

**Spota v Parrino**

2011 NY Slip Op 32076(U)

July 6, 2011

Supreme Court, Suffolk County

Docket Number: 2300/2010

Judge: Joseph Farneti

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SUPREME COURT - STATE OF NEW YORK  
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

*COPY*

PRESENT:

**HON. JOSEPH FARNETI**  
**Acting Justice Supreme Court**

\_\_\_\_\_  
THOMAS J. SPOTA,  
District Attorney of Suffolk County,

Plaintiff,

-against-

JAMES PARRINO, DINO ALLOCATI, JOHN  
DIPAOLA, JOSEPH SCHILIRO, REY  
DELGADO, JOEL SCHWARZ, CARL  
VRICELLA, and JACQUELINE BAYER,

Criminal Defendants,

MELISSA DIPAOLA, JESSE MCINERNEY,  
NACARTI CORP., JESSE JAMES  
HOLDINGS INC., JTD HOLDINGS LTD., and  
TRILOGY DEVELOPMENT, LLC,

Non-Criminal Defendants.  
\_\_\_\_\_

ORIG. RETURN DATE: FEBRUARY 1, 2010  
FINAL SUBMISSION DATE: NOVEMBER 4, 2010  
MTN. SEQ. #: 002  
MOTION: MG

**PLTF'S/PET'S ATTORNEY:**

THOMAS J. SPOTA  
DISTRICT ATTORNEY OF SUFFOLK COUNTY  
BY: JACOB C. TURNER, ESQ.  
ASSISTANT DISTRICT ATTORNEY  
NORTH COUNTY COMPLEX, BLDG. 77  
HAUPPAUGE, NEW YORK 11787-4311  
631-853-4153

**ATTORNEY FOR DEFENDANT**

**JAMES PARRINO:**

PERINI & HOERGER  
1770 MOTOR PARKWAY  
HAUPPAUGE, NEW YORK 11749  
631-232-2224

**ATTORNEY FOR DEFENDANT**

**JACQUELINE BAYER:**

KEITH O'HALLORAN, ESQ.  
32 MILL ROAD  
WESTHAMPTON BEACH, NEW YORK 11978  
631-998-3601

**ATTORNEY FOR DEFENDANT**

**CARL VRICELLA:**

SCARING & BRISSENDEN, LLC  
666 OLD COUNTRY ROAD - SUITE 501  
GARDEN CITY, NEW YORK 11501  
516-683-8500

**ATTORNEY FOR DEFENDANTS**

**JESSE MCINERNEY, JESSE JAMES  
HOLDINGS, INC. AND**

**TRILOGY DEVELOPMENT, LLC:**

GEORGE J. CALCAGNINI, ESQ.  
376 ROUTE 202  
SOMERS, NEW YORK 10589  
914-277-2255

*KAK*

**CRIMINAL DEFENDANTS:**

DINO ALLOCATI  
20-22 STEINWAY ST., APT. 2R  
ASTORIA, NEW YORK

JOHN DIPAOLA  
2369 LOUIS KOSSUTH AVENUE  
RONKONKOMA, NEW YORK

JOSEPH SCHILIRO  
414 AVALON PLACE  
EAST MEADOW, NEW YORK

REY DELGADO  
199 N. 7<sup>TH</sup> STREET  
BROOKLYN, NEW YORK

JOEL SCHWARZ  
112 GERARD ROAD  
YAPHANK, NEW YORK

**NON-CRIMINAL DEFENDANTS:**

MELISSA DIPAOLA  
2311 PINE AVENUE  
RONKONKOMA, NEW YORK

NACARTI CORP.  
25-15 205<sup>TH</sup> STREET  
BAYSIDE, NEW YORK 11360

JTD HOLDINGS, LTD.  
2369 LOUIS KOSSUTH AVENUE  
RONKONKOMA, NEW YORK

Upon the following papers numbered 1 to 18 read on this motion \_\_\_\_\_

**TO CONFIRM EX PARTE ORDERS OF ATTACHMENT**

Order to Show Cause and supporting papers 1-3; Affirmation in Opposition 4; Affidavit in Opposition and supporting papers 5, 6; Affirmation in Opposition and supporting papers 7, 8; Affirmation in Further Opposition and supporting papers 9, 10; Plaintiff's Affidavit in Response 11; Plaintiff's Affidavit in Response and supporting papers 12, 13; Plaintiff's Affidavit in Response and supporting papers 14, 15; Supplemental Affirmation in Opposition 16; Plaintiff's Affidavit in Further Response and supporting papers 17, 18; it is,

**ORDERED** that this motion by plaintiff for an Order, pursuant to CPLR 1317, confirming the *ex parte* Orders of Attachment granted by this Court on January 13, 2010 and January 14, 2010, and pursuant to CPLR 1320 (5), extending the ninety (90) day period from the date of the levy for the claiming authority to take actual possession of the property and directing that the levy remain in full force and effect pending further Order of the Court, is hereby **GRANTED** in its entirety.

By correspondence from counsel for criminal defendant JACQUELINE BAYER, dated March 12, 2010, this defendant withdrew her opposition to the instant application and consented to the confirmation of the Orders of Attachment.

