

**Michigan district court dismisses complaint for return of currency after government civil forfeiture proceedings, since Plaintiff had remedy in the latter case.** Maurice Haggen sought to purchase a 2014 Rolls Royce Wraith from Plaintiff Mercedes Benz of St. Clair and provided a \$47,500.00 down payment in cash following approval of his financing application. Plaintiff then purchased the vehicle from a third party for \$169,300.00. Soon after, Haggen informed Plaintiff he no longer wanted to purchase the vehicle and requested a refund. Plaintiff refused. Three days later, the government served Plaintiff with a warrant for the \$47,500.00, but Plaintiff refused to comply. The government then obtained a second seizure warrant directed at Plaintiff's bank, Chase, for the same amount, which froze \$47,500.00 from Plaintiff's account and sent a certified check to the IRS for that amount. Plaintiff thus filed a complaint alleging the warrant violated its Fourth Amendment right against unreasonable seizure, that both the innocent purchaser defense and the lienholder defense should apply, that the government violated the due process clause of the Fifth Amendment. Plaintiff filed a notice to quash the warrant and obtain return of the funds seized, and that the funds should be returned to Plaintiff. While Plaintiff's motion was pending with this Court, the government commenced separate administrative forfeiture proceedings under CAFRA, and Plaintiff filed an administrative claim. The government then filed an action in the United States District Court in the Eastern District of Michigan. Thus, there were two separate proceedings regarding the seizure of the \$47,500.00. The government moved to dismiss Plaintiff's complaint. The court held it did not have jurisdiction to hear this case regarding the same subject matter as the CAFRA proceedings, since Plaintiff not only received notice, but it also availed itself of its right under CAFRA to file a claim. It also did not matter that Plaintiff filed its case before the government initiated the CAFRA proceedings. Even if Plaintiff had not participated in the administrative forfeiture proceedings, it still would not be permitted to pursue this case, since it had received notice. Accordingly, the motion to dismiss was granted as the court lacked subject matter jurisdiction to hear the case. *Mercedes Benz of St. Clair Shores v. Drug Enft Admin.*, No. 19-11954, 2019 WL 6877889 (E.D. Mich. Dec. 17, 2019).

**Michigan district court dismisses separate Rule 41(g) action because defendant had adequate remedy for such a motion in his criminal case.** The DEA seized at least \$100,622.44 in U.S. currency from Khoshnevis – \$4,300 from his residence on and \$96,322.44 from two of his bank accounts. Khoshnevis filed a Claim of Interest and the parties agreed, pursuant to 18 U.S.C. §983(a)(3)(A) to extend the government's deadline to either file a complaint for forfeiture or return the property. The government took no action with respect to forfeiture on or before its August 9, 2019 deadline. On August 27<sup>th</sup>, Khoshnevis filed a Rule 41(g) motion for return of the \$100,622.44. On November 26<sup>th</sup> a grand jury indicted Khoshnevis on drug charges, including a forfeiture allegation, and later filed a Bill of Particulars that included all of the seized currency. The court held that because Khoshnevis had an adequate remedy at law within the criminal case, his separate civil equitable action seeking return of the funds had to be dismissed. The court said he nevertheless could file a Rule 41(g) motion in his criminal case contesting the seizure. Prior to November 26<sup>th</sup>, when the civil case was still being briefed by the parties, equitable principles might have favored the exercise of jurisdiction. When Khoshnevis was indicted, however he had to pursue his claims, if at all, in his criminal case. *In re Seizure of \$100,622.44 in U.S. Currency*, No. 19-MC-51236, 2019 WL 6776031 (E.D. Mich. Dec 12, 2019).

**North Carolina district court dismisses criminal forfeiture petition for lack of standing since defendant's father did not exercise dominion and control over the subject real property.** The defendant pleaded guilty to one count of conspiracy to commit health care fraud, and agreed to forfeit property along with offense proceeds totaling \$771,269.00. The court entered an order of forfeiture as to proceeds and preliminary order of forfeiture as to real property. Following the government's publication of notice, Strother, defendant's father, filed a petition seeking a hearing to determine his interest in the property, an alleged constructive trust imposed in his favor. If the property were not released, Strother requested payment upon its sale in the amount of \$36,000.00 to recoup his mortgage payments on the property. The government moved to dismiss the petition on grounds that Strother lacked a legal interest in the property and thus did not have standing. The court agreed. Strother purchased the property from defendant on January 17, 2013, but conveyed it back to defendant February 1, 2016, by general warranty deed, thus relinquishing his legal interest. Strother argued his status as mortgagor provided him with a legal interest, however by merely making mortgage payments, Strother did not exercise dominion and control over the property. The facts alleged in Strother's petition suggested that defendant, rather than Strother, exercised dominion and control by directing Strother to transfer title and by living at the property while Strother paid the mortgage. Alternatively, Strother asserted a legal interest as beneficiary of a constructive trust. Although Strother did not know what kind of deed he was signing, however, he knew he was conveying the property to defendant, as defendant told him she wanted the deed in case something happened to him in his advanced age. Furthermore, the fact that defendant did not pay Strother any money for the conveyance did not raise suspicion, as it was a transfer among family members. Strother failed to allege any evidence of fraud, breach of duty, or inequitable conduct. Finally, Strother asserted a legal interest under the innocent owner defense, but that is applicable only in civil forfeiture proceedings. *United States v. McCaffity*, No. 5:18-CR-263-FL-1, 2019 WL 6711734 (E.D.N.C. Dec. 9, 2019).