

Spota v Abrahams
2014 NY Slip Op 30681(U)
March 7, 2014
Supreme Court, Suffolk County
Docket Number: 13-11666
Judge: Joseph C. Pastoressa
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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 34 - SUFFOLK COUNTY

COPY

P R E S E N T :

Hon. JOSEPH C. PASTORESSA
Justice of the Supreme Court

Mot. Seq. # 002 - Mot-D

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THOMAS J. SPOTA,
District Attorney of Suffolk County,

Plaintiff-Claiming Authority,

- against -

COURTNEY ABRAHAMS a/k/a GARRY,
WILLIAM CAMPBELL, ANTHONY
CARPENTER, NICK R. ETIENNE a/k/a
SMACK, WAYNE GOLDING a/k/a GOBO and
ANDY MOHAMMED a/k/a INDIAN,

Criminal Defendants,

- and -

DWAYNE THOMAS a/k/a WORM,
CHRISTOPHER ABRAHAMS, COLLIN
ABRAHAMS, TAMIKA BOSTON, CYNTHIA
GORDON-COOPER, RIPTON COOPER,
SHERINE SIMPSON and AVENUE D
CELLULAR.

Non-Criminal Defendants.

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Upon the following papers numbered 1 to 29 read on this motion to confirm an order of attachment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 8 ; Notice of Cross Motion and supporting papers ____; Answering Affidavits and supporting papers 9 - 11; 12 - 13 ; Replying Affidavits and supporting papers 14 - 29 ; Other ____; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

ORDERED that the motion by the plaintiff for an order pursuant to CPLR 1317 confirming the previously granted order of attachment dated April 29, 2013 and for an order amending the order of attachment to correctly reflect Dwayne Thomas a/k/a Worm as a non-criminal defendant is granted to the extent of amending the order of attachment to reflect Dwayne Thomas a/k/a Worm as a non-criminal defendant and confirming the order of attachment with respect to the following assets of the criminal and non-criminal defendants: the Capital One Bank accounts of Anthony Carpenter (acct #s 6740422883, 6740422933), the Chase Bank accounts of William Campbell (acct #s 800800856, 828003913265, 2729709150), the Chase Bank account of Courtney Abrahams (acct # 450993865), the 2011 Acura (VIN # 19UUA8F57BA006926) registered to William Campbell, the 2003 BMW (VIN # WBSBR93403PK02312) registered to William Campbell, the Bethpage Federal Bank accounts of Cynthia Gordon-Cooper (acct #s 9977828004, 9977828012, 39 Month Bump Up Certificate), the joint Chase Bank accounts of Cynthia Gordon-Cooper and Ripton Cooper (acct #s 917099285, 2918712780), the Chase Bank account of Cynthia Gordon-Cooper with co-signers Dwayne Thomas and Courtney Abrahams (acct # 902966555), the real property located at 676 Commander Avenue, West Babylon, New York, 9 Orient Court, Westbury, New York, and 210 Nicholls Road, Wyandanch, New York, the 2006 Acura (VIN # JH4KB16586C004704) registered to Ripton Cooper, and the 2012 BMW (VIN # WBAKC6C51CC395722) registered to Sherine Simpson, and is otherwise denied.

The plaintiff commenced this civil forfeiture action pursuant to CPLR Article 13-A seeking to recover certain proceeds, substituted proceeds, and instrumentalities of the alleged criminal activity of the criminal defendants. In a related criminal proceeding, the criminal defendants were indicted on numerous narcotics charges including operating as a major trafficker, criminal possession of a controlled substance in the first degree, conspiracy, and money laundering. On April 29, 2013, the plaintiff obtained an ex parte order of attachment and thereafter levied upon certain assets of the criminal defendants and non-criminal defendants.

