UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v. Case No. 2:20-cr-114-JES-MRM

CASEY DAVID CROWTHER

UNITED STATES' MOTION FOR ORDER OF FORFEITURE AND PRELIMINARY ORDER OF FORFEITURE FOR DIRECT ASSETS

Pursuant to 18 U.S.C. §§ 982(a)(1), 982(a)(2)(A), and Rule 32.2(b)(2) of the Federal Rules of Criminal Procedure, the United States of America hereby moves for a preliminary order of forfeiture for the following assets, which were involved in, or proceeds of, the offenses for which the defendant was convicted:

a. a 2020 40' Invincible Catamaran, Hull ID# IVBC0076D920, registered to and owned by the defendant (the Catamaran); and

b. approximately $630,482.37 received from the sale of the real property located at 3653 San Carlos Drive, Saint James City, Florida 33956, in lieu of the property itself (the Real Property).

The United States further moves, pursuant to 18 U.S.C. §§ 982(a)(1), 982(a)(2)(A), and Rule 32.2(b)(2), for an order of forfeiture against the defendant in the amount of $2,739,081.21, representing the total proceeds of, and property involved in, the offenses of which the defendant was convicted.

The United States further asks that the preliminary order of forfeiture for direct assets and order of forfeiture become final as to the defendant at sentencing.

In support of its motion, the United States submits the following memorandum of law.

MEMORANDUM OF LAW

I. Statement of Facts

A. Allegations Against the Defendant

1. The defendant was charged in a Second Superseding Indictment, in pertinent part, with (1) two counts of a bank fraud scheme, in violation of 18 U.S.C. § 1344 and 18 U.S.C. § 2, (2) two counts of making a false statement to a lending institution, in violation of 18 U.S.C. § 1014 and 18 U.S.C. § 2, and (3) two counts of money laundering offenses, in violation of 18 U.S.C. § 1957 and 18 U.S.C. § 2. Doc. 62.

2. The Second Superseding Indictment also contained forfeiture allegations putting the defendant on notice that, pursuant to 18 U.S.C. §§ 982(a)(1) and 982(a)(2)(A), the United States would seek forfeiture of the following assets which constitute or were derived from (a) proceeds obtained, directly or indirectly, as a result of the offenses charged in Counts One, Two, Five, and/or Six, and/or (b) property involved in the money laundering offenses charged in Counts Three and/or Four:

a. an order of forfeiture in the amount of approximately $2,098,700.00, which represents the proceeds obtained from the offenses;

b. a 2020 40’ Invincible Catamaran, Hull ID# IVBC0076D920, registered to and owned by Casey Crowther; and

c. the real property located at 3653 San Carlos Dr., Saint James City, Florida 33956. *Id.* at 16-17.

3. On February 17, 2021, the United States filed a Bill of Particulars which more specifically identified the assets subject to forfeiture.[1] Doc. 72.

B. Finding of Guilt and Admissions of Fact

4. On March 22, 2021, without the benefit of a plea agreement, the defendant pled guilty to Counts Five (bank fraud scheme) and Six (making a false statement to a lending institution).[2] The Court accepted his plea and adjudicated him guilty. Doc. 117.

5. On March 23, 2021, a jury trial commenced for the remaining counts and, at the conclusion of the trial, the jury found the defendant guilty on all counts. Doc. 127.

II. Applicable Law

The United States is entitled to an order of forfeiture against the defendant and to forfeit the direct assets, pursuant to 18 U.S.C. § 982(a)(2)(A). The United States may criminally forfeit, pursuant to 18 U.S.C. § 982(a)(2)(A), any property constituting, or derived from, any proceeds the defendant obtained, directly or

[1] While this case was pending, the defendant obtained an offer to purchase the real property located at 3653 San Carlos Drive. Recognizing that it was in all parties' best interest to allow the pending sale to proceed as scheduled, the parties executed at Stipulation Regarding Sale of Real Property. Exhibit A. In that stipulation, the United States agreed to provide releases necessary to allow the sale to proceed. In exchange, the parties agreed that the net proceeds obtained from the sale of the property would be placed into a holding account and preserved as substitute *res* pending the outcome of the case. The Bill of Particulars was filed in accordance with this stipulation to reflect the parties' agreement that the sale proceeds be considered for forfeiture as substitute *res* in lieu of the real property.

[2] The United States moved to dismiss Count Seven. The defendant went to trial on the remaining counts (One through Four).

indirectly, as a result of a bank fraud scheme (18 U.S.C. § 1344) and/or making a false statement to a lending institution (18 U.S.C. § 1014). In addition, the United States is entitled to an order of forfeiture against the defendant and to forfeit the direct assets pursuant to 18 U.S.C. § 982(a)(1), which provides for the forfeiture of any property, real or personal, involved in a money laundering offense (18 U.S.C. § 1957), and any property traceable to such property.

Because forfeiture is an aspect of sentencing, the United States need only prove the elements of forfeiture by a preponderance of the evidence. *See United States v. Dicter,* 198 F.3d 1284, 1289-90 (11th Cir. 1999) (elements of forfeiture under 21 U.S.C. § 853(a)(1) and (a)(2) must be proven under the preponderance standard); *United States v. Hasson,* 333 F.3d 1264, 1278 (11th Cir. 2003) (extending preponderance standard to forfeiture cases under 18 U.S.C. § 982(a)(1)).

Moreover, forfeiture is mandatory and cannot be offset by restitution already paid to victims. *See United States v. Bailey*, 630 Fed. Appx. 902, 903-904 (11th Cir. 2015) (the Eleventh Circuit has "refused to offset the required forfeiture by restitution already paid to victims, recognizing that forfeiture and restitution are separate concepts serving different goals"); *see also United States v. Joseph*, 743 F.3d 1350 (11th Cir. 2014) (finding that the district court's oral pronouncement directing that restitution to the IRS be offset by the amount of the forfeiture was contrary to law and affirming written judgment, which declined to make such an offset).

III. Factual Basis for Forfeiture

A. Forfeiture of Directly Traceable Assets

The United States seeks to forfeit the property identified below as property traceable to the proceeds the defendant obtained from the bank fraud schemes (18 U.S.C. § 1344) and making a false statements to lending institutions (18 U.S.C. § 1014), and also, with regards to the Catamaran, as property involved in money laundering (18 U.S.C. § 1957). Rule 32.2(b)(1) provides that, when the government seeks to forfeit specific property, the Court must determine whether the government has established the requisite nexus between the property and the defendant's crime. Fed. R. Crim. P. 32.2(b)(1).

The Catamaran Purchased with PPP Loan Funds

In this case, the defendant was found guilty of a bank fraud scheme (18 U.S.C. § 1344) and making a false statement to a lending institution (18 U.S.C. § 1014) relating to his fraudulent procurement of a Payroll Protection Program (PPP) loan, as well as money laundering (18 U.S.C. § 1957) relating to his subsequent use of those illicit proceeds to purchase the Catamaran. As was established at trial, in or around April 2020, the defendant applied for an approximately $2.1 million PPP loan from Sanibel Captiva Community Bank on behalf of his company, Target Roofing. The defendant made false and fraudulent representations in order to secure the loan and used the PPP loan funds for his own personal enrichment.

As Sanibel Captiva Bank office manager Kristen DiIorio testified, around the time of the PPP loan application, the defendant contacted her about opening a separate account that he wanted exclusively for the PPP loan funds. Ms. DiIorio assisted the defendant with opening Sanibel Captiva account ending 6781, held in the name of Targer Roofing and Sheet Metal Inc. (Sanibel Captiva Account 6781). *See* Gov't Ex. 26. As Ms. DiIorio testified, the defendant was the only signor on the account and the only one with access to the account.

According to the April 2020 bank statement for Sanibel Captiva Account 6781, on April 14, 2020, $2,098,700 in PPP loan funds were deposited into the account. Gov't Ex. 107. Prior to that deposit, the account had a zero balance. *Id.* According to the trial testimony of Diane Knott, in the next few days, the defendant initiated a series of transfers from the account, including a $689,417 wire to Sara Bay Marina on April 24, 2020, for the purchase of the Catamaran. Gov't Exs. 33, 34, and 107.

Because the Catamaran was purchased with $689,417 in proceeds from the fraudulently obtained PPP loan, in violation of 18 U.S.C. § 1344 and 18 U.S.C. § 1014 (Counts One and Two), it is subject to forfeiture pursuant to 18 U.S.C. § 982(a)(2)(A). Additionally, because the defendant conducted the transaction to purchase the Catamaran knowing it involved more than $10,000 in illicit proceeds, in violation of 18 U.S.C. § 1957 (Count Four), the Catamaran is subject to forfeiture pursuant to 18 U.S.C. § 982(a)(1).

The Real Property Purchased with Fraudulently Obtained Mortgage

Before proceeding to trial on the counts relating to the PPP loan, the defendant pled guilty to a separate bank fraud scheme (18 U.S.C. § 1344) and to making a false statement to a lending institution (18 U.S.C. § 1014) relating to a mortgage he obtained via fraud to purchase the Real Property. Pages 3 through 5 of the United States' Notice of Maximum Penalties, Elements of Offense, Personalization of Elements and Factual Basis (Doc. 112) state, among other things, that in May 2020, the defendant entered into a contract to purchase the Real Property. To purchase the home, the defendant obtained a loan for a portion of the purchase price from the mortgage lender Angel Oak Mortgage Solutions, LLC (Angel Oak). *Id.* at 3.

During the application process for the loan, Angel Oak required the defendant to provide bank statements showing the source of funds he intended to use to make the down payment on the property in order to evaluate the risk of making a loan to him and to make sure that he had sufficient money on hand to meet certain payment obligations that would arise during the first year of the loan (e.g. taxes and insurance). *Id.* The defendant represented to Angel Oak that he would be using money contained in a bank account associated with his single-asset real estate company, 3801 Jade Ave, LLC (Jade Avenue Account), to make the down payment. *Id.* The defendant created three false bank statements with inflated balances for the Jade Avenue Account and a screenshot of a webpage which falsely showed an inflated balance for that account as of on or about July 17, 2020, which he provided to a mortgage broker, whose job it was to gather documents from the borrower and provide them to Angel Oak. *Id.* Angel Oak relied on those documents to determine the defendant's qualification for and terms of the loan it ultimately provided to him on or about July 31, 2020. *Id.*

Shortly before the loan closed and on July 31, 2020, the defendant signed and submitted to Angel Oak a document which falsely stated that the Jade Avenue Account contained approximately $1,071,696, when, in fact, the account contained no more than approximately $404,114.79, an amount insufficient to make the required down payment. *Id.* at 4. To make the down payment, the defendant relied on, among other things, previously undisclosed money, including a draw on a line of credit associated with another business he owned. *Id.*

As outlined in the Second Superseding Indictment, these misrepresentations caused the lender to approve the loan and disburse approximately $640,381.21 for the defendant's purchase of the Real Property.

Because the Real Property was purchased with proceeds obtained from a bank fraud scheme and from false statements to a lending institution, in violation of 18 U.S.C. § 1344 and 18 U.S.C. § 1014, it is subject to forfeiture pursuant to 18 U.S.C. § 982(a)(2)(A).

B. Order of Forfeiture

In addition to the forfeiture of directly traceable assets, the United States seeks an Order of Forfeiture in the total amount of proceeds the defendant obtained from the bank fraud schemes and false statements to lending institutions, and subsequently used, in part, in his money laundering violations. For cases in which a defendant no longer has the actual dollars or property traceable to proceeds in his possession, or the government cannot locate those assets, the obligation to forfeit simply takes the form of an order of forfeiture in favor of the United States. *See United States v. Padron*, 527 F.3d 1156, 1161-62 (11th Cir. 2008). Rule 32.2(b)(1) provides that, where the government seeks an order of forfeiture, the Court must determine the amount of money that the defendant will be ordered to pay.

Aside from the Catamaran and Real Property, identified above, the defendant has dissipated or otherwise spent the proceeds he obtained and laundered. Because the United States could not locate all of the specific property constituting or derived from the proceeds the defendant obtained from his bank fraud schemes and/or making false statements to a lending institution, or from property involved in his money laundering offenses, the United States seeks an order of forfeiture against the defendant for $2,739,081.21, pursuant to Rule 32.2(b)(2). This amount includes the $2,098,700.00 in Paycheck Protection Program (PPP) loan funds the defendant obtained from the bank fraud scheme and false statement to a lending institution as charged in Counts One and Two, plus the $640,381.21 in mortgage loan funds the defendant obtained from the bank fraud scheme and false statement to a lending institution as charged in Counts Five and Six.[3]

[3] This figure also encompasses the amounts involved in the money laundering offenses for which the defendant was found guilty (Counts Three and Four). Counts Three and Four related to the defendant's subsequent, knowing use of some of these illicit PPP loan proceeds in two monetary transactions, in violation of 18 U.S.C. § 1957. The first involved a $100,000 wire to the defendant's former business partner on April 21, 2020 (Count Three). The second was the $689,417 wire on April 24, 2020 for the purchase of the Catamaran (Count Four).

With regards to the proceeds obtained from the offenses in Counts One and Two (some of which were subsequently laundered as part of the offenses in Counts Three and Four), as detailed above, the jury found the defendant guilty of a bank fraud scheme and making false statements to a lending institution in connection with a fraudulently obtained PPP loan. Evidence at trial established that, as a result of false and fraudulent representations, on April 14, 2020, $2,098,700 in PPP loan funds were deposited into Sanibel Captiva Account 6781, an account controlled exclusively by the defendant.

With regards to the proceeds obtained from the offenses in Counts Five and Six, the defendant pled guilty to a separate bank fraud scheme and to making false statements to a lending institution in connection with a fraudulently obtained mortgage. As outlined in the Second Superseding Indictment, these misrepresentations caused the lender to approve the loan and disburse approximately $640,381.21 for the defendant's purchase of the Real Property.

Based on the facts proven at trial and the jury's finding of guilt on Counts One through Four, as well as the defendant's guilty plea to Counts Five and Six, at least $2,739,081.21 was obtained by the defendant from his offenses and involved in the money laundering violations. If the Court finds that at least $2,739,081.21 in proceeds was obtained by the defendant and laundered as part of the offenses, and that the defendant has dissipated those proceeds, then it is appropriate for the Court to enter an order of forfeiture against the defendant in that amount pursuant to Rule 32.2(b)(2).

The net proceeds from the forfeiture and sale of any specific assets, including the funds obtained from the sale of the Real Property and Catamaran, will be credited to and reduce the amount the United States shall be entitled to forfeit as substitute assets.

III. Conclusion

For the reasons stated above, the United States requests that, pursuant to 18 U.S.C. §§ 982(a)(1) and 982(a)(2)(A), and Rule 32.2(b)(2), the Court enter an order of forfeiture against the defendant in the amount of $2,739,081.21, for which he will be held liable.

The United States further requests that, because the $2,739,081.21 in proceeds was dissipated by the defendant, the United States may seek, as a substitute asset, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1), forfeiture of any of the defendant's property up to the value of $2,739,081.21.

The United States further requests that, pursuant to 18 U.S.C. §§ 982(a)(1) and 982(a)(2)(A), and Rule 32.2(b)(2), the Court enter a preliminary order of forfeiture for the assets identified on page two, *supra*.

The net proceeds from the forfeiture and sale of any specific assets will be credited to and reduce the amount the United States shall be entitled to forfeit as substitute assets.

The United States further requests that the order of forfeiture and preliminary order of forfeiture for direct assets become final as to the defendant at sentencing.

Upon issuance of the Preliminary Order of Forfeiture for Direct Assets, the United States will provide written notice to all third parties known to have an alleged legal interest in the property and will publish notice on the Internet at www.forfeiture.gov of its intent to forfeit the property. Determining whether a third party has any interest in the property must be deferred until a third party files a claim in an ancillary proceeding under Rule 32.2(c).

As required by Federal Rule of Criminal Procedure 32.2(b)(4)(B), the United States requests that the Court include the forfeiture when orally pronouncing the sentence and in the judgment. *See* Fed. R. Crim. P. 32.2(b)(4)(B) and *United States v. Kennedy*, 201 F.3d 1324, 1326 (11th Cir. 2000).

The United States further requests that the Court retain jurisdiction to address any third party claim that may be asserted in these proceedings, to enter any further order necessary for the forfeiture and disposition of such property, and to order any substitute assets forfeited to the United States up to the amount of the order of forfeiture.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to counsel of record.

s/Suzanne C. Nebesky
SUZANNE C. NEBESKY
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