

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

UNITED STATES OF AMERICA

v.

ROBERTO RICIERI RIBEIRO;  
MARK RICHARD SPEARS;  
TIMOTHY ROSS STEWART;  
BELCORP OF AMERICA, INC.; and  
PLAYERS INTERNATIONAL  
SERVICE CORPORATION,

*Defendants,*

KneX Worldwide, LLC, and  
Galaxy Filters, LLC,

*Petitioners.*

Criminal No. 1:11cr00035

**REPORT AND  
RECOMMENDATION**

This matter is before the court on the Government’s Motion To Dismiss Ancillary Claim of KneX Worldwide, (Docket Item No. 330), and the Government’s Motion To Dismiss Petition For Adjudication Of Interest Pursuant to 21 U.S.C. § 853(a) Of Galaxy Filters, LLC, (Docket Item No. 331) (“Motions”). The Motions request the court to dismiss the ancillary claim of KneX Worldwide, LLC, (Docket Item No. 198) (“KneX’s Claim”), and the petition of Galaxy Filters, LLC, (Docket Item No. 195) (“Galaxy’s Claim”), (collectively, “Claims”), filed in this matter in response to the court’s October 18, 2012, Preliminary Order Of Forfeiture, (Docket Item No. 151) (“Forfeiture Order”). Pursuant to the court’s January 29, 2014, Order, (Docket Item No. 344), KneX Worldwide, LLC, (“KneX”), and Galaxy Filters, LLC, (“Galaxy”), have responded to the Motions.

No party has requested to be heard on the Motions. Therefore, the Motions are ripe for decision. The matters have been referred to the undersigned for a report and recommended disposition pursuant to 28 U.S.C. § 636(b)(1)(B).

The Government argues that the Claims are not sufficient as a matter of law, in that they do not assert an interest in any of the real estate or personal property ordered forfeited by the court. *See* Attachment A to Forfeiture Order. In particular, the Government argues that the Claims, at best, amount to attempts by general creditors to seek payment.

A review of KneX's Claim shows that it is seeking payment for unpaid invoices totaling \$74,296.67. KneX's Claim shows that all of these invoices except for one reflect that Mohammed Babul at Podder & Grandsons, Inc., was the customer. One invoice, in the amount of \$616.22, was issued to Mohammed Babul at Belcorp America Tobacco on September 28, 2011. KneX's Claim stated that the invoices for which it sought payment from the forfeited assets were for products provided to defendant Belcorp of America, Inc., ("Belcorp"), beginning in March 2010 through October 2011. KneX's Claim was not signed under penalty of perjury.

A review of Galaxy's Claim shows that Galaxy seeks payment for approximately \$63,000.00 in cigarette filters it delivered to defendant Belcorp. Galaxy claims that it received only \$5,729.14 in payment for these filters, leaving an unpaid balance of \$57,186.70. The invoices attached to Galaxy's Claim show a debt owed by Podder & Grandsons for filters shipped to Belcorp in the late summer of 2011. Galaxy's Claim is signed under penalty of perjury.

Under the criminal forfeiture statute, a person, other than the defendant, who is asserting a legal interest in forfeited property, may petition the court for a hearing to adjudicate the validity of the party's alleged interest in the property. *See* 21 U.S.C.A. § 853(n)(2) (West 2013). The petition must be signed under penalty of perjury and must outline the petitioner's right, title or interest in the property and the time and circumstances of the petitioner's acquisition of the right, title or interest in the property. *See* 21 U.S.C.A. § 853(n)(3) (West 2013). To prevail, a petitioner must establish by a preponderance of the evidence that:

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section....

21 U.S.C.A. § 853(n)(6)(A)-(B) (West 2013). *See United States v. Reckmeyer*, 836 F.2d 200, 203-04 (4<sup>th</sup> Cir. 1987).

Under Federal Rules of Criminal Procedure Rule 32.2, these petitions may be dismissed for "lack of standing, for failure to state a claim, or for any other lawful reason." FED. R. CRIM. P. 32.2(c)(1)(A). In considering one of these motions, the court must assume that all facts set out in petition are true. *See* FED. R. CRIM. P. 32.2(c)(1)(A).

Here, the Government has moved to dismiss the Claims. In particular, the Government argues that the court should dismiss the Claims because, as general creditors, KneX and Galaxy have no legal interest in the property ordered to be forfeited. The Fourth Circuit Court of Appeals held in *Reckmeyer* that an unsecured or general creditor of a person whose property is subject to forfeiture does have a legal interest in the debtor's property. *See Reckmeyer*, 836 F.2d at 205. The difficulty comes, the court recognized, when the creditor is required to show an interest in a particular asset sought to be forfeited. *See Reckmeyer*, 836 F.2d at 206. This difficulty does not arise, however, when, as in *Reckmeyer*, the Government seeks forfeiture of all of a debtor's assets or the debtor's entire estate. Because a general creditor's legal interests "necessarily lie within that estate," the court held that, in such cases, general creditors have standing to oppose forfeiture. *Reckmeyer*, 836 F.2d at 206.

In this case, the Preliminary Order Of Forfeiture covers a five-page list of assets owned by the defendants. These assets include amounts of currency seized, amounts of tobacco proceeds, numerous financial accounts, numerous vehicles and proceeds from the sales of numerous vehicles, proceeds from the sale of one piece of real property and five other pieces of real property, factory equipment and personal property such as bottles of wine and liquor, books and artwork. Despite this lengthy list of assets to be forfeited, the Government argues that it is not seeking forfeiture of all of the defendants' assets. Therefore, the Government argues, the reasoning of *Reckmeyer* does not apply. The Government has not, however, provided the court with any proof that it is not seeking forfeiture of all of the defendants' assets. This representation is contained in unsworn memoranda, which are not accompanied by any affidavits. Therefore, I recommend that the

court hold that it is inappropriate to dismiss the Claims based on this reason at this time.

The Government also argues that the Claims should be dismissed because the invoices for which reimbursement is sought were not issued to the defendants, and, therefore, do not establish a debt owed by the defendants. The invoices attached to the Claims do show that they were addressed to an entity known as Podder & Grandsons, Inc. The Claims, however, do state that these invoices were for products delivered to, and used by, defendant Belcorp. Assuming this assertion to be true, it appears to be legally sufficient to establish a debt owed by the defendant Belcorp.

### **RECOMMENDED DISPOSITION**

Based on the above, I recommend that the court deny the Government's motion to dismiss Galaxy's Claim and set that Claim for ancillary proceeding. I further recommend that the court dismiss KneX's Claim, although not based on the Government's Motion. Instead, I recommend that KneX's Claim be dismissed because it does not meet the requirements of 18 U.S.C. § 853(n)(3), in that it was not signed under penalty of perjury.

### **Notice to Parties**

Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C):

Within fourteen days after being served with a copy [of this Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations as

provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed finding or recommendation to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence to recommit the matter to the magistrate judge with instructions.

Failure to file written objection to these proposed findings and recommendations within 14 days could waive appellate review. At the conclusion of the 14-day period, the Clerk is directed to transmit the record in this matter to the Honorable James P. Jones, United States District Judge.

The Clerk is directed to send copies of this Report and Recommendation to all counsel of record and unrepresented parties.

DATED: May 7, 2014.

/s/ Pamela Meade Sargent  
UNITED STATES MAGISTRATE JUDGE