IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

REAL PROPERTY LOCATED AT
1112 MONROE STREET, SAUK
CITY, SAUK COUNTY, WISCONSIN,
WITH ALL APPURTENANCES AND
IMPROVEMENTS THEREON,

Defendant.

OPINION AND ORDER

03-C-0236-C

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This is an action brought pursuant to 21 U..S.C. § 881 for forfeiture of property used allegedly for the manufacturing of a controlled substance in violation of 21 U.S.C. § 841. Plaintiff United States of America contends that defendant real property was used for the manufacture of marijuana and has moved for summary judgment. Accompanying its motion are proposed findings of fact, declarations of two police officers and other documentary evidence. Claimant Rick Mellentine has filed several documents: "Summary Judgement Motion," "Notice and Demand for Adjudication with Memorandum of Law by Affidavit," "Memorandum of Law by Affidavit" and "Cover Letter (and Memorandum) Pertaining to

Case # C-236-C." In the first document, he suggests that the court cannot exercise jurisdiction over this case because the state of Wisconsin has not granted cession to the court under Article I, § 8, cl. 17 of the United States Constitution and he seeks summary judgment on the ground that the search of his residence was unconstitutional under the constitutions of the United States and the state of Wisconsin. In the second document, claimant asserts that there are no facts in dispute and that he is entitled to relief as a matter of law. In none of the documents has claimant proposed any findings of fact or made any legal argument to support his assertion.

I conclude that defendant property should be forfeited to plaintiff United States. Claimant has not proposed any facts that would put the facts proposed by plaintiff into dispute and he has not suggested any reason why forfeiture should not occur. His suggestion that the court cannot exercise jurisdiction is without foundation; the constitutional provision he cites relates to the establishment of the District of Columbia as the seat of the national government. No similar cession by a state is necessary for the construction and operation of a federal district court. The constitutionality of the search of his residence has been decided by the state court and cannot be re-litigated in this case.

In the absence of any proposals to the contrary by claimant, I find that the following facts proposed by plaintiff are material and undisputed.

UNDISPUTED FACTS

On or about April 21, 2003, a confidential informant made contact with Rick Mellentine and entered his residence at 1112 Monroe Street, Sauk City, Wisconsin. The informant wore a body wire that recorded the conversation the informant had with Mellentine.

On or about April 21, 2003, a search warrant was executed at Mellentine's residence at 1112 Monroe Street, Sauk City, Wisconsin. Searchers found a marijuana grow room that appeared to be used for the processing of marijuana plants. They seized 35 potted plants, two fans, two electrical timers, a large umbrella style grow light, three extra light bulbs, three boxes of sandwich bags, pictures of marijuana plants, three bags of plant food, a grow light power supply, mirrors, a plant sprayer, a soda can made into a bong, a scale, scissors, a manual on growing herbs and flower pots with soil and cut marijuana leaves. Searchers found a total of 955 grams of processed marijuana, consisting primarily of 14 harvested plants with root systems and 172 grams of dried marijuana in Ziploc baggies, along with small quantities of marijuana found throughout the house.

Officer William Richards conducted Narco Pouch Brand filed tests on the seized marijuana that tested positive for the presence of marijuana. The evidence seized is consistent with the manufacture of marijuana.

On April 22, 2003, claimant Mellentine was charged in state court with one count

of "manufacture/deliver THC (>200-1000 grams) and one count of possession with intent to deliver THC (<=200 grams). After the state court denied his motion to suppress the evidence seized in the search, claimant pleaded guilty to manufacture and delivery of between 200 and 100 grams of THC on November 17, 2004. He chose not to appeal his conviction.

Plaintiff United States of America filed its complaint in this case on May 9, 2003. It filed an amended complaint on June 9, 2003. Claimant Mellentine was served with a copy of the complaint, the notice of complaint, the amended complaint and a notice of the amended complaint on August 6, 2003. On the same day, copies of the same documents were posted on defendant Real Property Located at 1112 Monroe Street, Sauk City, Sauk County, Wisconsin. Claimant JP Morgan Chase was served with a copy of the amended complaint and a notice of the amended complaint on August 11, 2003. It filed an answer to the amended complaint on September 15, 2003; on October 9, 2003, it filed a withdrawal of claim.

On September 5, 2003, plaintiff filed a second amended complaint. It served copies of the second amended complaint and notice of the second amended complaint on claimant Mellentine on November 13, 2003 and posted copies of both documents on defendant on November 21, 2003. Also on November 21, 2003, it served claimant National City Home Loan Services with copies of the documents. Notice of the forfeiture was published in The

Baraboo News-Republic on August 15, 2003, August 22, 2003 and August 29, 2003.

