UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

UNITED STATES OF AMERICA, Plaintiff, vs. MARTIN KAO, Defendant.	CR. NO. 21-00061 LEK

ORDER DENYING THIRD-PARTY IN INTEREST TIFFANY JENNIFER LAM'S OBJECTION TO THE ORDER GRANTING UNITED STATES' MOTION FOR ORDER AUTHORIZING APPLICATION OF DEFENDANT'S BOND DEPOSIT TO PAYMENT OF SPECIAL ASSESSMENT AND RESTITUTION [ECF NO. 156], [FILED 3/18/25 (DKT. NO. 164)]

Third-Party in Interest Tiffany Jennifer Lam ("Lam") appeals the magistrate judge's order finding that, under Title 28 United States Code Section 2044, Lam does not have any ownership interest in the funds posted as bail for Lam's husband, Defendant Martin Kao ("Kao"), in his criminal matter, United States v. Kao, 21-00061 LEK. See Third-Party in Interest Tiffany Jennifer Lam's Objection to the Order Granting the United States' Motion for Order Authorizing Application of Defendant's Bond Deposit to Payment of Special Assessment and Restitution, filed 3/18/25 (dkt. no. 164) ("Appeal").

The Court finds the matter suitable for decision without a hearing pursuant to Rule LR12.2(a)(1) of the Criminal Local Rules. After careful review of the submissions and applicable law, the Appeal is hereby DENIED and the magistrate judge's ruling is upheld as follows.

BACKGROUND

This matter arises out of a criminal prosecution against Kao. A criminal complaint was filed against Kao on September 29, 2020. [Criminal Complaint, filed 9/20/20 (dkt. no. 1).] Kao was arrested and was subsequently released on bail conditions, which included the posting of $2,000,000 bond secured by cash. [Minutes: Court Action: EP: Telephonic Detention Hearing held, filed 10/2/20 (dkt. no. 8).] Kao was indicted on May 6, 2021 and charged with three counts of wire fraud, in violation of Title 18 United States Code Section 1343 ("Counts 1-3"), and five counts of money laundering, in violation of Title 18 United States Code Section 1957 ("Counts 4-8"). [Indictment, filed 5/6/21 (dkt. no. 31).] Forfeiture of any real or personal property that constituted or was derived from proceeds traceable to the alleged offenses of wire fraud and money laundering was also sought. [Id. at pgs. 17-20.]

Kao entered guilty pleas to Counts 1 through 8, which was accepted on September 22, 2022. [Acceptance of Plea of Guilty, Adjudication of Guilt and Notice of Sentencing, filed 9/22/22 (dkt. no. 79).] On February 13, 2025, Kao was sentenced in this matter as well as to Count 1 of the Indictment filed in United States v. Kao, Cr. No. 23-00003 LEK, and received a sentence of eighty-seven months of incarceration, five years of supervised release as to Counts 1 through 3 in Cr. No. 21-00061 and Count 1 in Cr. No. 23-00003, and three years of supervised release as to Counts 4 through 8 in Cr. No. 21-00061, to run concurrently; restitution in the amount of $12,841,490; 12,000 hours of community service; and special assessment fees of $900.00. [Amended Judgment in a Criminal Case ("Amended Judgment"), filed 2/24/25 (dkt. no. 153), at 3-4, 6-7; Cr. 23-00003 LEK, Amended Judgment in a Criminal Case, filed 3/28/25 (dkt. no. 52).] He was ordered to surrender on March 25, 2025 for his term of imprisonment. [Id. at pg. 3.] Pursuant to the order of forfeiture filed on August 31, 2023, Plaintiff United States of America ("the Government") was granted an entry of a forfeiture money judgment in the amount of $12,841,490.00, which included $2,000,000 seized from Kao's personal investment account with Merrill Lynch. [Order of Forfeiture (Money Judgment and Preliminary Order of Forfeiture (Specific Property), filed 8/31/23 (dkt. no. 116), at 7.]

On March 4, 2025, the magistrate judge granted the Government's motion seeking application of Kao's $2,000,000 bond deposit to his special assessment fee and restitution amount. [Order Granting the United States' Motion for Order Authorizing Application of Defendant's Bond Deposit to Payment of Special

Assessment and Restitution ("3/4 Order"), filed 3/4/25 (dkt. no. 156).][1]

Lam filed her appeal from the magistrate judge's 3/4 Order on March 18, 2025.

STANDARDS

A district judge may designate a magistrate judge to determine any pretrial matter pending before the court and may reconsider any pretrial matter where it is shown that the magistrate judge's order is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); see also Fed. R. Civ. P. 72(b)(1) (empowering magistrate judges to enter findings and recommendations that are dispositive of a claim). A magistrate judge's non-dispositive order is deferred to unless "clearly erroneous or contrary to law." Grimes v. City & Cnty. of San Francisco, 951 F.2d 236, 241 (9th Cir. 1991) (citing Fed. R. Civ. P. 72(a), 28 U.S.C. § 636(b)(1)(A)). The "clearly erroneous" standard applies to the factual findings by the magistrate judge and the "contrary to law" standard applies to the legal conclusions by that judge. See Williams v. United States, Civ. No. 08-00437 ACK-BMK, 2012 WL 406904, at *3 (D. Hawai`i Feb. 8, 2012). A finding of fact may be set aside as clearly erroneous only if the court has "a definite and firm

[1] The Court construes the 3/4 Order as a report and recommendation for purposes of review in this appeal.

conviction that a mistake has been committed." Burdick v. C.I.R., 979 F.2d 1369, 1370 (9th Cir. 1992). "A decision is contrary to law if it applies an incorrect legal standard or fails to consider an element of the applicable standard." Williams, 2012 WL 406904, at *3.

For a magistrate judge's findings and recommendation, "[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3); see also United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) ("The statute makes it clear that the district judge must review the magistrate judge's findings and recommendations de novo *if objection is made,* but not otherwise.") (emphasis in original). Because the magistrate judge's order in this matter could be construed as a dispositive order, the Court elects to treat the order as a report and recommendation and analyzes the objections to it under the *de novo* standard.

DISCUSSION

Lam submits that she posted the $2,000,000 for Kao's bail by personally depositing funds that she had withdrawn from an account held with the financial institution, Merrill Lynch, specifically Account No. **-*2641 ("Merrill Lynch Account"). [Appeal at 3-4.] She contends that she has "a joint marital interest in the Merrill Lynch Account, which included the

$2,000,000.00" posted for Kao's bond securing his pretrial release. [Id. at 5.] Lam states that she and Kao, when they married in 2007, "agreed that all their financial assets, including [their home] and all their joint and individual bank and financial accounts . . ., were joint marital assets to be considered part of their marital estate[.]" [Id. at 2.] Other than her written declaration attesting to the marital agreement, there is no documentation (such as a written marital agreement) provided by Lam. See 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, filed 2/13/25 (dkt. no. 149), Declaration of Tiffany Jennifer Lam.

The Government, on the other hand, disputes that Lam has an ownership interest in the Merrill Lynch account. See Response to 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 (ECF No. 149) ("Response"), filed 2/27/25 (dkt. no. 154).] The Government points to the documentation produced regarding the Merrill Lynch Account as stating that this account was held solely by Kao and was not identified as a joint account. [Response at 3, 5 (citing Exh. A, Letter from Bank of America, N.A., dated 8/28/20 ("Exh. A")).] Indeed, the signature card for the Merrill Lynch Account identifies the account holder or trustee as "Martin Y. Kao"; [Response, Exh. A at BOA-317-008-DOJ-0000001;] the Merrill Lynch Client Relationship Agreement Form for Individual, Joint or Retirement Accounts identifies the client name as "Martin Y. Kao; [id., at BOA-317-008-DOJ-0000004;] and the Merrill Lynch brokerage account report reflecting a net value of $2,712,085 as of an unknown date lists the account as being a single ownership; [id., at MLPFS-00202-004-DOJ-0000135.]

Payment of a fine with money that has been posted by or on behalf of a defendant for an appearance bond is governed by 28 United States Code Section 2044, which states:

> 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.

Here, the Government made its motion pursuant to Section 2044 for the $2,000,000 posted for Kao's appearance bond. If the money posted belonged to Kao, then it follows that it can be held and paid over to be applied to the fine and restitution that Kao was ordered to pay as part of his criminal sentence, pursuant to Section 20244. Was Kao the owner of the money used to post his bond? The evidence demonstrates that he was.

The funds used to post the appearance bond were derived from the Merrill Lynch Account, and the documentation presented by the Government establishes Kao's control over the Merrill Lynch Account in that he is listed as its sole owner. Further, Kao attested that he was the owner of the funds used for the bond, which were to be returned to him upon exoneration of the bond. [Affidavit of Cash Bail, filed 10/08/20 (dkt. no. 14) (filed under seal).] There is no evidence that the funds were held jointly or by Lam individually.

As to Lam's arguments regarding the spousal agreement to share their expenses, income and property, the Court does not doubt her veracity. However, marital property ownership principles are inapplicable to the situation at hand because the issue here is not about property ownership and division when a divorce is granted. See, e.g., Haw. Rev. Stat. § 580-47(a)(3) (stating that upon granting a divorce, the court may order the division of "the estate of the parties, real, personal, or mixed, whether community, joint, or separate; . . . ."). Rather, the issue is whether there is evidence establishing her ownership, shared or otherwise, of the Merrill Lynch Account. Her arguments about marital property division are therefore unpersuasive. Likewise unpersuasive is her assertion that she has established ownership through her actions by being responsible for withdrawing the money, obtaining a cashier's check, and depositing this check to post the appearance bond. These actions were certainly supportive of her husband, for which she is to be commended, but are not evidence of ownership of the Merrill Lynch Account.

The Court, after its *de novo* review, FINDS that Kao was the sole owner of the Merrill Lynch Account. It CONCLUDES that the Government's motion was correctly granted and that the magistrate judge's order that the $2,000,000 belonging to Kao and deposited by him for the purposes of a criminal appearance bail bond is to be held and paid over to the Government to be applied to the payment of any assessment, fine, restitution, or penalty imposed upon Kao is SUSTAINED.

CONCLUSION

Third-Party in Interest Tiffany Jennifer Lam's Objection to the Order Granting United States' Motion for Order

Authorizing Application of Defendant's Bond Deposit to Payment of Special Assessment and Restitution, filed 3/18/25 (dkt. no. 164) is hereby DENIED.

DATED AT HONOLULU, HAWAII, April 4, 2025.

/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
Senior U.S. District Judge

UNITED STATES OF AMERICA VS. MARTIN KAO; CR 21-00061 LEK; ORDER DENYING THIRD-PARTY IN INTEREST TIFFANY JENNIFER LAM'S OBJECTION TO THE ORDER GRANTING UNITED STATES' MOTION FOR ORDER AUTHORIZING APPLICATION OF DEFENDANT'S BOND DEPOSIT TO PAYMENT OF SPECIAL ASSESSMENT AND RESTITUTION [ECF NO. 156], [FILED 3/18/25 (DKT. NO. 164)]