UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	Case No. 21-CR-00061-LEK
Plaintiff,	)	February 13, 2025
	)	3:45 p.m.
vs.	)	
MARTIN KAO,	)	
Defendant.	)	

TRANSCRIPT OF HEARING ON PLAINTIFF'S MOTION FOR ORDER AUTHORIZING APPLICATION OF DEFENDANT'S BOND DEPOSIT TO PAYMENT OF SPECIAL ASSESSMENT AND RESTITUTION AS TO DEFENDANT MARTIN KAO
BEFORE THE HONORABLE KENNETH J. MANSFIELD
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:	Craig S. Nolan, Esq. Sydney Spector, Esq. U.S. Attorney's Office 300 Ala Moana Boulevard, #6-100 Honolulu, HI 96850
For Defendant:	Victor J. Bakke, Esq. Topa Financial Center 700 Bishop Street, Suite 2100 Honolulu, HI 96813
For Tiffany Jennifer Lam:	Philip Miyoshi, Esq. Miyoshi & Hironaka, LLLC 201 Merchant Street, Suite 2240 Honolulu, HI 96813
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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

FEBRUARY 13, 2025 3:45 P.M.

THE CLERK: The United States District Court for the District of Hawaii, with the Honorable Kenneth J. Mansfield, United States Magistrate Judge, presiding, is now in session. The gallery may be seated.

Criminal case number CR-21-00061LEK, United States of America vs Martin Kao. This case has been called for United States' motion hearing.

Please make your appearance for the record, starting with the Government.

MR. NOLAN: Good afternoon, Your Honor. Craig Nolan and Sydney Spector for the Government.

THE COURT: Good afternoon to both of you.

MR. BAKKE: And good afternoon, Your Honor. Attorney Victor Bakke on behalf of Mr. Kao, who's present to my right.

THE COURT: All right. Good afternoon to both of you as well. You folks can be seated. I did listen to most, if not all, of your proceedings upstairs, so I could be sure I knew what happened. Really the very end was what was material to me in terms of whether there was an assessment of fine, restitution, or penalty and to what degree.

So I'm aware of what happened there, and I've reread the briefs that you folks filed and we discussed briefly last time. So I guess I'd certainly like to hear from both of you as to where you, each of you, think we stand today.

MR. NOLAN: Well, I mean, it's our motion, so I'll just briefly say --

THE COURT: That's fine.

MR. NOLAN: -- we think the law is clear. He posted $2 million as required by the Court. There was no third-party surety, and the law is clear that the Government can ask the Court for this money, and the Court will give us this money if -- we've got, you know, 12.8 million in restitution that's outstanding at this point. We've got forfeiture. There's no fine as the Court heard. He owes the Court itself $900 for the special assessments.

So we're way above the 2 million. We don't think there's any defense to the motion.

THE COURT: Okay. When I was rereading the briefs, and I think this may be what Mr. Bakke wants to talk to me about, the statute says any money belonging to and then deposited by or on behalf of the Defendant. And I read a couple cases about that belonging to any third parties. What argument or what evidence does the Government have that the $2 million belongs to the Defendant?

MR. NOLAN: So first, that the Government -- excuse me -- that the Defendant himself was ordered to post $2 million. Though his wife may have procured the check from their shared account, that is his money, and it was posted on his behalf in his name. The Court has a sealed document that I don't have.

THE COURT: I have it in front of me.

MR. NOLAN: Yeah. So I don't know what that looks like, and maybe the Court is willing to enlighten us. But in any event, no matter what the state law here may be on how property is treated, and there are millions and millions of dollars out there in their joint names, it was posted on his behalf. There was no third-party surety and under the circumstances --

THE COURT: And I agree with all of that, but it's the belonging to part of the statute that I also have to comply with.

MR. NOLAN: It came from his account, and he posted it.

THE COURT: What can you tell me about the account? Because I don't know anything about the account that it was drawn from, if you know.

MR. NOLAN: Well, handed here today we have a declaration from his wife. And so according to his wife's declaration, she contacted Merrill Lynch to withdraw the funds totaling $2 million. Mr. Kao was, of course, incarcerated at that point. He was detained at FDC. She requested that Merrill Lynch issue $2 million cashier's check from the Merrill Lynch account, and it was one of the accounts in both their names. She delivered the check.

So in any joint account, either owner has full access to that money and has full right to that money. Whatever else there may be out there, I don't know if there's a prenup or something along those lines, but it's a declaration from his wife

in support of essentially a motion to intervene and prevent this from happening.

