

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

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UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

06-CR-0071-C

JEFFREY ROZEK and  
SANDRA ROZEK,

Defendants.

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On August 9, 2006, this court held a telephonic hearing on defendants' joint motion for an evidentiary hearing on their Fifth and Sixth Amendment claim for release of their real property. The government was represented by Assistant United States Attorney John Vaudreuil. Defendant Jeffrey Rozek was represented by his attorney, Corey Chirafisi. Defendant Sandra Rozek was represented by her attorney, Richard Coad.

As discussed in more detail during the conference, here's where we landed: the court's conclusion is that the government's *lis pendens* on the Rozeks' home does not qualify as a seizure of the property. *See, e.g., United States v. Peters*, 791 F.2d 1270, 1279 n.5 (7<sup>th</sup> Cir. 1986). Nonetheless, we agreed that no rational banker would lend money against the Rozeks' home in light of the government's notice. So, as an equitable matter, it may be that the court's direction in *United States v. Moya-Gomez*, 860 F.2d 706, 730 (7<sup>th</sup> Cir. 1988) might apply to the current situation.

That said, it is a “situation,” not a “dispute.” The government is willing to commit to a dollar amount owed to the remaining creditors in the bankruptcy. The government also will advise defendants and the court as to the guideline range for any fine in this case. Defendants, by counsel, will ascertain the current value of the home, probably based on the city tax assessment, perhaps based on the 2004 appraisal. In any event, the government and defendants agree that the court can subtract from the unencumbered value of the house the amount due to creditors and the guideline range for a fine to arrive at a residual dollar amount. The court then can enter an order protecting this residual dollar amount from seizure or a fine. In essence, this money becomes protected and will be available to the Rozeks, at least in theory.

As the parties acknowledged, the court’s order may or may not convince a bank to lend money against the protected residual dollar amount. Given the fact that the government has not actually seized the Rozeks’ house, however, this is the best the Rozeks can hope for under the circumstances. The Rozeks are free to use whatever funds they can generate against this residual equity in their home to hire an attorney or do whatever else they wish with it.

Because time is of the essence in this fast-moving case, the parties agreed to obtain these numbers and provide them to the court by close of business on Friday, August 11, 2006. The parties should notify the court forthwith if they encounter unexpected snags or

disputes. The parties had no other matters to bring to the court's attention.

Entered this 9<sup>th</sup> day of August, 2006.

BY THE COURT:

/s/

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STEPHEN L. CROCKER  
Magistrate Judge