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## Pawnbroker Who Alleges Police Harassment Over Online Database Can Pursue Lawsuit Against City

BY MARK HAMBLETT

A PAWNBROKER who claims police harassed the business because it refused to join a law enforcement database used to track down stolen goods can pursue a claim of selective enforcement against New York City, a federal judge has ruled.

Eastern District Judge Margo Brodie said Gem Pawnbrokers had stated a claim under §1983 for a violation of the Equal Protection Clause by police because it specifically alleged it was treated differently from one of its main competitors.

Gem, a collateral loan and secondhand dealer, runs more than 20 retail stores in New York City, and, as a licensed pawnbroker, is subject to administrative inspections of its books by the New York City Police Department.

Under police guidelines—developed in 1998 by George Grasso, deputy commissioner for legal matters, so that administrative inspections comply with the Constitution—police are advised to visit pawnbrokers during regular business hours to inspect books. If they develop probable cause that there is criminal activity, police can secure the premises and obtain a search warrant.

The guidelines make clear that an officer may seize property only if “its evidentiary or contraband nature” is apparent and the property is in plain view.

Gem alleged that these guidelines were not followed by police and it was subject to harassment after refusing to join Leads Online, which automatically

posts all pawn transactions electronically and makes on-site administrative inspections unnecessary.

The business charged that, beginning in 2011, police maintained a constant presence in some of its stores, demanded collateral jewelry without a warrant and placed “criminal holds” on some jewelry.

Brodie dismissed several of Gem’s claims in March 2014, but let stand claims for violations of the Fourth Amendment, malicious prosecution, municipal liability for New York City and equitable relief.

She also allowed Gem to file an amended complaint alleging selective enforcement in violation of the Equal Protection Clause.

The Law Department moved for both reconsideration of Brodie’s 2014 decision and to dismiss the equal protection claim.

On Tuesday, Brodie said the city had failed to offer a good enough reason for reconsideration, such as a change in the case law or law the court may have overlooked. The equal protection claim survived, she said, because Gem had identified a competitor, EZ Pawn Corp. as a similarly situated comparator.

The judge said Gem had alleged “an adequate point of comparison” between itself and EZ Pawn “by describing that EZ Pawn was similarly ‘faced with harassment and heavy-handedness by the NYPD,’ before using Leads Online and that ‘it has never been harassed,’ since joining Leads Online.”

Gem, she said, could proceed with its equal protection claim “even

under the more stringent ‘class of one’ standard.”

Solo practitioner **Paul Solda**, who represents Gem, said Wednesday that Brodie at oral argument in 2014 “commented that she had doubts about the constitutionality of the administrative inspection scheme and how it’s implemented and how changes in the law itself violate privacy rights.”

**Solda** said his client suffered “systematic” abuse by police because Gem is the largest collateral loan and secondhand dealer in the city and Leads Online would be less than effective without its participation. He also said police were enforcing a law that may not survive.

Local Law 149 of 2013 and the resulting amendment to §20-277 of the New York City Administrative Code, **Solda** said, requires “that all pawnbrokers report and upload all of their daily transactions on Leads Online.”

The amendment is the subject of a suit pending in Bronx Supreme Court brought by the trade association for collateral loan brokers and secondhand dealers, The Collateral Loanbrokers Association of New York.

In that case, the Loanbrokers Association and the Law Department agreed to a stipulation that stayed the Leads Online statute pending the organization’s constitutional challenge before Justice Mitchell Danziger. The case is *Collateral Loanbrokers Association of New York v. The City of New York*, 303901/2014.