

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

Case No. 3 :11CV00090
JUDGE HAYNES

2010 CHEVROLET CAMARO 2SS COUPE)
BEARING VIN 2G1FT1EW0A9145379;)
2005 HARLEY DAVIDSON ROAD KING)
MOTORCYCLE BEARINGVIN 1HD1FXV185Y677771:)
FOUR REAL PROPERTIES COMMONLY)
KNOWN AS 814 PITT AVENUE, SPRINGFIELD,)
ROBERTSON COUNTY, TENNESSEE;)
4676 HIGHWAY 41N, SPRINGFIELD, TENNESSEE;)
204 LAWRENCE LANE, SPRINGFIELD,)
TENNESSEE; and 209 NEW CHAPEL ROAD,)
SPRINGFIELD, TENNESSEE, and PROCEEDS)
FROM ANY SALE OF THE FOUR REAL)
PROPERTIES BY THE CURRENT OWNERS,)

Defendants.)

**MEMORANDUM IN SUPPORT OF MOTION FOR ORDER
RE RENTAL PAYMENTS ON DEFENDANT PROPERTY**

The United States has moved for an Order requiring Claimant Angela S. Posey and Claimant Bart S. Posey to immediately disclose to the Court and to the United States the names and contact information of all parties paying rent on any of the following Defendant Property, and further to enter an Order requiring these renters to immediately submit all rent payments on the following Defendant Property be paid directly to the Department of Justice, United States Marshals Service, 110 9th Avenue South, 7th Floor, Nashville, TN 37203 or to Claimant F&M Bank, 50 Franklin Street, Clarksville, Tennessee 37040 whichever the Court deems proper:

- A. Real property located at 4676 Highway 41 N, Springfield, Tennessee (“Highway 41N”) including all buildings, appurtenances, and improvements thereon;
- B. Real property located at 204 Lawrence Lane, Springfield, Tennessee (“Lawrence Lane”) including all buildings, appurtenances, and improvements thereon; and
- C. Real property located at 209 New Chapel Road, Springfield, Tennessee (“New Chapel Road”) including all buildings, appurtenances, and improvements thereon.

(hereinafter collectively “Defendant Property”). (3:11cv00138, D.E. 16, 17 & 18: Protective Orders as to Pitt Avenue, Highway 41N, and New Chapel Road). The legal descriptions for the Defendant Real Properties are provided in the Complaint and incorporated herein by reference. (3:11cv00138 D.E. 1 :Complaint).

FACTS:

Claimant Bart Posey and/or his wife Claimant Angela Posey are the titled owners of the Defendant Property. (3:11cv00138, D.E. 2: Affidavit, 13 - 15).

On March 15, 2007, Bart S. Posey and Angela S. Posey entered into a Deed of Trust in favor of Claimant F&M Bank in the original amount of \$528,000 and collateralized by the Defendant Property¹ as modified.(3:11cv00138, D.E. 2: Affidavit, 12 - 15)(3:11cv00138, D.E. 28: Posey Claim). (D.E. 23: F&M Bank Claim). The Deed of Trust in favor of F&M Bank was placed of record on March 19, 2007 in Record Book 1178, Page 151 in the office of the Register of Deeds for Robertson County, Tennessee, as modified in the Modification Agreement dated October 9, 2007, placed of record on October 26, 2007 in Record Book 1229, Page 720 in the office of the Register of Deeds

¹A fourth property - 814 Pitt Avenue, Springfield, Robertson County, Tennessee was also sued for forfeiture. (3:11cv00138, D.E. 1 & 2: Complaint and Affidavit). Pitt Avenue is not at issue in this motion because it is not collateral for the F&M loan. (D.E. 23: Claim of F&M Bank)

for Robertson County, Tennessee as further modified in the Modification Agreement dated October 20, 2008, placed of record on October 24, 2008 in Record Book 1290, Page 329 in the office of the Register of Deeds for Robertson County, Tennessee. (D.E. 23 and 23-1: Claim of F&M Bank)

Beginning January 1, 2008, Highway 41N was subject to a ten year lease agreement between the State of Tennessee and Highway 41N Building (Bart Posey, President), 4676 Highway 41 North, Suite A, Springfield, TN 37172) with monthly payments of \$6,270 per month to 41 & Main Building. (D.E. ___: Declaration of AUSA Phillips, Exhibit 1 and 2). The lease extends through December 31, 2017. (D.E. __: Declaration of AUSA Phillips, Exhibit 1).

