UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

# United States v. 4492 South Livonia Road

889 F.2d 1258 (2d Cir. 1989) · Decided November 17, 1989

## SUMMARY

The Second Circuit reviewed the civil forfeiture of a home and surrounding real property under 21 U.S.C. § 881(a)(7). It held that, under the circumstances, the government's seizure of the claimant's home without prior notice and an adversarial hearing violated due process because no exigent circumstances justified postponing a hearing. The court nevertheless affirmed the subsequent forfeiture judgment because the improper seizure did not require forfeiture of the property, and no evidence obtained through the improper seizure was used.

## CASE DETAILS

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| COURT | United States Court of Appeals for the Second Circuit |
| WRITING FOR THE COURT | Irving R. Kaufman Feinberg; Dumbauld; Feinberg; Newman |
| JURISDICTION | Federal |
| DECIDED | November 17, 1989 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | Peter Serafine appealed from a final judgment of forfeiture entered for the United States in an in rem civil forfeiture action involving his home and surrounding real property. He challenged the denial of his motions to dismiss and for return of property, the seizure of the premises, and the district court's grant of summary judgment. |
| STANDARD OF REVIEW | De novo review of the district court's legal conclusions concerning jurisdiction, constitutional due process, pleading sufficiency, and the propriety of summary judgment; summary judgment was proper where the government's probable-cause showing was sufficient and the claimant produced no evidence establishing an applicable defense. |
| PRECEDENTIAL VALUE | Published federal appellate opinion; precedential within the Second Circuit subject to later authority. |
| PARTIES | Peter Serafine v. United States |

## TOPICS

civil procedure · summary judgment · subject matter jurisdiction · due process · real estate

## PRACTICE AREAS

civil forfeiture · constitutional due process · real property · civil procedure · appellate procedure

## QUESTIONS PRESENTED

1. Whether Serafine had Article III standing to appeal despite failing to file a formal claim and answer in the in rem forfeiture proceeding.
2. Whether 21 U.S.C. § 881(a)(7), as applied to the seizure of a claimant's home, permitted seizure without prior notice and an adversary hearing.
3. Whether the government's forfeiture complaint satisfied Supplemental Rule E(2)(a)'s particularity requirement.
4. Whether the district court properly granted summary judgment based on hearsay and partially disputed evidence.
5. Whether the government established probable cause connecting the property to narcotics activity and whether Serafine established an innocent-owner or other defense.
6. Whether the forfeiture was invalid because the government's initial seizure of the property was unlawful.
7. Whether the government was required to prove the forfeiture by the criminal beyond-a-reasonable-doubt standard.
8. Whether the territorial scope of the forfeiture could be challenged for the first time on appeal.

## HOLDINGS

1. An owner of property subject to an in rem forfeiture has Article III standing, and technical noncompliance with procedural claim-filing requirements may be excused when the claimant demonstrates a sufficient property interest through a motion and supporting affidavits.
2. The government may not seize a claimant's home at the inception of a civil forfeiture action without prior notice and an opportunity for an adversary hearing absent exigent circumstances justifying postponement of those procedures.
3. An unlawful seizure does not, standing alone, immunize property from later civil forfeiture when the government does not use evidence obtained through the unlawful seizure in the forfeiture proceeding.
4. The forfeiture complaint satisfied Supplemental Rule E(2)(a), or any pleading defect was cured, because the complaint and supporting Brainard affidavit adequately identified the dates, circumstances, locations, participants, drugs, and paraphernalia underlying the forfeiture claim.
5. In a civil forfeiture proceeding under § 881, the government may establish the probable cause component of its prima facie case through hearsay evidence traditionally sufficient to establish probable cause.
6. Summary judgment for the government was proper because undisputed evidence established probable cause connecting the property to narcotics activity, and Serafine produced no evidence establishing that the property was not used unlawfully or that he lacked knowledge or consent.

7. The government need establish probable cause to connect the property with narcotics activity; it need not link the property to a particular transaction, and the evidence here established the requisite sufficient nexus.
8. The government was not required to prove the forfeiture beyond a reasonable doubt; the statutory civil forfeiture framework required only a probable-cause showing sufficient to shift the burden of persuasion to the claimant.

### KEY QUOTATIONS

> *"In sum, under all the circumstances there were no exigent circumstances justifying the seizure of Serafine's home when the forfeiture action was started."* (1265)

> *"Although we hold that the government's seizure of the premises containing Serafine's home at the inception of the civil forfeiture action was improper, we affirm the district court's later judgment of forfeiture on the motion for summary judgment."* (1271)

### FACTUAL BACKGROUND

The government sought forfeiture of a 120-acre parcel containing Serafine's home, barns, and outbuildings under 21 U.S.C. § 881(a)(7), alleging that the property facilitated cocaine distribution. DEA evidence connected two cocaine purchases to visits by the seller to the property, and a later warranted search found cocaine, drug paraphernalia, weapons, and $19,000 in cash, including money matching bills used in the purchases. The government filed a lis pendens and seized the property, but allowed Serafine to remain in the home under an occupancy agreement. Serafine later pleaded guilty in state court to selling cocaine on one of the relevant dates.