The plaintiff alleges that based on its investigation, criminal defendant Courtney Abrahams is part of a narcotics organization which possesses and sells cocaine in Suffolk County, New York and elsewhere. According to the plaintiff's investigation, criminal defendant Andy Mohammed supplies cocaine to Mr. Abrahams for redistribution. Mr. Abrahams then distributes the cocaine to the remaining criminal defendants (William Campbell, Anthony Carpenter, Nick Etienne, and Wayne Golding) and others. Court-authorized search warrants were executed at multiple locations including the criminal defendants' residences at 676 Commander Avenue, West Babylon, New York, 210 Nicholls Road, Wyandanch, New York, and 9 Orient Court, Westbury, New York. During the execution of the search warrants, law enforcement uncovered evidence evincing a large-scale narcotics operation including 2 kilograms of cocaine and approximately \$61,000.00. Law enforcement also seized numerous vehicles either used in the furtherance of the illegal narcotics operation or owned by the defendants including a 2006 Acura, registered to non-criminal defendant Ripton Cooper, a 2012 BMW, registered to non-criminal defendant Sherine Simpson, and a 2011 Acura and 2003 BMW, registered to criminal

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defendant William Campbell. Criminal defendant Courtney Abrahams resides at 676 Commander Avenue, West Babylon, New York, and criminal defendant William Campbell resides at 210 Nicholls Road, Wyandanch, New York. Non-criminal defendants Christopher Abrahams and Collin Abrahams are the brothers of criminal defendant Courtney Abrahams and they reside at 9 Orient Court, Westbury, New York together with non-criminal defendant Cynthia Gordon-Cooper, the mother of Courtney Abrahams, Collin Abrahams and Christopher Abrahams. In addition, Ripton Cooper, the step-father of Courtney Abrahams, also resides at 9 Orient Court, Westbury, New York. Non-criminal defendant Tamika Boston, the girlfriend of defendant William Campbell, resides with him at 210 Nicholls Road, Wyandanch, New York. Non-criminal defendant Sherine Simpson resides with Courtney Abrahams at 676 Commander Avenue, West Babylon, New York.

The plaintiff now moves for an order confirming the order of attachment granted on April 29, 2013 and for an order amending the order of attachment to correctly reflect Dwayne Thomas a/k/a Worm as a non-criminal defendant. In opposition, criminal defendant Courtney Abrahams and non-criminal defendants Christopher Abrahams, Collin Abrahams, Cynthia Gordon-Cooper, Ripton Cooper, and Sherine Simpson assert that the plaintiff failed to establish that it will prevail on the issue of the amount of forfeiture with respect to Courtney Abrahams and failed to establish that there is a substantial probability that it will prevail on the issue of forfeiture with respect to non-criminal defendants Christopher Abrahams, Collin Abrahams, Cynthia Gordon-Cooper, Ripton Cooper, and Sherine Simpson.

With respect to the caption of the order of attachment, the Court notes that it lists Dwayne Thomas a/k/a Worm as a criminal defendant. The Court, in its discretion, grants the plaintiff's request to amend the order of attachment and the caption of this proceeding to correctly reflect Dwayne Thomas a/k/a Worm as a non-criminal defendant (see CPLR 305 [c]) as it appears that Mr. Thomas will not be prejudiced in any way by this amendment.

Turning to the confirmation of the order of attachment, a forfeiture action against a criminal defendant can result in a judgment recovering "the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime or the real property instrumentality of a crime or . . . a money judgment in an amount equivalent in value to the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime" (see CPLR 1311 [1]).

Pursuant to CPLR 1312 (3), a court may grant an order of attachment when:

(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; (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; and (c) in an action relating to real property, that entry of the requested order will not substantially diminish, impair, or terminate the lawful

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property interest in such real property of any person or persons other than the defendant or defendants.

After the order of attachment was granted on April 29, 2013, the plaintiff attached the following assets of the criminal defendants: two Capital One Bank accounts of Anthony Carpenter, three Chase Bank accounts of William Campbell, one Chase Bank account of Courtney Abrahams, real property located at 210 Nicholls Road, Wyandanch, New York (owned by William Campbell and his girlfriend non-criminal defendant Tamika Boston), and a 2011 Acura and 2003 BMW owned by and registered to William Campbell. Here, the indictment filed in the criminal prosecution underlying this action, the affidavit of the assistant district attorney, and the affidavit of Detective Troyano establish that there is a substantial probability that the plaintiff will prevail on the issue of forfeiture against the criminal defendants (see Morgenthau v Vinarsky, 72 AD3d 499 [1st Dept 2010]), that the aforementioned property of the criminal defendants constitutes either the proceeds of a crime, the substituted proceeds of a crime, the instrumentality of a crime, or the real property instrumentality of a crime (see CPLR 1312 [3]), that failure to enter the order may result in the property being destroyed or made unavailable, that the need to preserve the property outweighs any hardship on the criminal defendants, and that the attachment of the real property located at 210 Nicholls Road, Wyandanch, New York will not diminish, impair or terminate any lawful property interest of anyone other than the defendants.