THE COURT: Was that filed in this case?

MR. NOLAN: No.

THE COURT: I haven't seen that.

MR. NOLAN: No, it was handed to --

THE COURT: Okay.

MR. NOLAN: -- Mr. Bakke and me literally as we walked into the courtroom --

THE COURT: Okay.

MR. NOLAN: -- by her attorney. So it's all new to me. But, frankly, it's pretty good proof that the money came from their joint account. And, you know, he -- it's his property. If he wants it, he used it by depositing it here, and he can't make it safe by leaving it with the Court.

THE COURT: Okay. Thank you.

MR. BAKKE: I'm sorry, Your Honor.

THE COURT: Mr. Bakke?

THE COURT: Your Honor, I'm sorry. First of all, Mr. Nolan just referenced to a sealed document. What --

THE COURT: I believe he's referring to ECF 14, which is the affidavit by owner of cash bail that's in the docket.

MR. BAKKE: Oh, okay. I haven't seen it.

MR. NOLAN: We haven't seen it, it's sealed.

THE COURT: Well, how about, for starters, I'll give it

to each of you, and we can talk about whether to -- your client signed it, Mr. Bakke. Presumably -- I mean, it was after you were involved in the case when he signed it. I have it in front of me.

MR. BAKKE: He may not have signed it with me. He's had like --

THE COURT: It was during COVID, I recognize that.

MR. BAKKE: In fact, then it probably -- I was his lawyer at the very beginning --

THE COURT: Right.

MR. BAKKE: -- for like a couple days.

THE COURT: And this is after that. I checked the docket. This is 14 on the docket. You were his lawyer when he signed this.

MR. BAKKE: I was his lawyer when he signed it?

THE COURT: I'm almost positive. I can pull up the docket again.

MR. BAKKE: Okay. It's been a couple years, and he's had like --

THE COURT: Okay. At a minimum, you need to see this document, sir.

MR. BAKKE: Yeah, yeah.

THE COURT: Take a look. We'll start with you. We'll take this in baby steps. If you can give a copy of this to Mr. Bakke.

(Counsel reviews document)

MR. BAKKE: According to my client, when he got out, he signed this at Attorney Michael Green's office because I was only his attorney for, like, a day or two. (Indiscernible - Mr. Bakke standing away from microphone) --

THE COURT: Okay. But you read what it said.

MR. BAKKE: -- until like a year later.

THE COURT: Did you read what it says, Mr. Bakke?

MR. BAKKE: Oh, I read what it says. Yeah, my client acknowledges --

THE COURT: Disavows that?

MR. BAKKE: No, no, no, he acknowledges. That's what I'm saying, he just --

THE COURT: Okay.

MR. BAKKE: He signed it with Mr. -- with Attorney Michael Green.

THE COURT: Sure.

MR. BAKKE: I don't have any personal knowledge to that.

THE COURT: Okay. All right. Okay. So in light of this information, which is what I have about whose money this is, what's your argument?

MR. BAKKE: You know, having seen that, first of all, now for the first time --

THE COURT: That's why I wanted you to see it.

MR. BAKKE: Yeah. Your Honor, I -- I mean, I think the law is fairly clear. I think the whole issue is that if the money is encumbered prior to being posted, then there's a legitimate third-party interest that can raise it. What he can't do is encumber it after it's been posted.

So to make things a little more complicated, today, Attorney Philip Miyoshi -- oh, there he is back there.

THE COURT: Good afternoon, Mr. Miyoshi.

MR. BAKKE: Mr. Miyoshi is behind me. So he's representing Ms. Lam. So I have not had a chance to read through his document that he, I guess, tried to file with the Court. Me and the Prosecutor both just got this. But I can -- maybe he can summarize the position, but really I would have to defer to him. I have no knowledge of the marital assets and how that goes through.

But I believe the Court is taking the right analysis, which is, who does that money belong to? And whether or not -- if it's jointly owned, does that make it encumbered to the point where Ms. Lam, the wife, would have her own ability to, almost like an interpleader, come in and fight for the money?

THE COURT: Okay. Mr. Miyoshi.

MR. MIYOSHI: Yeah. Thank you, Your Honor. And I apologize for not making a appearance through the eFiling system. I attempted to do that prior to the hearing today. It wouldn't allow me to do that because I wasn't a party to this case. I

attempted to file it manually with the Court, but was advised that because I'm an attorney, I can only eFile something. So I was left with --

THE COURT: Okay.

