UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v. Case No. 2:21-cr-74-JLB-MRM

AMBER REWIS BRUEY

UNITED STATES' UNOPPOSED MOTION FOR ORDER OF FORFEITURE AND PRELIMINARY ORDER OF FORFEITURE FOR DIRECT ASSET

Pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), 28 U.S.C. § 2461(c), and Rule 32.2(b)(2) of the Federal Rules of Criminal Procedure, the United States of America hereby files this motion for an order of forfeiture against the defendant in the amount of $881,058.35, representing the total amount of (1) proceeds she obtained as a result of her participation in the wire fraud conspiracy charged in Count One of the Indictment; (2) proceeds she obtained from the wire fraud scheme charged in Counts Two through Eleven; (3) funds obtained and laundered by the defendant as a result of her participation in the money laundering conspiracy charged in Count Fourteen; and (4) funds involved in the illegal monetary transactions charged in Counts Fifteen through Eighteen.

In addition, pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), 28 U.S.C. § 2461(c), and Rule 32.2(b)(2), the United States moves for a preliminary order of forfeiture for the following asset[1], which constitutes or was derived from proceeds

[1] The United States was unable to locate the Honda Talon that was identified as subject to forfeiture because it had been sold prior to the Indictment; therefore, the United States is not seeking the forfeiture of that vehicle in this motion. The remaining assets identified as

traceable to the wire fraud conspiracy and/or the wire fraud scheme, and was involved in the money laundering conspiracy and in an illegal monetary transaction (Count Sixteen):

> Real property located at 114 Kemp Lane, Hertford, North Carolina 27944, including all improvements thereon and appurtenances thereto, the legal description for which is as follows:
>
> BEGINNING AT A POINT on the southern side of the Perquimans River, said point being at the northeastern comer of the Skinner property, thence in a southwestern direction along a fence, being the Skinner line, 295 feet to a chopped oak, thence in a southeasterly direction, a line parallel with said Perquimans River, 178 feet to a chopped oak; thence in a northerly direction, a straight line to a chopped gum, said gum being at the break of a swamp; and thence continuing on in a straight line from said oak and gum, to the Perquimans River; thence along the run of said river in a northwesterly direction back to the POINT OF BEGINNING. For reference and chain of title see Deed Book 109 Page 330 of the Perquimans County Registry.
>
> ALSO CONVEYED HEREBY is a right of way to said above described property, across property of now or formerly R.E. Mathews, the same being 30 foot wide right of way and running from property of said Mathews, hitting the outer edge of the swamp located on the southeastern side of said above described property.
>
> Designated Map No. 2-D061-0017-HB (PIN No. 7868-24-9352) in the Perquimans County Tax Office,

(the Real Property).

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subject to forfeiture in the Indictment have been administratively forfeited. *See* Doc. 80. Therefore, the United States is only seeking a preliminary order of forfeiture for the Real Property in this motion.

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

The United States has conferred with James Lappan, counsel for the defendant, who has advised that he has no objection to this motion. 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 an Indictment (1) in Count One with a wire fraud conspiracy, in violation of 18 U.S.C. § 1349, (2) in Counts Two through Eleven with a wire fraud scheme, in violation of 18 U.S.C. §§ 1343 and 2, (3) in Count Fourteen with a money laundering conspiracy, in violation of 18 U.S.C. § 1956(h), and (4) in Counts Fifteen through Eighteen with illegal monetary transactions, in violation of 18 U.S.C. §§ 1957 and 2. Doc. 3.

2. The Indictment also contained forfeiture allegations putting the defendant on notice that, pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), and 28 U.S.C. § 2461(c), the United States would seek the order of forfeiture and forfeiture of, among other things, the Real Property identified on page two, *supra*. *Id.* at 19-21.

B. Finding of Guilt

3. On March 16, 2022, without the benefit of a plea agreement, the defendant pled guilty to Counts One (wire fraud conspiracy), Two through Eleven

(wire fraud scheme), Fourteen (money laundering conspiracy), and Fifteen through Eighteen (illegal monetary transactions) before United States Magistrate Judge Mac R. McCoy, who recommended that the defendant's guilty plea be accepted. Docs. 69, 70. On the same date, United States District Judge Thomas P. Barber accepted the defendant's plea and adjudicated her guilty. Doc. 72. The defendant's sentencing is currently set for June 24, 2022.

4. Pages 4 through 11 of the United States' Notice of Maximum Penalties, Elements of Offense, Personalization of Elements, and Factual Basis (Doc. 68), which was established at the defendant's change of plea hearing, state, among other things, that in March of 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was enacted to provide emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program (PPP). Another source of relief was the Economic Injury Disaster Loan (EIDL) program, which was a Small Business Administration (SBA) program that provided low-interest financing to small businesses affected by declared disasters.

In or around April 2020, the defendant and her husband and co-conspirator, Anthony James Bruey (the Brueys), conspired to defraud PPP lenders and the SBA by submitting false and fraudulent PPP and EIDL applications. In total, the Brueys submitted approximately 26 fraudulent PPP and EIDL applications between April 2020 and June 2020, causing PPP lenders and the SBA to approve approximately 12 loans and issue a total of $881,058.35 in PPP and EIDL funds. The PPP and EIDL funds were deposited into bank accounts that were controlled and maintained by the Brueys. The defendant then used these fraudulently obtained funds for her own personal enrichment. Specifically, after unlawfully obtained PPP and EIDL funds were deposited into accounts controlled and maintained by the Brueys, the funds were used to purchase, among other assets, a residence in North Carolina (the Real Property identified above).

II. Applicable Law

The United States is entitled to an order of forfeiture against the defendant and to forfeit the Real Property, pursuant to 18 U.S.C. § 981(a)(1)(C). The United States may civilly forfeit, pursuant to 18 U.S.C. § 981(a)(1)(C), any property, real or personal, which constitutes or is derived from proceeds of any "specified unlawful activity," as defined in 18 U.S.C. § 1956(c)(7), or a conspiracy to commit such offense (18 U.S.C. § 1349). A “specified unlawful activity” also includes any offense listed in section 1961(1), which, in turn, includes any violation of section 1343 (wire fraud conspiracy and/or wire fraud scheme). Because the United States is entitled to civilly forfeit proceeds of such offense, it may criminally forfeit the proceeds pursuant to 28 U.S.C. § 2461(c), which authorizes the criminal forfeiture of any property that can be forfeited civilly, using the procedures set forth in 21 U.S.C. § 853.

In addition, the United States is entitled to an order of forfeiture against the defendant and to forfeit the Real Property 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 conspiracy (18 U.S.C. § 1956(h)) and/or illegal monetary transactions (18 U.S.C. § 1957), or any property traceable to such property.

A. Order of Forfeiture

For cases in which a defendant no longer has the actual dollars or property traceable to proceeds in her 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.

Because the United States could not locate all of the specific property constituting or derived from the proceeds the defendant obtained and/or laundered as a result of her offenses, the United States seeks an order of forfeiture against the defendant in the amount of $881,058.35, pursuant to Rule 32.2(b)(2). As was established in the Notice of Maximum Penalties, Elements of Offense, Personalization of Elements, and Factual Basis, the defendant fraudulently obtained approximately $881,058.35 in PPP and EIDL funds as a result of her participation in the wire fraud conspiracy and/or the wire fraud scheme, and then laundered at least a portion of these funds as part of her participation in the money laundering conspiracy and the illegal monetary transactions. If the Court finds that at least $881,058.35 was obtained by the defendant, and that she 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).[2]

B. Direct Assets

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). As was established in the Notice of Maximum Penalties, Elements of Offense, Personalization of Elements, and Factual Basis, the Brueys used fraudulent loan funds to purchase, among other things, the Real Property. Specifically, and as alleged in Count Sixteen to which the defendant has pled guilty, the Brueys wired approximately $211,457.57 in funds traceable to the fraudulent loan proceeds to purchase the Real Property, in violation of 18 U.S.C. § 1957.

Because the Real Property was purchased with funds derived from proceeds traceable to the wire fraud conspiracy and/or the wire fraud scheme, and was involved in the money laundering conspiracy and an illegal monetary transaction

[2] The United States also obtained an order of forfeiture against co-defendant Anthony James Bruey in the amount of $881,058.35 (Doc. 82); however, because these funds were jointly obtained by the Brueys, the United States will not seek to collect more than $881,058.35 from both defendants.

(Count Sixteen), to which the defendant has pled guilty, the Real Property is subject to forfeitable pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), and 28 U.S.C. § 2461(c).

The defendant will receive credit to the amount owed on her order of forfeiture for the net proceeds obtained from the sale of the Real Property as well as any other assets that have been administratively forfeited.

III. <u>Conclusion</u>

For the reasons stated above, the United States requests that, pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), 28 U.S.C. § 2461(c), and Rule 32.2(b)(2), the Court enter an order of forfeiture against the defendant in the amount of $881,058.35, for which she will be held liable.

The United States further requests that, because the $881,058.35 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) and/or 28 U.S.C. § 2461(c), forfeiture of any of the defendant's property up to the value of $881,058.35.

The United States further requests that, pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), 28 U.S.C. § 2461(c), and Rule 32.2(b)(2), the Court enter a preliminary order of forfeiture for the Real Property 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 asset become final as to the defendant at sentencing.

Upon issuance of the Preliminary Order of Forfeiture for Direct Asset, 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 May 23, 2022, 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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