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USA v. Real Property located at 8646 Everidge Court, Sacramento, Californ... 115-1200-101-0000 et al

Doc. 35

7
8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 REAL PROPERTY LOCATED AT 8646
EVERIDGE COURT, SACRAMENTO,
15 CALIFORNIA, SACRAMENTO
COUNTY, APN: 115-1200-101-0000,
16 INCLUDING ALL APPURTENANCES
AND IMPROVEMENTS THERETO, et
17 al.

18 Defendants.
19

2:13-CV-00363-KJM-KJN

STIPULATION TO STAY
FURTHER PROCEEDINGS AND
ORDER

DATE: N/A
TIME: N/A
COURTROOM: N/A

20 The United States and Claimants East West Bank, Bao Qiong Li, East West Bank,
21 Xiu Zhen Chen, and Zhi Cai Wu (collectively, the "claimants"), by and through counsel,
22 hereby stipulate that a stay is necessary in the above-entitled action, and request that
23 the Court enter an order staying all further proceedings until the resolution of the related
24 criminal case against Zhiqiang Liu, Shihong Chen, Qinghong Li, and Jun Mou Peng
25 regarding marijuana cultivation at 8646 Everidge Court, Sacramento, California; 8270
26 Cliffcrest Drive, Sacramento, California; 9761 McKenna Drive, Elk Grove, California;
27 3713 45th Avenue, Sacramento, California; and 54 Caina Court, Sacramento, California
28

1 (“defendant properties”).¹ Claimant Bao Qiong Li is the record owner of defendant
2 property 9761 McKenna Drive which is a residence. Claimant East West Bank is the
3 lienholder on the 9761 McKenna Drive property. Claimant Xiu Zhen Chen is the record
4 owner of 3713 45th Avenue, which is a residence. Claimant Zhi Cai Wu is the record
5 owner of 54 Caina Court, which is a residence.

6 1. Each of the claimants has filed a claim to one the defendant properties. East
7 West Bank filed an Answer on June 13, 2013. Claimants Bao Qiong Li, Xiu Zhen Chen,
8 and Zhi Cai Wu have not yet filed their Answers and will not be required to do so until
9 the stay contemplated by this stipulation expires.

10 2. The stay is requested pursuant to 18 U.S.C. §§ 981(g)(1), 981(g)(2), and 21
11 U.S.C. § 881(i). The United States contends that the defendant properties were used to
12 facilitate the cultivation of marijuana and/or were derived from proceeds of the
13 cultivation of marijuana.

14 3. To date, several individuals have been charged with federal crimes related to
15 marijuana cultivation at the defendant properties, United States. v. Zhiqiang Liu, et al.,
16 Case No. 2:13-CR-00050-KJM; but Bao Qiong Li, Xiu Zhen Chen, and Zhi Cai Wu have
17 not been charged with any criminal offense by state, local, or federal authorities. It is the
18 United States’ position that the statute of limitations has not expired on potential
19 criminal charges relating to the marijuana grows at the defendant properties.
20 Nevertheless, the United States intends to depose the record owners regarding their
21 ownership of the defendant properties, as well as their knowledge and participation in
22 large scale marijuana cultivation, including the marijuana grows at the defendant
23 properties. If discovery proceeds at this time, claimants will be placed in the difficult
24 position of either invoking their Fifth Amendment rights against self-incrimination and
25 losing the ability to pursue their claims to the defendant properties, or waiving their
26 Fifth Amendment rights and submitting to a deposition and potentially incriminating

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28 ¹ United States. v. Zhiqiang Liu, et al., 2:13-CR-00050-KJM.

1 themselves. If they invoke their Fifth Amendment rights, the United States will be
2 deprived of the ability to explore the factual basis for the claims they filed with this court.

3 4. In addition, claimants intend to depose, among others, the agents involved
4 with this investigation, including but not limited to, the agents with the Drug
5 Enforcement Administration. Allowing depositions of the law enforcement officers at this
6 time would adversely affect the ability of the federal authorities to investigate the alleged
7 underlying criminal conduct.

8 5. During the stay, the parties reserve the right to seek all avenues of redress
9 to preserve the real properties, including filing a motion for interlocutory sale or seeking
10 a receiver appointment to collect rents and maintain the property. This includes filing
11 such a motion under the Supplemental Rules if the real properties are in default or have
12 substantial mortgage payments in arrears.

13 6. The parties recognize that proceeding with these actions at this time has
14 potential adverse effects on the investigation of the underlying criminal conduct and/or
15 upon the claimants' ability to assert any defenses to forfeiture. For these reasons, the
16 parties jointly request that these matters be stayed until the conclusion of the related
17 criminal case. At that time the parties will advise the court of the status of the criminal
18 investigation, if any, and will advise the court whether a further stay is necessary.

19 Dated: 6/28/13

BENJAMIN B. WAGNER
United States Attorney

21 By: /s/ Kevin C. Khasigian
22 KEVIN C. KHASIGIAN
Assistant U.S. Attorney

23 Dated: June 27, 2013

FRENCH & LYON
A Professional Corporation

25 By: /s/ Patricia H. Lyon
26 PATRICIA H. LYON
Attorneys for claimant EAST WEST BANK

27 (Signature retained by attorney)

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Dated 6/26/2013

/s/ Mark Reichel
MARK REICHEL
Attorney for claimants BAO QIONG LI,
XIU ZHEN CHEN, ZHI CAI WU

(Signature approved by email)

ORDER

For the reasons set forth above, this matter is stayed pursuant to 18 U.S.C. §§ 981(g)(1), 981(g)(2), and 21 U.S.C. § 881(i) until the conclusion of the related criminal case, at which time the parties will advise the Court whether a further stay is necessary.

IT IS SO ORDERED

Dated: July 3, 2013
JD


UNITED STATES DISTRICT JUDGE