

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

REAL PROPERTY LOCATED AT
8711 LAKE ROAD, WISCONSIN
RAPIDS, WISCONSIN, WITH ALL
APPURTENANCES AND IMPROVEMENTS
THEREON,

Defendant.

OPINION AND ORDER

03-C-0168-C

This is a proceeding for civil forfeiture, brought pursuant to 21 U.S.C. § 881(a)(7). The United States contends that it is entitled to forfeit claimant Patricia Lewis's house (the defendant property) because claimant used the property to violate or facilitate the violation of the federal drug laws. Claimant filed a Statement of Interest or Right on July 18, 2003, and an answer on behalf of the defendant property in which she denied that the property was used to commit a crime that violated the federal drug laws.

The case is before the court on plaintiff's motion for summary judgment. Claimant has not filed a response to the motion. Instead, she filed a motion for appointment of

counsel. I denied the motion on December 15, 2003, because claimant had not submitted an affidavit of indigency or shown evidence of any effort to retain counsel privately. In the same order I gave claimant an extension of time in which to respond to plaintiff's motion. Despite that extension, claimant filed nothing in opposition to the motion.

I conclude that the undisputed facts show that claimant used the defendant property to facilitate the sale of controlled substances, including cocaine. Therefore, I will grant plaintiff's motion for foreclosure.

From the facts proposed by plaintiff, which are unopposed by claimant, I find that the following are material and undisputed.

UNDISPUTED FACTS

The defendant property is located in Wood County, Wisconsin, and is within the Western District of Wisconsin.

Sometime before February 20, 2003, Steven Kranig was assisting the Wood County Sheriff's Department in setting up a "reverse" sale of cocaine to claimant Patricia Lewis. Kranig called claimant at her residence and arranged to sell her nine ounces of cocaine for \$6,500. On February 20, 2003, claimant made the purchase from Kranig for approximately \$6,500 in United States currency.

Shortly after making the purchase, claimant was arrested and taken to the Wood

County jail, where she made two telephone calls. In both conversations, claimant asked the person to whom she was speaking to go to her house and remove the “green monster” from her closet. In one of the calls, she said that the police would be looking for the “green monster.” In the other, she gave the combination for a safe.

On February 20, 2003, a search warrant was executed on the defendant property. Officers found a green safe in the master bedroom closet. Inside it were a coin collection, jewelry, a black bag with multiple keys, personal documents, numerous prescription pills packaged in a plastic bag, a plastic straw with cocaine residue and \$31,301 in United States currency. Also in the safe were lists of names of individuals, together with the amounts owed to claimant and other documents showing calculations of large sums of money. In other parts of the residence, officers found personal documents, several pill bottles containing various kinds of prescription pills, a cellophane wrapper containing prescription pills, a large plastic bag containing marijuana residue, a mirror, a plastic blade, a metal postal scale and items of drug paraphernalia, including cocaine sniffers and marijuana pipes. Patricia Herman arrived at the defendant property, where she told Investigator Griesbach that claimant had called her and asked her to remove the “green monster” from her closet.

The \$6,750 that claimant had used to buy cocaine from Kranig, the \$31,301 found at the defendant property and a 1996 Harley Davidson motorcycle were administratively forfeited by the Drug Enforcement Administration on July 21, 2003. Claimant did not file

any claims regarding this property.

On several occasions, various persons bought cocaine from claimant at the defendant property. In 1999, Shawn Curry purchased one gram of cocaine for \$100 at the property. Curry saw claimant go into her bedroom and return with a bag containing approximately seven to eight grams of cocaine. Claimant removed a chunk of cocaine from the bag, weighed it and removed some of the cocaine until it reached one gram.

Christopher O'Day purchased cocaine from claimant at the defendant property five to six times between 1999 and 2000. Each purchase was either one or two "8-balls." On one occasion, O'Day went into claimant's bedroom and saw her remove a coffee can from a large green safe. The can contained at least three to four ounces of cocaine in prepacked amounts. On several occasions between 1999 and 2000, O'Day went to the defendant property with Cliff Riddle and saw claimant deliver cocaine to Riddle.

I take judicial notice that distributing cocaine is a violation of 21 U.S.C. § 841, punishable by more than one year's imprisonment.

OPINION

21 U.S.C. § 881(a)(7), subjects to forfeiture "all real property . . . used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment." The undisputed facts

show that claimant used the defendant property as a place to distribute drugs and as a place to store drugs, drug paraphernalia and cash used to commit violations of the federal drug laws prohibiting the distribution of cocaine. Distributing cocaine carries a potential penalty of imprisonment for more than one year. No more is necessary to show that the defendant property is subject to forfeiture to the United States under § 881(a)(7). Plaintiff's motion for summary judgment will be granted.

ORDER

IT IS ORDERED that the United States' motion for summary judgment is GRANTED. The United States shall submit a proposed form of judgment to the clerk of court no later than January 21, 2004.

Entered this 13th day of January, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge