 60-4106(c) prohibits a forfeiture when it would be “grossly disproportionate to the nature and severity of the owner’s conduct.” Plaintiff has not alleged

that Mr. Young has engaged in any conduct which would give rise to the forfeiture of his vehicle. The forfeiture of Mr. Young's vehicle without any allegation or proof of his own criminal conduct would be grossly disproportionate to the nature and severity of his conduct.

Fourth Affirmative Defense

Kansas Constitution Bill of Rights Section 9 Excessive Fines

4. Kansas Constitution Bill of Rights Section 9 holds that "All persons shall be bailable by sufficient sureties except for capital offenses, where proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted." "Although forfeiture proceedings are civil, they are penal in nature and thus subject to the excessive-fines clauses of the Kansas and the United States Constitutions." *State, ex rel., Salina Police Dep't v. One 2007 Ford Mustang Auto., VIN 1ZVFT82H175328282*, 393 P.3d 1059 (Kan. Ct. App. 2017) (quoting *State v. Black 1999 Lexus ES300*, 45 Kan. App. 2d 168 (2011)). Under Section 9, a forfeiture is excessive when it is "grossly disproportional to the gravity of a defendant's offense." *Id.* (quoting *United States v. Bajakajian*, 524 U.S. 321, 334 (1998)). The forfeiture of Mr. Young's vehicle would be grossly disproportional to the gravity of his "offense," because there is no offense that Mr. Young has been accused of committing.

Fifth Affirmative Defense

United States Constitution Eighth Amendment Excessive Fines

5. The Eighth Amendment to the United States Constitution states that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Excessive Fines Clause is incorporated against the states through the Fourteenth Amendment. *Timbs v. Indiana*, 139 S. Ct. 682, 687 (2019). "[C]ivil in rem forfeitures are fines for purposes of the Eighth Amendment." *Id.* at 690. "If the amount of the forfeiture is grossly disproportional to the gravity of the defendant's offense, it is unconstitutional." *Bajakajian*, 524 U.S. at 337. Because Mr. Young is not accused of committing any offense, the forfeiture of his vehicle would be grossly disproportional.

Demand for Jury Trial

Claimant demands his right to a trial by jury. To the extent that KSA § 60-4113(h) purports to prohibit the right to trial by jury, it violates the United States and Kansas constitutions.

Relief Requested

Claimant, Seretse K. Young II, respectfully requests the Court enter judgment against the Plaintiff; order the 2014 Mercedes GL Class, VIN: 4JGDF7CE0EA388179, restored to Claimant, free of any fees or charges; for costs to be assessed against the Plaintiff; for an award of attorney fees incurred after Kan. Leg. 2024 S.B. 458 goes into effect on July 1, 2024; and for all other legal and equitable remedies as this Court deems just and proper.

Service on Attorney General

Pursuant to KSA § 75-764, Claimant will serve a copy of his First Amended Answer and Affirmative Defenses on the Attorney General's office.