

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 1:08-cv-02205-RMC
)	
2 NORTH ADAMS STREET, etc., et al.,)	
)	
Defendants.)	
)	

RETURN TO COURT’S ORDER TO SHOW CAUSE

COMES NOW, plaintiff, the United States of America, by and through the United States Attorney for the District of Columbia, respectfully to make this return to an order to show cause why the Court should not dismiss this action pursuant to Local Rule 83.23 for failure to prosecute. In summary, first, plaintiff has been diligent in prosecuting this action and gave direct notice very promptly to known potential claimants in January 2009. Further, plaintiff is complying with the federal statute requiring that notice of the case be given by publication. In keeping with the likely outcome of this notification, plaintiff also is preparing a motion for default judgment and a final order of forfeiture. As things now stand, plaintiff expects that the Court will be in a position to grant such a motion, which should result in the dismissal of this case, by approximately January 15, 2010, that is, in 70 days. In light of this, plaintiff respectfully submits that it has properly prosecuted this action and that the interests of justice indicate that it should not now be dismissed. In further support and explanation whereof, plaintiff states as follows:

1. Less than a year ago, on December 19, 2008, the plaintiff United States government brought this civil forfeiture action *in rem* against nine defendant items of real and personal property. The verified complaint alleges that the defendant properties constituted or were derived from

proceeds of a wire-fraud scheme, in violation of 18 U.S.C. § 1343, and thus were subject to forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C), and on other related grounds. The nine defendants are two pieces of real property in Florida, and seven items of personalty, including about \$635,000 in funds in a bank account, three automobiles, a boat with a motor and trailer, a pair of jet skis, and miscellaneous computer equipment.

2. This action seeks to forfeit the illegal proceeds of a “Ponzi-style” fraud, which resulted in millions of dollars being swindled from thousands of would-be investor-members in a computerized advertising pyramid scheme. The government brought this action in the wake of an earlier, companion civil forfeiture action *in rem*, captioned United States v. 8 Gilcrease Lane, Quincy, Florida, etc., et al., 1:08-cv-01345-RMC. The issues raised in the earlier “8 Gilcrease Lane” case mirror those presented in the instant case. The earlier companion case remains in active litigation. This companion case also is before this Court, the Hon. Rosemary M. Collyer, J., presiding.

4. After the filing of this action, a warrant of arrest *in rem* issued for the defendant properties, according to law. Not later than January 31, 2009, plaintiff had arranged for federal law enforcement agents to serve the defendant properties. In the course of doing so, plaintiff also gave direct notice to all known potential claimants. Principal among these was Mr. Thomas A. Bowdoin, Jr., and persons or entities associated with Mr. Bowdoin. Mr. Bowdoin and one or more of these persons and entities have filed claims in the companion civil forfeiture action, United States v. 8 Gilcrease Lane, Quincy, Florida, etc., et al., 1:08-cv-01345-RMC. They have not filed claims in this action, however.

5. As this Court well knows, at various points during the pendency of all of the matters

involving Mr. Bowdoin, it has appeared that there would be global resolution of all litigation. In consequence, plaintiff has conducted its prosecution of this case in harmony with its anticipation of the outcome of the related matters. As a result, plaintiff did not commence notification by publication immediately after it filed this action. Further, several of the defendant assets did not come into the government's custody until late October 2009, less than a month ago. In general, the government cannot give notice by publication until a defendant item of personal property has been taken into the government's custody.¹ Promptly when it appeared that a global resolution of all related litigation had become much less likely, the government applied to this court in late October for seizure warrants for several of the defendant properties. Within days of the Court issuing the warrants, federal law enforcement agents had swiftly executed them, and all defendant items of personal property are in the custody of an agency of the U.S. government.

6. Before plaintiff may properly seek a default judgment, it must comply with the Supplemental Rules For Admiralty Or Maritime Claims And Asset Forfeiture Actions, especially Rule G, which governs this action specifically. Rule G(4) governs notice. Because this is an action *in rem* against specific inanimate properties, the rule requires the government to give notice to known potential claimants and notice by publication. Supplemental Rule G4(a)(1) specifically states that, "A judgment of forfeiture may be entered only if the government has published notice of the action within a reasonable time filing the complaint or at a time the court orders."

