

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

PLAINTIFF,

v.

THE REAL PROPERTY LOCATED
AT 225 VALLEY ROAD, N.W.,
ATLANTA, FULTON COUNTY, GA
30305, ET. AL,

and

APPROXIMATELY 8,671,456,050 IN
IRAQI DINARS, ET. AL,

Defendants.

CIVIL ACTION NO.

1:15-CV-2032-LMM

1:15-CV-2677-LMM

PLAINTIFF'S OPPOSITION TO ATTEMPTS TO INTERVENE

Plaintiff, the United States of America, by its attorney John A. Horn, the United States Attorney for the Northern District of Georgia, and Assistant United States Attorney Thomas J. Krepp respectfully submits this Opposition to non-parties' motions and correspondence seeking to intervene in the above-listed civil forfeiture actions.

Background

The United States has filed two Verified Complaints for Forfeiture involving an Atlanta-based Iraqi dinar exchanger named Sterling Currency Group. Both complaints allege that the principals of Sterling Currency Group and others were involved in a scheme to defraud Iraqi dinar investors who believed that the Iraqi currency would “revalue” or dramatically increase in value. Through its website, Sterling falsely claimed that following a revaluation it would have “remote satellite offices” available at airports located around the country. Furthermore, Sterling paid money to at least one individual who spread false information about supposed “sources” that indicated that the revaluation date was near. Ultimately, Sterling reaped more than 600 million dollars in proceeds from its scheme, and Sterling’s owners and agents laundered that money through various entities and trusts in an effort to shield the illicit assets from the Government.

On June 3, 2015, agents executed federal search and seizure warrants related to Sterling. During the execution of these warrants, agents seized many of the defendant properties, including numerous foreign currencies. The

Government filed an Amended Complaint for Forfeiture¹ on June 9, 2015, seeking forfeiture of various real properties, vehicles, airplanes, and entities owned or controlled by Sterling and its owners and agents, pursuant to 18 U.S.C. § 981(a)(1)(C) as proceeds of specified unlawful activity traceable directly or indirectly to violations of 18 U.S.C. §§ 1341, 1343, 1349, 1956, and 1957 and pursuant to 18 U.S.C. § 981(a)(1)(A) as property involved in money laundering offenses in violation of 18 U.S.C. §§ 1956 and 1957. [*United States v. 225 Valley Road, Atlanta, Fulton County, Georgia, et al.*, NDGa., Civil Action No. 1:15-CV-2032-LMM (hereafter “Sterling 1”), at Doc. 2]. Subsequently, on July 29, 2015, the Government filed a related Complaint for Forfeiture against various foreign currencies (including Iraqi dinars), bank accounts, cash, and coins, seeking forfeiture on the same grounds as Sterling 1. [*United States v. 8,671,456,050 in Iraqi Dinars, et al.*, NDGa., Civil Action No. 1:15-CV-2677-LMM (hereafter “Sterling 2”), at Doc. 1]. The Government has served notice of the forfeiture actions on all known potential claimants, and the deadlines for some of the potential claimants to file verified claims are still pending.

¹ This action initially commenced with the Government’s filing a Complaint for Forfeiture on June 5, 2015, which was amended a few days later. [Doc. 1].

Attempts to Intervene

On August 7, 2015, Alison Shimer filed a Motion to Intervene. [Sterling 1, Doc. 96]. In her motion, Shimer argues that she should be allowed to intervene in this case so that she can receive foreign currency, specifically 800,000 Iraqi dinars and 1,000,000 Vietnamese dong, that she purchased from Sterling before the Government initiated the instant proceedings.² [*Id.* at 3].

