

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 8:19-cv-908-T-02AEP

13318 LOST KEY PLACE, LAKEWOOD,
RANCH, FLORIDA, et al.

Defendants.

**UNOPPOSED SECOND MOTION FOR
JUDGMENT OF FORFEITURE**

The United States of America hereby moves the Court, pursuant to 18 U.S.C. §§ 981(a)(1)(C) and (a)(1)(A), and Supp'l Rule G, Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions, for a Judgment of Forfeiture for the following assets:

- a. The real property, attachments thereto, and appurtenances thereon, located at: 444 Gulf of Mexico Drive, Longboat Key, Florida;
- b. The real property, attachments thereto, and appurtenances thereon, located at 4058 Founders Club Drive, Sarasota, Florida,

(collectively, the Defendant Properties).¹

¹ The United States is still working to resolve the claims relating to the two remaining Defendant Properties, 6922 LaCantera Circle and 4064 Founders Club Drive. *See* Docs. 35 and 37. The United States will file a separate motion for those properties after pending third party claims are resolved.

The United States has properly served notice on all interested parties. Despite notice, no party, other than the Sarasota County Tax Collector and the Sailboat Square Condominium Association, Inc., whose claims have been recognized, has filed claims or objections to the forfeiture of the Defendant Properties, and the time for doing so has expired. Furthermore, the undersigned has conferred with Bora Kayan, the attorney for the Sarasota County Tax Collector, and Kevin Darken, the attorney for Sailboat Square Condominium Association, Inc., who have both confirmed that they have no objection to this motion. Therefore, the United States is entitled to a Judgment of Forfeiture for the Defendant Properties. In support of this motion, the United States submits the following memorandum of law.

MEMORANDUM OF LAW

I. Statement of Facts

1. On April 18, 2019, the United States filed an Amended Verified Complaint for Forfeiture *in Rem* seeking forfeiture of, among others, the Defendant Properties, on the grounds that the properties represent proceeds of violations of 18 U.S.C. §§ 1341 (mail fraud) and 1343 (wire fraud), or a conspiracy to commit mail and wire fraud (18 U.S.C. § 1349) and are, therefore, subject to civil forfeiture by the United States pursuant to 18 U.S.C. § 981(a)(1)(C). Additionally, in the Amended Verified Complaint, the United

States alleged that the monetary transactions made to purchase the Defendant Properties were conducted in violation of 18 U.S.C. § 1957(a) and, as such, the Defendant Properties are also subject to civil forfeiture pursuant to 18 U.S.C. § 981(a)(1)(A). Doc. 12.

2. The only persons or entities known to have a possible interest in the Defendant Properties are the following:

- a. The court-appointed Receiver in the related matter *Commodity Futures Trading Commission v. Oasis International, et al.*, Case No. 8:19-cv-886-T-33SPF;
- b. 444 Gulf Of Mexico Drive, LLC;
- c. 4058 Founders Club Drive, LLC;
- d. Michael DaCorta;
- e. Sarasota County Tax Collector;
- f. Sailboat Square Condominium Association, Inc.; and
- g. The Founders Club Community Association, Inc.

3. In May and June 2019, in accordance with the requirements of Rule G(4)(b), the United States sent direct written notice of this forfeiture action to the interested parties identified in paragraph 2, above. The process of identifying potential claimants, and the specific dates and methods of sending notice to each potential claimant, are detailed in the Declaration by

Tammy Keene, which is attached hereto as Exhibit A and fully incorporated herein by reference.

