

Puerto Rico district court strikes claim and answer because Claimants failed to respond to special interrogatories timely even after extension was granted. The government filed a civil forfeiture case against a 2008 33' Contender Model Tournament Vessel. Claimants filed an answer and statements of interest, and then a motion to stay the civil forfeiture proceedings because of a related criminal case in which the defendant vessel also was involved. The Court denied claimants' motion without prejudice, and requested from claimants an update regarding the status of the underlying criminal case. Claimants did not respond to the Court's request to furnish information, nor did they re-submit their motion for a stay. Shortly thereafter, plaintiff served special interrogatories pursuant to Supplemental Rule G(6) for Admiralty or Maritime Claims and Asset Forfeiture Actions. The court granted Claimants, motion for an extension to answer the interrogatories. Two days after the due date, Claimants filed an "emergency" motion for a second extension, which the court denied.. The government then filed a motion for default entry and a motion to strike. Claimants informed the court that claimants' answers to the interrogatories eventually were served on plaintiff and filed an opposition on the same date. Claimants did not dispute that they failed to answer the interrogatories timely, but argued that their eventual service of their answers mooted the motion to strike. Claimants also argued sanctions should not be imposed because plaintiff did not allege it suffered any prejudice, nor did plaintiff file a motion to compel answers. Lastly, claimants averred the interrogatories threatened claimants' Fifth Amendment right against self-incrimination. The court said that Claimants were forewarned that no further extensions would be granted. and failed to comply with the court's extension order. Although Rule G(8) does not explicitly state when a motion to strike should be granted, since Rule G(8) specifically allows the government to file a motion to strike when a claimant fails to comply with Rule G(6), it stands to reason that Rule G(8) anticipated courts granting the same for such failures. Claimants' repeated failure to answer plaintiff's interrogatories timely led to their failure to establish statutory standing, so the court now struck the answer and claims pursuant to G(8)(c)(i)(A). The court added that even if Rule G were silent on when a court may strike a claimant's answer and claim, and therefore Rule 37 instead should apply to such discovery sanctions in a civil forfeiture case, it still would have the discretion to strike the answer and claims here. The importance of Rule G(6) special interrogatories in forfeiture proceedings may justify a somewhat more demanding approach than the general approach to discovery sanctions under Rule 37. Although plaintiff did not file a motion to compel discovery in this case, the court specifically ordered claimants to answer the interrogatories; thus, the court held it may properly impose sanctions under Rule 37(b). *United States v. 2008 33' Contender Model Tournament Vessel*, No. CV 12-01721, 2017 WL 3084899 (D.P.R. July 20, 2017).

North Carolina district court grants summary judgment based in part on drug-sniffing canine's presumed reliability. The court granted the government's motion for summary judgment in a civil forfeiture case based on the totality of the circumstances, including the undisputed evidence of Claimant Gonzalez's conviction for felony conspiracy to traffic in cocaine, narcotics alerts on the corner of his bed and the seized currency by a certified canine, the location and storage of \$115,471 in cash in Gonzalez's home, his maintenance and use of bank accounts for personal and business expenses, and modest adjusted gross income to support a family of six considering the family's expenses. Canine Bo alerted both to the front corner of Gonzalez's bed and to the seized currency. Although Gonzalez argued that circulated currency is

mostly contaminated with cocaine in light of pervasive use of that drug in this country so that the canine alert cannot be conclusively probative (actually not probative at all) of a drug presence in the house, the Supreme Court more recently determined that an alert by a properly trained canine is entitled to a presumption of reliability (finding that “evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert). Although some courts in the 1990's questioned the validity of a dog alert, recently courts have accepted scientific evidence that dogs do not alert to innocently tainted currency in general circulation but only to currency that has been exposed to large amounts of illicit cocaine within the very recent past because they are alerting to volatile odors from illegal narcotics that dissipate quickly over time. The court found that Bo is a Dutch Shepherd, a breed specifically selected for their keen senses and ability to be trained to detect the odor of narcotics, and he was initially certified two months prior to his alert in this case with the North American Police Work Dog Association. Since then, he has been recertified every year by the same organization. Thus, Bo's alerts to Gonzalez's bed and the seized currency were presumed reliable, and Gonzalez offered no evidence to rebut the presumption. The court concluded it was more likely true than not that the \$115,471 in U.S. currency seized from Gonzalez's residence was connected to drugs. *United States v. \$115,471.00 in U.S. Currency*, No. 1:11-CV-318, 2017 WL 2842778 (M.D.N.C. July 3, 2017).

Louisiana district court denies criminal forfeiture money judgment because statute did not provide for forfeiture based on conspiracy without a conviction on the underlying violation. Defendants were convicted of conspiring to operate an unlicensed money service business and a drug conspiracy. Before the forfeiture hearing, the court noted that 18 U.S.C. § 982(a)(1) does not specifically provide for criminal forfeiture when a person has been convicted of *conspiring to commit* certain violations (in this case, 18 U.S.C. §§1956, 1957, or 1960). The government sought a money judgment of more than \$2.6 million under this provision for the property “involved in” or “traceable to” the offense. However, conspiracy to commit a criminal offense is an inchoate crime, separate from the underlying offense itself. The forfeiture statute upon which the government relied, 18 U.S.C. § 982(a)(1), provides for forfeiture only when a person is “convicted of an offense *in violation of section 1956, 1957, or 1960 of this title.*” Other subsections of that same statute expressly provide for forfeiture for commission of certain federal crimes *or* conspiracy to commit those crimes, indicating that if Congress intended to provide for criminal forfeiture for conspiring to violate 18 U.S.C. §§1956, 1957, or 1960, it would have expressly done so like it did for these other crimes. The court found that reading subsection 18 U.S.C. §983(a)(1) to provide for forfeiture for both an underlying violation of 18 U.S.C. §1960 and a conspiracy to violate that provision under 18 U.S.C. § 371 when other subsections of 18 U.S.C. § 983(a) expressly provide for forfeiture for the crime of conspiracy violates the canons of construction that 1) statutes should be interpreted as a whole and 2) statutes should be interpreted to avoid rendering any part of their language superfluous. Thus, the court held that forfeiture under 18 U.S.C. § 982(a)(1) is only available when there is a conviction for an underlying violation of §§1956, 1957, or 1960. The government therefore could not obtain the money judgment it sought. *United States v. Lord*, No. CR 15-240, 2017 WL 2919026 (W.D. La. July 7, 2017).

Virginia district court grants wife’s criminal forfeiture ancillary petition because tenancy by entirety allowed her to retain full and exclusive use of the property during her life.

The court entered a preliminary order of forfeiture of the defendant Michael Franco’s real property. Several parties came forward to claim legal interests, one of which was by his wife Darlene Franco for a tenancy by the entirety. The government agreed to recognize the four tenancy-in-common interests and the bank’s lien, and suggested a forfeiture scheme compensating these parties for their interests. It did not attempt to argue that Darlene's tenancy by the entirety ownership interest did not qualify for any protection under 18 U.S.C. §853(n)(6). Thus, the remaining issue to be resolved was how the court should treat Darlene's tenancy by the entirety interest. The government requested that the court sever the tenancy by the entirety estate and hold that it and Darlene each held a 1/3 interest in the property as tenants in common. Darlene, on the other hand, suggested that the court decline to order forfeiture, and instead enter an order giving a lien on the property in favor of the government in an amount set by the court. Under Virginia law, an estate by the entirety is immune from the claims of creditors of either the wife or the husband alone. This state law protection from creditors does not necessarily shield tenancies by the entirety from federal forfeiture, however. Where federal and state law conflict, federal law prevails. Thus, though state law defines the nature of the property interest in question, federal law governs whether the subject property is forfeitable. Even where state law forbids criminal forfeiture of property held in a tenancy by the entirety in state court, the guilty spouse's interest is still forfeitable in a federal proceeding. The court decided that the government could not occupy the position of the defendant in the entireties estate, since the estate was founded on marital union, and the government obviously cannot assume the role of spouse to Darlene Franco. Section 853 requires the court to order forfeiture of Michael Franco's property, while recognizing and protecting his innocent spouse's interest. That interest, as defined by state law, is intertwined with Michael Franco's forfeited rights in a way that does not admit of easy, neat resolution. The court concluded that Darlene Franco shall retain full and exclusive use of the property during her life, protection against alienation without her consent or any attempt to levy upon her husband's former interest, and the right to obtain title in fee simple (as to the 2/3 share formerly owned by Darlene and Michael Franco) should her husband predecease her. Should she predecease her husband, however, the government would obtain the 2/3 share in fee simple. *United States v. Franco*, No. 5:14-CR-11, 2017 WL 3187392 (W.D. Va. July 26, 2017).

Alabama district court holds that under the False Claims Act criminal forfeiture order did not qualify as an “alternate remedy” sought by government, and thus denies qui tam relator’s petition.

