

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	No. 07-2774 P
FIFTEEN THOUSAND DOLLARS)	
(\$15,000.00) IN UNITED STATES)	
CURRENCY,)	
)	
ONE 2003 HUMMER H2,)	
VIN 5GRGN23U83H138769, WITH ALL)	
APPURTENANCES AND ATTACHMENTS)	
THEREON,)	
)	
Defendants.)	

ORDER DENYING PLAINTIFF'S MOTION TO STRIKE CLAIM AND ANSWER OF
ELAINE TUCKER AND FOR SUMMARY JUDGMENT AND ORDER OF FORFEITURE

Before the court is plaintiff United States of America's ("government") Motion to Strike Claim and Answer of Elaine Tucker and for Summary Judgment and Order of Forfeiture. (D.E. 30.) For the reasons below, the government's motion is DENIED.¹

I. BACKGROUND

This is an *in rem* forfeiture action brought by the government to enforce 21 U.S.C. § 881(a) (6), which provides for the forfeiture

¹All parties consented to have a United States Magistrate Judge conduct all proceedings in this case, including presiding at the trial, ordering the entry of a final judgment, and conducting all post-judgment proceedings. (D.E. 32.)

of things of value, including United States currency, which was used or intended to be used in exchange for controlled substances, or represents proceeds of trafficking in controlled substances, or was used or intended to be used to facilitate a violation of Title II of the Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.*; and to enforce 21 U.S.C. § 881(a)(4), which provides for the forfeiture of a conveyance that was used, or intended to be used, to facilitate the transportation, sale, receipt, possession, or concealment of a controlled substance in violation of 21 U.S.C. §§ 801 *et seq.* The defendant property includes \$15,000.00 in United States currency and a 2003 Hummer H2 vehicle, VIN 5GRGN23U83H138769, both of which are in the custody of the Federal Bureau of Investigation in Memphis.

In early 2006, federal agents began investigating the activities of a drug trafficking organization, allegedly led by Lorenzo Castelo. Confidential informants identified Castelo and his associates as members of a group responsible for trafficking cocaine and marijuana in the Memphis, Tennessee area. The confidential informants provided law enforcement with information about the Castelo group's customers, including Roderick Tucker, who was identified as a cocaine trafficker with gang affiliations. Through wiretaps, agents recorded several conversations between Tucker and a key member of the Castelo group relating to the distribution of large quantities of cocaine.

On July 10, 2007, agents executed a search warrant at Tucker's residence, located at 3747 Merritt Street, in Memphis. Agents seized from the residence \$15,000.00 in cash and a 2003 Hummer H2. On July 25, 2007, Tucker and others were indicted for conspiracy to distribute in excess of five kilograms of cocaine, and on October 4, 2007, he pleaded guilty to the drug conspiracy charge. On January 4, 2008, Tucker was sentenced to 51 months of imprisonment, followed by three years of supervised release.

The government filed a Verified Complaint of Forfeiture on December 3, 2007, and an amended complaint on December 10, 2007, based on the allegation that the \$15,000.00 and Hummer were used or intended to be used in exchange for controlled substances or represented proceeds from Tucker's drug trafficking activities, and that the Hummer was used or intended to be used to facilitate the transportation, sale, receipt, possession, or concealment of the drug trafficking activities.² Elaine Tucker (Roderick Tucker's mother) and Tenille Holmes (Roderick Tucker's wife) filed a joint answer on November 5, 2008 and verified claims on January 6, 2009. Elaine Tucker asserted a claim on the Hummer and Holmes asserted a claim on the \$15,000.00.

