

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

CARL DELANO TORJAGBO
A/K/A KARL LUCIUS DELANO

Criminal Action No.

1:22-CR-171-MLB-RDC

**POST-HEARING BRIEF IN SUPPORT OF
MOTION FOR INTERLOCUTORY SALE OF REAL PROPERTY (DOC. 61)**

The United States of America, by Richard S. Moultrie, Jr., United States Attorney, and Nicholas L. Evert, Assistant United States Attorney, for the Northern District of Georgia, hereby files this Post-Hearing Brief in support of its Motion for the interlocutory sale of 5114 Greythorne Lane, Marietta, Georgia; 101 Holt Drive, Acworth, Georgia; and Tract 4 Fiber Drive, Cartersville, Georgia (“the Motion”). (Doc. 61).

The Court held an evidentiary hearing on the Motion on December 9, 2024. Three witnesses testified: the treasurer of the Brookshyre Manor Homeowner’s Association (“HOA”), Janet Franchi; Cobb County Police Department Detective Adriano Ghisi; and Federal Bureau of Investigation Special Agent Scott Caruana.

Ms. Franchi, who lives next door to 5114 Greythorne Lane, testified that after Defendant’s arrest, his cousin was initially looking after the property, but that the cousin stopped looking after the property in early 2023, and nobody has been looking after the property since then. (Hearing Transcript [167] (“Tr.”) at 10, 13). In the months that followed, the home started to fall into disrepair. (Tr. at 13-16).

The HOA undertook the maintenance of the front of the property. (Tr. at 22). As of the hearing, the HOA had spent \$3,400 maintaining Defendant's home on his behalf, all while he had failed to pay his dues to the HOA. (Tr. at 11-12, 24). The HOA is spending at least \$150 per month maintaining the property. (Tr. at 22). While the HOA has been able to prevent the front of the house from falling into decay, it has been unable to do so with respect to the back of the house. (Tr. at 36-37). Photographic evidence shows that the pool behind the house is full of murky standing water and debris, and the HOA is concerned about what type of safety hazards this may present. (Tr. at 14-16). In total, as of early December 2024, the HOA had lost a total \$10,719.93 as a result of Defendant's failure to pay his dues and maintain his property. (Tr. at 27).

Detective Ghisi testified that the house at 5114 Greythorne Lane has been targeted for adverse possession by squatters. (Tr. at 47-52). Specifically, an individual entered the house and (falsely) asserted that he had a claim to the house by virtue of having paid taxes on the property. (Tr. at 47-50). Even after this individual left, at least one other potential squatter was found at the house. (Tr. at 51).

Special Agent Caruana testified that, as of December 3, 2024 (for Greythorne Lane and Holt Drive) and December 4, 2024 (for Fiber Drive), there were \$66,441.28 in unpaid taxes for 5114 Greythorne Lane, \$7,937.09 in unpaid taxes for 101 Holt Drive, and \$3,614.09 in unpaid taxes for Tract 4 Fiber Drive. (Tr. at 60-66).

Federal Rule of Criminal Procedure 32.2(b)(7) authorizes a district court to order the interlocutory sale of property alleged to be forfeitable in accordance

with Rule G(7) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (“Supplemental Rules”). Supplemental Rule G(7) authorizes a district court to order the interlocutory sale of all or part of the property subject to a pending asset forfeiture action if certain conditions are met. Specifically, Supplemental Rule G(7)(b) provides that upon the motion of a party:

- . . . the court may order all or part of the property sold if:
- (A) the property is perishable or at risk of deterioration, decay, or injury by being detained in custody pending the action;
 - (B) the expense of keeping the property is excessive or is disproportionate to its fair market value;
 - (C) the property is subject to a mortgage or to taxes on which the owner is in default; or
 - (D) the court finds other good cause.

Supp. R. G(7)(b)(i).

