

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 06-01060
:
vs. :
: CRIMINAL
1998 CHEVROLET TRUCK, :
PA REG. YRR2922, :
Reputed Owner :
John W. Chianelli, : Defendant's Motion for Summary Judgment
Defendant :

ORDER

AND NOW, this day of November 2006, the Court DENIES Defendant's motion for summary judgment.

The Commonwealth sought forfeiture of the 1998 Chevrolet truck based on 42 Pa.C.S.A. §6801(a)(4), which permits the forfeiture of all conveyances, including aircraft, vehicles or vessels, which are used or are intended for use to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of controlled substances. In its forfeiture petition, the Commonwealth alleged Mr. Chianelli used the truck to make the deliveries of cocaine. Mr. Chianelli admitted this allegation in his answer to the forfeiture petition. On September 18, 2006, counsel for Mr. Chianelli filed a request for admissions. The Commonwealth never responded to the request for admissions. On October 20, 2006, counsel for Mr. Chianelli filed his motion for summary judgment. In this motion, he asserts that, by failing to respond, the Commonwealth is deemed to have admitted that the truck was not used as an instrument of crime and that the truck was neither contraband nor derivative contraband that would warrant its forfeiture to the Commonwealth under applicable statutes and case law; therefore, he is entitled to summary judgment. The Court cannot agree. The

Court finds that paragraphs 5, 6, and 7 of the requests for admissions are conclusions of law and, therefore, they are not deemed admitted by the Commonwealth's failure to respond. See Brindley v. Woodland Village Restaurant, 438 Pa.Super. 385, 395-398, 652 A.2d 865, 870-872 (Pa.Super. 1995); Dwight v. Girard Medical Center, 154 Pa.Comm. 326, 333, 623 A.2d 913, 916 (Pa.Comm. 1993).

Mr. Chianelli also contends that, even accepting the fact that the drugs were in the vehicle when he allegedly drove to meet the confidential informant and then sold drugs to the informant, the vehicle is not subject to forfeiture, because the evidence only demonstrates that the vehicle was used as a means of transportation. Mr. Chianelli relies on Commonwealth v. One 2001 Toyota Camry (Joel Sandler), 894 A.2d 207 (Pa.Comm. 2006), appeal denied, 903 A.2d 1234 (Pa. 2006) to support his contention. The Court finds that case is distinguishable and does not control the outcome in this case. One 2001 Toyota Camry involved an individual who used his vehicle to meet with an undercover detective to solicit him to commit murder and forfeiture was sought under the common law, not 42 Pa.C.S.A. §6801(a)(4). The Court believes the vehicle was more than just a means of transportation for Mr. Chianelli, since his counsel acknowledged at oral argument that the drugs were in the vehicle as well. Given this fact, the vehicle would be subject to forfeiture proceedings under section 6801(a)(4). Commonwealth v. One 1983 Toyota Corolla, 134 Pa.Comm. 325, 578 A.2d 90 (Pa.Comm. 1990)(vehicle in which cocaine was possessed and transported subject to forfeiture). Even assuming the vehicle was merely a means of transportation, the Court believes the vehicle still could be subject to forfeiture proceedings under section 6801(a)(4). See Commonwealth v. One 1979 Lincoln Four Door Sedan, 344 Pa.Super. 171, 496 A.2d 397 (1985), appeal denied, 513 Pa. 634, 520 A.2d 1384

(1987)(Superior Court upheld forfeiture of vehicle that was used to transport a drug worker to the lab, as well as food for the other workers).

By The Court,

Kenneth D. Brown, P.J.

cc: William Miele, Esquire
Mary Kilgus, Esquire (ADA)
Gary Weber, Esquire (Lycoming Reporter)
Work File