UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
v.	)	
	)	
17 Bridge St, Lewiston, Maine;	)	
1830 Lisbon Street, Lewiston, Maine;	)	**Civ. No. 2:18-cv-00143-GZS**
230 Merrow Road, Auburn, Maine;	)	
249 Merrow Road, Auburn, Maine;	)	
with all appurtenances and	)	
improvements thereon,	)	
	)	
Defendants-*in-rem*.	)	

UNOPPOSED MOTION TO STAY

NOW COMES the United States, by and through its attorneys, Halsey B. Frank, the United States Attorney and Donald E. Clark, Assistant United States Attorney, and hereby moves to stay further proceedings in this civil forfeiture case, pursuant to the provisions of 18 U.S.C. § 981(g)(1) and to extend all deadlines, for a period of ninety (90) days. In support of this motion, the Government represents the following:

STATEMENT OF THE CASE

On April 2, 2018, the United States filed this civil forfeiture case seeking to forfeit the defendants-in-rem alleging that they were used to facilitate the commission of a felony violation of the Controlled Substances Act, 21 U.S.C. 801 et seq.

Between about April 3 and 4, 2018, notices of the pending civil forfeiture action and copies of the complaint were sent to the following parties and claimants: (1) Paul Murphy, Esq., for Comvest, Inc. (17 Bridge Street) and 1830 Lisbon St., LLC; (2) Verne Paradie, Esq. and Richard A. Merlino, Esq., for Timothy Veilleux; (3) Tim Zerillo, Esq., for Brian Bilodeau; (4) Scott Lynch, Esq., for Ty Properties/Tyler Poland (249 Merrow Rd.); (5) Jay P. McCloskey,

Esq., for MR, LLC/Kevin Dean (230 Merrow Rd.). Notice of the action and complaint were also sent to all known lienholders and municipal taxing authorities for Lewiston and Auburn.

To date, service has been accepted by Comvest, Inc. (17 Bridge Street); 1830 Lisbon St., LLC; Ty Properties and Kevin Dean (249 Merrow Rd.). (See Docket Item ## 6-9.)

There is an ongoing criminal investigation arising out of the same facts and circumstances that gave rise to this civil forfeiture case.

Attorneys representing Comvest, Inc.; 1830 Lisbon St., LLC; Timothy Veilleux; Brian Bilodeau; Ty Properties/Tyler Poland; and MR, LLC/Kevin Dean have stated that they do not object to the granting of this motion to stay. The government is unaware of any potential claimant who objects to the granting of this motion to stay.

ARGUMENT

A. Applicable Law

18 U.S.C. § 981(g) provides in relevant part:

> (1) Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a related criminal case. …
>
> (4) In this subsection, the terms "related criminal case" and "related criminal investigation" mean an actual prosecution or investigation in progress at the time at which the request for the stay, or any subsequent motion to lift the stay is made. In determining whether a criminal case or investigation is "related" to a civil forfeiture proceeding, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the two proceedings, without requiring an identity with respect to any one or more factors.

B. Discussion

Here, the criminal investigation and the civil forfeiture case arise out of the same facts and circumstances and are clearly related. See Docket Item # 1; United States v. Richard Daniels, 2:18-mj-00076-JHR-1, Docket Item # 1; United States v. Brian Bilodeau, 2:18-mj-00078-JHR-1, Docket Item # 1; United States v. Tyler Poland, 2:18-mj-00092-JHR-1, Docket Item # 1. The criminal investigation is ongoing and the parties, witnesses, facts, and circumstances involved in the two proceedings are the same.

Civil discovery will adversely affect the ability of the Government to conduct the criminal investigation. See United States v. One Assortment of 73 Firearms, 352 F. Supp. 2d 2, 4 (D. Me. 2005) (government satisfies its burden by showing civil discovery will subject the criminal investigation "to early and broader civil discovery than would otherwise be possible in the context of the criminal proceeding"). This is particularly so where, as here, the evidence in both cases arises out of a single investigation. See id.; United States v. $278,780.80 in Funds Formerly on Deposit ... in the name of Versacor, 2012 WL 4747209 (S.D.N.Y. Oct. 4, 2012) (granting a stay because the complete overlap between civil and criminal cases means that civil discovery is certain to adversely impact the criminal case). More importantly, pending resolution of the criminal investigation, claimants' Fifth Amendment rights against self-incrimination may prevent the Government from deposing them in the civil forfeiture case, or may result in an adverse inference against them. See id.

CONCLUSION

For the foregoing reasons, the Government moves for a stay of the civil forfeiture case and an extension of all deadlines for a period of ninety (90) days or until further order of the Court.

Dated: April 11, 2018

Respectfully submitted,

HALSEY B. FRANK
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UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and I will send notification of such filing to the following by email:

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