

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 E10239  
HAPPY LANE, BARABOO, SAUK COUNTY  
WISCONSIN, WITH ALL APPURTENANCES  
AND IMPROVEMENTS THEREON,

Defendant.  
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ORDER

04-C-0160-C

Plaintiff United States of America has filed an unopposed motion for summary judgment, contending that it is entitled to forfeiture of defendant Real Property located at E10239 Happy Lane, Baraboo, Sauk County, Wisconsin. The motion will be granted.

I find from the facts proposed by the government and unopposed by defendant that the following facts are material and undisputed.

UNDISPUTED FACTS

Patricia McGrath has lived at E10239 Happy Lane, Baraboo, since July 1, 1998. The

property was given to her by her parents.

The Baraboo National Bank holds a real estate security agreement against the property that secures payment of a note to the bank executed by Patricia M. McGrath on March 22, 2004, with the original principal sum of \$7,000.

Amber McGrath and Robert McGrath have lived at E10239 Happy Lane since 2000. Joseph Crom has lived there for approximately 14 months; Joshua Martin has lived there since late December 2003; Norman Wilson has lived there off and on since late December 2003.

On February 4, 2004, Crystal L. Castaldo purchased approximately one-half ounce of marijuana from Joshua Martin. On February 17, 2004, she purchased approximately one ounce of marijuana from Norman Wilson. On March 4, 2004, she purchased approximately one-half ounce of marijuana from Joshua Martin. All of these purchases were made at E10239 Happy Lane, Baraboo.

On March 7, 2004, a search warrant was executed on the Happy Lane residence on March 7, 2004. Detective Christopher Zunker participated in its execution. While he was in the kitchen, he observed a postal scale, a smoking device made from a pen body, two smoking devices commonly used to smoke marijuana, a homemade smoking device made from a soda can and a 300-pack of Glad sandwich bags, all either on the kitchen counter or below it. In a bedroom belonging to Amber McGrath and Joseph Crom, Detective Zunker

saw a marijuana smoking pipe, an aluminum foil smoking pipe, a marijuana smoking pipe made from a radio antenna, a clear marijuana smoking pipe, a metal rack containing vials of unknown substances and marijuana seeds, an ice cream bucket containing multiple tie offs and other plastic bags, marijuana residue and a sandwich bag containing marijuana seeds. In another bedroom, he saw a metal spoon, plastic baggies and a silver postal scale. In the living room, he saw a multicolored ceramic marijuana pipe on the coffee table in the living room and a three-foot glass water bong on the floor.

Patricia McGrath knew there was drug paraphernalia in the kitchen, bedrooms and living room. She had observed numerous people smoking marijuana in her house during the time that Robert and Amber McGrath were living with her and she was aware that marijuana was smoked on a daily basis throughout her house. It was not unusual for her to observe a group of people sitting around her house smoking marijuana. She was aware that the basement of her house was used as a party area where drugs were smoked; she has seen drug paraphernalia, remnants, seeds and stems there. She made no effort to tell anyone she saw smoking marijuana not to do it in her house or get them to stop. She did not know that it was against the law to let people smoke marijuana in her house. She was suspicious that Joshua Martin may have been selling drugs out of her house when she noticed that people would stop by in the evening, stay a short time and then leave. However, she never asked Martin or anyone else in the house about his activities.

On July 9, 2004, Joshua Martin was convicted in Wisconsin state court for the February 4, 2004 delivery of marijuana to Crystal Castaldo at E10239 Happy Lane. On March 9, 2004, a complaint was filed against Patricia McGrath in the Circuit Court for Sauk County, Wisconsin, charging her with maintaining a drug trafficking place in violation of Wis. Stat. § 961.42(1). An information was filed on May 21, 2004, charging the same violation.

On September 14, 2004, Patricia McGrath entered a plea of no contest to the charge of maintaining a drug trafficking place. The court accepted her plea and found her guilty of the offense.

#### CONCLUSIONS OF LAW

The defendant real property located at E10239 Happy Lane, Baraboo, Sauk County, Wisconsin, 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, is subject to civil forfeiture under 21 U.S.C. § 881(a)(7). Patricia McGrath is not an innocent owner of the defendant real property located at E10239 Happy Lane, Baraboo, Sauk County, Wisconsin, within the meaning of 18 U.S.C. § 983(d)(2)(A).

ORDER

IT IS ORDERED that the defendant real property located at E10239 Happy Lane, Baraboo, Sauk County, Wisconsin, is forfeited to the United States of America to be deposited of in accordance with federal law.

Entered this 8th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge