FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

FEB 13 2025

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Lucy H. Carrillo, Clerk

MIYOSHI & HIRONAKA LLLC

PHILIP W. MIYOSHI #7459
201 Merchant Street, Suite 2240
Honolulu, Hawaii 96813
Telephone: (808) 888-5042
philip@808-law.com

Attorneys for Thid-Party In Interest
TIFFANY JENNIFER LAM

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, Plaintiff, vs. MARTIN KAO, Defendant.	Case No: 1:21-cr-00061-LEK THIRD-PARTY IN INTEREST TIFFANY JENNIFER LAM'S OBJECTION TO THE UNITED STATES' MOTION FOR ORDER AUTHORIZING APPLICATION OF DEFENDANT'S BOND DEPOSIT TO PAYMENT OF SPECIAL ASSESSMENT AND RESTITUTION [DKT 132]; DECLARATION OF TIFFANY JENNIFER LAM; CERTIFICATE OF SERVICE HEARING: Date: February 13, 2025 Time: 3:30 PM Judge: Hon. Kenneth J. Mansfield

THIRD-PARTY IN INTEREST TIFFANY JENNIFER LAM'S OBJECTION TO THE UNITED STATES' MOTION FOR ORDER AUTHORIZING APPLICATION OF DEFENDANT'S BOND DEPOSIT TO PAYMENT OF SPECIAL ASSESSMENT AND RESTITUTION

Third-Party In Interest TIFFANY JENNIFER LAM ("Tiffany"), by and through her counsel Miyoshi & Hironaka LLLC, hereby submits her Objection to the United States' Motion for Order Authorizing Application of Defendant's Bond Deposit to Payment of Special Assessment and Restitution [Dkt. 132] ("Motion"). Tiffany has an ownership interest in the cash bail posted on behalf of Defendant Martin Kao ("Martin's Bail") and therefore 28 U.S.C. § 2044 does not apply to such interest. Accordingly, the Motion should be denied with respect to Tiffany's ownership interest in Martin's Bail.

I. FACTUAL SUMMARY

A. Marriage Partnership

Tiffany is married to Martin Kao ("Martin"). Tiffany and Martin have been married since February 7, 2007. Tiffany was 31 years of age and Martin was 34 years of age at the time. Tiffany and Martin have two children aged 10 and 12.

Tiffany and Martin did not have any substantial liquid assets at the time they were married in 2007. Their primary asset was real property located in Manoa ("Manoa Property") that Tiffany owned prior to marriage and which she inherited from her grandfather. Tiffany owned the Manoa Property free of any mortgage or

other encumbrance. The Manoa Property is a marital asset which Tiffany and Martin currently own jointly.

After Tiffany and Martin married, Tiffany relinquished her career as a certified public accountant and did not work. Tiffany's role in the marriage was to be the primary homemaker, wife, and mother.

At the time Tiffany and Martin married, they agreed that all their financial assets, including the Manoa Property and all their joint and individual bank and financial accounts (collectively "Accounts"), were joint marital assets to be considered part of their marital estate ("Marital Agreement"). Tiffany relied on the Marital Agreement in making decisions regarding her personal life, career, finances and other marital matters. All the funds in their Accounts that were accumulated during their marriage were considered to be marital property.

Over the course of their marriage, Tiffany and Martin deposited income and other monies into their Accounts which were used to pay family living expenses and accumulate marital savings. Tiffany made direct and indirect contributions to those Accounts including the management of income and expenses, investment decisions, and college savings for the children. Since being married, Tiffany and Martin have always filed joint Federal and State tax returns.

B. Posting Of Martin's Bail

Martin was arrested on September 30, 2020. At the time of Martin's arrest, one of the Accounts was with Merrill Lynch, Account No. **-*2641 ("Merrill Lynch Account"), which had a balance of approximately $5,000,000.00. On or about October 1, 2020, the United States seized $2,000,000.00 ("Seized Funds") from the Merrill Lynch Account in connection with this case.

After Martin's arrest, Tiffany was informed that Martin's Bail was set in the amount of $2,000,000.00. Tiffany immediately contacted Merrill Lynch to withdraw funds totaling $2,000,000.00 from the Merrill Lynch Account to pay for Martin's Bail. On October 6, 2020, Tiffany requested that Merrill Lynch issue a $2,000,000.00 cashier's check from the Merrill Lynch Account to be made payable to the United District Court of Hawaii for Martin's Bail. As of the date that Tiffany requested Merrill Lynch to issue the cashier's check, and after removal of the Seized Funds, the Merrill Lynch Account had an approximate balance of $3,000,000.00.

On the morning of October 7, 2020, Tiffany went to the offices of Merrill Lynch and picked up the $2,000,000.00 cashier's check for Martin's Bail. Later that morning, Tiffany met Ms. Erin Patrick from United States Pretrial Services Offices in front of the Federal Courthouse to hand over the $2,000,000.00 cashier's check and personally post Martin's Bail. Tiffany was accompanied by her brother,

Todd. Upon delivery of the $2,000,000.00 cashier's check to Ms. Patrick, Tiffany was not provided with a receipt for posting Martin's Bail.