On February 16, 2011, the United States filed a Complaint and Affidavit seeking forfeiture of the Defendant Property because it was purchased with proceeds of a 2.5 million dollar fraud involving health care. (3:11cv00138, D.E 1 & 2: Complaint and Affidavit).

On April 4, 2011, Protective Orders were placed on the Defendant Property providing that the Defendant Property "shall not be sold, destroyed, or neglected by any interested party." (3:11cv00138, DE. 15, 17, 18: Protective Orders). On April 23, 2011, Bart S. Posey and Angela S. Posey filed a claim to the Defendant Property. (3:11cv00138, D.E. 28: Posey Claim).

When the April, 2011 payment on the mortgage came due, the Poseys' failed to make it; their last mortgage payment was made on March 31, 2011. (D.E. ___: Declaration of AUSA Phillips, Exhibit 1). Substantial interest on the loan is accruing at a 21% rate, and as of November 7, 2011 the amount owed F&M by the Posey's was \$822,953.09. (D.E. ___: Declaration of AUSA Phillips, Exhibit 1)

As of May, 2012, the State of Tennessee is current on its \$6,270 per month payment to 41 & Main Building. (D.E. ___: Declaration of AUSA Phillips, Exhibit 2)

LAW:

The United States does not have actual possession of Defendant Property sought for forfeiture so the Court entered Protective Orders pursuant to Federal Rules of Civil Procedure, Supplement Rule G(7)(a) to preserve the property or to prevent its removal or encumbrance. This Court may also enter any other Order necessary to accomplish this desired result, including directing the loan payments from the State of Tennessee be made directly to F&M Bank to address the defaulted mortgage. Fed. R. Civ. P. Suppl. R. G(7)(a).

The failure of the Posey's to pay the mortgage is clearly a deliberate attempt to lessen the value of the property through further encumbrance, and as such is a violation of the Protective Orders because it places the ownership of the Defendant Property in jeopardy, risks sale by foreclosure, and diminishes the value of the properties and the amount of restitution available to the victims of Claimant Angela Posey and Claimant Bart S. Posey's alleged 2.5 million dollar fraud scheme. (*See* D.E. 2: Affidavit in support of Complaint)(setting forth the fraud scheme)

Therefore, an Order requiring Claimant Angela S. Posey and Claimant Bart S. Posey to immediately disclose to the Court and to the United States the names and contact information of all parties paying rent on any of the Defendant Property, and further requiring all these renters, including the State of Tennessee to immediately submit all rent payments to the Department of Justice, United States Marshals Service, 110 9th Avenue South, 7th Floor, Nashville, TN 37203 or to F&M Bank, (whichever the Court deems proper) will assist in preserving the remaining value of the Defendant Property for distribution to victims of Posey's 2.5 million dollar fraud scheme pending the finalization of this forfeiture lawsuit. This Order will also stem the loss to F&M Bank pending further negotiations regarding a potential motion for Interlocutory Sale and an expedited settlement with F&M Bank.

A proposed Order is submitted for the Court's convenience.

JERRY E. MARTIN
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Middle District of Tennessee

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of May, 2012, a copy of the foregoing Motion was filed electronically. Notice of this filing will be sent to the following, if registered, by operation of the Court's electronic filing system. If not registered, notice was mailed by regular U.S. mail to:

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DEBRA TEUFEL PHILLIPS