

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

MEMORANDUM AND ORDER

REAL PROPERTY LOCATED AT
1106 SHANGHAI ROAD, TOWN OF
SPRING GROVE, GREEN COUNTY,
WISCONSIN, WITH ALL APPURTENANCES
AND IMPROVEMENTS THEREON,

06-C-358-S

Defendant.

Plaintiff United States of America commenced this action pursuant to 21 U.S.C. § 881(a)(7) for the forfeiture of real property which was used or intended to be used in any manner or part to commit or to facilitate the commission of a violation of 21 U.S.C. § 801 et seq., punishable by more than one year's imprisonment. Default judgment was granted against defendant Ronald Roberson. Sherry Roberson has filed a claim.

On November 1, 2006 plaintiff filed a motion for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, conclusions of law and a brief in support thereof. This motion has been fully briefed and is ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by

both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding the motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

The defendant real property is located at 1106 Shanghai Road, Town of Spring Grove, Green County, Wisconsin. On June 30, 2006 this property was owned by Ronald and Sherry Roberson.

On June 30, 2006 a search warrant was executed at the property and a sophisticated marijuana grow operation was located in a shed on the property. Items found in the shed included approximately 226 marijuana plants; twenty-one PL Light System ballasts; seven ballasts; Black plastic "flats"; twenty-eight grow lamps; a dehumidifier; nine submersible water pumps; thirty-six one-gallon containers of fertilizer; two carbon dioxide generators; seventeen grow media strips; a cycle timer and three other timers; three 6-inch in-line duct fans; one 5-inch in-line duct fan; two bottles of insecticide; a Ziploc bag with loose marihuana; approximately 1500 clear plastic Ziploc bags and two boxes of 2-gallon Ziploc bags.

Items found in the residence included a digital scale; a gym. bag containing numerous empty Ziploc bags and one Ziploc bag containing trace amounts of marijuana; a black plastic garbage bag containing numerous Ziploc bags; a black plastic film container containing trace amounts of marijuana seeds and plant material; two plastic Ziploc bags containing marijuana seeds; \$1,860.00 in currency in the dresser drawer of the master bedroom and a marijuana cigarette on the kitchen counter.

Items found in a green jeep on the property were papers with Sherry Roberson's name on them and a wax paper funnel containing approximately 5 grams of what appeared to be freshly cut marijuana.

Officers determined that the power meter had been bypassed. The electrical service powering the shed had been connected

underground ahead of the meter and was providing power to a second electrical panel within the shed.

On June 30, 2006 Inspector Lori DePauw interviewed Sherry K. Roberson. Sherry Roberson stated that she had absolutely no knowledge of marijuana in the house. She further denied having any knowledge of the marijuana grow operation on the property. Sherry Roberson further stated that she is not allowed to question what her husband does and that he was physically abusive.

Sherry Roberson also told the inspector that two days earlier her husband had denied her access to the shed. She stated that her husband had previously been arrested for having a marijuana grow operation in their old house.

DISPUTED FACTS

Claimant Sherry Roberson by her affidavit has raised a genuine issue of material fact concerning the following:

Claimant Sherry Roberson had knowledge of the marijuana grow operation in the shed on her property.

Claimant Sherry Roberson had knowledge of the items in her residence which were seized pursuant to the June 30, 2006 search.

Claimant Sherry Roberson was suspicious of her husband's activities.

The green jeep was owned and operated only by Sherry Roberson.

MEMORANDUM

In a civil forfeiture case it is the government's burden to establish probable cause to believe that the property is subject to forfeiture. United States v. On Leong Chinese Merchants Association Building, 918 F. 2d 1289, 1292 (7th Cir. 1990) Probable cause is defined as "reasonable ground for the belief of guilt supported by less than prima facie proof but more than mere suspicion." Id. This burden is the same as the government's burden in establishing the basis for a search warrant. United States v. Lot 9, Block 2 of Donnybrook Place, 919 F. 2d 994, 998 (5th Cir. 1990).

Once the government demonstrates probable cause in a forfeiture case, the ultimate burden shifts to the claimant to prove by a preponderance of the evidence that the property is not subject to forfeiture. United States v. Edwards, 885 F. 2d 377 (7th Cir. 1989).

Claimant contends that her interests in the real property are not subject to forfeiture because she is an innocent owner pursuant to 18 U.S.C. § 983(d)(2)(A). See United States v. \$215,300 United States Currency, 882 F. 2d 417, 419-420 (9th Cir. 1989), cert. denied, 497 U.S. 1005 (1990). The claimant must offer some admissible evidence that would be sufficient to establish her defense. If not the United States is entitled to summary judgment based on its showing of probable cause alone. United States v.

Premises and Real Property at 4492 S. Livonia Road, 889 F.2d 1258, 1309 (2nd Cir. 1989).

In her affidavit plaintiff states that she did not have knowledge of the marijuana grow operation in the shed on her property or of the items found in the residence relating to the operation. She has raised a genuine issue of material fact concerning her direct knowledge of the marijuana grow operation.

Plaintiff argues that had claimant no direct knowledge of the operation she was willfully blind to it. See United States v. Antzoulatos, 962 F.2d 729, 724 (7th Cir. 1992). Willful blindness is the result when one is aware of a high probability of a fact and consciously avoids seeking the truth in an attempt to remain ignorant. United States v. One 1973 Rolls Royce, 43 F.3d 794, 807-812 (3rd Cir. 1994).

Plaintiff claims she had no knowledge of the grow operation or the currency and marijuana found in the residence. She further states that she was not suspicious that her husband was growing marijuana. A genuine issue of material fact remains for trial on both claimant's direct knowledge and willful blindness. Plaintiff's motion for summary judgment will be denied.

ORDER

IT IS ORDERED that plaintiff's motion for summary judgment is DENIED.

Entered this 5th day of December, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge