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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,
vs.
One 2002 Cadillac Escalade 4X4,
Defendant,
And Regarding the Interest of Carl D.
Anderson and Darryl Scott
And Regarding the Interest of General
Motors Acceptance Corporation,
Claimants.

No. CV 03-1504 PHX ROS
ORDER

Pending before the Court is Claimant General Motors Acceptance Corporation's ("GMAC") Motion for Partial Summary Judgment (Doc. # 20) and Plaintiff United States' Cross-Motion for Summary Judgment (Doc. # 30). For the reasons stated below, both Motions will be denied.

BACKGROUND

The following facts are not disputed unless otherwise mentioned.

On October 29, 2001, Carl D. Anderson purchased the *in rem* defendant, a 2002 Cadillac Escalade. [Doc. # 21 (Claimant's Statement of Facts ("CSOF")) ¶1.] At the time of purchase, Mr. Anderson had numerous finance agreements for other vehicle purchases with Claimant GMAC. [Doc. # 1 (Verified Compl.) ¶ 75.] According to the Verified

1 Complaint, the income listed on the finance application was insufficient to fund the required
2 monthly payments for all finance agreements. [Id. ¶ 76.]

3 On February 4, 2003, the Arizona Department of Public Safety Highway Patrol
4 ("DPS") performed a traffic stop on Defendant vehicle for making an unsafe lane change.
5 [Id. ¶ 16 and 17.] After the vehicle was pulled over, Officer C.J. Hemmen noticed suspicious
6 conduct by the driver and indications of illegal activity in the vehicle. [Id. ¶¶ 31 and 37.]
7 Because Officer Hemmen suspected the vehicle contained a hidden compartment used for
8 drug trafficking, the driver and passenger were detained and the vehicle was searched. [Id.
9 ¶ 40.] After being detained, the driver admitted to the existence of the hidden compartment
10 and demonstrated how to open it. [Id. ¶¶ 44 and 48.] A canine search revealed evidence of
11 the presence of drugs. [Id. ¶¶ 50-55.]

12 Plaintiff filed a Verified Complaint against the vehicle seeking its forfeiture on
13 August 5, 2003. [Doc. # 1.] In an Order filed on October 19, 2004, this Court determined
14 that the vehicle was subject to forfeiture because (1) the vehicle was proceeds traceable to
15 money exchanged for controlled substances; (2) the vehicle was used or was intended to be
16 used to transport controlled substances, and (3) the vehicle was involved in a money
17 laundering transaction. [Doc. # 15 (Order) at 3-4.]

18 Claimant GMAC moved for partial summary judgment on November 16, 2004,
19 asserting that they were innocent owners under 18 U.S.C. § 983(d)(2)(A). [Doc. # 20.]
20 Plaintiff objected to Claimant GMAC's Motion on December 23, 2004 and claimed that
21 Claimant GMAC was not an innocent owner under § 983(d)(2)(A). [Doc. # 30.]
22 Additionally, Plaintiff cross-moved for summary judgment. [Id.]

23 DISCUSSION

24 I. Legal Standard for Summary Judgment

25 A court must grant summary judgment if the pleadings and supporting documents,
26 viewed in the light most favorable to the non-moving party, "show that there is no genuine
27 issue as to any material fact and that the moving party is entitled to judgment as a matter of
28

1 law.” Fed. R. Civ. P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);
2 Jesinger v. Nev. Fed. Credit Union, 24 F.3d 1127, 1130 (9th Cir. 1994). Substantive law
3 determines which facts are material, and “[o]nly disputes over facts that might affect the
4 outcome of the suit under the governing law will properly preclude the entry of summary
5 judgment.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); see Jesinger, 24 F.3d
6 at 1130. In addition, the dispute must be genuine, that is, “the evidence is such that a
7 reasonable jury could return a verdict for the nonmoving party.” Anderson, 477 U.S. at 248.

8 Furthermore, the party opposing summary judgment “may not rest upon the mere
9 allegations or denials of [the party’s] pleadings, but . . . must set forth specific facts showing
10 that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e); see Matsushita Elec. Indus. Co.,
11 Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986); Brinson v. Linda Rose Joint
12 Venture, 53 F.3d 1044, 1049 (9th Cir. 1995). There is no issue for trial unless there is
13 sufficient evidence favoring the non-moving party; if the evidence is merely colorable or is
14 not significantly probative, summary judgment may be granted. Anderson, 477 U.S. at 249-
15 50. However, because “[c]redibility determinations, the weighing of evidence, and the
16 drawing of inferences from the facts are jury functions, not those of a judge, . . . [t]he
17 evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn
18 in his favor” at the summary judgment stage. Id. at 255 (citing Adickes v. S.H. Kress & Co.,
19 398 U.S. 144, 158-59 (1970)); see Warren v. City of Carlsbad, 58 F.3d 439, 441
20 (9th Cir. 1995).

21 **II. Analysis**

22 At issue is whether Claimant GMAC is an innocent owner pursuant to 28 U.S.C. §
23 983(d)(2)(A). Section 983(d)(2)(A) provides:

24 With respect to a property interest in existence at the time the illegal conduct giving
25 rise to forfeiture took place, the term 'innocent owner' means an owner who –
26 (i) did not know of the conduct giving rise to forfeiture; or
27 (ii) upon learning of the conduct giving rise to the forfeiture, did all that
28 reasonably could be expected under the circumstances to terminate such use
of the property.

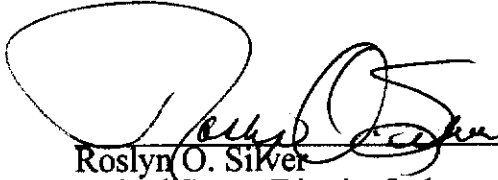
1 According to this Court's Order of October 19, 2004, the conduct that gave rise to the
2 forfeiture took place before Claimant GMAC obtained an ownership interest in the vehicle.
3 That is, the intent to use the vehicle for drug trafficking was present before Claimant GMAC
4 financed the vehicle. Further, the money laundering transaction had already begun when
5 Claimant GMAC provided financing. Section 983(d)(3)(A) better fits the facts of this case
6 because the illegal activities giving rise to the forfeiture took place before Claimant GMAC
7 obtained an ownership interest.¹ Because Claimant GMAC did not have an ownership
8 interest in the vehicle when the illegal activities giving rise to the forfeiture took place, §
9 983(d)(2)(A) is not applicable.

10 Accordingly,

11 **IT IS ORDERED** that Claimant GMAC's Motion for Partial Summary Judgment
12 (Doc. # 20) is **DENIED**.

13 **IT IS FURTHER ORDERED** that Plaintiff United States' Cross-Motion for
14 Summary Judgment (Doc. # 30) is **DENIED**.

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16 DATED: 8/1, 2005.

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20 Roslyn O. Silver
21 United States District Judge
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24 ¹ Neither party discusses § 983(d)(3)(A) in their Motions for Summary Judgment. In
25 fact, Plaintiff states GMAC's burden exactly as § 983(d)(2)(A) provides. [Doc. # 30 (Pl.'s
26 Mot. Summ. J.) at 11.] In its Reply to Claimant GMAC's Response to Plaintiff's Cross-
27 Motion for Summary Judgment, Plaintiff does mention that its argument is in part based on
28 Home Savings Bank, F.S.B. v. Gillam, 952 F.2d 1152, 1160 (9th Cir. 1991).