MR. MIYOSHI: -- between a rock and a hard place there. But, Your Honor, we do represent Ms. Lam in this matter, and I did provide both counsel with a memorandum. I would be happy to provide it with you if I could -- I understand that might be a little unorthodox and that you might want me to do whatever I can to eFile it so you can get it through the proper channels, but I do have a copy of this. But our --

THE COURT: Why don't you just file it with us? I think we can do it the old fashioned way.

MR. MIYOSHI: May I approach, Your Honor?

THE COURT: Yes, please. And the Government and Mr. Bakke have copies?

MR. MIYOSHI: I had provided them before the hearing. Yeah.

MR. NOLAN: We do.

THE COURT: Okay. Thank you. Just let me -- give me a second.

MR. MIYOSHI: Sure.

(Court reviews document)

THE COURT: Okay. I've skimmed the facts section, then there's the legal argument, so I'm going to pause and not try to

digest that on the fly. But go ahead, Mr. Miyoshi.

MR. MIYOSHI: Thank you, Your Honor. You know, in summary -- and, you know, again, I don't want to take up the time of the two counsel here, but in summary, you know, our position is that Ms. Lam has a marital interest in those funds. I think the law under -- with respect to 28 U.S.C. 2044 is clear. The Government bears the burden of establishing that that money, as this Court noted, belongs to the Defendant, so that it could be applied to restitution.

We believe that the evidence shows that Ms. Lam has an interest at least in up to $1.5 million of the bond amount because of the amount that was in the account at the time she withdrew $2 million to pay for Martin's bail.

And I think, you know, with respect to the law relating to marital interests, I think it's pretty clear that under Hawaii law, at least, marriages are looked at like -- well, viewed as a partnership. And absent some agreement to the contrary, it's -- when parties contribute equally, whether it's by resources, money, time, or other contributions, that it's typically viewed 50/50.

And so, we would submit that under 2044, it wouldn't apply to the funds that Ms. Lam has in order to (indiscernible).

THE COURT: Okay. Thank you, Mr. Miyoshi. I'll certainly hear from you, Mr. Nolan. Here's what I think I should do, though, is one, unseal ECF 14, because we're all fighting

over it, and I think -- is there any objection to me unsealing? That's the affidavit of -- by owner of cash bail. Mr. Bakke, your client signed it.

MR. BAKKE: No objection, Your Honor.

THE COURT: Okay. And Mr. Nolan, no objection?

MR. NOLAN: No objection.

THE COURT: Okay. So we will unseal the affidavit by owner of cash bail. That's ECF 14. So then everybody has access to it, and we can talk about it.

MR. NOLAN: So my colleague is just noticing that before the Court unseals it, there's a Social Security number on there that should be redacted.

THE COURT: All right.

MR. NOLAN: At least the first five digits.

THE COURT: All right. Thank you very much. So we'll figure that out. We will redact -- we know who we're talking about. We'll redact the whole Social Security number.

MR. NOLAN: Sure. Yeah.

THE COURT: We'll black it out. Anything else on that, Mr. Bakke, that you'd like me to --

MR. BAKKE: No, Your Honor.

THE COURT: Occupation, driver's license number, date of birth.

MR. BAKKE: I mean, whatever the personal identifiers, I think, are supposed to be redacted. Sorry, I didn't look that

closely at that information.

THE COURT: Yeah. Okay. Well, redact the Social Security number, the date of birth, and the ID number, I'm assuming is the driver's license number. So we'll redact that as well. Let me take a closer look, if there's anything else that we should redact.

MR. NOLAN: Well, Your Honor probably ought to redact the street number on his residential address on the top line.

THE COURT: Okay. Thank you. And the flip side is a receipt. I don't think there's anything there that is of concern. Mr. Nolan, when you're done, can you hand it over to Mr. Bake again?

MR. NOLAN: Oh --

MR. BAKKE: Yeah, sorry. I don't have it in front of me. Yeah, yeah, sorry. That's why I was going to --

THE COURT: Somehow I've ended up with two copies, and you guys are sharing.

MR. BAKKE: I was going to say, oh, you can just keep it under seal and make us a copy.

MR. NOLAN: And you have access to all the copies?

MR. BAKKE: Yeah, that's just the receipt.

THE COURT: Okay. So we'll unseal it with those redactions. And then I think I should give the Government a chance to file a further brief on this, if it would like. If it doesn't -- I haven't read Mr. Miyoshi's brief. Like I said, I

skimmed the factual recitation. I know what I think Hawaii law would be on, like, a shared account between spouses, but I don't know that at all. I tend to start where you ended, Mr. Nolan, that either spouse can take out whatever they want from it. But I don't know if I'm right about that.

