

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

2010 CHEVROLET CAMARO 2SS)
COUPE BEARING)

VIN 2G1FT1EW0A9145379, et al.,)

Defendants.)

.....)

BART POSEY,)

Claimant.)

Civil No. 3:11-cv-00090

Judge Haynes

JURY DEMAND

*In Rem Civil Forfeiture
Action*

**MOTION OF CLAIMANT BART POSEY TO SET ASIDE ORDER GRANTING
INTERLOCUTORY PRIVATE JUDICIAL SALE OF DEFENDANT VEHICLES**

COMES NOW the Claimant, **Bart Posey**, by and through his undersigned counsel, and pursuant to Rule G(7)(b) of the Supplemental Rules for Certain Admiralty and Maritime Claims, hereby moves the Court to set aside the order granting the government’s request for an interlocutory private judicial sale of defendant vehicles, a 2010 Chevrolet Camaro and a 2005 Harley Davidson Road King Motorcycle, entered in this action on May 25, 2012. (Docket Entries 27 & 28). In support hereof, Claimant states as follows:

1. On May 23, 2012, the government filed a *Motion for Interlocutory Private Judicial Sale of Defendant Vehicles Only* with a supporting memorandum of law, an affidavit with attachments, and a proposed order. (Docket Entries 21, 21-1, 22 & 23). Without providing the Claimant an opportunity to respond, the Court granted the government’s motion and signed and entered the proposed order on May 25, 2012. (Docket Entries 27 & 28).

2. Under the *Local Civil Rules, U.S. District Court, Middle District of Tennessee*, Claimant has fourteen (14) days to respond in opposition to his adversary's motion. *LR7.01(b)*. Pursuant to Fed.R.Civ.P. 6(a)(1)(B), the Claimant's response to the government's motion for interlocutory sale was due on or before **June 6, 2012**.

3. The government initiated this series of civil forfeiture actions on February 1, 2011 some fifteen months ago. (Docket Entry 1). However, the government began its forfeiture odyssey on November 3, 2010, some seventeen months ago, with the filing of certain notices of liens *lis pendens* on certain parcels of real property located in Robertson County, Tennessee. The government was only moved to initiate its forfeiture action due to Claimant's challenge to the precipitously filed liens *lis pendens*. See *In re Notices of Lis Pendens Filed by the United States of America (Real Property in Robertson County, Tennessee, owned by Bart Posey and, Wife, Angela S, Posey)*, *MDTN 3:11-mc-00005*. The Camaro and Harley Davidson Motorcycle were administratively seized as well on November 3, 2010. (Docket Entry 1, Government's *Verified Complaint In Rem* at ¶ 2). Any delay and resulting costs are directly attributable to the dilatory conduct of the Plaintiff, United States.

4. The purpose of an interlocutory sale of property in a civil forfeiture action is to preserve the monetary value of the seized property. The property is exchanged for money, an asset which does not deteriorate, and which is deposited into an interest bearing account. See Supplemental Rule G(7)(b)(iv). The interlocutory sale of seized property requires a showing that the defendant property is subject to deterioration, depreciation or waste. *Id.* Here, Plaintiff's assertion that it will suffer further harm rings hollow since its conduct has occasioned the very expense that it now seeks to remediate. Mr. Posey is presumed innocent of the criminal conduct obliquely mentioned but not explained in the government's forfeiture filings. These two items of personal

property are unique and have special significance to the Claimant. As such, they should not now be sold, seventeen months after their seizure, just because the government has seemingly awoken from its slumber.

WHEREFORE, Claimant Bart Posey respectfully requests that the Court set aside the order granting the government's request for an interlocutory private judicial sale of defendant vehicles, a 2010 Chevrolet Camaro and a 2005 Harley Davidson Road King Motorcycle, entered in this action on May 25, 2012.

Respectfully submitted,

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S:/ Peter Strianse
PETER J. STRIANSE
Attorney for Claimant Bart Posey

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via the Court's electronic filing system unless not registered and, in that event deposited in the United States mail, postage prepaid, to:

Debra T. Phillips
Assistant United States Attorney
110 Ninth Avenue South
Suite A961
Nashville, TN 37203-3870

this 31st day of May, 2012.

S:/ Peter J. Strianse
PETER J. STRIANSE