

Ohio district court declines to grant motion to strike claim for failure to answer special interrogatories because the allegations of the complaint itself suggested Claimant had standing to challenge the civil forfeiture, but, in light of Claimant's failure to respond to the motion, directed Claimant to further respond to the interrogatories. A civil forfeiture complaint alleged the government with a warrant seized eight counterfeit watches and assorted counterfeit articles of clothing, shoes, and accessories, along with additional property that was not the subject of the civil forfeiture proceeding. The government moved to strike Claimant Luqman's claim based upon his failure to fully respond to special interrogatories served by the government pursuant to Supplemental Rule G(6) of the Federal Rules of Civil Procedure, to establish his identity and standing. Luqman failed to file a timely response to the motion. The government did not dispute that Luqman had physical possession of the subject property at the time that it was seized, but noted that case law supported that simple physical possession was insufficient to establish standing under Article III, and that the claimant must also allege facts regarding how he came to possess the property, the nature of his relationship to the property, and/or the story behind his control of the property. Because of the danger of false claims, Supplemental Rule G(5)(a)(i) requires more than a conclusory statement of ownership. Thus, courts have consistently held that claimants in civil forfeiture cases must answer interrogatories regarding their interest in the defendant property where the claimant's ownership interest in the property forms a central issue in the proceeding. On the other hand, courts have found that in some cases, the Government's own allegations can establish a claimant's standing. Here, the complaint alleged all of the defendant property was seized from Luqman by the FBI and he operated a snack business out of his residence. Unlike a sum of cash in a vehicle, the property consisted largely of clothing and other personal property items found in what appears to have been his residence. Thus, the allegations of the complaint and the nature of the property seized raise some question as to the centrality of the information sought and legitimacy of any challenge to Article III standing the government claimed to be exploring through the interrogatories. Nevertheless, the court said there was no question the interrogatories generally related to the Claimant's identity and to his relationship to the seized property. Although the government did not allege that anyone else lived in the residence or that it has some other basis for challenging standing, its argument that it required the information to more fully determine Luqman's standing was unopposed by Luqman, and the government adequately supported its position that each of the interrogatories related to Claimant's standing, identity, and asserted defense to forfeiture. Also, Luqman's vague and limited response that he has an ownership interest because he obtained a "majority" of the seized items from street vendors and as gifts constituted a wholly insufficient and incomplete response to the special interrogatories. The response failed to identify with any precision which of the seized items were allegedly purchased from vendors, which were allegedly received as gifts, the dates on which the alleged transactions may have occurred, or any other highly relevant information pertinent to Claimant's alleged ownership interest. While the rule permits the government to move to strike a claim or answer based on a claimant's failure to respond, that is discretionary with the Court. On the record presented, where the allegations of the complaint itself suggested Claimant had standing to challenge the civil forfeiture, the magistrate declined to recommend dismissal of the claim, but, in light of Claimant's failure to respond to the motion to strike, instead directed Claimant to further respond to the interrogatories. Claimant also moved for release of all seized property not considered counterfeit (IPad, iPhone, birth certificate, business ledgers, social security card, clothing items sunglasses)

under 18 U.S.C. § 983(f). The government argued the items were evidence both in this civil forfeiture case and “in a related criminal investigation into the Claimant's activities.” The court held the government failed to adequately explain how the non-counterfeit items were connected to this in rem proceeding. Something more than a vague reference to an unspecified “ongoing criminal investigation” is required to permit the government to continue to hold indefinitely items of personal property that are not alleged to be counterfeit and that have not been identified as defendants or otherwise shown to be required as evidence. On the other hand, Luqman's motion failed to show he complied with the requisite steps to obtain the return of any property prior to filing the his motion for release. Thus, the court directed the government to explain its basis for continuing to hold the property. *United States v. Eight (8) Counterfeit Watches*, No. 1:17-CV-156, 2017 WL 3706040 (S.D. Ohio Aug. 28, 2017).

Fourth Circuit follows U.S. Supreme Court holding that Congress intended to limit pretrial restraining orders to property directly forfeitable under that statute. A challenged pre-trial restraining order arose out of Defendant's alleged participation in a conspiracy to defraud the government while serving abroad in the armed forces. Between July 2009 and January 2010, Defendant was the senior Non-Commissioned Officer in a U.S. Army deployment to Afghanistan that was paired with a Special Forces Group split-team. In connection with the deployment, the split-team had access to federal funds earmarked for specified military purposes, such as the purchase of equipment not otherwise available through military supply systems and the administration of humanitarian projects benefitting the Afghan population. According to the government, while overseas, Defendant—along with four other team members—conspired to steal approximately \$200,000 of these funds. Specifically, the government alleged Defendant and his co-conspirators withdrew Afghani currency from the Finance Office at Bagram Airfield, converted it into American currency, and sent a portion of the stolen funds to the United States via money order. Aware that they would need to account for the withdrawn funds, the co-conspirators allegedly falsified receipts to conceal their theft. Defendant admitted to taking money during the deployment that he knew was “left over” from the accounts. With charges pending against Defendant, the government sought a restraining order, pursuant to 21 U.S.C. § 853(e)(1)(A), to prevent the sale of an estimated \$200,000 piece of real property owned by Defendant and his wife. In so doing, the government correctly noted that the Fourth Circuit, unlike other circuits, permitted the pre-trial restraint of substitute assets, subject to Sixth Amendment concerns. Defendant's counsel advised the government that the property at issue was not needed to pay attorney's fees. Defendant argued that Circuit decisions setting out this rule were abrogated by a recent Supreme Court recent decision. The district court disagreed and, concluding that it was bound to abide by Circuit precedent, ordered Defendant to refrain from selling or otherwise disposing of the property during the pendency of the proceedings against him. In an interlocutory appeal, the Circuit held that its existing interpretation of 21 U.S.C. §853(e) did not withstand close scrutiny, since the section indicates that Congress intended to limit pretrial restraining orders to property directly forfeitable under that statute. The plain language of the statute provides no authority to restrain substitute assets prior to trial. The Supreme Court signaled a firm distinction between the government's authority to restrain tainted and untainted assets in construing §853 and related restraint provisions. Consequently, the Circuit overruled its precedents and the district court's order was vacated. *United States v. Chamberlain*, No. 16-4313, 2017 WL 3568493 (4th Cir. Aug. 18, 2017).

New York district court grants forfeiture under 18 U.S.C. §981 based on joint and several liability of co-conspirators, finding that U.S. Supreme Court holding disallowing such liability was limited to 21 U.S.C. §853. McIntosh was convicted for a spree of violent robberies and firearm offenses by a group of conspirators, who netted at least \$75,000 in cash and cell phones. Most of this sum was taken from two robbery victims whose own possession of the money in question appeared to derive from activities of dubious legality, gambling and loan sharking. McIntosh divided the robbery proceeds among himself and the other defendants, using a portion of his own share to buy a BMW 525, which the government seized. The court sentenced McIntosh to prison, imposed restitution, and directed forfeiture of \$75,000 and the BMW as the fruits of the crimes. McIntosh challenged the proposed amount of forfeiture because the Supreme Court held that the forfeiture provision for drug crimes, 21 U.S.C. §853, does not permit a defendant to be held jointly and severally liable for property derived by his co-conspirators from the crime. He argued that decision compelled the limitation of his own forfeiture to the value of the property that he *personally* obtained from his crimes, which was substantially less than the total amount of proceeds the conspirators obtained from the robbery conspiracy. The court held, however, that since the statutory basis for forfeiture here is was not for a drug crime but based on 18 U.S.C. §981, McIntosh could be held liable for the forfeitable proceeds of the conspiracy jointly and severally with his co-conspirators. The Supreme Court read the combined provisions of §853(a) to limit forfeiture to tainted property, i.e., property flowing from, or used in, the crime itself, and held that joint and several liability would allow the government to reach beyond the property personally obtained by the defendant being sentenced and beyond the tainted proceeds of the crime because, if the co-conspirator had retained his ill-gotten gains, the defendant being sentenced would have to pay the difference out of untainted assets from his own pocket. Also, the historical nature of forfeiture as an *in rem* proceeding suggested that it would apply only to tainted assets unless Congress specifically provided otherwise. The court here, however, found significant differences between the two statutes. Also, in its opinion the Supreme Court meticulously avoided mention of any forfeiture statute apart from §853. The court thus granted the government's request for forfeiture. *United States v. McIntosh*, No. 11-CR-500 (SHS), 2017 WL 3396429 (S.D.N.Y. Aug. 8, 2017).

Texas district court uses its discretion to deny motion to strike late-filed claim because claimant was in good faith and did not speak English, did not understand process, and did not have funds to retain counsel. In a motion to strike, the United States contended Hermila Correa's claim did not comply with the deadlines set forth in the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture. The government argued she was personally served with the Complaint and Notice of Forfeiture, which stated that any claim had to be filed within 35 days of receipt of the Notice and an answer no later than 21 days after filing a claim. Correa responded by arguing that the Court had discretion to allow her late claim and answer based on a showing of good cause, her answer served the basic purpose of Supplemental Rule C(6) by putting the Court on notice of her assertion of the right to the property and she could present a meritorious defense as an innocent owner. She claimed she is a Mexican National who does not read or speak English and, accordingly, understood little about the documents served upon her other than that they were associated with her estranged husband, Juan Correa. She further asserted that losing her homestead would be extremely prejudicial and she made a good