7. The government gave notice to known potential claimants both by serving the

¹ This is only true of items of personal property, such as cars, funds in a bank account, cash, or vessels. It is not true of defendant pieces of real property. Only very rarely is the government permitted to take custody of real property before the issuance of an order of forfeiture. See 18 U.S.C. §§ 985(b)-986(d).

defendant properties, as well as by hand delivering written notice of the forfeiture action. The government has signed receipts for such direct notice from, among others, Mr. Bowdoin himself. As noted, this had occurred within 35 days of plaintiff commencing this forfeiture action. Thus, all those persons who have actual interests in the defendant properties have had notice since January 2009.

8. Because this is a government-initiated forfeiture action, the Supplemental Rules also require the notice be given to all the world, through notice by publication. Supplemental Rule G(4)(a)(1) states how this is to be done. One of the means of giving notice by publication is “posting a notice on an official internet government forfeiture site for at least 30 days.” Supplemental Rule G(4)(a)(iv)(C). The government recently has begun the period of posting such notice on an internet forfeiture site, <http://www.forfeiture.gov>, for 30 consecutive days. Rule G(5), on responsive pleadings, requires any verified claim to be timely filed “no later than 60 days after the first day of publication on an official internet government forfeiture site.” Supplemental Rule G(5)(a)(ii)(C). If no one (who did not receive the earlier direct notice to known potential claimants) files a claim based on notice by publication, then plaintiff expects to be in a position to file an affidavit of default with the Clerk of the Court on or before January 8, 2010. After the Clerk enters the default, plaintiff very swiftly will file a motion for default judgment and a final order of forfeiture. On the present schedule, the government expects to do this by January 15, 2010.²

² In general, notice by publication cannot be given on the internet until an item of defendant personal property has been taken into government custody. Although this is not invariably so, it is true in this instance. Thus, until the government had obtained seizure warrants for some of the items of defendant personal property, it could not begin notice by publication. Thus, the alternative would have been for the government to give notice by publication piecemeal or *seriatim*. Not only is this more expensive, administratively complex, and confusing, but some claimants might well argue that it could appear unfair. In any event, the government has preferred not to give notice piecemeal.

9. The experience of counsel who regularly litigate federal civil forfeiture actions is that it is exceedingly rare for a proper claimant to enter a case based upon notice by publication. This is certainly so when the government has given proper notice to known potential claimants, as was done in this instance in January 2009. Not only was such notice given, but publicity attendant to the earlier companion forfeiture action, makes it nearly certain that anyone who has standing to contest this forfeiture action already is on notice of it. Nevertheless, none of the known potential claimants has tried to enter this action to oppose the forfeiture. Further, under Supplemental Rule G(5), it is now too late for any person who got direct notice before the end of January 2009 to file a proper, timely verified claim to oppose forfeiture. Under these circumstances, it appears most likely that no person or entity will be able properly to enter this action and become a claimant.³

10. As a result of the foregoing, plaintiff respectfully submits that it has prosecuted this forfeiture action with reasonable diligence and vigor, particularly given events in related matters. At this time, it appears that the court will be in a position to resolve this matter in its entirety during the first half of January 2010. If so, then the entire lifespan of this complex piece of civil litigation will have been just a bit less than 13 months. In consequence, plaintiff respectfully submits that the Court should not dismiss this action at this time. Instead, the government will promptly bring to the Court's attention either when it is ripe for the Court to consider a motion for default judgment or that active further litigation is expected.

³ Although the Supplemental Rules require notice by publication, and this has always been so, the rationale (and efficacy) of such notice appears to be based on forfeiture's historical antecedents in admiralty and customs law, and especially on conditions prevailing at ports and in customs houses during the 18th & 19th centuries in England and America. Although fairness and equity may still dictate that notice of a forfeiture action be given by publication, it remains very rare that a person or entity with a *bona fide* claim to the defendant properties – that is, someone with the necessary standing to be in the case – actually has no other notice than through publication.

WHEREFORE, plaintiff respectfully prays this Honorable Court to accept this return to the order to show cause, to discharge the order to show case, and not to dismiss this action until the government has filed a motion for default judgment and final order of forfeiture, or otherwise proposed dismissal to the Court, which should occur by approximately January 15, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused the foregoing RETURN TO COURT'S ORDER TO SHOW CAUSE to be filed with the Court through the Court's ECF system on or before the sixth day of November 2009. As of this date, the only other parties to this action are the defendant properties, which are inanimate objects not represented by counsel. No person has filed a claim with this Court nor has anyone sought to intervene in this action, and there are no opposing or other counsel upon whom to give service.

/s/ Barry Wiegand

Barry Wiegand

