

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA

Justice

-----X PART 13  
COUNTY OF NASSAU,

Plaintiff,

INDEX NO. 15691/04

-against-

MOTION DATE: 3/29/07

SEQUENCE NO. 003

RAUL BERRIOS, AMELIA BERRIOS and  
PRIMUS FINANCIAL, INC.,

Defendants.

-----X

Notice of Motion, Affs. & Exs.....	<u>1</u>
Affirmation In Opposition & Exs.....	<u>2</u>

Upon the foregoing papers, it is ordered that the motion by defendant Amelia Berrios for an order granting summary judgment and declaring her an "innocent owner" within the meaning of the Nassau County Administrative Code §8-70 is granted.

The facts are undisputed that Raul Berrios was arrested on July 14, 2004 and plead guilty on December 13, 2004 to a violation of VTL §1192.2. The 2001 Land Rover he was driving is the subject of this forfeiture action. That car is registered to his wife, defendant Amelia Berrios, and defendant Primus Financial is a lienholder. The action was discontinued as to defendant HSBC.

The proponent of a summary judgment motion "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v. Prospect Hosp.*,

68 NY2d 320 (1986)). Once the movant has demonstrated a *prima facie* showing of entitlement to judgment, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v. City of New York*, 49 NY2d 557 (1980)).

The plaintiff commenced this action to obtain a judgment of civil forfeiture pursuant to Nassau County Administrative Code §8-7.0(g) (3). This local statute provides for forfeiture of a vehicle used as an instrumentality of a crime. It was drafted in an effort to prevent driving while intoxicated (*County of Nassau v. Canava*, 1 NY3rd 134 (2003)).

Movant asserts that she qualifies as an innocent owner as set forth in Nassau County Administrative Code as an affirmation defense (NCAC §8-7.0 (g)(4)). In her sworn statement, Amelia Berrios alleges that she did not have any knowledge that her husband was driving her car while intoxicated.

Plaintiff opposes this application by producing certificates of conviction for defendant Raul Berrios' prior conviction for VTL §1192.2 in April 1997 and his plea of guilty to VTL §1192.1 in May 1997. Plaintiff contends that the two convictions in 1997 would preclude movant from prevailing on the affirmative defense in that she could have known that there "was a reasonable likelihood that the vehicle would be used in violation of any such provision" (NCAC §8-7.0 (g) (4)).

Plaintiff has not met its burden of showing that two convictions seven years before would preclude Amelia Berrios from prevailing as an innocent owner as defined in NCAC §8-7.0(g)(4)(f).

Dated: May 31, 2007.

**ENTERED**

JUN 05 2007

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

*Anthony L. Barga*  
Anthony L. Barga, J. S. C.