After issuance of the cashier's check, the approximate balance in the Merrill Lynch Account was $1,000,000.00. The Merrill Lynch Account was closed, and the remaining funds were transferred to another Account and were subsequently used to pay for Martin's various legal expenses and costs ("Martin's Legal Fees") expended in this and other criminal and civil matters. Pursuant to the Marital Agreement, Tiffany had a joint marital interest in the Merrill Lynch Account, which included the $2,000,000.00 used for Martin's Bail and the $1,000,000.00 expended on Martin's Legal Fees.

II. DISCUSSION

The United States seeks to apply Martin's Bail to the restitution/fines ordered in connection with Martin's sentence in this case. The United States invokes 28 U.S.C. § 2044 as a basis for its request:

> On motion of the United States attorney, the court shall order any money belonging to and deposited by or on behalf of the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States attorney to be applied to the payment of any assessment, fine, restitution, or penalty imposed upon the defendant. The court shall not release any money deposited for bond purposes after a plea or a verdict of the defendant's guilt has been entered and before sentencing except upon a showing that an assessment, fine, restitution or penalty cannot be imposed for the offense the defendant committed or that the defendant would suffer an undue hardship. *This section shall not apply to any third party surety.*

28 USCA § 2044 (emphasis supplied).[1] The United States "bears the burden of showing, by a preponderance of the evidence, that" Martin's Bail belongs to Martin and that they are not owned by a third party. *United States v. Gonzalez*, No. 11-CR-80211, 2013 WL 654918, at *4 (S.D. Fla. Feb. 21, 2013) (28 U.S.C. § 2044 not applicable to bond paid by defendant's sister). In other words, the United States must show "(1) that the money was deposited by the defendant or on the defendant's behalf; and (2) that the money belongs to the defendant." *United States v. Arnold*, No. 1:18-CR-30-1, 2020 WL 957415, at *3 (N.D. Miss. Feb. 27, 2020) (internal quotations and citations omitted) (28 U.S.C. § 2044 not applicable to bond paid by defendant's wife).

The United States cannot make such showing as the funds used to pay for Martin's Bail are owned by Tiffany. The cashier's check in the amount of $2,000,000.00 delivered by Tiffany to Ms. Patrick on October 6 was withdrawn from the Merrill Lynch Account, a financial account owned by Martin and Tiffany pursuant to their Marital Agreement. In instances, where as here, there is an effort to divide a marital asset as between spouses, the Hawaii courts apply the

[1] *See United States v. Equere*, 916 F.Supp. 450, 453 n.4 (E.D. Pa. 1996) (stating that "the [third party surety] disclaimer applies to" third party individuals).

partnership model. *See e.g., Collins v. Wassell*, 133 Hawai`i 34, 42, 323 P.3d 1216, 1224 (2014) (stating that "[c]ases in this jurisdiction have 'created a framework based on partnership principles that provides further guidance for family courts to use in dividing property upon divorce.'"). "Under general partnership law, 'each partner is entitled to be repaid his contributions to the partnership property, whether made by way of capital or advances.'" *Gussin v. Gussin*, 73 Haw. 470, 483, 836 P.2d 484, 491 (1992) (citation omitted). "In the absence of any agreement between husband and wife . . . partnership principles of law require an equal division of the marital property" where the facts show a marriage and the existence of jointly owned property. *Id.* at 484, 836 P.2d at 491.

Here, Tiffany had a marital ownership interest in the Merrill Lynch Account, which maintained a balance of approximately $3,000,000 at the time Tiffany withdrew $2,000,000 from the account to pay for Martin's Bail. Under *Gussin*, Tiffany owned fifty percent (50%) of the funds in the Merrill Lynch Account. As set forth above, and pursuant to the partnership model for marital property under Hawaii law, Tiffany's ownership interest in the Merrill Lynch Account was at least $1,500,000.00 ($3,000,000.00/2) at the time she requested that Merrill Lynch issue a $2,000,000.00 cashier's check for Martin's Bail. Therefore, Tiffany's ownership interest in Martin's Bail is approximately $1,500,000 and Section 2044 does not apply towards such an amount regarding any restitution/fine imposed on Martin in

this case. *See e.g., Equere*, 916 F. Supp. at 454 (28 U.S.C. § 2044 not applicable to bond paid by defendant's brother); *United States v. Sparger*, 79 F.Supp.2d 714, 719 (W.D. Tex. 1999) ; (28 U.S.C. § 2044 not applicable to bond paid by defendant's attorney); *United States v. Salyer*, No. 2:10-CR-0061 LKK, 2014 WL 412088, at *5 (E.D. Cal. Feb. 3, 2014), report and recommendation adopted, No. 2:10-CR-0061 LKK, 2014 WL 1270583 (E.D. Cal. Mar. 26, 2014) (28 U.S.C. § 2044 not applicable to bond paid by defendant's sister).

III. CONCLUSION

For the foregoing reasons, Tiffany respectfully requests that the Court deny the United States' Motion with respect to her marital interest in the monies she withdrew from the Merrill Lynch Account to fund Martin's Bail. Tiffany further requests that her ownership interest in Martin's Bail be returned to her as the conditions of Martin's bond have now been satisfied. *See* Fed. R. Crim. P. 46 ("The court must exonerate the surety and release any bail when a bond condition has been satisfied or when the court has set aside or remitted the forfeiture.")

DATED: Honolulu, Hawaii, February 13, 2025.

/s/Philip W. Miyoshi
PHILIP W. MIYOSHI
Attorney for Third-Party In Interest
TIFFANY JENNIFER LAM