

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; et al)	
)	
Defendants.)	
)	

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

If Claimant Bart Posey posts a security bond in the amount of the appraised value pursuant to Supp.R.Fed.R.Civ.P G(7)(b)(v), the United States would have no objection to setting aside the Order. However, Claimant's motion is devoid of any reference to a security bond, a remedy which has been available to him since the date of seizure of the Camaro 2SS Coupe bearing VIN # 2G1FT1EW0A9145379 ("Defendant Camaro) and the 2005 Harley Davidson Road King Motorcycle bearing VIN 1HD1FXV185Y677771 ("Defendant Harley") (collectively hereinafter referred to as "Defendant Property").

In accord with Supplemental Rule G(7)(b)(iv) and as acknowledged by Claimant at paragraph 4 of his motion, "[t]he 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." If a security

bond is not submitted, then as noted in the government's interlocutory sale Motion (D.E. 21), the Defendant Property may be sold in order to preserve the monetary value of the property, and perhaps provide some compensation to the victims of the alleged \$2.5 million dollar fraud committed by Claimant. (D.E. 1, 2: Complaint and Affidavit)(D.E. 10: Verified Claim of Statutory Liquidator/Receiver and Exhibits).

Claimant does not contest that Defendant Property is not only at risk of deterioration by being detained, but is incurring ongoing expenses due to storage that are disproportionate to its fair market value. The Defendant Camaro has lost over \$7,000.00 in value and has incurred an additional \$5,580.00 in expenses, and the Defendant Harley has incurred expenses of over one/half of its value. (D.E. 23: Affidavit of Paralegal Deborah Krause and exhibits).

In his motion, Claimant makes a reference to the *lis pendens* litigation as to real property. This reference has no bearing on the issue of whether or not Claimant filed a security bond to allow him to keep possession of the vehicles. The *lis pendens* litigation solely affirmed the right of the United States to file a *lis pendens* on real property pending litigation, as long as an administrative or civil forfeiture action followed within a set time after a challenge to the filing of the *lis pendens*. (3:11mc0005, D.E. 4,5: Memorandum, Order). The only connection the *lis pendens* litigation has to this matter is that the *lis pendens* litigation is part of a real property forfeiture litigation which was consolidated on March 14, 2012 with the Defendant Camaro litigation and the Defendant Harley litigation.(D.E. 14: Order).

WHEREFORE, the United States prays that the Interlocutory Sale Order stand in order to preserve the value of the Defendant Property for the victims of the alleged 2.5 million dollar fraud involving health care pending a determination of the Government's forfeiture claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 2012, a copy of the foregoing Response to Motion of Claimant Bart Posey to Set Aside Order Granting Interlocutory Private Judicial Sale of Defendant Vehicles 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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