The False Claims Act (FCA) prohibits any person from knowingly submitting a false or fraudulent claim to the United States for payment or approval or knowingly making any false statement material to such a claim. The Attorney General may bring a civil action under the FCA in the name of the United States. Alternatively, a private person—known as a “relator”—may bring a *qui tam* action “for the person and for the United States Government.” If a *qui tam* action results in a recovery for the Government, the relator shares in the award. If the government does not join the relator's suit, but pursues an “alternative remedy,” the relator has the same rights to recover in that proceeding that they would have had if the United States had joined in the *qui tam* action. In the instant action, Carver filed a *qui tam* action asserting FCA claims against Defendants Couch and Ruan. The government did not join in Carver's *qui tam* action, but pursued criminal charges. Both were convicted, preliminary orders of forfeiture were

entered, and Couch entered into an agreement with the government on forfeiture. Carver then claimed she was entitled to a share of the forfeited assets, contending that this criminal action constituted an “alternative remedy” under the FCA and thus, that she was entitled to share in the forfeited assets the same as if the government had joined in the *qui tam* action and the assets had been forfeited through that action. While the *qui tam* statute uses the broad word “any” to describe the allowable alternative remedies, it specifies that “any alternate remedy” includes “any administrative proceeding to determine a civil money penalty” and makes no mention of criminal proceedings. Even crime victims, who enjoy various statutory rights of participation, have no right to intervene in the district court in a criminal case. Additionally, criminal forfeiture procedures do not provide for the intervention of third parties. Carver conceded she was not a proper petitioner under 21 U.S.C. § 853(n) because her legal interest did not vest in the petitioner at the time the Defendants committed the crimes and she is not a “bona fide purchaser for value of the property” that at the time of purchase was “reasonably without cause to believe that the property was subject to forfeiture.” There is simply no provision in the Federal Rules of Criminal Procedure for a third party to intervene in a criminal proceeding to claim a share of forfeited assets. Thus, the court held that this action did not qualify as an “alternate remedy” under the FCA, so her verified petition to assert an interest in property forfeited was denied. *United States v. Couch*, No. CR 15-88-CG, 2017 WL 3016923 (S.D. Ala. July 14, 2017).

Ohio district court finds that Petitioner had standing to contest criminal forfeiture of currency she alleged was found in her suitcase, although the defendant admitted in plea bargain that it was drug money. (595) Petitioner was traveling with the defendant at the time he was pulled over and arrested. Defendant consented to the search of the pickup truck he was driving and agents found \$4,980.00 in a suitcase in the rear of the truck. As part of his plea agreement, Defendant said the currency was obtained by him through the distribution of illegal narcotics and agreed to forfeit the money. The court entered a preliminary order of forfeiture and petitioner filed a petition claiming ownership of the \$4,980.00. The court first found Petitioner presented a facially colorable interest in the seized property, and made sufficient factual allegations regarding how she came to possess the money, i.e., that the source of the seized currency was rental income, child support and wages, and provided bank records to support this claim. She maintained that the seized currency was in her suitcase. However, the government contended the defendant's clothing and other items were found in the suitcase, which Petitioner did not dispute, but explained their clothing was packed in her suitcase. Such constructive possession is constitutionally sufficient to confer standing. Moreover, standing exists where there is an assertion of ownership coupled with an admission by the government that the claimant has a relationship to the seized property. Here, the government filed agents’ declarations stating that the two left their house together and traveled together in the defendant’s truck before his arrest. Therefore, the government did not dispute Petitioner had some involvement with the seized currency. The government pointed out that in his signed plea agreement, the defendant admitted the \$4,980.00 was connected to drugs. However, confining a third party to the facts as determined by another's guilty plea when that third party is statutorily prohibited from participating in the criminal forfeiture proceeding flies in the face of logic as well as basic due process. Therefore, Petitioner had standing to contest forfeiture. Petitioner also presented evidence that she had a legal right to the \$4,980.00 found in a suitcase in the rear of the truck, since the defendant never claimed the money or the luggage belonged to him. Petitioner stated in her deposition that the source of the money was primarily from a \$25,000.00 promissory note and

cash income from her rental properties. Moreover, the amount of currency was not so unusually large that it serves as strong evidence of a connection to illegal activity. While the government raised questions as to whether these sources were substantial enough to produce any income, Petitioner presented sufficient evidence to defeat summary judgment. *United States v. Howard*, No. 12-CR-95, 2017 WL 2955758 (S.D. Ohio July 11, 2017).