

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

ATLANTA DIVISION

UNITED STATES OF AMERICA)
)
 v.) Case No. 1:22-cr-00171-MLB-RDC
)
CARL DELANO TORJAGBO.)
)

**POST-HEARING BRIEF IN OPPOSITION TO GOVERNMENT’S
MOTION FOR INTERLOCUTORY SALE OF REAL PROPERTY**

COMES NOW Defendant Carl Delano Torjagbo, through undersigned counsel, and submits this post-hearing brief in opposition to the government's motion for interlocutory sale of property. (Doc. 61). The government has moved for interlocutory sale of three properties owned by Mr. Torjagbo: a residence at 5114 Greythorne Lane, Marietta, GA, and land parcels at 101 Holt Drive, Ackworth, GA, and Tract 4 Fiber Drive, Cartersville, GA. (Doc. 61). The Court conducted an evidentiary hearing on December 9, 2024. (Doc. 167, hearing transcript, hereinafter "T"). The government failed to meet its burden¹ to establish the properties are sufficiently at risk of deterioration, decay, taxes, encumbrance or other factors listed in Supplemental Rule G(7). This Court should deny the

¹The default rule is the "burden of proof [is] . . . on the moving party." *See USA v. Approximately 81,454 Cans of Baby Formula*, 560 F.3d 638, 641 (7th Cir. 2009). *USA v. Hall*, 877 F.3d 676, 685 (6th Cir. 2017).

government's unusual request for interlocutory sale prior to any finding of Mr. Torjagbo's guilt, considering the high market value of the properties and the comparatively minor expenses of preserving them.

There is insufficient evidence Torjagbo's properties are losing net value as opposed to gaining. While back-taxes admittedly are accruing, (T-pp.60-65), and landscaping costs, legal expenses and HOA dues are being incurred by an East Cobb homeowners' association, (T-pp.26-27), it is reasonable to conclude increases in property values in the 2024-2025 real estate market² offset these expenses. Furthermore, the government failed to present evidence of the current values of the properties or establish the values have declined to dangerous levels, or even below what Torjagbo paid. In its motion, the government alleges the properties have a total fair market value over \$1.5 million. (Doc.61-4). At the evidentiary hearing, counsel for Torjagbo proffered that the Greythorne Lane property is now worth approximately \$2 million³. (T-p.71). All taxes and HOA expenses can be covered with the equity increase / profit from Greythorne Lane. Interlocutory sales are permitted when "the expense of keeping the property is

²Real estate prices in Marietta, GA, are increasing and projected to increase for 2024-2025. Marietta remains a sellers market. See <https://www.noradarealestate.com/blog/marietta-ga-housing-market-trends/> (Accessed 3/18/2025).

³This was consistent with testimony that the neighborhood home in the HOA ranged from \$1.5 to \$2.8 million. (T-43).

excessive or is disproportionate to its fair market value." Fed. R. Civ. P. Supp. G(7)(b)(1)(B). *USA v. Youssef*, 734 F. Supp. 3d 638, 641, 2024 U.S. Dist. LEXIS 89643, *5 (E.D. MI. 2024). Here, expenses are not excessive or disproportionate to the fair market value, and the government has not proved otherwise.

The government also failed to prove sufficient nexus between the properties and the alleged criminal conduct. Torjagbo has not been convicted of any crime. He maintains and retains his presumption of innocence. The government must show a nexus between directly forfeitable property and the offense. *USA v. Smith*, 2010 WL 4962917, at *3 (E.D. Ky. Dec. 1, 2010). While FBI Agent Caruana provided generalized conclusions that the properties were purchased with fraud proceeds, (T-pp.60,62,64), this was unspecific and insufficient proof of nexus. Additionally, Torjagbo asks the Court to be persuaded by a district court's ruling *USA v. Benbow*, 2006 WL 2850100, at *3 (M.D. Fla. Oct. 3, 2006) and deny the interlocutory sale as it amounts to a "pre-conviction forfeiture." *Id.* In *Benbow*, District Judge Kovachevich vacated an interlocutory sale in a criminal forfeiture case and rejected the wholesale import of civil forfeiture procedure. The court reasoned the statute governing criminal forfeiture required a conviction as a prerequisite to forfeiture, held that an interlocutory sale of real estate was, for all intents and purposes, a forfeiture and vacated its order because the defendant had

not yet been convicted. For similar reasons, this Court should reject the government's attempt to turn Torjagbo's criminal forfeiture case into a civil one. A man's home is his castle. The government should not be allowed to sell Torjagbo's property in this unusual manner at this unusual time.

The government acknowledges the dearth of applicable case law. (Doc. 171-3, gov. post-hearing brief). The cases cited by the government are factually and procedurally distinguishable from Torjagbo's and do not support an interlocutory sale here. In *USA v. Furando*, 40 F.4th 567, 581 (7th Cir. 2022)⁴, the forfeiture order was filed after a defendant's guilty plea, not before. *Furando* involved a third-party claim against the property. Here, no third-party claim has been filed. *USA v. Smith*, No. 3:08-CR-31, 2010 WL 4962917, at *2 (E.D. Ky. Dec. 1, 2010)⁵, involved a government's motion to amend a preliminary order of forfeiture and sell property after a jury trial, while the case was on appeal. Here, Torjagbo has not been convicted. In *Smith*, the mortgage was not being paid; the property was subject to foreclosure. Here, there is no mortgage or foreclosure risk. In *USA v. Gianelli*, 594 F. Supp. 2d 148, 150 (D. Mass. 2009)⁶, the mortgage was in default,

⁴ Cited by government at Doc.171-p.3.

⁵Cited by government at Doc.171-p.3.

⁶Cited at Doc.171-p.3.

and no payments were being made, despite an order to do so. The government established the home had lost over half its value. Here, there is no mortgage, and Torjagbo's home value has not decreased in a similar way, if at all. *USA v. Lot 41, Berryhill Farm Ests.*, 128 F.3d 1386, 1390 (10th Cir. 1997)⁷, involved a civil forfeiture complaint and summary judgement under Title 21 USC §881(a)(6), after the owner had been convicted in a criminal jury trial.

Last, the risk of squatters has been mitigated and resolved by Torjagbo's involvement of the Cobb County police. (T-46,55-56). Adverse possession in Georgia requires 20 years absent color of title, 7 years with color of title, and was never a realistic concern or risk to the properties. *See* OCGA § 44-5-161, et. seq.

WHEREBY, Carl Delano Torjagbo requests the government's motion be denied.

Dated: This 19th day of March, 2025.

Respectfully submitted,

s/ L. Burton Finlayson

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⁷Cited at Doc.171-p.3.

CERTIFICATE OF SERVICE

This is to certify that I have this day electronically filed the foregoing post-hearing brief with the Clerk of Court using the CM/ECF system which will automatically send email notifications of such filing upon all counsel of record including the following:

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DATED: This 19th day of March, 2025.

s/ L. Burton Finlayson

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