In opposition, criminal defendant Courtney Abrahams merely asserts that the plaintiff failed to establish that it will prevail on the issue of the amount of forfeiture with respect to him. After reviewing the affidavit of Detective Troyano, the Court finds that the computation of the amount of forfeiture is a reasonable estimate of the alleged criminal proceeds supported by the facts presented (see Spota v Parrino, 2011 NY Slip Op 32076[U] [Sup Ct, Suffolk County 2011] see also Kuriansky v Natural Mold Shoe Corp., 136 Misc 2d 684 [Sup Ct, Westchester County 1987]; Dillon v Secular, 132 Misc 2d 279 [Nassau County Ct 1986]). Specifically, Detective Troyano states in his affidavit that he conservatively calculated the proceeds, substituted proceeds, and instrumentalities of the criminal defendants conduct for the past three years at thirty-nine million nine hundred and thirty-six thousand dollars (\$39,936,000.00). Detective Troyano states that he arrived at this figure by conservatively estimating—based on conversations with witnesses as well as lawfully intercepted phone conversations between the criminal defendants—that the criminal defendants sold approximately eight kilograms of cocaine each week for approximately \$32,000.00, netting approximately \$13,312,000.00 each year for three years, for a total sum of approximately \$39,936,000.00. Thus, the order of attachment is confirmed with respect to the assets of the criminal defendants.

Turning to the assets of the non-criminal defendants, CPLR 1311 (1) provides that “a civil action may be commenced against a non-criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime . . .” A court may grant an order of attachment when, as noted above, there is, *inter alia*, a substantial probability that the plaintiff will prevail on the issue of forfeiture (see CPLR 1312 [3]). In order for the plaintiff to establish that there is a substantial probability that it will prevail on the issue of forfeiture against a non-criminal defendant, the plaintiff must show by a preponderance of the evidence—where the proceeds of a crime are involved— that the non-criminal defendant either knew or should have known that the proceeds were obtained through the commission of

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a crime or fraudulently obtained his or her interest in the proceeds to avoid forfeiture (see CPLR 1311 [3] [b] [ii]). Where the substituted proceeds of a crime are involved, the plaintiff must show by a preponderance of the evidence that the non-criminal defendant either knew that the property sold or exchanged to obtain an interest in the substituted proceeds was obtained through the commission of a crime or fraudulently obtained his or her interest in the substituted proceeds to avoid forfeiture (see CPLR 1311 [3] [b] [iii]; Dillon v Secular, supra). Where the instrumentality of a crime is involved, the plaintiff must show by a preponderance of the evidence that the non-criminal defendant either knew that the instrumentality was or would be used in the commission of a crime or knowingly obtained his or her interest in the instrumentality to avoid forfeiture (see CPLR 1311 [3] [b] [iv]; Difiore v Mozeb, 31 Misc 3d 963 [Sup Ct, Westchester County 2011]) and where real property instrumentality is alleged to be the instrumentality of a crime, the plaintiff must show by clear and convincing evidence that the non-criminal defendant knew that such property was or would be used for the commission of specified felony offenses, and either knowingly and unlawfully benefitted from such conduct or voluntarily agreed to the use of the property for the commission of such offenses (see CPLR 1311 [3] [b] [v]).

Here, after the order of attachment was granted on April 29, 2013, the plaintiff attached the following assets of the non-criminal defendants: three Bethpage Federal Bank accounts of Cynthia Gordon-Cooper, a Chase Bank account of Collin Abrahams, two Chase Bank accounts of Tamika Boston, a Citibank account of Tamika Boston, two joint Chase Bank accounts of Cynthia Gordon-Cooper and Ripton Cooper, a Chase Bank account of Cynthia Gordon-Cooper with Dwayne Thomas and criminal defendant Courtney Abrahams listed as co-signers on the account, real property located at 676 Commander Avenue, West Babylon, New York—owned by Collin Abrahams and Cynthia Gordon-Cooper, real property located at 9 Orient Court, Westbury, New York—owned by Ripton Cooper and Mrs. Gordon-Cooper, a 2006 Acura registered to Ripton Cooper and a 2012 BMW registered to Sherine Simpson.

