

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:08CV230

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 3039.375 POUNDS OF COPPER COINS,)
)
 5930.32 TROY OUNCES OF SILVER COINS,)
)
 63.24 TROY OUNCES OF GOLD COINS,)
)
 3 PLATINUM COINS,)
)
 168,599 SILVER TROY OUNCE COINS,)
)
 147 GOLD TROY OUNCE COINS,)
)
 17 GOLD .05 TROY OUNCE COINS,)
)
 710 SILVER .5 TROY OUNCE COINS,)
)
 11 SILVER BARS AND SILVER SCRAP)
 TOTALING 10,720.60 TROY OUNCES,)
)
 1,000.5 TROY OUNCES OF SILVER COINS,)
)
 1,000.5 TROY OUNCES OF SILVER COINS,)
)
 DIES, MOLDS, AND CASTS SEIZED AT)
 SUNSHINE MINTING, INC. ON)
 NOVEMBER 14, 2007,)
)
 16,000.05 TROY OUNCES OF RAW SILVER,)
)
 100 OUNCES OF COPPER COINS,)

**MOTION
PURSUANT TO
18 U.S.C. § 981(g)(1)
TO EXTEND STAY
BEYOND JUNE 20, 2009**

and)
)
\$254,424.09 IN UNITED STATES)
CURRENCY,)
)
Defendants.)
)
)
)

NOW COMES the United States of America, plaintiff herein, by and through Edward R. Ryan, acting United States Attorney for the Western District of North Carolina, and herewith moves, pursuant to 18 U.S.C. § 981(g)(1), to stay discovery and other proceedings in this civil forfeiture case because civil discovery and other proceedings will adversely affect the government’s ability to conduct a related criminal investigation and prosecution of a related criminal case. In support of this Motion, the government shows this court the following.

Case is Presently Stayed

1. This civil-forfeiture action was filed on May 29, 2008, and an Order and Warrant for Arrest in Rem of the defendant property was issued by the Court on June 11, 2008. (Documents 1, 2)

2. Section 981(g)(1) of Title 18 of the United States Code provides that

Upon motion of the United States, the court *shall stay* the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a *related* criminal case.

(Emphasis added).

3. Pursuant to § 981(g)(1), the Court, on June 20, 2008, made findings and granted the motion of the United States to stay. (Documents 4, 7).

4. On October 21, 2008, the Court, extended the stay **until June 20, 2009**. (Document 40).

5. In its motion and pleadings, the United States had stated that the major justification for the stay was a pending criminal investigation. That investigation has now led to the indictment on May 19, 2009 (unsealed on June 3, 2009) of four defendants in *United States v. Bernard von Nothaus, William Kevin Innes, Sarah Jane Bledsoe, and Rachelle L. Moseley*, 5:09cr27.

6. The United States may file parallel civil- and criminal-forfeiture cases and may switch between them. *United States v. Nava*, 404 F. 3d 1119, 1136-37 (9th Cir. 2005) (United States may file civil-forfeiture case parallel to criminal case); *Cassell v. United States*, 348 F. Supp. 2d 602, 606 (M.D.N.C. 2004) (United States has the option of pursuing forfeiture civilly or criminally); *United States v. One Parcel . . . Lot 41, Berryhill Farm*, 128 F. 3d 1386, 1397-98) (10th Cir. 1997) (Civil case stayed pending criminal trial).

Present Case is Related to Filed Indictment

7. The listed assets that are alleged to be subject to forfeiture are the same in both the civil and criminal cases. (Indictment, Notice of Forfeiture and Finding of Probable Cause; Complaint, ¶ 6)

8. As the attached Affidavit of FBI Special Agent Andrew F. Romagnuolo demonstrates, the present civil-forfeiture case and the criminal case are based on the same factual events. “Where a criminal investigation and a civil forfeiture action have common facts, similar alleged violations and some common parties, the actions are clearly related.” *United States v. All Funds*

on Deposit in Suntrust Account Number XXXXXXXXXX8359, 456 F. Supp. 2d 64, 65 (D.D.C. 2006).

9. The two cases have common parties. Three of the four newly indicted criminal defendants, that is, Bernard von Nothaus, William Kevin Innes, and Sarah Jane Bledsoe, are mentioned in the Complaint (*Passim*, ¶ 122).

10. The cases have common – indeed, almost identical – facts. (See Indictment, Introductory Paragraphs 1-44; Complaint, ¶¶ 1-141).

11. The cases have common alleged violations. Both the Indictment and the Complaint allege violations of 18 U.S.C. §§ 485 and 486 (coins in resemblance or similitude to United States coins) and 18 U.S.C. § 1341 (mail fraud). The Complaint alleges additional violations, including counterfeiting, a violation of 18 U.S.C. § 470 *et seq.*

12. As the attached Affidavit of FBI Special Agent Andrew F. Romagnuolo also demonstrates, the indictment in the criminal case has led to new evidence, which evidence may reasonably be expected to affect the resolution of the present civil-forfeiture case. The affidavit also demonstrates that the criminal investigation is continuing.

13. Thus, the indictment is more than a “related” (§ 981(g)(1), *supra*) criminal case. The two cases are more than “similar,” *All Funds, Suntrust, supra* at 65.

