

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:14-CR-128-2H

UNITED STATES OF AMERICA)
)
 v.)
)
WILLIAM TODD CHAMBERLAIN)

**GOVERNMENT'S APPLICATION FOR POST-INDICTMENT
RESTRAINING ORDER**

COMES NOW the United States, by and through the United States Attorney for the Eastern District of North Carolina, and makes application to this Court, pursuant to 21 U.S.C. § 853(e)(1)(A) (as also incorporated by 28 U.S.C. § 2461(c)), for a restraining order to preserve the availability of certain real property that is subject to forfeiture in the above-styled criminal action. As grounds therefore, the government states as follows:

1. Pursuant to 21 U.S.C. § 853(e)(1), this Court is authorized to enter a restraining order or injunction, require the execution of satisfactory performance bond, or take any other action to preserve the availability of the real property subject to forfeiture.

2. On June 25, 2014, Defendant WILLIAM TODD CHAMBERLAIN was indicted by a federal grand jury in this district for conspiracy to unlawfully embezzle, steal, and convert United States federal funds marked for war operational and

reconstruction efforts for his benefit and that of co-conspirators. As part of said Indictment, the United States sought the criminal forfeiture under 18 U.S.C. § 981(a)(1)(C), as made applicable by 28 U.S.C. § 2461(c), of the gross proceeds of the defendant's illegal acts, in an amount of at least \$200,000.00. The defendant was also put on notice that the United States would seek assets in substitution for the gross proceeds of the offense should the proceeds be made unavailable due to the acts or omissions of the defendant. That asset is a single tract of real property as set forth in Exhibit A.

4. The federal grand jury's indictment of the defendant, as well as the Declaration of Special Agent Jason Sargenski, attached hereto as Exhibit B, together establish sufficient probable cause for the issuance of this restraining order.

5. Action is needed to preserve the property in the event forfeiture is decreed.

LEGAL MEMORANDUM

In order to assure the availability of property for forfeiture upon conviction, 21 U.S.C. § 853(e)(1) provides that the court may enter a restraining order upon the filing of an indictment. Specifically, Section 853(e), provides that:

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a

satisfactory performance bond, or take any other action to preserve the availability of property ... for forfeiture under this section--

(A) upon the filing of an indictment or information charging a violation ... for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; ...

Pre-trial restraint of assets under 21 U.S.C. § 853(e) has been approved by the United States Supreme Court. In United States v. Monsanto, 491 U.S. 600, 109 S.Ct. 2657 (1989), the district court restrained, under 21 U.S.C. § 853, a defendant from disposing of his house, his apartment, and \$35,000 in cash prior to trial. The Supreme Court upheld the pre-trial restraint, noting:

"[I]t would be odd to conclude that the Government may not restrain property, such as the home and apartment in respondent's possession, based on a finding of probable cause, when we have held that . . ., the Government may restrain persons where there is a finding of probable cause to believe that the accused has committed a serious offense."

Id., at 615-16.

In the same year as the Monsanto decision, the Eleventh Circuit recognized the right of the United States to seek pre-trial restraint of forfeitable assets:

To preserve forfeitable assets for a possible conviction, the district court may restrain the defendant from using . . . assets before trial. The restraints may be imposed by way of a restraining order, an injunction, the execution of a performance bond, or a temporary seizure of certain assets which, because of their liquidity, can be readily transferred or hidden.

United States v. Bissell, 866 F.2d 1343, 1349 (11th Cir.), cert. denied, 493 U.S. 876 (1980). Furthermore, the Fourth Circuit, unlike other circuits, permits the pre-trial restraint of substitute assets, subject to Sixth Amendment concerns. In re Billman, 915 F.2d 916, 919 (4th Cir. 1990); United States v. Bollin, 264 F.3d 391, 421 (4th Cir. 2001); United States v. Bromwell, 222 Fed.Appx 307, 311 (4th Cir. 2007).

The Fourth Circuit's position is undisturbed by Luis v. United States, 2016 WL 1228690 (Mar. 30, 2016). The holding of the majority of the Court lies at the point the plurality opinion and concurring opinion overlap: the pretrial restraint of untainted substitute assets needed by a criminal defendant to pay counsel of choice violates the Sixth Amendment. Here, counsel for the defendant, Elliot Abrams, has advised the undersigned in a phone conversation that the single tract of

real property that the United States seeks to restrain is not needed to pay attorney's fees; thus, there is no Sixth Amendment concern that would implicate Luis. However, should it be, the Court can hold a hearing and make that determination.