On August 8, 2015, Sterling sent an email to its customers, a portion of which stated:

You may consider filing a claim with the United States District Court for the Northern District of Georgia. The case number is 1:15-CV-2677. You may wish to send a letter explaining why you chose to purchase dinar and request the order be completed, or may choose to request a refund of the money you sent to Sterling.³

² Shimer seeks the return of foreign currencies, which are not defendant properties in Sterling 1, and argues that her right to intervene stems from the Government's forfeiture of "all right, title, and interest of Sterling . . ." [Sterling 1, Doc. 96 at 2]. The Government disagrees with her contention and asserts that Shimer's requested relief cannot be enforced through litigation in Sterling 1 and that her motion is misplaced. Nonetheless, the Government's position is that her motion to intervene should be denied, regardless of whether she had properly filed her motion in Sterling 2.

³ A copy of the full email sent by Sterling is available in at least one of the letters received by this Court. [Sterling 1, Doc. 124.]. The government notes that since sending the August 8th letter, Sterling's principals have learned that not all corporate funds were seized by the government.

Since that time, dozens of would-be interveners have sent correspondence, letters, documents, and other materials to the Court.⁴ [*See, e.g.*, Sterling 1, Docs. 116, 124, 133; Sterling 2, Docs. 10, 12-23, 39-41, 77, 81, 85-88, 90-93, 95-96]. Like Shimer, these interveners assert that they purchased foreign currencies, primarily Iraqi dinars, from Sterling prior to June 3, 2015, the date the Government seized the various defendants *in rem*. Due to the Government's seizure of Sterling's inventory of foreign currencies, Sterling did not fulfill their orders.⁵ As such, like Shimer, the interveners request that the Court order the Government to release

⁴ By the time this document is filed on the docket, additional interveners will likely have similarly petitioned the Court.

The Clerk of Court has docketed these documents as non-party letters and claims. [*See, e.g.*, Sterling 2, Docs. 10, 12, 19 (docketed as claims)]. However, these documents are indistinguishable in their nature and form, with the "claims" failing to demonstrate any qualities that would elevate them in status. Moreover, the "claims" fail to meet the statutory requirements of a claim, as set forth in Rule G of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. Hence, the Government will not distinguish between non-party letters and claims as part of this brief. Nonetheless, the Government does not waive any objections it may have to the form and substance of these "claims" and their failure to comply with Rule G.

⁵ Sterling had a lucrative layaway plan that allowed customers to commit to buying an amount of foreign currency but only paying a small percentage of the total purchase price upfront (akin to an options contract). Many of the interveners were involved in this layaway plan and may only have been due the equivalent of their deposit under the layaway plan.

the foreign currencies that they paid for or, in the alternative, to refund their purchase price.⁶

For the reasons discussed herein, efforts by Sterling's victims to intervene in this case should be denied.

ARGUMENT

Sterling's customers are not entitled to intervene in these civil forfeiture actions. A civil forfeiture proceeding is an *in rem* action against property, not an action against a person. *Via Mat Int'l S. Am. Ltd. v. United States*, 446 F.3d 1258,1264 (11th Cir. 2006); *United States v. Cherry*, 330 F.3d 658, 668 n.16 (“[T]he most notable distinction between civil and criminal forfeiture is that civil forfeiture proceedings are brought against property, not against the property owner.”). Because civil forfeiture is an *in rem* proceeding in which the property is

⁶ Shimer asserts that because she filed a formal motion to intervene with the Court that she should somehow be treated differently and given exceptional recourse. [Sterling 1, Doc. 139 at 3]. While Shimer may posture her motion as an attempt to ensure that either the Government or Sterling is ordered to perform according to her purchase contract with Sterling, the recourse she seeks is identical to her fellow interveners – receipt of foreign currency or return of her purchase price. [*Id.* (“[Shimer] merely seeks specific performance of Sterling’s contractual obligation to deliver to her the foreign currency that Sterling previously agreed to deliver.”)]. Therefore, her position is the same as the other interveners, regardless of whether they made a less formal appeal upon the Court, and Shimer should not be allowed to sidestep her fellow victims who may be less able or less inclined to file a formal motion.

the defendant, all third parties contesting the forfeiture are interveners. *United States v. 8 Gilcrease Lane*, 641 F. Supp.2d 1, 4-6 (D.D.C. 2009); see also *United States v. All Funds in Account Nos. 747.034/278 (Banco Espanol de Credito)*, 295 F.3d 23, 25 (D.C. Cir. 2002) (“Civil forfeiture actions are brought against property, not people. The owner of the property may intervene to protect his interest.”). However, a third party may only intervene if he complies with the pleading requirements of Rule G(5); there is no separate right to intervene under Rule 24. *U.S. v. 8 Gilcrease Lane*, 641 F. Supp.2d at 4-6.