faith effort to comply with the Supplemental Rules by filing her claim and answer as soon as she was financially able to procure representation. The court stated it had the discretion in appropriate circumstances to depart from the strict construction requirements of Rule G to excuse a claimant's procedural default. The court first concluded the possibility of prejudice to the government was minimal since it knew that Correa was a potential claimant, which is why it sent direct notice of the action to her. Her claim was a little more than six weeks overdue, and thus in the scheme of a civil lawsuit, this presented, at worst, a modest increase in the length of the litigation. Although the government would suffer some prejudice in the delay of the resolution of the case, it was on notice that Correa actually resided in the residence at issue and thus no surprise that she would, at some point, protest the forfeiture of her homestead and her resulting eviction from her home. The harm suffered by Correa if the Court enforced the strict construction of the deadlines set forth in Rule G would be far more significant than the harm suffered by the United States in allowing a delay in the litigation. No scheduling order was on file given that the parties had not filed a Rule 26(f) report as ordered. The government itself requested an extension of time to submit the joint report, and the extended deadline came and went without a report on file while the parties negotiated a settlement. Correa made her appearance in the relative infancy of the case, before a scheduling order was issued. Due to the court's busy docket, the consideration of the pending motion to strike in effect had delayed the case far more than the amount of delay caused by Correa's late filings. In addition, Correa was straightforward in explaining why she submitted her claim and answer past the deadline. Given the disappearance of her husband and, presumably, any financial support that he had been providing, it was reasonable to believe she needed some time to secure the funds to retain an attorney. The language barrier also would make it virtually impossible to assert her rights *pro se*. Thus, strict enforcement of the specific deadlines set forth in the Supplemental Rules would have been unreasonable, particularly Ms. Correa was fighting for her rights to her homestead. Evaluating the reason for delay is perhaps the single most important factor, and the circumstances presented weighed in favor of Correa. Finally, there was nothing in the record to suggest that she acted in bad faith by purposefully delaying matters or ignoring the Notice for tactical or malicious reasons. The court denied the government's motion to strike. *United States v. 5124 Gumwood Avenue, McAllen, Hidalgo County, Texas*, No. 1:16-CV-186, 2017 WL 3842373 (E.D. Tex. Aug. 10, 2017).

Sixth Circuit vacates dismissal of claim based on fugitive disentitlement because evidence was not sufficient to establish that the claimant had the specific intent of staying in Israel to avoid prosecution. The government filed a civil *in rem* forfeiture complaint against 20 bank accounts, two real properties, three vehicles, and \$91,500 in cash related to the government's investigation of Sbeih and Osama Salouha, a claimant in a related case. The government alleged Salouha illegally sold prescription drugs through the two pharmacies he owned in Ohio, Sbeih was a joint owner in one pharmacy, and together they laundered the receipts from Salouha's illegal drug sales through their personal and business accounts. Sbeih and his wife, Nimeh Ahmad-Sbeih, filed verified claims to seven of the personal bank accounts held in one or both of their names. The case was then stayed for a year because of the related criminal investigation, and then Sbeih was indicted. Meanwhile, the district court lifted the stay on the civil forfeiture case and scheduled a status conference. Sbeih's counsel sought the district court's permission for Sbeih not to attend the conference in person, as he was in Israel. Sbeih alleged he was in danger

of losing his Jerusalem permanent residency permit if he left Israel. The district court granted the motion, excusing Sbeih. The government then filed a motion to strike Sbeih's claim pursuant to the fugitive disentitlement statute. The district court did not immediately rule on the issue and instead waited to see whether the Salouhas, Sbeih's co-defendants in the criminal case, were able to reenter the country, as they were reportedly stuck in Gaza. The government refiled its motion to strike Sbeih's claims, which the district court granted and entered judgment against the relevant defendant properties forfeiting them to the United States. On appeal, Sbeih only challenged the applicability of the fifth fugitive disentitlement factor – whether he deliberately avoided prosecution by declining to reenter the United States. In the district court, Sbeih included an affidavit from his lawyer in Israel, as well as an expert report from a professor who reviewed Sbeih's records from his Israeli court proceedings. The court found Sbeih made a conscious choice not to reenter the United States for the purpose of avoiding prosecution, since he was not prohibited from leaving Israel nor detained in Israel, and presented no evidence he was somehow incapacitated or otherwise unable to travel. The appeals court held that since individuals can have multiple goals when committing various crimes, as long as one of the goals of a defendant in not coming to the United States is to evade prosecution, the specific intent requirement of the statute, 18 U.S.C. §2466 is satisfied. It therefore held that §2466 does not provide that disentitlement is proper only when a claimant has the sole or principal purpose of evading prosecution in not returning to the United States. Instead, disentitlement is appropriate whenever a claimant fails to enter or reenter the United States with the intention of avoiding prosecution, regardless of any additional purposes the claimant may have for remaining outside the United States. Nevertheless, the court nothing, beyond the mere fact that Sbeih had notice of the criminal proceeding but failed to return, that supported the district court's finding that Sbeih was deliberately remaining in Israel to avoid prosecution. There was no significant pattern of travel between Israel and the United States that abruptly stopped after the criminal indictment, and no evidence to contradict Sbeih's statement that he moved to Israel in 2008 and returned only once in 2011 with the explicit permission of the Israeli Ministry of the Interior. Based on the record, the district court committed clear error in finding that the evidence was sufficient to establish that Sbeih had the specific intent of staying in Israel to avoid prosecution. The judgment of the district court was vacated and the matter remanded. *United States v. \$525,695.24, Seized from JPMorgan Chase Bank Inv. Account #xxxxxxx*, No. 16-3209, 2017 WL 3612006 (6th Cir. Aug. 23, 2017).