

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

Case No.: 3:14-cv-1428-TJC-PDB

REAL PROPERTY, INCLUDING
ANY BUILDINGS, APPURTENANCES,
AND IMPROVEMENTS THEREON,
LOCATED AT 4866 YACHT BASIN DRIVE,
2119 PIERCE ARROW DRIVE,
and 14658 FERN HAMMOCK DRIVE,
JACKSONVILLE, FLORIDA, and
RESTAURANT AND MARKET
EQUIPMENT PURCHASED for
PANGEA ISLAND MARKET and GRILLE,

Defendants.

**CONSENT MOTION FOR ENTRY OF AN ORDER FOR INTERLOCUTORY
SALE AND SUBSTITUTE RES**

The United States of America, by and through the undersigned
Department of Justice Trial Attorney, hereby moves the Court for entry of an
Court Order for Interlocutory Sale of restaurant and market equipment purchased
for Pangea Island Market and Grille named as a defendant in the above-
captioned matter, and in support thereof, submits the following:

MEMORANDUM OF LAW

I. Background

1. The United States filed a Verified Complaint for Forfeiture *In Rem* in
the United States District Court for the Middle District of Florida on November 21,

2014, alleging that the defendant properties are subject to forfeiture to the United States pursuant to 18 U.S.C. §§ 981(a)(1)(A) and (a)(1)(C). The defendant properties include items purchased for Pangea Island Market and Grille in St Johns, Florida (the “Defendant Restaurant and Market Equipment”).

2. As alleged in the Verified Complaint, Pangea Island Market and Grille was a fish market and restaurant operated by Mamadie Touré, a Guinean national residing in the United States. The Verified Complaint alleges that Touré, through a company she created called Pangea Island, LLC, originally purchased the Defendant Restaurant and Market Equipment between February and September of 2013. Touré also formed several other companies and opened bank accounts in their names, including Matinda & Co., LLC, Pangea Island Grille, LLC, and Pangea Island Market, LLC.

3. On December 2, 2014, the Clerk issued a Warrant of Arrest *In Rem* for the Defendant Restaurant and Market Equipment.

4. On January 12, 2015, Bartram Springs Center LLC (“Bartram Springs”) filed a Verified Claim, claiming an ownership interest in the Defendant Restaurant and Market Equipment. On February 2, 2015, Bartram Springs filed an Answer and Affirmative Defenses.

5. Bartram Springs has represented that it owns the premises used to operate Pangea Island Market and Grille -- 132 Everest Lane, Suite 1, St. Johns, St. Johns County, Florida, 32259, and 164 Everest Lane, Suite 5, St. Johns, St. Johns County, Florida, 32259 -- which it had leased to Matinda & Co., LLC (the

“Restaurant and Market Property”).

6. On January 16, 2015, Accelerated Contractors LLC (“Accelerated Contractors”) provided the United States with a March 20, 2014, recorded claim of lien against property owned by Pangea Island Grille, LLC, of a total value of \$298,319.29, of which an unpaid principal of \$24,776.29 remained. Accelerated Contractors also provided a payment record showing that Pangea Island Grille, LLC, subsequently made a \$5,000 payment, which had reduced the amount owed to \$21,616.09 (including interest) as of June, 2014. Accelerated Contractors has represented that Pangea Island Grille, LLC, retained Accelerated Contractors to perform construction work on the Restaurant and Market Property.

7. Pangea Island Market and Grille are no longer operating. On November 20, 2014, Bartram Springs obtained a Writ of Possession for the Restaurant and Market Property, after filing a lawsuit alleging that Pangea Island Market, LLC, and Pangea Island Grille, LLC, had failed to pay the rent owed on their leases for the Restaurant and Market Property.

8. The Defendant Market and Restaurant Equipment remain at the Restaurant and Market Property, however (with the exception of approximately 15 items, which are currently in custody of the FBI). Bartram Springs has represented that it has not been able to lease the Restaurant and Market Property to a new tenant while the Defendant and Restaurant Market Equipment remain on the premises. Bartram Springs has further represented that it has two

potential tenants who have been waiting for the two storefronts to be vacated, and Bartram Springs is losing rent in the amount of \$9,317.17 per month (\$4,590.67 for one unit and \$4,726.50 for the other) as a result of the seized equipment occupying the space and preventing the new tenants from being able to move in.

9. The United States has given direct notice, by Federal Express, to Mamadie Touré (including Matinda & Co., LLC; Matinda & Co., Ltd.; Matinda Holdings, LLC; Pangea Island, LLC; Pangea Island Grille, LLC; and Pangea Island Market, LLC), Bartram Springs, Accelerated Contractors, Patterson Scale and Restaurant Equipment, BridgeWell Capital LLC and EquityMax, Inc.¹ The United States has also published notice for 30 days on the government's internet forfeiture website, www.forfeiture.gov.

10. Aside from Bartram Springs, Accelerated Contractors, and Mamadie Touré, no other individuals or entities have filed claims or contacted the United States regarding potential claims to the Defendant Market and Restaurant Equipment, and the time for doing so has expired.