On June 28, 2004, a stipulation for compromise and settlement between plaintiff and claimant National City Home Loan Services was filed with the court.

OPINION

To prevail in a forfeiture action brought pursuant to 21 U.S.C. § 881, plaintiff has to show by a preponderance of the evidence the existence of a substantial connection between the property to be forfeited and the underlying criminal activity. 18 U.S.C. § 983(c)(2). If plaintiff succeeds, it becomes the claimant's burden to prove by a preponderance of the evidence that no such connection exists or that he is an "innocent owner."

Plaintiff has adduced ample evidence to meet its burden of showing a substantial connection between the manufacture of marijuana and defendant real property. The quantity and variety of items seized are strong evidence that defendant property facilitated the illegal manufacturing of marijuana. For his part, however, claimant Mellentine has made no showing that he is an innocent owner or that the government's evidence is insufficient to show a substantial connection. He has proposed no facts of any kind, much less facts that would tend to show that he is innocent of any illegal conduct despite his ownership of the property used for the manufacturing process.

Instead of proposing facts to counter those proposed by plaintiff or advancing legal arguments to show a lack of substantial connection or that he is an innocent owner, claimant devotes most of his filings to arcane arguments having to do with his non-status as a party to this suit. He begins by saying that "an acronym of [him]self" is named in the suit and plaintiff has not responded to claimant's "issue of assonance." Cover Letter (and Memorandum) Pertaining to Case #C-0236-C, dkt.#57, at 1. He asserts that plaintiff "create[d] a **strawman**, in/by acronym of [his] given name, upon [his] birth," making him a Principal. Id. at 2. He goes on to say that his presence in this case is "in exercise of [his] right of 'Amicus curiae.'" Id. at 4.

To the extent that claimant is trying to disassociate himself from this law suit, he is not helping himself. Without a claimant in the suit, no one would be challenging the forfeiture. If claimant Mellentine wants to disavow any claim to defendant property by asserting that plaintiff has not responded to his "issue of assonance," he is free to do so but at the cost of abandoning any rights he might have to the property.

It appears, however, that claimant wants the benefits of participation in this suit without actually appearing because he seeks judgment in his favor "in the nature of quia-timet injunction." Claimant's Notice and Demand for Adjudication at 1. "Quia timet is the right to be protected against anticipated future injury that cannot be prevented by the present action. The doctrine of "quia timet" permits equitable relief based on a concern over

future probable injury to certain rights or interests, where anticipated future injury cannot be prevented by a present action at law, such as where there is a danger that a defense at law might be prejudiced or lost if not tried immediately." Am. Jur. Equity § 93.

Claimant Mellentine has shown no grounds for equitable relief in his favor. The undisputed facts show that defendant property was used for an illegal purpose, in violation of 21 U.S.C. § 841. He has not shown that he was an innocent owner of the property, entitled to injunctive relief to prevent the property from being forfeited to plaintiff.

Claimant's suggestion that this court cannot exercise jurisdiction over his case is based on his belief that a federal court cannot operate in the absence of a cession by the state in which it is located. He cites no statute or case law to support his belief. His citation to the United States Constitution is of no help because the provision he cites refers to the cession of land for the establishment of the District of Columbia. Congress has given the federal district courts explicit jurisdiction over forfeiture actions such as this one, 28 U.S.C. § 1355 ("district courts shall have original jurisdiction . . . of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture"), and has provided that the actions may be prosecuted in any district in which the property is located. 28 U.S.C. § 1395(b).

Finally, claimant tries to re-litigate the suppression motion he lost in state court, but his effort is futile. The issue has been decided and claimant is collaterally estopped from re-

arguing it. Montana v. United States, 440 U.S. 147, 153 (1979) ("once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation").

ORDER

IT IS ORDERED that the motion for summary judgment filed by claimant Rick Mellentine is DENIED for claimant's failure to show that he is entitled to judgment in his favor and the motion for summary judgment filed by plaintiff United States of America is GRANTED on its showing that defendant Real Property Located at 1112 Monroe Street, Sauk City, Sauk County, Wisconsin, with all appurtenance and improvements thereon, was used to facilitate the manufacturing of marijuana in violation of 21 U.S.C. § 841 and is therefore subject to forfeiture pursuant to 21 U.S.C. § 881. The clerk of court is to enter judgment of forfeiture in favor of plaintiff and close this case.

Entered this11th day of July, 2005.

BY THE COURT:

Barbara B. Crabb

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BARBARA B. CRABB
District Judge