

Not Reported in F.Supp.2d, 2000 WL 1505986 (S.D.N.Y.)
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United States District Court, S.D. New York.
UNITED STATES of America

v.

Patrick R. BENNETT, Defendant.

No. 97 CR 639 JSM.
Oct. 6, 2000.

[Serene K. Nakano](#), Assistant United States Attorney, New York, for the Government.

[Michael D. Pinnisi](#), Brown, Pinnisi & Michaels, P.C., Ithaca, for the defendant.

Steven Kessler, New York, for Mrs. Gwen Bennett.

MEMORANDUM ORDER

[MARTIN](#), District J.

*1 The Government has submitted a "First Amended Order of Forfeiture as to Defendant Patrick Bennett's Interest in Property." Opposition thereto has been submitted by the defendant and his wife Mrs. Gwen Bennett.

The defendant repeats an argument previously made and rejected by the Court that forfeiture cannot be imposed because the Court determined that the sentencing guidelines for money laundering should not be applied in this case because the defendant's conduct did not come within the heartland of cases to which the guideline was intended to apply. That argument is frivolous. The evidence introduced at trial amply supported the jury's finding that Bennett violated the money laundering statute and that he should be required to forfeit \$109,088,889.11. The Court's determination that the defendant's money laundering conduct did not warrant a guideline range of 324-405 months was in no sense a rejection of the jury's finding that he engaged in money laundering and that the forfeiture of that amount was appropriate.

Bennett also contends that the Government failed to show that he received any of the funds subject to the money laundering counts and that certain of the properties listed in the proposed order of forfeiture were acquired prior to the date of any of the money laundering charges. The evidence at the trial and the *Fatico* hearing established that funds obtained by fraud by the Bennett Funding Group were diverted to Bennett Management and Development Corporation and that substantial portions of these funds were then disbursed to, or for the benefit of, the defendant. The evidence was also clear that although the properties in question were purchased in the name of Mrs. Bennett, she had no significant independent assets and the funds used to make these purchases came from the defendant.

To the extent that the properties were purchased prior to the date of the money laundering activities, the Government claims that it is entitled to forfeit the listed assets as "substitute property ." The defendant argues that [18 U.S.C. § 982](#), which governs forfeiture in money laundering cases, does not provide for the forfeiture of substitute assets. While [section 982](#) does not specifically authorize the forfeiture of "substitute assets," subsection (b)(1) of that section provides:

The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 ([21 U.S.C. 853](#)).

[Title 21 § 853\(p\)](#) provides:

Forfeiture of substitute property

If any of the property described in subsection (a) of this section, as a result of any act or omission of the defendant-

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(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

*2 (3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).
FN1

FN1. That this substitute asset provision is to be applied to a [section 982](#) forfeiture is evident from [section 982\(b\)\(2\)](#), which restricts the use of the substitute asset provision in the case of a defendant who merely acted as an intermediary.

Thus, the forfeiture of substitute property is authorized in this case. Because the Government established at the *Fatico* hearing that amounts well in excess of the value of the substitute property were diverted to the defendant in connection with the money laundering scheme, it is entitled to forfeiture of the substitute assets.

There is no merit to the argument that the Government has failed to establish that the defendant has any interest in the assets at issue. Each of the assets was purchased with his money. While Mrs. Bennett has sought to intervene in this proceeding to allege that she is the rightful owner of the subject properties, her claims are premature. See [21 U.S.C. § 853\(n\)\(1\)](#).

The Court has also considered the defendant's application to stay entry of the order of forfeiture pending appeal and finds that there is no reason for

delay.

For the foregoing reasons, the Court will sign the Order of Forfeiture submitted by the Government.

SO ORDERED.

S.D.N.Y., 2000.

U.S. v. Bennett

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