In determining whether to issue a restraining order, "[t]he return of the indictment by the federal grand jury . . . represents a determination of probable cause sufficient to issue a restraining order under 21 U.S.C. § 853(e)(1)(A)" United States v. Sellers, 848 F.Supp. 73, 75 (E.D.La. 1994); accord, In re Billman, 915 F.2d 916, 919 (4th Cir. 1990), cert. denied, 500 U.S. 952 (1991) ("[T]he government may 'seize property based on a finding of probable cause to believe that the property will ultimately be proven forfeitable,'(citation omitted). The probable cause found by the grand jury satisfies the government's burden of proving the allegations of the indictment."). As noted in the legislative history of the Comprehensive Crime Control Act of 1984,

For the purposes of issuing a restraining order, the probable cause established in the indictment or information is to be determinative of any issue regarding the merits of the government's case on which the forfeiture is to be based.

S.Rep. No. 225, 98th Cong., 2d Sess. 203 (1984), reprinted in 1984 U.S. Code Cong. & Admin. News 3182, 3386. However, the

Declaration of Special Agent Jason Sargenski provides additional support for a probable cause finding that \$200,000 in gross proceeds was generated by the illegal activity and subsequently made unavailable by the defendant.

The United States seeks only to preserve the status quo of the subject property to prevent its alienation or dissipation. The purpose of pre-trial restraint of property is to preserve the availability of property that can be forfeited after trial. In re Billman, 915 F.2d at 921. The restraint is limited to a single tract of real property, one estimated to have a value approaching \$200,000, and does not disturb other more liquid assets which the defendant may have. Nor does the Government seek possession or control of the property. Given that probable cause is established by the grand jury finding and agent's declaration, the issuance of the restraining order is mandatory. United States v. Wingerter, 369 F.Supp. 2d 799, 811 (E.D. Va. 2005) ("There is no discretion to permit a defendant to spend assets that are subject to forfeiture, including substitute assets. They must be preserved for forfeiture.")

WHEREFORE, for the foregoing reasons, the Government requests this Court to enter a protective order immediately restraining, prohibiting, and enjoining WILLIAM TODD CHAMBERLAIN and his agents, servants, employees, attorneys, family members

and those persons in active concert or participation with him, from selling or otherwise disposing of the subject property as described in the deed attached hereto as Exhibit B, encumbering the property in any way, or allowing the property to fall into disrepair or be devalued by neglect or failure to take proper care of it.

Finally, the Government further requests that the Attorney General or his designee be directed to promptly serve a copy of this Restraining Order upon WILLIAM TODD CHAMBERLAIN, as well as any other person in possession of the restrained property, and make a return thereon reflecting the date and time of service.

The Government further requests that this Restraining Order remain in full force and effect until further order of this Court.

Respectfully submitted this 18th day of April, 2016.

JOHN STUART BRUCE
Acting United States Attorney

BY: /s/ Stephen A. West
STEPHEN A. WEST
Assistant United States Attorney
Attorney for Plaintiff
Civil Division
310 New Bern Avenue
Federal Building, Suite 800
Raleigh, N. C. 27601-1461
Telephone: (919) 856-4530
Facsimile: (919) 856-4821
E-mail: steve.west@usdoj.gov
NC State Bar #12586

CERTIFICATE OF SERVICE

I certify that I have on this 18th day of April, 2016, served a copy of the foregoing Government's Application for Post-Indictment Restraining Order upon counsel electronically via ECF:

Elliot Sol Abrams
Cheshire Parker Schneider & Bryan, PLLC
P. O. Box 1029
133 Fayetteville St., Suite 500
Raleigh, NC 27602

JOHN STUART BRUCE
Acting United States Attorney

BY: /s/ Stephen A. West
STEPHEN A. WEST
Assistant United States Attorney
Attorney for Plaintiff
Civil Division
310 New Bern Avenue
Federal Building, Suite 800
Raleigh, N. C. 27601-1461
Telephone: (919) 856-4530
Facsimile: (919) 856-4821
E-mail: steve.west@usdoj.gov
NC State Bar #12586