I. Sterling’s Customers are Not Entitled to Intervene in These Forfeiture Proceedings.

Rule 24 of the Federal Rules of Civil Procedure governs an individual’s ability to intervene in a civil suit. Fed. R. Civ. P. 24. For an individual to intervene as a matter of right, he must prove either that he has “an unconditional right to intervene by a federal statute” or that he “claims an interest relating to the property . . . that is the subject of the action, and is so situated that disposing of the action . . . may impair or impede [his] ability to protect [his] interest” Fed. R. Civ. P. 24(a). If a would-be intervener is unable to support intervention as a matter of right, then he may petition the court under Rule 24(b), which allows for permissive intervention. Fed. R. Civ. P. 24(b). Under Rule 24(b), intervention

is allowed if a federal statute supports a conditional right to intervene or if the intervener “has a claim or defense that shares with the main action a common question of law or fact.” *Id.* In this case, Sterling’s customer-interveners cannot satisfy either of these Rules.

Shimer argues that her motion to intervene should be granted under either Rule 24(a)(2) or Rule 24(b)(1)(b). [Sterling 1, Doc. 96-1 at 10-14]. First, Shimer asserts that “she is so situated that disposition of the Plaintiff’s forfeiture action . . . may impede or impair [her] ability to protect her interest in receiving the currency she has paid for.” [*Id.* at 10]. Shimer argues that her “contractual right to receive from Sterling the currency she has already paid for will be seriously impaired or impeded if she is not allowed to intervene now.” [*Id.*]. Shimer, as well as the other customer-interveners, may assert that they have an interest in the defendant properties, particularly the seized foreign currencies; however, the forfeiture actions do not impair or impede any arguable interests these customer-interveners may have because Congress explicitly protected victims’ interests through the remission process.⁷ *See* 18 U.S.C. § 981(e)(6). Hence,

⁷ More information regarding the petition for remission process can be found at <http://www.justice.gov/criminal-afmls/victims-forms>.

if the Government prevails, the Attorney General will be authorized to retain forfeited property in order to restore victims of the offenses. *Id.*

Moreover, the customer-interveners, including Shimer, are mistaken that intervention will allow them to immediately recover foreign currencies or refunds of their purchase prices. [*See, e.g., id.* at 10 (“If intervention is denied [Shimer] will be forced to wait until the conclusion of this forfeiture action.”)]. If they are allowed to intervene in the case, they still must wait for the judiciary process to be completed, at the end of which either the defendant properties are forfeited – at which point the remission process kicks in – or Sterling prevails and the customer-interveners can sue to enforce their contracts. Intervention does nothing more than allow the intervener to stand alongside the plaintiff or defendant in order to protect his interest; it does not create an avenue for immediate recourse.⁸

⁸ Of note, while the Government opposes intervention of Sterling’s customers in these civil forfeiture proceedings for all of the reasons set forth in this brief, the Government has no objection to Sterling refunding customers’ purchase price from unseized personal funds controlled by its principals. Customers who receive a full refund of their purchase price will not be allowed to double-dip by also receiving funds in the remission process. *Accord United States v. Huff*, 609 F.3d 1240, 1249 (11th Cir. 2010) (“Restitution is not intended to provide a windfall for crime victims but rather to ensure that victims, to the greatest extent possible, are made whole for their losses.”)