Turning first to the bank accounts attached by the plaintiff, after reviewing the affidavit of the assistant district attorney and the affidavit of Detective Troyano, the Court finds that the plaintiff only established a substantial probability that it will prevail on the issue of forfeiture with respect to the three Bethpage Federal Bank accounts of Cynthia Gordon-Cooper, two joint Chase Bank accounts of Cynthia Gordon-Cooper and Ripton Cooper, and the Chase Bank account of Cynthia Gordon-Cooper with co-signers Dwayne Thomas and criminal defendant Courtney Abrahams (see Morgenthau v Vinarsky, supra). Specifically, Detective Troyano states in his affidavit that after listening to lawfully intercepted phone conversations between Mrs. Gordon-Cooper and Courtney Abrahams, watching surveillance tapes at the bank, and reviewing bank records, he learned that Mr. Abrahams was depositing money into Mrs. Gordon-Cooper's bank accounts to help Mrs. Gordon-Cooper pay her mortgage on 9 Orient Court, Westbury, New York. In addition, he listened to conversations where Mr. Abrahams told Mrs. Gordon-Cooper that he was leaving stacks of \$5,000 in her basement and was thinking about putting a lock on the basement door. Detective Troyano further states that during the course of the criminal investigation, Courtney Abrahams applied for and received assistance from the Nassau County Department of Social Services. Mrs. Gordon-Cooper submitted two handwritten letters to the Department of Social Services in support of Mr. Abraham's application for assistance in which she stated that Mr. Abrahams had no source of income and that she had been providing him with financial assistance, shelter, and meals. Thus, the affidavit of Detective Troyano together with the affidavit of the assistant district attorney

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established by a preponderance of the evidence that non-criminal defendant Cynthia Gordon-Cooper either knew or should have known that the proceeds which were deposited into her accounts by Mr. Abrahams were obtained through the commission of a crime (see CPLR 1311 [3] [b] [ii]), that the failure to enter the attachment order may result in the property being destroyed or made unavailable, and that the need to preserve the availability of the property outweighed any hardship against Mrs. Gordon-Cooper. The Court notes that since the plaintiff does not refer to or mention the other bank accounts of the non-criminal defendants in its moving papers, it failed to assert that there is a substantial probability that it will prevail on the issue of forfeiture with respect to those bank accounts

Contrary to the non-criminal defendants' contentions, the Court finds that with respect to the real property located at 676 Commander Avenue, West Babylon, New York—owned by Collin Abrahams and Cynthia Gordon-Cooper—and the real property located at 9 Orient Court, Westbury, New York—owned by Ripton Cooper and Mrs. Gordon-Cooper—that the plaintiff established, through the affidavit of Detective Troyano, a substantial probability that it will prevail on the issue of forfeiture with respect to said real properties, that failure to enter the order may result in the property being destroyed or made unavailable, that the need to preserve the property outweighs any hardship on the defendants, and that the attachment of the real properties will not diminish, impair or terminate any lawful property interest of anyone other than the defendants (see CPLR 3212 [3]). As noted earlier, Detective Troyano stated in his affidavit that after listening to lawfully intercepted phone conversations between Mrs. Gordon-Cooper and Courtney Abrahams, he learned that Mr. Abrahams had informed Mrs. Gordon-Cooper that he had stored stacks of \$5,000 in her basement at 9 Orient Court and was thinking about buying a lock for the basement door. Furthermore, on April 27, 2013, law enforcement agents executed a search warrant at 9 Orient Court, Westbury, New York and recovered large sums of money hidden in the concrete floor of the basement. As for the real property located at 676 Commander Avenue, Detective Troyano states in his affidavit that while Mrs. Gordon-Cooper and non-criminal defendant Collin Abrahams closed on that real property on April 4, 2006, a few days prior to the closing date, Collin Abrahams granted power of attorney to his brother, Courtney Abrahams indicating that Courtney Abrahams had full control over the property and establishing that Collin Abrahams' interest in the real property was in title only. Detective Troyano further states that during the course of the investigation, law enforcement agents observed criminal defendants Anthony Carpenter and William Campbell obtain a quantity of cocaine from Courtney Abrahams at 676 Commander Avenue. In addition, on April 27, 2013, during the execution of a warrant at 676 Commander Avenue, West Babylon, New York, several items evidencing an illegal narcotics operation were seized. Thus, the plaintiff established that the real properties located at 676 Commander Avenue, West Babylon, New York and 9 Orient Court, Westbury, New York were being used as a real property instrumentality of the crimes committed by Courtney Abrahams and that the non-criminal defendant owners knew that such property was or would be used for the commission of specified felony offenses, and either knowingly and unlawfully benefitted from such conduct or voluntarily agreed to the use of the property for the commission of such offenses (see CPLR 1311 [3] [b] [v]).

