

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

v.

Case No. 8:09-CR-110-T-27AEP (Forfeiture)

EDUARDO IZQUIERDO-MARQUES
a/k/a "Papa."

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ORDER

THIS MATTER involves a dispute regarding forfeiture of a 2007 Ford F-650 XLT Super Duty Pro-Loader Yellow Tow Truck, VIN No. 3FRNX65F17V502649, by Third-Party Claimant, Mirta Hernandez-Machado ("Machado"). Before the Court is the United States of America's Renewed Motion for Summary Judgment (Dkt. No. 167), and Machado's Motion for Summary Judgment (Dkt. No. 177); Motion to Strike "Exhibit D" (Dkt. No. 174); Motion to Strike "Exhibit F" (Dkt. No. 175); and Motion to Strike "Exhibit G" (Dkt. No. 176). The United States in this matter seeks to forfeit the Tow Truck because Machado allegedly voluntarily surrendered the Tow Truck to the Defendant, Eduardo Izquierdo-Marquez, so that she could file a fraudulent insurance claim against the property. Third-Party Claimant, Machado, asserts that she is an innocent owner and never surrendered the Tow Truck. For the reasons given below, the parties' Motions for Summary Judgment are DENIED.

I. Procedural Background

On February 18, 2010, Machado filed a Petition and Request for Expedited Return of Property (Dkt. No. 124) and an Opposition to Forfeiture, Petition for Hearing to Adjudicate Validity in the Property, Petition and Request for Expedited Return of Property and

Compensation for Injuries and Damages Suffered (Dkt. No. 125). In her Petition, Machado claims to be the true and lawful owner of the Tow Truck and that the Tow Truck disappeared or was stolen from the location where it was parked. At the close of the Court directed and scheduled discovery period, the Court denied the United States' original Motion for Summary Judgment. See Dkts. No. 155, 160. The United States moved for reconsideration of summary judgment. See No. 162. During an October 28, 2010 pretrial conference, the Court denied without prejudice the United States' Motion for Reconsideration (Dkt. No. 162), and re-opened discovery to allow Machado to respond to the United States' discovery requests. Further, the Court directed that the parties could file any appropriate summary judgment motions at the close of the re-opened discovery period. As such, the parties have filed their respective Summary Judgment Motions (Dkt. Nos. 167 and 177), and Machado has filed three Motions to Strike (Dkt. Nos. 174, 175, 176). Specifically, Machado wants stricken from the record Special Agent Bijan Hunter's Affidavit, a photograph of the Tow Truck, and a Fraud Hotline Call Reporting document (respectively Exhibits D, F and G to the United States' Renewed Motion for Summary Judgment). However, Machado's Motions to Strike (Dkt. Nos. 174, 175, 176) are baseless and without merit, and as such are due to be denied.

II. Standard for Summary Judgment

Summary judgment is appropriate where "there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c)(2). In reviewing the motion, the Court must view the evidence and all factual inferences in a light most favorable to the non-moving party, and all reasonable doubts about the facts are resolved in favor of the non-movant. Dadeland Depot, Inc. v. St. Paul Fire and

Marine Ins. Co., 483 F.3d 1265, 1268 (11th Cir. 2007) (citations omitted). When a party fails to sufficiently establish the existence of an element essential to that party's case, on which that party will bear the burden of proof at trial, there can be "no genuine issue as to any material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) ("The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof."). A nonmoving party's complete failure to prove an essential element of his or her case necessarily renders all other facts immaterial. Id.

III. Discussion and Analysis

To prevail on a third-party claim under 21 U.S.C. § 853(n)(6)(A), a petitioner must show that she had a legal interest in the property and the interest vested in the claimant instead of the defendant. See 21 U.S.C. § 853(n)(6)(A). However, "[a] third-party claimant ... must have more than bare legal title to the forfeited property." United States v. Hovind, No. 3:06cr83/MCR, 2009 WL 2369340, at *4 (N.D. Fla. July 29, 2009). In the Eleventh Circuit, possession of bare legal title without the right to exercise dominion and control over the property is insufficient to prove ownership. See A Single Family Residence Located at 900 Rio Vista Blvd., 803 F.2d 625, 630 (11th Cir. 1986).

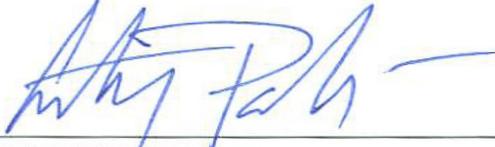
The Court has reviewed all evidence, factual inferences, and reasonable doubts about the facts in a light most favorable to the respective non-moving party. The core issue in this case is simply whether Machado voluntarily surrendered the Tow Truck to the Defendant, Eduardo Izquierdo-Marquez, and, therefore, transferred her ownership interest in the Tow Truck. The United States relies heavily upon Machado's alleged initial statements and actions

surrounding the circumstances of when she discovered the Tow Truck was stolen, and when she reported to the police and the insurance company that the Tow Truck was stolen. Specifically, the United States highlights that Machado's "original" version of events simply defies plausibility in light of all of the other independent evidence. However, the United States asserts that since Machado has become educated in the Government's position in this case by review of the United States' original Summary Judgement Motion (Dkt. No. 155), Machado has drastically changed her statements in this case in an effort to create a genuine issue of fact. Based upon review of the record, the United States' argument is not without merit, but nonetheless the Court finds that, given the nature of this matter, it is more appropriate to resolve this dispute upon the conclusion of an evidentiary hearing rather than upon a summary judgment motion.

Accordingly, for the reasons set forth above, it is **ORDERED** that:

1. the United States of America's Renewed Motion for Summary Judgment (Dkt. No. 167), and Machado's Motion for Summary Judgment (Dkt. No. 177); Motion to Strike "Exhibit D" (Dkt. No. 174); Motion to Strike "Exhibit F" (Dkt. No. 175); and Motion to Strike "Exhibit G" (Dkt. No. 176) are **DENIED**, and
2. the evidentiary hearing in this case shall go forward as scheduled for January 10, 2011, at 9:30 a.m., in Courtroom 10A, United States Courthouse, 801 N. Florida Avenue, Tampa, Florida.

Done and Ordered at Tampa, Florida this 7th day of January, 2011.



ANTHONY E. PORCELLI
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Third Party Claimant