Further, permissive intervention should be denied. These forfeiture actions revolve around false and misleading representations regarding the Iraqi dinar (e.g. non-existent airport exchanges and fictitious sources). The question of law and fact for the Court to consider is whether the Government can prove by a preponderance of the evidence that illegal acts give rise to forfeiture of the proceeds of those acts. Contrary to Shimer's assertion, these forfeiture proceedings do not directly concern whether she, or any other customer, has a right to specific performance of her contract with Sterling or whether Sterling owns the foreign currencies that were seized. [*Id.* at 14].

Although Shimer did not raise it, perhaps the most viable argument for permissive intervention in these actions is that the customer-intervenors have a conditional right to intervene pursuant to 18 U.S.C. § 983(a)(4)(A) and Rule G. Under 18 U.S.C. § 983(a)(4)(A), "any person claiming an interest in the seized property may file a claim asserting such person's interest in the property" However, asserting an interest in seized property requires strict compliance with Rule G(5). *Id.*; see also *United States v. \$12,126.00 in U.S. Currency*, 337 Fed. App'x 818, 820 (11th Cir. 2009) (the Government may move to strike a claim for failure to comply with Rule G(5)); *United States v. One 2003 Chevrolet Suburban*, 2011 WL 4543471, *1-2 (M.D. Ga. Sept. 29, 2011) (holding that the pleading requirements in

Rule G(5) must be strictly enforced, both to ensure that the Government is provided with timely notice of a claimant's interest in contesting the forfeiture and to deter the filing of false claims). Rule G(5) requires that persons asserting an interest in seized property file a timely claim in the judicial proceeding. Supp. R. G(5). None of the customer-intervenors have complied with the statutory requirements of Rule G(5) by filing verified claims and, therefore, they are not entitled to permissive intervention, and further, they lack statutory standing. See Cassella, Stefan D., *Asset Forfeiture Law in the United States: A Treatise on Forfeiture Law*, § 9-4, at 22-23 (2006) ("The term 'statutory standing' relates to a claimant's ability to show that he has satisfied whatever statutory requirements Congress has imposed for contesting a civil forfeiture action in federal court"). Nonetheless, even if the customer-intervenors filed verified claims pursuant to Rule G and subsequently gained statutory standing, because they do not have constitutional or prudential standing to contest the forfeiture actions, intervention must be denied.

II. Sterling's Customers Lack Standing to Intervene in These Forfeiture Actions.

To intervene in a civil forfeiture case, claimants must not only comply with Rule G but also possess constitutional and prudential standing. *United States v.*

\$487,825.00, 484 F.3d 662, 664 (3rd Cir. 2007) (“In order to stand before a court and contest a forfeiture, a claimant must meet both Article III and statutory standing requirements.”); *United States v. Real Property Located at 730 Glen-Mady Way*, 590 F. Supp.2d 1295, 1302 (E.D. Cal. 2008) (granting motion to dismiss because, although claimant had Article III standing, he did not possess prudential standing). All of the customer-interveners lack constitutional and prudential standing, stripping them of the ability to intervene in these actions even if they had complied with Rule G. *See United States v. 8 Gilcrease Lane*, 641 F. Supp.2d 1, 4-6 (D.D.C. 2009) (holding that in a civil forfeiture action, there is no separate right to intervene under Rule 24; someone seeking to intervene must have standing and must comply with Rule G).

Standing is a threshold issue in every federal case. *Via Mat Int’l S. Am. Ltd. v. United States*, 446 F.3d at 1262; *United States v. Real Property Located at 5201 Woodlake Dr.*, 895 F. Supp. 791, 793 (M.D.N.C. 1995) (“[I]n order to contest a forfeiture, a claimant [or intervener] first must demonstrate a sufficient interest in the property to give him Article III standing; otherwise there is no ‘case or controversy,’ in the constitutional sense, capable of adjudication in the federal courts.”). The claimant or intervener bears the burden of establishing constitutional standing. *United States v. \$9,041,598.68*, 163 F.3d 238, 245 (5th Cir.