In its motion to strike and for summary judgment, the government argues that it has demonstrated that Roderick Tucker was

²The complaint was initially filed under seal due to the related and ongoing criminal investigation; however, the complaint was later unsealed on April 11, 2008.

a large scale drug trafficker, that the \$15,000.00 and Hummer were seized from his residence, and that "[i]t is therefore more likely than not - that is, to a preponderance of the evidence - that the defendant currency was the proceeds of illegal drug trafficking and/or money meant to purchase illegal drugs, and that the defendant vehicle was purchased with illegal drug proceeds." (Pl.'s Mot. to Strike and for Summ. J. at 13.) The government asks the court to strike Elaine Tucker's claim or grant summary judgment in the government's favor, because she has failed to establish that she has a colorable ownership, possessory, or security interest in at least a portion of the Hummer and, therefore, lacks Article III standing. In addition, the government argues that the court should reject Holmes's contention that the \$15,000.00 represents profits and unused portions of a business loan for her cash-only vending machine business, because Holmes has failed to provide all of her tax returns and that the tax returns she was able to provide to the government show that her business had substantial operating expenses and generated very little profit.

In response to the motion, Elaine Tucker and Holmes filed a joint brief in opposition and attached affidavits in support of their claims to the seized property. In Tucker's affidavit, she asserts that she purchased the pre-owned Hummer in 2006 from City Auto Sales and added Roderick Tucker's name to the title for estate planning purposes because "[i]f something were to happen to me, I

wanted Roderick to have the vehicle, take over payments for it and not have to deal with probate proceedings." (Tucker Aff. ¶¶ 2, 5.) She states that she started off paying the monthly car note through automatic withdrawal from her bank account, but that due to problems with the automatic withdrawal, she had Holmes pay the car note for her and reimbursed Holmes on a monthly basis. (Id. ¶ 3.) Tucker further avers that "I only allowed Roderick Tucker to drive the 2003 Hummer when I needed him to get it serviced" and that "I left the vehicle parked there [at his residence] . . . because I was having back problems that did not allow me to drive the vehicle and I felt it was more secure parked at his house rather than at my house." (Id. ¶ 4.) Tucker claims that she insured the vehicle under her son's insurance plan because he and Holmes owned several vehicles and therefore received a multiple vehicle discount on insurance premiums, and that she reimbursed them monthly for the premium payments. (Id. ¶ 5.)

In Holmes's affidavit, she claims that the \$15,000.00 was a combination of a business loan from CitiFinancial in the approximate amount of \$11,000.00 and cash from her vending machine business in the approximate amount of \$4,000.00.³ (Holmes Aff. ¶¶ 3, 5.) Holmes further avers in her affidavit that

³Holmes produced a Pre-Close Loan Offer Summary as evidence of the loan from CitiFinancial in the amount of \$13,447.38. She claims that "only \$11,000 of that amount was actually made available to me for purposes of capitalizing my company. The rest was fees and interest." (Id. ¶ 3.)

[t]he vending business is a cash business. I purchase the goods I sell with cash at Sam's Wholesale Club. I used a portion, but not all, of the money from the 2005 loan from CitiFinancial to capitalize my business. Revenue in the vending business is exclusively cash. Since I pay cash for my goods sold and receive nothing but cash as revenue for the goods I sell, I do not run the income and expenses from my business through a bank account. I do use a bank account at Regions Bank to pay my personal bills. But most of that money came in 2007 from my other job as a customer service representative at Newgen Diabetic Shoes. I may have used some of the vending machine money to pay those personal bills. But mainly, the vending machine revenues were kept in cash and the expenses were paid in cash.

(Id. ¶ 4.)

II. ANALYSIS

A. Federal Forfeiture Law

Federal law renders subject to forfeiture to the United States

[a]ll moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter.

21 U.S.C. § 881(a)(6). "All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of" controlled substances are also subject to forfeiture to the United States. Id. § 881(a)(4). The government may obtain title to such property by filing an *in rem* civil case naming as the defendant the property to be forfeited. United States v. One 1973 Chevrolet Impala, 640 F.