Civil Discovery Would Adversely Affect the Criminal Case

14. Requiring the United States to litigate this civil-forfeiture case would adversely affect the related criminal case. The normal interrogatories, depositions, and other devices of civil discovery go beyond what is required in criminal discovery, especially at the beginning of a criminal case. “Where civil discovery would subject the government’s criminal investigation to

‘early and broader civil discovery than would otherwise be possible in the context of the criminal proceeding’ a stay should be granted.” *All Funds, Suntrust, supra* at 65 (interior citation omitted). *United States v. All Funds on Deposit in Business Marketing Account*, 319 F. Supp. 2d 290, 294 (E.D.N.Y. 2004) (Once the court is satisfied that routine civil discovery would compromise the identities of confidential informants, stay of the civil case is mandatory under section 981(g)).

Speedy Trial Governs Criminal Case

15. Because of the imperatives of speedy trial, 18 U.S.C. § 3161 *et seq.*, the law requires the United States’ Attorney and the FBI – and the Court – to devote its resources to the criminal case at this time. There is no comparable speedy-trial imperative in federal civil litigation.

Coins Are Alleged to be Contraband and Cannot be “Owned”

16. In addition, by its pleading in both the civil and criminal cases, the United States is alleging that coins and currency produced and used to violate the statutes alleged are contraband. “Some contraband is intrinsically illegal in character, . . . one cannot have a property right in that which is not subject to legal possession.” *Helton v. Hunt*, 330 F.3d 242, 247 -248 (4th Cir. 2003) (internal citations and marks omitted). “Counterfeit coins are contraband per se, their mere possession is illegal, and they must be forfeited to the United States.” *United States v. Simmons*, 2000 WL 33138083, 3 (E.D.Cal.,2000).

Thus, if the United States’ allegations are vindicated, the law would prevent the return of a great part of the assets, e.g. copper, gold, silver coins, to “claimants” (18 U.S.C. § 983(d), civil case) or “petitioners” (21 U.S.C. § 853(n), criminal case) who might otherwise successfully prove themselves to be “owners” and even “innocent owners.”

The law of civil forfeiture explicitly denies any right of “ownership” in contraband:

Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.

18 U.S.C. § 983(d)(4).

Estoppel May Obtain

17. Since the assets alleged to be subject to forfeiture are the same in both cases, a resolution in the criminal case of the issue of whether certain assets are contraband may serve as an estoppel or *res judicata* in the civil case. And other findings and ruling concerning forfeiture in the criminal case may affect the civil case. *Concepcion v. United States*, 298 F. Supp. 2d 351, 357 (E.D.N.Y.) (Collateral estoppel bars relitigating in civil case a jury finding on forfeiture in criminal case).

Assets Need as Evidence

18. As the attached Affidavit of FBI Special Agent Andrew F. Romagnuolo indicates, the assets alleged to be subject to forfeiture will almost certainly be needed as exhibits in the criminal case. But the separate civil case, advancing on its own schedule, could jeopardize the availability of those assets in the criminal case.

Claimants’ Fifth Amendment Rights Would be Protected

18. It should also be noted that a stay protects a potential claimant’s rights under the Fifth Amendment, as recognized by 18 U.S.C. § 981(g)(2)(C). This serves as a safeguard for the four indicted defendants in the criminal case and any possible future defendants. Defendant Bernard von NotHaus is listed as a claimant on the docket of this civil case.

WHEREFORE, the United States, for reasons stated in this Motion and in the attached Affidavit of FBI Special Agent Andrew F. Romagnuolo, requests that the Court extend the stay until such time as the forfeiture issues have been resolved by consent or by jury verdict for all four defendants in the criminal case.

Respectfully submitted this the 15th day of June, 2009.

EDWARD R. RYAN
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**AFFIDAVIT OF ANDREW F. ROMAGNUOLO
SPECIAL AGENT, FEDERAL BUREAU OF INVESTIGATION**

Now comes Andrew Romagnuolo, Special Agent, Federal Bureau of Investigation, and herewith makes the following statements under oath and attests that these statements are true and based upon my personal knowledge or are otherwise made to the best of my knowledge, information and belief:

1. I have been a Special Agent of the Federal Bureau of Investigation for 11 years.
2. I am the chief investigator of the civil forfeiture case of *United States v. 3039.375 Pounds of Copper Coins*, 1:08cv230, and the criminal case of *United States v. Bernard von Nothaus, William Kevin Innes, Sarah Jane Bledsoe, and Rachelle L. Moseley*, 5:09cr27.
3. That criminal case commenced with a sealed indictment on May 19, 2009, and the indictment was unsealed on June 3, 2009.
4. The civil-forfeiture and criminal cases involve the same persons and the same events.
5. All four of the defendants in the criminal case have now made initial appearances, and one of the defendants has been arraigned.
6. As a result of the indictment and initial appearances, I am preparing for trial in the criminal case.
7. The assets in the civil-forfeiture case, including Liberty coins and other metals, will be needed as exhibits in the criminal case.
8. As a consequence of publicity surrounding the indictment in the criminal case, new witnesses have come forth, and I am investigating new evidence that pertains to both the civil-forfeiture and criminal cases. Thus, with additional time to investigate its significance, this new evidence should be relevant to the resolution of the civil-forfeiture case.
9. The coins and other assets, including metals, seized in this case are in the custody of the United States Marshal's Service and the Federal Bureau of Investigation and are secure.
10. As the chief investigator of both the civil-forfeiture and criminal cases, it is my opinion that civil discovery would seriously impair preparation for trial and the continuing criminal investigation.

This 15th day of June, 2009.



Andrew F. Romagnuolo
Special Agent
Federal Bureau of Investigation

Sworn to and subscribed before me this the 15th day of June, 2009.



SHELLY P. FLYNN
NOTARY PUBLIC

My Commission Expires: October 15, 2011