1998) (finding that claimant has burden of proving standing and must have a “facially-colorable interest in the proceedings sufficient to satisfy the case-or-controversy requirement”). “The claimant’s burden under Article III is not a heavy one; the claimant need demonstrate only a colorable interest in the property, for example by showing actual possession, control, title, or financial stake.” *United States v. Real Property Located at 5208 Los Franciscos Way*, 385 F.3d 1187, 1191 (9th Cir. 2004); *United States v. One-Sixth Share*, 326 F.3d 36, 41 (1st Cir. 2003) (“At the initial stage of intervention, the requirements for a claimant to demonstrate constitutional standing are very forgiving. In general, any colorable claim on the defendant property suffices.”).

It is well-settled that a claimant lacks Article III standing unless he can demonstrate a cognizable interest *in the particular assets subject to forfeiture*. It is not sufficient to allege a generalized interest in the estate of the person (or entity) from whom the property has been seized. Such a generalized interest renders the claimant an unsecured creditor, void of an interest in the particular assets subject to forfeiture.⁹ The federal courts have uniformly held that unsecured creditors

⁹ An unsecured creditor can only attain standing by obtaining a judgment and then converting that judgment to a judgment lien. *United States v. All Funds on Deposit with R.J. O’Brien & Assoc.*, 2012 WL 1032904 (N.D. Ill. Mar. 27, 2012)

lack constitutional standing to contest forfeiture of their debtors' specific property. *See, e.g., United States v. \$20,193.90 U.S. Currency*, 16 F.3d 344, 346 (9th Cir. 1994) ("Unlike secured creditors, general creditors cannot claim an interest in any particular asset that makes up the debtor's estate."); *United States v. \$124,906 in U.S. Currency*, 2000 WL 360086, *2 (D. Or. 2000) ("[U]nsecured creditors do not have standing to challenge the civil forfeiture of their debtor's property.").

The customer-interveners all report a similar situation, i.e. payment to Sterling in exchange for foreign currencies that they did not receive because of the Government's seizure. These customer-interveners do not allege that Sterling stole their payments, but rather, they indicate that they voluntarily sent the payments to Sterling. As such, when the customer-interveners transferred their payments to Sterling, they became unsecured creditors who lack interest in any particular assets that are the subject of these forfeiture proceedings. *See 8 Gilcrease Lane*, 641 F. Supp.2d at 5 (holding that fraud victim who voluntarily relinquishes property to the fraudster surrenders title and becomes an unsecured

(finding that a party who obtained a default judgment against person whose property is being forfeited remains an unsecured creditor without standing); *United States v. All Assets Held at Bank Julius Baer & Co.*, 772 F. Supp.2d 191, 199 (D.D.C. 2011) (A person with an *in personam* judgment against the wrongdoer lacks standing to contest forfeiture of the wrongdoer's property because the judgment gives him no interest in the specific asset subject to forfeiture.).

creditor); *United States v. \$13,500 in U.S. Currency*, 2008 WL 5191209, *4 (W.D. Tenn. Dec. 10, 2008) (finding that a bribe payer lacks standing to contest forfeiture of the bribe money because once he voluntarily transferred it to the bribe taker, he no longer had an interest in the money).

Even if the customer-intervenors were able to directly trace their payments into Sterling's bank accounts, they would still be unsecured creditors who lack standing. *See, e.g., United States v. \$3,000 in Cash*, 906 F. Supp. 1061, 1069 (E.D. Va. 1995) (despite victim's ability to trace his money to seized bank account, title was passed to perpetrator, making victim an unsecured creditor without standing); *United States v. BCCI Holdings (Luxembourg) S.A. (Final Order of Forfeiture and Disbursement)*, 69 F. Supp.2d 36, 59 (D.D.C. 1999) (holding that a person who voluntarily transfers his property to defendant is no longer owner of that property; his ability to trace his property to defendant's assets is irrelevant; therefore, victims who transferred their property to defendant are merely unsecured creditors, not owners of forfeited property); *accord United States v. \$61,483.00 in U.S. Currency*, 2003 WL 1566553, *2 (W.D. Tex. 2003) (under state law, because a lender retains no legal interest in funds that he loans to a borrower, it does not matter if the lender can trace his money directly to the *res* subject to forfeiture).