Supp. 2d 993, 995 (W.D. Tenn. 2009). The Civil Asset Forfeiture Reform Act of 2000 ("CAFRA"), which applies to forfeiture proceedings after August 23, 2000, sets forth the government's burden of proof in forfeiture actions. United States v. \$39,000.00 in U.S. Currency, No. 04-2902, 2005 WL 2600217, at *2 (W.D. Tenn. Oct. 11, 2005). Under CAFRA, the "burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture." 18 U.S.C. § 983(c)(1). To meet this burden, the government is not required to show a direct connection between the property and the illegal activity. Id. "The burden of showing something by a preponderance of the evidence merely requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence." \$39,000.00, 2005 WL 2600217, at *4 (quotations omitted). "The aggregation of facts, each one insufficient on its own, may suffice to meet the government's burden." United States v. \$118,170.00 in U.S. Currency, 69 F. App'x 714, 715 (6th Cir. 2003) (citing United States v. \$67,220.00 in U.S. Currency, 957 F.2d 280, 284 (6th Cir. 1992)).

B. Standing

The government moves to strike the claim and answer of Elaine Tucker for failure to establish Article III standing. In a civil forfeiture action, the claimant to the defendant property must have standing in order to challenge the forfeiture action. United

States v. \$515,060.42 in U.S. Currency, 152 F.3d 491, 497 (6th Cir. 1998). To contest a governmental forfeiture action, the claimant must have both statutory and constitutional standing. Id. The government concedes, and the court finds, that Tucker has satisfied the statutory standing requirement, as she has complied with the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.⁴ (D.E. 30 at 9.)

To establish constitutional standing, the claimant must have a colorable ownership, possessory, or security interest in at least a portion of the defendant property. \$515,060.42, 152 F.3d at 497. "A claimant need not prove the merits of his underlying claim . . . but he must claim a facially colorable interest in the seized property." Id. at 497-98 (citation omitted). "Colorable claims which confer standing include the most obvious type of interest in seized property, an ownership interest." Id. at 498. "[B]are legal title, in the absence of assertions of dominion, control or some other indicia of ownership of or interest in the seized property, is insufficient to confer standing to challenge a forfeiture." Id. at 498 n.6.

Here, the government contends that Tucker lacks Article III

⁴Specifically, Supplemental Rule G(5) governs the content of responsive pleadings and provides that a claim must "(A) identify the specific property claimed; (B) identify the claimant and state the claimant's interest in the property; (C) be signed by the claimant under penalty of perjury; and (D) be served on the government attorney designated under Rule G(4)(a)(ii)(C) or (b)(ii)(D)." Fed. R. Civ. P. Supp. G(5).

standing because she can show nothing more than bare legal title to the Hummer and is a mere "nominee" owner who exercised neither dominion nor control over the vehicle. The government contends that "[i]t is common . . . for drug traffickers to attempt to conceal and disguise the source and ownership of their narcotics proceeds by placing assets in the names of friends and relatives, commonly referred to as 'nominee owners.'" (Pl.'s Mot. to Strike and for Summ. J. at 4.)

The court finds that Tucker has satisfied the constitutional standing requirement.⁵ Tucker states in her affidavit that she purchased the Hummer in 2006, added Roderick Tucker's name on the title for estate planning purposes, reimbursed Tenille Holmes for the car loan and insurance payments on a monthly basis, and only allowed her son to drive the Hummer to have it serviced. This evidence sufficiently demonstrates that Elaine Tucker exercised dominion and control over the Hummer prior to its seizure. See One 1973 Chevrolet Impala, 640 F. Supp. 2d at 996-97. Accordingly, the government's motion to strike Tucker's claim and answer for lack of Article III standing is denied.

C. Summary Judgment

1. Legal Standard

The government moves for summary judgment against both

⁵While the government has not challenged Tenille Holmes's standing, the court similarly finds that she has statutory and constitutional standing with respect to the \$15,000.00.

claimants and has attached affidavits and exhibits in support of its motion. Federal Rule of Civil Procedure 56(c) provides that

[t]he judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(c)(2); see Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Canderm Pharmacal, Ltd. v. Elder Pharms., Inc., 862 F.2d 597, 601 (6th Cir. 1988). In reviewing a motion for summary judgment, the evidence must be viewed in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). When the motion is supported by documentary proof such as depositions and affidavits, the nonmoving party may not rest on the pleadings, but must present some "specific facts showing that there is a genuine issue for trial." Celotex, 477 U.S. at 324. It is not sufficient "simply [to] show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586. These facts must be more than a scintilla of evidence and must meet the standard of whether a reasonable juror could find by a preponderance of the evidence that the nonmoving party is entitled to a verdict. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). Finally, the "judge may not make credibility determinations or weigh the evidence." Adams v. Metiva, 31 F.3d 375, 379 (6th Cir. 1994).