A. Notice and Consent of the Court-Appointed Receiver

4. On April 24, 2019, a Notice of Appearance was filed by Jared J. Perez, Esquire, on behalf of the Court-appointed Receiver (the Receiver) in the related matter *Commodity Futures Trading Commission v. Oasis International, et al.*, Case No. 8:19-cv-886-T-33SPF (the Receivership), confirming actual notice of these proceedings. Doc. 17. In the Receivership, the United States District Court for the Middle District of Florida appointed the Receiver to assume control of certain Receivership Defendants. 48-1 at 1-2. The Defendant Properties were both purchased in the names of, and/or controlled by, these Receivership Defendants. *Id.* at 3. Therefore, pursuant to the Receivership Orders, the Receiver assumed control of, and has the authority to enter into all agreements for, the titled owners of the Defendant Properties. *Id.*

5. On June 19, 2019, the United States and the Receiver filed a Consent Forfeiture Agreement. Doc. 48-1. In the Consent Forfeiture Agreement, the Receiver consented to the civil forfeiture of the Defendant Properties. *Id.*

B. Michael DaCorta and the Limited Liability Companies

6. Michael DaCorta is the Registered Agent for the limited liability companies that holds title to the Defendant Properties. On April 26, 2019, DaCorta signed a Consent to entry of a Preliminary Injunction and Order Appointing Receiver and Staying Litigation by Defendants Oasis International Group, Limited, in the Receivership (Doc. 35-3) which ultimately gave the Receiver authority to take control of the Defendant Properties in this case. Therefore, the Receiver has the authority to consent to the forfeiture of the Defendant Properties on behalf of DaCorta and the limited liability companies.

7. Out of an abundance of caution, however, the United States served notice of these proceedings on DaCorta, personally and as registered agent for the limited liability companies that hold title to the Defendant Properties. *See Exhibit A at 3-4.*

8. On May 22, 2019, a Notice of Appearance was filed by Jacob V. Stuart, Jr., Esquire, on behalf of Michael DaCorta, confirming that DaCorta had received actual notice of these proceedings. Doc. 29. Mr. Stuart later withdrew as counsel; however, in his motion to withdraw, he noted that DaCorta “is aware of the pending deadlines in this case.” *See Doc. 32.*

9. Despite notice, neither DaCorta nor either of the limited liability companies (for which he is the Registered Agent) that hold title to the Defendant Properties have filed a claim or answer in this case, and the time for doing so has expired.

C. Sarasota County Tax Collector

10. The United States also served notice on the Sarasota County Tax Collector. *See* Exhibit A at 4. The Sarasota County Tax Collector did not file a Verified Claim; however, the Tax Collector filed an Acknowledgment of Receipt of Notice of Forfeiture. Doc. 42.

11. The United States has filed a notice in which it has recognized the interest of the Sarasota County Tax Collector. Doc. 51. The United States has agreed that, from the proceeds of the sale of the Defendant Properties (to the extent that there are sufficient proceeds after the payment of expenses relating to seizure, maintenance, custody, and disposal of the property), the Receiver will pay any and all *ad valorem* real property taxes and *non-ad valorem* assessments due and owing the Sarasota County Tax Collector up to the date of entry of the Judgment of Forfeiture as a priority lien under Florida law. *Id.*

D. Homeowners Associations

12. The United States also provided direct written notice to the associated homeowners association that may claim an interest in the Defendant Properties, including the Sailboat Square Condominium Association, Inc. (Sailboat Square HOA) and The Founders Club Community Association, Inc. (Founders Club HOA). *See* Exhibit A at 4-5.

13. On June 26, 2019, Sailboat Square HOA filed a Verified Claim for their interest the Defendant Property located at 444 Gulf of Mexico Drive, Longboat Key, Florida. Doc. 54. On July 9, 2019, the United States filed a notice in which it recognized the interest of Sailboat Square HOA. Doc. 56. The United States has agreed that, from the proceeds of the sale of the 444 Gulf of Mexico Drive, Longboat Key, Florida Defendant Property (to the extent that there are sufficient proceeds after the payment of expenses relating to seizure, maintenance, custody, and disposal of the property), the Receiver will pay Sailboat Square HOA any assessments due and owing under any relevant contracts and Florida law up to the date of the sale of the property. *Id.*

14. Despite notice, Founders Club HOA has failed to file a claim, and the time for doing so has expired; however, the United States recognizes the interests of Founders Club HOA and agrees that, from the proceeds of the

sale of the Defendant Property located at 4058 Founders Club Drive, Sarasota, Florida (to the extent that there are sufficient proceeds after the payment of expenses related to seizure, maintenance, custody, and disposal of the Defendant Properties, including any and all outstanding taxes and interest due and owing the Tax Collector), the Receiver, on behalf of the United States, will pay the assessments due and owing to Founders Club HOA pursuant to contract and in accordance with Florida law, up to the date of entry of the Judgment of Forfeiture.

