

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL NO. 1:07CV338

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
Vs.)
)
57 CANDLER HEIGHTS ROAD,)
Candler, Buncombe County, North)
Carolina, as described in a deed at)
Deed Book 2255, Page 0635 in the)
Public Registry of Buncombe County,)
North Carolina, being real property,)
together with the residences, and all)
appurtenances, improvements, and)
attachments thereon,)
)
Defendant,)
)
And)
)
JOYCE C. SIMMONS,)
)
Claimant.)
_____)

ORDER OF FORFEITURE
AND DISMISSAL

THIS MATTER is before the Court on the Government’s motion for entry of judgment and final judgment of forfeiture filed December 29, 2008.

Attorneys for the Claimant have filed no response to this motion and the time to do so has expired.

The Government filed this civil forfeiture action against 57 Candler Heights Road (“Defendant property”) on October 23, 2007, pursuant to the provisions of 18 U.S.C. §§ 981, 983, 985, and 21 U.S.C. § 881. Prior to a jury trial scheduled for July 9, 2008, the parties entered into a signed settlement agreement whereby the Defendant property would be substituted for several other named properties in which Claimant possessed an interest. **See Settlement by Substitution of Property and Consent to Forfeiture, filed July 7, 2008.** Under the terms of the settlement agreement, Claimant Joyce C. Simmons and husband Robert Edward Simmons, agreed to waive all ownership interests in and consented to forfeiture of the following properties (hereinafter, “Settlement Properties”) in return for the Government’s agreement not to pursue forfeiture of the Defendant property:

1. Lot 45, Phase 1-A, Grey Rock, Lake Lure, Rutherford County, North Carolina, as described in a deed at Deed Book 918, Page 73, in the Public Registry of Rutherford County, North Carolina, being real property, together with the residences, and all appurtenances, improvements, and attachments thereon;
2. Lot 461, Phase 3-B, Grey Rock, Lake Lure, Rutherford County, North Carolina, as described in a deed at Deed Book 906, Page 628, in the

Public Registry of Rutherford County, North Carolina, being real property, together with the residences, and all appurtenances, improvements, and attachments thereon;

3. Lot 23, Grey Rock, Lake Lure, Rutherford County, North Carolina, as described in a deed at Deed Book 922, Page 426, in the Public Registry of Rutherford County, North Carolina, being real property, together with the residences, and all appurtenances, improvements, and attachments thereon;
4. Real property, being .78 acres, on Grandview Road, French Broad, Buncombe County, North Carolina, as described in a deed at Deed Book 4224, Page 0879, in the Public Registry of Buncombe County, North Carolina, being real property, together with the residences, and all appurtenances, improvements, and attachments thereon.
5. Lot 5481, Smokey Park Highway, Candler Heights First AdLot 5481, Smokey Park Highway, Candler Heights First Addition, Candler, Buncombe County, North Carolina, being .93 acres at lots 9-12, as described in a deed at Deed Book 4440, Page 0094, in the Public Registry of Buncombe County, North Carolina, being real property, together with the residences, and all appurtenances, improvements, and attachments thereon;
6. Lot 3493, Smokey Park Highway, Candler Heights First Addition, Candler, Buncombe County, North Carolina, being .85 acres at lots 13-17, as described in a deed at Deed Book 4440, Page 0094, in the Public Registry of Buncombe County, North Carolina, being real property, together with the residences, and all appurtenances, improvements, and attachments thereon.

Settlement Agreement, *supra*. The Government published notice of the intention to pursue forfeiture of the above named properties as required by Rule G(4)(a)(iv)(C) of the Supplemental Rules for Admiralty or Maritime

and Asset Forfeiture Claims, Title 28, U.S.C. Appendix. **See Service by Publication, filed August 20, 2008.**¹

The Government provided notice of this action to Bank of America on October 23, 2008. **Government's Motion, *supra*, ¶ 9.** The Government recognizes the prior deeds of trust held by Bank of America on Lot 45, Lot 461, and Lot 23, and agrees to pay the principal and interest at the rate of interest stated in the deeds of trust following the sale of the properties after the conclusion of the forfeiture proceeding. ***Id.***

The Government also provided notice of this action to Louise Young Robinson on December 22, 2008. ***Id.* ¶ 10.** The Government recognizes the prior deeds of trust held by Ms. Robinson on Lot 5481 and Lot 3493, and agrees to pay the principal and interest at the rate of interest stated in the deeds of trust following the sale of the properties after the conclusion of the federal forfeiture proceeding. ***Id.***

¹Lot 45 was the subject of a separate civil forfeiture action. **See *United States v. Lot 45, Grey Rock, Lake Lure, Rutherford County, North Carolina, Civil No. 1:08CV286, filed July 2, 2008.*** The complaint against Lot 45 was dismissed without prejudice on the Government's motion on December 16, 2008. **See *Order Dismissing Case without Prejudice, filed December 16, 2008.*** The Government published notice of its intent to forfeit Lot 45 as evidenced by the Service by Publication affidavit filed July 2, 2008.

The Court finds that the parties herein have reached a valid settlement agreement in this matter whereby each party has agreed to be bound by the terms and conditions contained therein.

IT IS, THEREFORE, ORDERED that the Settlement Agreement is hereby accepted by the Court.

IT IS FURTHER ORDERED that Claimant Joyce C. Simmons and husband Robert Edward Simmons, hereby waive any and all ownership interests in the Settlement Properties and consent to an order of forfeiture of the Settlement Properties to the United States.

IT IS FURTHER ORDERED that any and all interest in the real properties known as the Settlement Properties is hereby forfeited to the United States.

IT IS FURTHER ORDERED that with respect to Lot 45, Lot 461, and Lot 23, the United States shall pay the principal and interest at the rate of interest stated in the deeds of trust to Bank of America following the sale of the properties.

IT IS FURTHER ORDERED that with respect to Lot 5481 and Lot 3493, the United States shall pay the principal and interest at the rate of

interest stated in the deeds of trust to Louise Young Robinson following the sale of the properties.

IT IS FURTHER ORDERED that the Government waives any interest in the Defendant property 57 Candler Heights Road and the complaint herein is hereby **DISMISSED WITH PREJUDICE**.

Signed: February 6, 2009

A handwritten signature in black ink, appearing to read "Lacy H. Thornburg", is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

