

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
(at Lexington)

COGNAC, LLC, d/b/a OCCIDENTAL)
THOROUGHBREDS,)
)
Plaintiff,)
)
V.)
)
TANDY, LLC,)
)
Defendant.)

Civil Action No. 5: 10-60-DCR

**MEMORANDUM OPINION
AND ORDER**

*** **

This matter is pending for consideration of the United States’ Motion to Consolidate [Record No. 2], the United States’ Motion to Set Aside Order [Record No. 9], and Plaintiff Cognac, LLC, d/b/a Occidental Thoroughbreds’ (“Cognac”), Motion to Remand [Record No. 12]. Having considered the parties’ respective positions, the Court will grant the United States’ Motion to Consolidate [Record No. 2] and deny Cognac’s Motion to Remand [Record No. 12]. The United States’ Motion to Set Aside Order [Record No. 9] will be addressed at the hearing scheduled to begin May 24, 2010.

On January 15, 2010, Cognac filed this suit against Tandy, LLC (“Tandy”) in the Fayette Circuit Court alleging breach of contract, unjust enrichment, and quantum meruit. These claims arise from an alleged contract that Cognac had with Tandy to sell the thoroughbred Einstein. Cognac maintains that the parties agreed that it would receive a 5% commission of the proceeds

from the sale of Einstein. Einstein was sold for \$1.8 million. Thus, Cognac contends that Tandy owes it \$90,000. The United States removed the case to this Court on February 18, 2010.

On June 17, 2009, this Court entered a Preliminary Order of Forfeiture that included a finding that William Gallion and Shirley Cunningham, Jr., were jointly and severally liable for a money judgment of \$30,000,000.00 to the United States. (*See United States v. William J. Gallion, et al.*, Criminal Action No. 2: 07-39-DCR; Record No. 856.) On August 20, 2009, this order was amended to include Tandy as a substitute asset. The United States Marshal was ordered to seize the forfeited substitute assets, including Tandy, and dispose of the property in accordance with applicable law. (*Id.*; Record No. 964). In *United States v. William J. Gallion et al.*, Criminal Action No. 2: 07-39-DCR, Cognac filed a petition for a hearing to adjudicate the validity of its interest in \$90,000.00 of Tandy's assets in accordance with 21 U.S.C. § 853(n). (*Id.*; Record No. 1205) The United States Code further states:

No party claiming an interest in property subject to forfeiture under this section may commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

21 U.S.C. § 853(k)(2). Since this case and the above-referenced criminal action both involve Cognac's alleged interest in \$90,000.00 from Tandy, the cases should be consolidated.

Accordingly it is hereby

ORDERED as follows:

(1) The United States' Motion to Consolidate [Record No. 2] is **GRANTED**. All future filings must be made in *United States v. William J. Gallion, et al.*, Criminal Action No. 2: 07-39-DCR.

(2) In addition to filing in this proceeding, the Clerk of the Court also shall file this Order in *United States v. William J. Gallion, et al.*, Criminal Action No. 2: 07-39-DCR.

(3) Plaintiff Cognac, LLC, d/b/a Occidental Thoroughbreds', Motion to Remand [Record No. 12] is **DENIED**.

(4) The United States' Motion to Set Aside Order [Record No. 9] is **SCHEDULED** for a hearing on **Monday, May 24, 2010**, beginning at the hour of 10:00 a.m., at the United States Courthouse in Covington, Kentucky.

This 17th day of May, 2010.



Signed By:

Danny C. Reeves DCR

United States District Judge