While there is a dearth of caselaw from the Court of Appeals for the Eleventh Circuit (and in general) regarding interlocutory sales, a number of courts have ordered interlocutory sales where one or more of the enumerated conditions are met. *See United States v. Furando*, 40 F.4th 567, 581 (7th Cir. 2022) (affirming grant of motion for interlocutory sale where district court adopted and incorporated government’s argument that property was “subject to deterioration and non-payment of real estate taxes”); *United States v. Smith*, No. 3:08-CR-31-JMH, 2010 WL 4962917, at *2 (E.D. Ky. Dec. 1, 2010) (granting motion for interlocutory sale where defendant had allowed mortgages to become delinquent); *United States v. Gianelli*, 594 F. Supp. 2d 148, 150 (D. Mass. 2009) (ordering interlocutory sale where “mortgage on [property was] in default and payments [were] not being made” and “the equity in the property available to the government in the event forfeiture [was] ordered continue[d] to diminish”); *see also United States v. One*

Parcel of Real Prop. Described as Lot 41, Berryhill Farm Ests., 128 F.3d 1386, 1390 (10th Cir. 1997) (recognizing that district court had ordered interlocutory sale where, *inter alia*, “real estate taxes, mortgage payments, and monthly expenses were accruing and threatening to impair the equity in the property”).¹

The use of the word “or” in Supplemental Rule G(7)(b) clearly indicates that the Court is authorized to order an interlocutory sale for any one of the reasons in subsections (A) through (D).

Here, all three of the properties are subject to interlocutory sale pursuant to subsection (C), as they are “subject to ... taxes on which the owner is in default[.]” Specifically, S.A. Caruana testified that there were \$66,441.28 in unpaid taxes for 5114 Greythorne Lane, \$7,937.09 in unpaid taxes for 101 Holt Drive, and \$3,614.09 in unpaid taxes for Tract 4 Fiber Drive. (Tr. at 62, 64, 66). Based on the plain language of Supplemental Rule G(7)(b), this alone is sufficient for the Court to order an interlocutory sale. Moreover, if the government is ultimately able to forfeit the properties, it will have to pay these taxes, which will diminish “the equity in the property available to the government in the event forfeiture is ordered[.]” *See Gianelli*, 594 F. Supp. 2d at 150. The available equity will only decrease further as additional taxes and penalties accrue on the properties.

¹ *But see United States v. Benbow*, No. 804CR226T17TBM, 2006 WL 2850100, at *3 (M.D. Fla. Oct. 3, 2006) (finding that interlocutory sale in a criminal case was improper because it essentially amounted to pre-conviction forfeiture). “*Benbow*’s validity has not been endorsed or adopted by any other court[.]” *United States v. Guzman*, No. 3:08-CR-00023-2, 2013 WL 12228400, at *3 (M.D. Tenn. Oct. 7, 2013). Moreover, to the extent *Benbow* can be read to suggest that interlocutory sales are inappropriate in criminal cases, that is at odds with Fed. R. Crim. P. 32.2(b)(7).

5114 Greythorne Lane is also subject to interlocutory sale based on subsection (A), as the property is “at risk of deterioration, decay, or injury[.]” Nobody has been looking after the property on Defendant’s behalf since early 2023. (Tr. at 13). At the very least, this has already resulted in the area behind the house (which includes the pool) falling into a state of decay. The front of the house would likely have suffered the same fate, but for the efforts of the HOA, which has spent thousands of dollars (and counting) to prevent the front of the house from falling into disrepair. The harm to the government from this will be two-fold if it is ultimately able to forfeit the property: (1) if the house continues to decay, the amount that the government will be able to sell it for will decrease; and (2) the government will likely have to reimburse the HOA for some or all of the expenses it has incurred (and those expenses continue to rise), which will diminish the value that can be recovered from the house. *See Gianelli*, 594 F. Supp. 2d at 150.

Finally, pursuant to subsection (D), there is “other good cause” for the interlocutory sale of 5114 Greythorne Lane, as the house has been targeted for adverse possession by squatters. First, the squatters are emblematic of the fact that nobody has been caring for the house for almost two years. Second, the presence of squatters is troubling for the neighbors. And third, if another squatter comes to the property and refuses to leave, there could need to be time-consuming and potentially costly eviction litigation.

Conclusion

For the foregoing reasons, the Government respectfully request that the Court grant the Motion for Interlocutory Sale (Doc. 61).

Respectfully submitted,

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