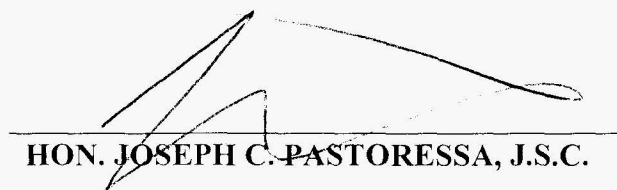
As for the 2006 Acura registered to non-criminal defendant Ripton Cooper and the 2012 BMW registered to non-criminal defendant Sherine Simpson, the Court finds that contrary to the contentions of the non-criminal defendants, the plaintiff established, through the affidavit of the assistant district attorney and the affidavit of Detective Troyano, a substantial probability that it will prevail on the issue

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of forfeiture with respect to said vehicles, that failure to enter the order may result in the property being destroyed or made unavailable, and that the need to preserve the vehicles outweighs any hardship on the defendants (see CPLR 3212 [3]). Specifically, in his affidavit, Detective Troyano states that while the 2006 Acura was registered to Ripton Cooper, who resides at 9 Orient Court, Westbury, New York, during the course of his investigation, law enforcement agents observed Courtney Abrahams regularly operating that vehicle in furtherance of his narcotics operation. Mr. Abrahams has been observed regularly arriving at his residence located at 676 Commander Avenue, West Babylon, New York in that vehicle and that vehicle has been observed parked at his residence. As for the 2012 BMW, the assistant district attorney states in her affidavit that while the 2012 BMW is registered to Sherine Simpson, who resides at 676 Commander Avenue, West Babylon, New York with Courtney Abrahams, the records for that vehicle indicate that it was purchased by Sherine Simpson and criminal defendant William Campbell, and that William Campbell has made most if not all of the finance payments to date on that vehicle. Furthermore, Detective Troyano states in his affidavit that the 2012 BMW has been observed by law enforcement agents being used by Courtney Abrahams in the commission and furtherance of the illegal narcotics operation. Thus, the plaintiff has established that non-criminal defendants Ripton Cooper and Sherine Simpson were the owners of the vehicles "in title only" and that the vehicles were obtained by them in order to avoid the potential forfeiture of the vehicles as a consequence of the criminal defendants use of same to further their possession, transport, and sale of narcotics (see CPLR 1311 [3] [b] [iv]; Difiore v Mozeb, supra).

In light of the foregoing, the motion by the plaintiff is granted to the extent of amending the order of attachment dated April 29, 2013 to reflect Dwayne Thomas a/k/a Worm as a non-criminal defendant and confirming the order of attachment with respect to the following assets of the criminal and non-criminal defendants: the Capital One Bank accounts of Anthony Carpenter (acct #s 6740422883, 6740422933), the Chase Bank accounts of William Campbell (acct #s 800800856, 828003913265, 2729709150), the Chase Bank account of Courtney Abrahams (acct # 450993865), a 2011 Acura (VIN # 19UUA8F57BA006926), a 2003 BMW owned by and registered to William Campbell (VIN # WBSBR93403PK02312), the Bethpage Federal Bank accounts of Cynthia Gordon-Cooper (acct #s 9977828004, 9977828012, 39 Month Bump Up Certificate), the joint Chase Bank accounts of Cynthia Gordon-Cooper and Ripton Cooper (acct #s 917099285, 2918712780), the Chase Bank account of Cynthia Gordon-Cooper with co-signers Dwayne Thomas and criminal defendant Courtney Abrahams (acct # 902966555), the real property located at 676 Commander Avenue, West Babylon, New York, 9 Orient Court, Westbury, New York, and 210 Nicholls Road, Wyandanch, New York, the 2006 Acura registered to Ripton Cooper (VIN # JH4KB16586C004704), and the 2012 BMW (VIN # WBAKC6C51CC395722) registered to Sherine Simpson.

Dated: March 7, 2014


 HON. JOSEPH C. PASTORELLA, J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION

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