### PROCEDURAL HISTORY

The United States commenced an in rem forfeiture action on December 15, 1986, alleging that the property facilitated cocaine distribution. The property was seized the next day pursuant to a clerk-issued warrant and an ex parte probable-cause seizure warrant obtained from a magistrate. The district court denied Serafine's motions to dismiss and for return of property, later granted the government's motion for summary judgment, and entered an order of forfeiture. The Second Circuit held the initial seizure improper but affirmed the later forfeiture judgment.

### DISPOSITION

affirmed

### CASES CITED

- United States v. $38,000.00 in United States Currency, 816 F.2d 1538, 1543-44, 1547-48 (11th Cir. 1987)
- United States v. U.S. Currency, in the Amount of $103,387.27, 863 F.2d 555, 560 & n. 10 (7th Cir. 1988)
- United States v. United States Currency in the Amount of $2,857.00, 754 F.2d 208, 213 (7th Cir. 1985)
- United States v. $359,500 in United States Currency, 828 F.2d 930, 934 (2d Cir. 1987)
- Crowell v. Benson, 285 U.S. 22, 62 (1932)

- Fuentes v. Shevin, 407 U.S. 67, 81-82, 90-91 (1972)
- Goldberg v. Kelly, 397 U.S. 254 (1970)
- Sniadach v. Family Finance Corp., 395 U.S. 337, 342 (1969)
- Mitchell v. W.T. Grant Co., 416 U.S. 600, 611-19 (1974)
- Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 677 n. 12, 678-80 (1974)
- United States v. Karo, 468 U.S. 705, 714 (1984)
- Payton v. New York, 445 U.S. 573, 590 (1980)
- G.M. Leasing Corp. v. United States, 429 U.S. 338, 354, 358-59 (1977)
- United States v. Reed, 572 F.2d 412, 422 (2d Cir. 1978)
- United States v. Single Family Dwelling, Civ. No. 85-0246-F, slip op. at 38 (D. Mass. Nov. 26, 1986)
- United States v. Certain Real Estate Property, 612 F. Supp. 1492, 1498 (S.D. Fla. 1985)
- United States v. One 1978 Mercedes Benz, Four-Door Sedan, 711 F.2d 1297, 1303 (5th Cir. 1983)
- United States v. One 1975 Pontiac Le-mans, 621 F.2d 444, 450-51 (1st Cir. 1980)
- United States v. One (1) 1971 Harley-Davidson Motorcycle, 508 F.2d 351 (9th Cir. 1974)
- United States v. Pole No. 3172, Hopkinton, 852 F.2d 636, 638-41 (1st Cir. 1988)
- United States v. $39,000 in Canadian Currency, 801 F.2d 1210, 1220-22 (10th Cir. 1986)
- United States v. One 56-Foot Motor Yacht Named Tahuna, 702 F.2d 1276, 1283, 1287 (9th Cir. 1983)
- United States v. One 1975 Mercedes 280S, 590 F.2d 196, 199 (6th Cir. 1978)
- United States v. Parcel of Real Property Known as 6109 Grubb Road, 886 F.2d 618 (3d Cir. 1989)
- United States v. $2,500 in United States Currency, 689 F.2d 10, 12, 15-16 (2d Cir. 1982)
- United States v. $321,470.00, United States Currency, 874 F.2d 298, 299 (5th Cir. 1989)
- United States v. Premises Known as 526 Liscum Drive, Dayton, Montgomery County, 866 F.2d 213, 216-17 n. 3 (6th Cir. 1989)
- United States v. All Those Certain Lots in Virginia Beach, 657 F. Supp. 1062, 1065 (E.D. Va. 1987)
- United States v. One 1986 Mercedes Benz, 846 F.2d 2, 4-5 (2d Cir. 1988) (per curiam)
- United States v. About 151.682 Acres of Land, 99 F.2d 716 (7th Cir. 1938)
- United States v. A Parcel of Land with a Building Located Thereon at 40 Moon Hill Road, 884 F.2d 41, 44-45 (1st Cir. 1989)
- United States v. Santoro, 866 F.2d 1538, 1540, 1543 (4th Cir. 1989)
- United States v. Reynolds, 856 F.2d 675, 677 (4th Cir. 1988)
- United States v. Eight Thousand Eight Hundred and Fifty Dollars ($8,850) in United States Currency, 461 U.S. 555, 562 & n. 12 (1983)
- Application of Kingsley, 802 F.2d 571, 578 (1st Cir. 1986)

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