So if you want a chance to brief it, I'll give it to you. If you don't -- well, I need to do some reading before I rule anyway now.

MR. NOLAN: Well, since the Court's going to look at it, certainly we'll brief it. But I will say, somehow counsel has bootstrapped this into 1.5 million. He said there's 3 million in the account. Two million came out. She's entitled to half of what was in there. So she owns 1.5. And somehow now he wants 1.5 of the 2 that's deposited with the Court.

I think, at best, and I think based on his pleading here, his motion, the Court could rule today that 1.5 million ought to be turned over and that then the parties can brief and contest the remaining 500,000. That would be based on his numbers, with her being entitled to 1.5 of the three.

THE COURT: Right.

MR. NOLAN: She would be --

THE COURT: The money is not going anywhere, right. So I would rather just -- I don't think there's any exigency, Mr. Nolan.

MR. NOLAN: So the money doesn't go anywhere until he

reports --

THE COURT: Right.

MR. NOLAN: -- on March --

MR. BAKKE: 25th.

MR. NOLAN: -- 25th.

THE COURT: Okay.

MR. NOLAN: Yes. Or unless he turns himself in earlier.

THE COURT: Sure. So how much -- one week, two weeks? What would you guys like to --

MR. NOLAN: Two weeks, please.

THE COURT: Okay. Two weeks is fine.

MR. NOLAN: Thank you.

THE COURT: The 27th, February 27th.

MR. NOLAN: That works. Thank you.

THE COURT: Okay.

MR. BAKKE: That's a Thursday, right, Your Honor?

THE COURT: That's a Thursday.

MR. BAKKE: A Thursday.

THE COURT: Just the filing then, the filing by the Thursday. And then I'll take a look at it and decide whether I want another hearing or whether I could just issue something.

MR. NOLAN: Okay. Thank you.

THE COURT: And so, Mr. Bakke, if you would like to file -- since I'm giving them another shot, you can review what

Mr. Miyoshi's filed, and if you would like to supplement, you can't, too, on the 27th.

MR. BAKKE: Yes, Your Honor. I'm a little confused. Is Mr. Miyoshi coming into the case or -- because --

THE COURT: Why don't you file a motion to intervene? I'm not sure logistically, how to handle this. I'm just trying to get this issue right.

MR. BAKKE: I can't -- I can't represent Mr. Kao --

THE COURT: Right. Against --

MR. BAKKE: -- and Mrs. Kao against each other.

THE COURT: Right. Understood. Okay. So if you don't want to file anything, you don't have to.

MR. BAKKE: Yeah, I --

THE COURT: I would like to file what Mr. Miyoshi handed us in the case, but I was not thinking -- I was completely glossing over those logistics.

MR. MIYOSHI: And, Your Honor, I did prepare a notice of appearance for the limited purpose of this hearing. I don't know if the Court could accept it or that it would be for me to seek. I did look at the rules. I didn't really find anything that would allow me to, from a rule standpoint, intervene into a criminal matter.

THE COURT: Right. And that may be right. So.

MR. MIYOSHI: Looking at that, but I certainly -- the Court could allow a special appearance just for purposes of this

motion.

THE COURT: Yeah, I will for purposes of this motion only. And I believe, based on the arguments you're making, your client has standing on this issue because she's asserting these are her assets. So I will allow it for that. And we'll try to figure out how to get you formally in the case for limited purposes of this motion.

MR. MIYOSHI: Is it possible to submit it to the Court?

THE COURT: Yeah. I'll leave them with you. Okay. So we will do what we can to get those filed. We're going to unseal as redacted ECF 14 and the Government and Mr. Kao, if he would like, I don't know that there's anything different he would want to say, and I'm not trying to create a conflict, but if he would like to file anything else on the 27th, he may.

MR. BAKKE: Thank you.

THE COURT: And then I will read everything and decide whether we need to get together or whether I can just issue an order. Anything further from anybody?

MR. NOLAN: No. Thank you, Your Honor.

THE COURT: Okay.

MR. BAKKE: No, Your Honor.

THE COURT: Thanks. We'll be in recess.

THE CLERK: All rise. Court stands in recess.

(Proceedings concluded at 4:08 p.m.)

CERTIFICATE

I, Jessica B. Cahill, court approved transcriber, do hereby certify that pursuant to 28 U.S.C. §753, the foregoing is a complete, true, and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated: June 28, 2025

Jessica B. Cahill

Jessica B. Cahill, CER/CET-708