E. Publication Notification

15. The United States also published notice of the above-referenced civil forfeiture action on its official website, www.forfeiture.gov, for a period of 30 consecutive days, from April 20, 2019 through and including May 19, 2019, as required by Supp'1 Rule G(4)(a)(i) & (iv)(C)(3). Doc. 28.

II. Legal Argument

Based on the facts, which are more fully set forth in the Amended Verified Complaint, the Defendant Properties are subject to forfeiture to the United States pursuant to 18 U.S.C. §§ 981(a)(1)(C) and (a)(1)(A), and Supp'1 Rule G. The Defendant Properties are proceeds, or derived from proceeds, of wire fraud and mail fraud, or a conspiracy to commit wire fraud and mail fraud, in violation of 18 U.S.C. §§ 1341, 1343 and 1349. Under Section

981(a)(1)(C), the United States is authorized to civilly forfeit any property, real or personal, which constitutes or is derived from proceeds from any offense constituting “specified unlawful activity” as defined in 18 U.S.C. § 1956(c)(7), or a conspiracy to commit such offenses. 18 U.S.C. § 981(a)(1)(C). Section 1956(c)(7)(A) incorporates the racketeering offenses under 18 U.S.C. § 1961. Mail and wire fraud offenses in violation of 18 U.S.C. §§ 1341 and 1343 are specified unlawful activities under 18 U.S.C. § 1961(1). *See* 28 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 1956(c)(7)(A), and 18 U.S.C. § 1961(1).

Additionally, the monetary transactions made to purchase the Defendant Properties were conducted in violation of 18 U.S.C. § 1957(a) because they were knowingly conducted with more than \$10,000 in funds derived from specified unlawful activity (specifically, mail and wire fraud), and, as such, they are subject to civil forfeiture pursuant to 18 U.S.C. § 981(a)(1)(A).

As required by Supp'l Rule G(4)(a)(iv)(C), the United States posted notice of this forfeiture on an official government internet website (www.forfeiture.gov) for at least 30 days, beginning April 20, 2019. Doc. 28. Under Rule G(5)(a)(ii), a person or entity is required to file a claim to the defendant property within the time stated on the direct written notice, or not later than 60 days after the first date of internet publication – here, on or

before June 19, 2019. The Warrant of Arrest *in Rem* and the internet publication gave instructions for filing a claim in the form of a Statement of Right or Interest, to be filed with the Office of the Clerk, United States District Court, Sam Gibbons Federal Courthouse, 801 North Florida Avenue, Tampa, Florida 33602, within the time prescribed by law.

Additionally, as required by Supp'l Rule G(4)(b)(i) and as detailed above and in Exhibit A, the United States sent notice and a copy of the Amended Verified Complaint to all known interested parties. Other than Sarasota County Tax Collector and the Sailboat Square Condominium Association, Inc., whose claims have been recognized by the United States, no other party has filed a claim, and the time for doing so has expired. Furthermore, the Receiver, who was given authority and control over the Defendant Properties, has consented to their forfeiture. Thus, it is now appropriate for the Court to enter a Judgment of Forfeiture for the Defendant Properties.

III. Conclusion

The United States respectfully requests that this Court enter a Judgment of Forfeiture, pursuant to 18 U.S.C. §§ 981(a)(1)(C) and (a)(1)(A) and Supp'l Rule G, forfeiting to the United States of America all right, title, and interest in Defendant Properties for disposition according to law, subject to any *ad*

valorem asset taxes and *non-ad valorem* assessments due and owing to Sarasota County Tax Collector, assessments due and owing to the Sailboat Square HOA and the Founders Club HOA, and to the terms of the Consent Forfeiture Agreement between the United States and the Receiver, as outlined in this Motion.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to counsel of record.

s/Suzanne C. Nebesky _____
SUZANNE C. NEBESKY
Assistant United States Attorney