Hence, the customer-intervenors, who are victims of Sterling's fraud, do not have constitutional standing to intervene in the forfeiture actions. While this strikes a harsh blow to someone who has already been harmed by a criminal's acts, it is a grounded result. Forfeiture actions are not liquidation proceedings, whereby victims can duke it out and vie for the highest priority. The remission process thwarts such lobbying by competing victims and ensures that victims' interests are justly evaluated. *See 8 Gilcrease Lane*, 641 F. Supp.2d at 6 (reliance on the remission process instead of granting standing to victims prevents the forfeiture from being turned into a liquidation proceeding); *cf. United States v. \$2,767,202.27 in U.S. Currency*, 463 F. Supp.2d 873 (C.D. Ill. 2006) (demonstrating the error in allowing victims to use the forfeiture proceeding at a liquidation proceeding: after the Government conceded that victims had standing, competing claimants filed cross motions for summary judgment, each asserting that its ability to trace its property to the defendant *res* was superior to the other victims).

Moreover, because Congress intends victims to be compensated by the Attorney General through the remission process, the customer-intervenors also lack prudential standing. The Supreme Court has held that federal courts should exercise their jurisdiction only when the potential litigant's claim falls "within

the zone of interests protected by the law invoked.” *Elk Grove Unified School District v. Newdow*, 542 U.S. 1, 12 (2004). In other words, a person lacks prudential standing if, even though he has constitutional standing, his interests are not of the type that Congress intended to protect when enacting the law. Regarding forfeiture proceedings, Congress narrowed the categories of persons who are entitled to intervene – owners. 18 U.S.C. § 983(d)(6). “Owners”, as defined by the civil forfeiture statutes), are protected; however, non-owners are not. Because unsecured creditors are explicitly excluded from the definition of “owners”, they, along with victims, lack prudential standing. *See* 18 U.S.C. § 983(d)(6) (“a person with only a general unsecured interest in, or claim against, the property or estate of another” is not an owner). Instead, Congress intended to protect victims through the remission process, not directly in the forfeiture proceeding. *See Real Property Located at 730 Glen-Mady Way*, 590 F. Supp.2d at 1302 (finding that fraud victims lacks prudential standing to contest forfeiture of fraud proceeds because Congress intended these victims to be compensated through the remission process, not by the court presiding over a forfeiture proceeding).

CONCLUSION

For the foregoing reasons, the Court should deny all attempts made by Sterling’s victims/customers, including Shimer, to intervene in these forfeiture

proceedings. Although dozens of Sterling's victims have petitioned the Court, these individuals represent a mere fraction of the thousands of victims involved in the fraud schemes described in the complaint, schemes that lasted over 10 years. The Court should not allow these few to gain an advantage over the remaining victims of the scheme by artificially inserting themselves into the proceedings. Intervention will not only result in a manifest injustice to similarly-situated victims but also create undue delays in the litigation, thereby further stalling the victims' recovery through the remission process.

Respectfully submitted,

JOHN A. HORN

United States Attorney

600 U.S. Courthouse

75 Spring Street SW

Atlanta, GA 30303

(404) 581-6000 fax (404) 581-6181

/s/THOMAS J. KREPP

Assistant United States Attorney

Georgia Bar No. 346781

Thomas.Krepp@usdoj.gov

Certificate of Compliance

I hereby certify, pursuant to Local Rules 5.1 and 7.1D, that the foregoing brief has been prepared using Book Antiqua, 13 point font.

/s/THOMAS J. KREPP

Assistant United States Attorney

Certificate of Service

I served this document today by filing it using the Court's CM/ECF system, which automatically notifies the parties and counsel of record, and by mailing a copy with sufficient postage to:

Alison Shimer

September 11, 2015

/s/ THOMAS J. KREPP

THOMAS J. KREPP

Assistant United States Attorney