2. Claim of Elaine Tucker

The government's alternative argument with respect to Elaine Tucker is that, even if she has standing to bring her claim, the court should nevertheless grant summary judgment on the grounds that the Hummer was merely titled in Elaine Tucker's name and did not constitute property over which she exercised dominion and control. For support, the government relies upon the same facts it cited in arguing that Tucker lacks Article III standing. As discussed above, the court finds that Tucker's affidavit contains statements of fact that, if credited, establish her as the true and rightful owner of the Hummer. This conflict in the evidence raises a genuine issue as to a material fact and precludes summary judgment. See One 1973 Chevrolet Impala, 640 F. Supp. 2d at 998; United States v. One 2002 Chevrolet Avalanche, No. 05-2001, 2006 WL 2612691, at *3 (W.D. Tenn. Sept. 11, 2006). Therefore, the government's motion for summary judgment against Elaine Tucker is denied.

3. Claim of Tenille Holmes

The government argues that the \$15,000.00 is traceable to Roderick Tucker's drug trafficking activities and that Tenille Holmes has not presented evidence sufficient to preclude summary judgment in favor of the government. The court disagrees. Through her affidavit, Holmes has presented evidence that the \$15,000.00 was a combination of a business loan from CitiFinancial in the approximate amount of \$11,000.00 and cash for her vending machine

business in the approximate amount of \$4,000.00. Holmes has also presented the court with loan documents for the CitiFinancial loan, as well as tax records evidencing the existence of Holmes's vending machine business.

The government argues that Holmes cannot tie the \$15,000.00 to legitimate income, and therefore it must be tied to drug trafficking activities. Although "possession of large amounts of cash is not *per se* evidence of drug activity," failure to account for the acquisition of a large amount of cash through legitimate means is a factor that weighs in favor of forfeiture. United States v. \$110,873.00 in U.S. Currency, 159 F. App'x 649, 652 (6th Cir. 2005) (finding that the government satisfied its burden by presenting evidence of "an unusually large amount of currency; no state income tax returns from 1994 to 2002; the presence of drugs at the scene; an alert by a drug-detection dog to the currency" and two prior incidents involving the claimant, currency, and drugs); see also \$118,170.00, 69 F. App'x at 717-18 (finding that claimant's "sketchy financial history" consisting of sporadic tax returns, combined with the presence of marijuana and an alert by the drug dog, sufficiently demonstrated that the large sum of money found in his trunk was illegally obtained and subject to forfeiture); United States v. \$174,206.00 in U.S. Currency, 320 F.3d 658, 662 (6th Cir. 2003) (finding that evidence of legitimate income, in the form of tax returns reporting \$31,142.00 between

1994 and 1999, was insufficient to explain the \$174,206.00 seized).

The government relies heavily on Holmes's tax returns in an effort to undermine Holmes's claim to the \$15,000.00. While there is evidence that calls into question the credibility of Holmes's assertion that the \$15,000.00 was proceeds from the CitiFinancial loan and cash for her business, the court may not make credibility determinations or weigh the evidence in deciding the summary judgment motion. Adams, 31 F.3d at 379. As with Elaine Tucker's claim, the court finds that Holmes's affidavit contains statements of fact that raise a genuine issue as to the legitimacy and rightful ownership of the \$15,000.00. Thus, the government's motion for summary judgment against Tenille Holmes is denied.

III. CONCLUSION

For the reasons above, the government's Motion to Strike Claim and Answer of Elaine Tucker and for Summary Judgment against Tucker and Tenille Holmes is DENIED.

IT IS SO ORDERED.

s/ Tu M. Pham
TU M. PHAM
United States Magistrate Judge

March 10, 2010
Date