

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>CERTAIN REAL PROPERTY LOCATED</b>	)	<b>Civil No. 91-192 P</b>
<b>AT 491 WASHINGTON STREET,</b>	)	
<b>AUBURN, MAINE, WITH ALL</b>	)	
<b>APPURTENANCES AND</b>	)	
<b>IMPROVEMENTS THEREON,</b>	)	
	)	
<b>Defendant</b>	)	

**MEMORANDUM DECISION ON PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT<sup>1</sup>**

The government seeks summary judgment against claimant Pierrette Morris in this forfeiture action brought pursuant to 21 U.S.C. ' 881(a)(7), which provides in relevant part as follows:

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

...

(7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, . . . in any manner or part, to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission

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<sup>1</sup> Pursuant to 28 U.S.C. ' 636(c), the parties have consented to have United States Magistrate Judge David M. Cohen conduct all proceedings in this case, including trial, and to order the entry of judgment.

established by that owner to have been committed or omitted without the knowledge or consent of that owner.

The government contends that the defendant property is subject to forfeiture because it was used or intended to be used to facilitate a violation of the Controlled Substances Act, 21 U.S.C. ' 801 *et seq.*, punishable by more than one year's imprisonment. Complaint & 5. Pierrette Morris, among others, has filed a timely claim to the defendant real estate.

A motion for summary judgment must be granted if

the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed R. Civ. P. 56(c). On a motion for summary judgment the court must view the record in the light most favorable to the nonmoving party. *Ortega-Rosario v. Alvarado-Ortiz*, 917 F.2d 71, 73 (1st Cir. 1990).

In a civil forfeiture action the government must establish probable cause to believe that the defendant property ``had the requisite nexus [*i.e.*, a substantial connection] to a specified illegal purpose," here its use in, or facilitative of, drug trafficking. *United States v. One Lot of U.S. Currency (\$68,000)*, 927 F.2d 30,32 (1st Cir. 1991); *United States v. One Parcel of Real Property*, 921 F.2d 370, 375 (1st Cir. 1990). Such probable cause consists of a ``reasonable ground for belief of guilt; supported by less than prima facia proof but more than mere suspicion." *United States v. Parcels of Land*, 903 F.2d 36, 38 (1st Cir. 1990) (citation omitted). Circumstantial evidence or evidence that would be inadmissible at trial may be credited as long as it is reliable. *Id.* This includes hearsay. *One Parcel of Real Property*, 921 F.2d at 375. Once the government has made a showing of probable cause, ``the burden shifts to the claimant to prove by a preponderance of the evidence that the property was not used in violation of the statute or that it was so used without the owners' knowledge or

consent." *United States v. Parcel of Land and Residence at 28 Emery St., Merrimac, Mass.*, 914 F.2d 1, 3 (1st Cir. 1990).

The government's motion is supported by affidavits of Richard L. Hudson, a convicted drug trafficker, and Michael F. Kelly, a supervising special agent for the Maine Bureau of Intergovernmental Drug Enforcement ("BIDE"). According to Hudson, he received from Michael Morris ("Morris"), co-owner with Pierrette Morris (hereinafter, "the claimant") of the defendant property, an ounce of cocaine from a canister in the garage of the defendant property in December 1988. In the process, he observed several canisters in the garage containing in the aggregate an estimated eight to nine ounces of cocaine. Money arrangements for the transaction were made between Morris and Hudson's father, also a convicted drug trafficker. Hudson recites that in January 1989 he again received cocaine from Morris in the garage of the defendant property, this time approximately four ounces. As in the previous transaction, money arrangements were handled by Morris and Hudson's father. Hudson also states that on approximately seven separate occasions beginning in February 1989 he sold quantities of cocaine to Morris in the residence of the defendant property and that during four of those transactions the claimant was present and observed the transfer of cocaine and/or cash for cocaine. Morris has himself been convicted on drug trafficking charges and is presently in federal prison.

Agent Kelly reports in his affidavit that during an interview with one Daniel Letourneau, then under indictment on felony drug charges, Letourneau told of obtaining one-half kilogram of cocaine from Morris in the basement of the residence of the defendant property in October 1988, paying for a portion of it and receiving the balance on credit. Kelly also reports an account of one Tamra LaLiberte, a cooperating individual, of an occasion in the late summer or fall of 1988 when she observed Morris and her then-husband Mark LaLiberte use cocaine in the driveway of the defendant residence and observed Morris later the same day remove three or four bags, each containing several

ounces of cocaine, from a desk in the residence. According to LaLiberte, the claimant saw this cocaine and heard Morris and LaLiberte's husband discuss the fact that they expected someone to come to the defendant residence to pick up that cocaine. Finally, LaLiberte told of several instances between early 1988 and mid-1989 when she, her husband, Morris and the claimant consumed cocaine, usually provided by Morris and kept in the referenced desk, in the defendant residence.

On the issue of probable cause, the claimant contends that the affidavit of Agent Kelly contains unreliable hearsay. Objection to Government's Motion for Summary Judgment and Supporting Memorandum & 4. Specifically, she asserts that "[w]hen each hearsay statement is viewed in the context of the totality of the information provided in the Affidavit, the motive to fabricate becomes clear, and the credibility of each of the Government informants becomes questionable." *Id.* & 5.

Kelly addresses in his affidavit the reliability of both Letourneau and LaLiberte whose hearsay statements are reported. He explains that, as part of Letourneau's cooperation with the government pursuant to a plea agreement, Letourneau has provided information concerning the drug trafficking activities of Morris and others which Kelly and other investigators have independently corroborated. Moreover, according to Kelly, Letourneau has testified in several criminal trials in federal court which have resulted in the conviction of the charged defendants. Kelly also explains that the information LaLiberte has provided concerning the drug trafficking activities of Morris, the claimant and others, pursuant to a cooperation agreement with the government by the terms of which she has been assured that her statements will not be used directly against her, has been independently corroborated.

In the absence of the submission of any information of evidentiary quality to the contrary,<sup>2</sup> I conclude that the hearsay statements contained in Agent Kelly's affidavit satisfy the reliability requirement. In any event, Hudson's non-hearsay statements serve to establish probable cause to believe that the defendant property has been used in connection with Morris' felonious drug trafficking activities.

The government having established probable cause, the summary judgment record must reflect specific facts demonstrating that there is a material and genuine issue for trial in order for the claimant to avoid summary judgment. *Ortega-Rosario*, 917 F.2d at 73. It does not. Even though the claimant has asserted an "innocent owner" defense, she has presented no information of evidentiary quality supporting her position. *See* footnote 2 *supra*.

For the foregoing reasons, I hereby **GRANT** the government's motion for summary judgment against claimant Pierrette Morris. The government shall submit within 10 days of the date hereof a proposed judgment consistent herewith which reflects the previously acknowledged "innocent owner" status of claimants' Androscoggin Savings Bank and Maine Cellular.

Dated at Portland, Maine this 27th day of April, 1992.

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<sup>2</sup> Although the claimant has filed a statement of material facts, the statements contained therein may not be credited because they are not supported by appropriate record citations as required by Local rule 19(b)(2) or by a record of the kind required by Federal Rule of Civil Procedure 56(e) and Local Rule 16(g).

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David M. Cohen  
United States Magistrate Judge