By correspondence from counsel for non-criminal defendants JESSE MCINERNEY, JESSE JAMES HOLDINGS INC., and TRILOGY DEVELOPMENT, LLC, dated March 12, 2010, these defendants withdrew their opposition to the instant application and consented to the confirmation of the Orders of Attachment.

By Settlement Agreement and Consent to Forfeiture, sworn to on September 15, 2010 and So-Ordered by this Court on September 20, 2010, the instant action was settled and discontinued as against criminal defendant CARL VRICELLA only.

By Settlement Agreement and Consent to Forfeiture, sworn to on December 6, 2010 and So-Ordered by this Court on December 13, 2010, the instant action was settled and discontinued as against criminal defendant JAMES PARRINO only.

By Settlement Agreement and Consent to Forfeiture, sworn to on December 3, 2010 and So-Ordered by this Court on December 13, 2010, the instant action was settled and discontinued as against criminal defendant JACQUELINE BAYER only.

In view of the foregoing, this application by plaintiff to confirm the *ex parte* Orders of Attachment is now unopposed.

The plaintiff herein, Thomas J. Spota, District Attorney of Suffolk County, has filed an application by Order to Show Cause dated January 15, 2010 seeking an Order of this Court, pursuant to CPLR 1317, confirming *ex parte* Orders of Attachment heretofore granted on January 13, 2010 and January 14, 2010 and levied upon the garnishees, beginning on January 14, 2010.

The Court finds that service of the instant application, as ordered by the Court, was properly effectuated upon the defendants herein.

Plaintiff submits that the criminal defendants have engaged in criminal activity, including Operating as a Major Trafficker and Conspiracy, in connection with the sale and possession of Ketamine. The plaintiff's supporting documentation, including the affidavit of Detective Brett Carlson, sworn to on January 13, 2010, details the alleged criminal activity of trafficking Ketamine, which has resulted in approximately \$4,800,000.00 in illegal proceeds.

“A court may grant an application for a provisional remedy when it determines that: (a) there is a substantial probability that the claiming authority will prevail on the issue of forfeiture and that failure to enter the order may result in the property being destroyed, removed from the jurisdiction of the court, or otherwise be unavailable for forfeiture; [and] (b) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order may operate . . . .” CPLR 1312 (3); see *Morgenthau v Citisource*, 68 NY2d 211 [1986]).

The plaintiff supports the instant application and the strength of the underlying criminal proceedings through the sworn affidavit of Detective Carlson. The source of Detective Carlson’s knowledge is the records obtained throughout the course of the investigation, conversations with individuals associated with the investigation, and conversations with other law enforcement personnel.

Upon review of the affidavit of Detective Carlson, the Court finds the sum sought by plaintiff to be a reasonable estimate of the alleged criminal proceeds supported by the facts presented (see *Kuriansky v Natural Mold Shoe Corp.*, 136 Misc 2d 684 [Sup Ct, Westchester County 1987] citing *Sunset Taxi Co. v Blum*, 73 AD2d 691 [2d Dept 1979]).

For the purpose of the instant application, plaintiff has demonstrated a sufficient probability that he will prevail on the issue of forfeiture. In addition, when considering the liquidity of the assets seized, the Court finds a substantial risk that denial of the confirmation Order may allow for the likely dissipation or removal of said assets prior to determination of the forfeiture proceeding.

The Court is left to determine whether the need to preserve the availability of the property through the entry of the requested Order outweighs the hardship on any party against whom the Order may operate. In his application to the Court seeking confirmation of the *ex parte* Orders of Attachment, plaintiff addresses the hardship such Order may bring upon defendants by the statement “[a]ny hardship placed on defendants is outweighed by the need for preservation of their property for these purposes” (Turner Aff., ¶ 22). The plaintiff further reminds the Court that any undue hardship upon any of the affected defendants

may be relieved by a modification of the requested Order "should they make the requisite showing that other assets are unavailable" (Turner Aff., ¶ 22).

Finally, plaintiff seeks an Order, pursuant to CPLR 1320 (5), extending the ninety (90) day period from the date of the levy for the claiming authority to take actual possession of the property pending further Order of the Court, so that plaintiff may maintain defendants' accounts that have been frozen at the current banking institutions, and to obviate the need for plaintiff to seize the monies and open a trust account.

As discussed hereinabove, the instant application is no longer opposed. Accordingly, it is

**ORDERED** that the *ex parte* Orders of Attachment granted by this Court on January 13, 2010 and January 14, 2010 and levied upon the garnishees beginning on January 14, 2010, be and the same are hereby confirmed, pursuant to CPLR 1317 (2), with respect to the remaining defendants; and it is further

**ORDERED** that the Court extends the ninety (90) day period from the date of the levy for the claiming authority to take actual possession of the property, pursuant to CPLR 1320 (5), and the levy shall remain in full force and effect pending further Order of the Court; and it is further

**ORDERED** that the within Order of this Court shall be without prejudice to any applications brought pursuant to CPLR 1312 (4).

The foregoing constitutes the decision and Order of this Court.

Dated: July 6, 2011

  
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HON. JOSEPH FARNETI  
Acting Justice Supreme Court

\_\_\_\_\_  
FINAL DISPOSITION

  X    
NON-FINAL DISPOSITION