

UNITED STATES OF AMERICA,

Plaintiff,

v.

ONE 2006 DODGE CHARGER R/T,

Defendant,

and

DeMARCO L. DAVIS,

Claimant.

ORDER ON MOTION TO STRIKE CLAIM

This matter is before the Honorable William G. Hussmann, Jr., United States Magistrate Judge, on the parties' consent to Magistrate Judge found in their Case Management Plan (Docket No. 11) and the Order of Reference entered by the Honorable Richard L. Young, Chief Judge, on May 27, 2011 (Docket No.12).

A Motion to Strike Claim for Failure to Comply with Supplemental Rule G(5) and Pursuant to FED. R. CIV. P. 27(b) for Failure to Respond to Discovery Requests was filed by Plaintiff, United States of America, on August 16, 2012. (Docket No. 32). Claimant filed his Response on September 14, 2012 (Docket No. 36), which Response creates genuine issues of fact about whether the Claimant purchased the vehicle with cash from a seller who had listed the car on craigslist.

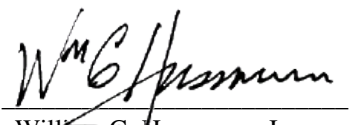
Plaintiff, United States of America, seeks to dismiss this action in part upon the underlying conduct and in part because the Claimant has failed to prosecute the claim. Although the United States may ultimately prevail with respect to this issue, the Magistrate Judge concludes that there are sufficient factual disputes to warrant a trial in order to make the appropriate determination with respect to Mr. Davis's ownership of the property.

With respect to Mr. Davis's failure to prosecute the claim, his ability to prosecute the claim has been hindered by his incarceration. Moreover, dismissal for failure to prosecute is an extreme sanction. Mr. Womack has now filed a Response in opposition, and the Magistrate Judge concludes that when in doubt, a decision on the merits is preferable to a default entry.

This matter remains set for a TELEPHONIC STATUS CONFERENCE on DECEMBER 4, 2012, at 8:15 a.m., Evansville time (CST), before the Magistrate Judge. Each counsel wishing to participate in this conference shall individually place a call to (317) 229-3960 at the time of the conference.¹ The parties should be prepared to address an appropriate trial date at that time.

The Motion to Strike Claim is DENIED.

SO ORDERED the 16th day of October, 2012.


William G. Hussmann, Jr.
United States Magistrate Judge
Southern District of Indiana

¹**This is the court's bridge line. The first person to call the number will hear a tone and then dead air. As each additional person calls the number, they will hear a tone and then will be able to talk to all other persons who have previously connected to the conference call.**

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