II. Legal Argument

A. The Defendant Restaurant and Market Equipment Should Be Sold in an Interlocutory Sale to Preserve Its Value and to Enable Bartram Springs to Lease Its Property

11. Under certain circumstances, the Court has the authority to order

¹ BridgeWell Capital LLC and EquityMax Inc. received direct notice because of their potential interest in one or more of the real properties named as defendants in this action, not the Defendant Restaurant and Market Equipment.

an interlocutory sale of property that is subject to civil forfeiture before any final adjudication of the government's forfeiture action. Pursuant to Rule G(7)(b)(i) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, this Court may order an interlocutory sale upon finding any of the following to be true: 1) the property is perishable or at risk of deterioration, decay, or injury by being detained in custody pending the action; 2) the expense of keeping the property is excessive or is disproportionate to its fair market value; 3) the property is subject to a mortgage or to taxes on which the owner is in default; or 4) the Court finds other good cause.

12. The Defendant Restaurant and Market Equipment is appropriate for interlocutory sale for several reasons. First, its value is fast depreciating. The Verified Complaint alleges that the Defendant Restaurant and Market Equipment was purchased for approximately \$278,000 in 2013. The United States' appraisal valued the property at less than one-third that amount – approximately \$87,000 – in January, 2015. Waiting to sell the property will only result in further deterioration of its value.

13. Second, the Defendant Restaurant and Market Equipment is currently sitting in the Restaurant and Market Property, preventing Bartram Springs from re-letting the premises to other tenants. Future tenants may not plan to operate a fish restaurant (or any restaurant at all), and would thus have little use for items such as fish display cases that are among the Defendant Restaurant and Market Equipment.

14. Third, it is not cost-effective for the U.S. Marshals Service to pay to remove and store the Defendant Restaurant and Market Equipment for the pendency of this lawsuit. The Defendant Restaurant and Market Equipment includes such bulky, difficult-to-remove items as refrigerators, sinks, a commercial stove, and a walk-in freezer. The costs of removing, storing, and disposing of the equipment would be considerable – and could exceed the appraised value of the items – and the United States could be exposed to additional liability for any damage to the Restaurant and Market Property caused by the removal of the Defendant Restaurant and Market Equipment.

15. Fourth, Accelerated Contractors has filed a lien against the Defendant Restaurant and Market Equipment based on Pangea's unpaid construction bills, and interest on the unpaid balance continues to accumulate. Accelerated has represented that Pangea is liable for interest at the rate of 18% per annum on the unpaid principal.

16. Where, as here, the property is declining in value because of depreciation and debt, courts have ordered interlocutory sales. See, e.g., *United States v. Real Property Located at 22 Santa Barbara Drive*, 264 F.3d 860, 866-67 (9th Cir. 2001) (stipulated sale paid off mortgage); *United States v. Pelullo*, 178 F.3d 196, 198-99 (3d Cir. 1999) (interlocutory sale approved over criminal defendant's objections where equity was being depleted by accruing taxes and interest on mortgagee's foreclosure judgment); *United States v. One Parcel of Real Property Described as Lot 41, Berryhill Farm Estates*, 128 F.3d 1386, 1389-

90 (10th Cir. 1997) (district court granted Government's unopposed motion for interlocutory sale and confirmed sale after Government asserted that property was subject to deterioration and decay); *United States v. 2003 BMW X5 SUV*, Civ. No. 14-0912, 2015 WL 845661, at *1 (D. Md. Feb. 24, 2015) ("The Court finds that the Government's desire to avoid storage costs . . . and the risk of depreciation in value . . . constitute 'good cause' for the interlocutory sale of the personal property") (citing *United States v. Hailey*, Cr. No. 11-0540, 2011 WL 6202787, at *1 (D. Md. Dec. 8, 2011); *United States v. One 1979 Peterbilt*, Civ. A. No. 93-1166, 1994 WL 99540, *2 (E.D. La. Mar. 18, 1994) (granting unopposed motion for interlocutory sale because of depreciating value of vehicle, expense of storing vehicle, and interest accumulating at 17% per year).

B. The Stipulated Sale Process

17. Supplemental Rule G further provides that "[t]he sale is governed by 28 U.S.C. §§ 2001, 2002, and 2004, unless all parties, with the court's approval, agree to the sale, aspects of the sale, or different procedures." After the sale takes place, "[s]ale proceeds are a substitute res subject to forfeiture in place of the property that was sold." Fed. R. Civ. P. Supp. G(7)(b)(iv).

18. Here, the parties agree that the Defendant Restaurant and Market Equipment will be sold by the United States Marshals Service pursuant to the following terms:

19. The Defendant Restaurant and Market Equipment will be sold to Bartram Springs for \$45,000. No further hearing or notice shall be required.

20. Bartram Springs will waive and release any and all claims arising from and resulting from the seizure, detention, and forfeiture of any of the defendants in this action.

21. From the \$45,000 received from Bartram Springs, the United States will pay Accelerated Contractors \$16,000, in satisfaction of Accelerated Contractor's lien.

22. Accelerated Contractors will waive and release any and all claims arising from and resulting from the seizure, detention, and forfeiture of any of the defendants in this action.

23. The funds remaining from the proceeds of the sale of the Defendant Restaurant and Market Equipment will be substituted as a defendant in the above-captioned matter (the "Substitute *Res*") and will be deposited into the United States Marshals Seized Asset Deposit Fund.

24. Mamadie Touré, and any entity owned or controlled by her, including but not limited to Matinda & Co., LLC; Matinda & Co., Ltd.; Matinda Holdings, LLC; Pangea Island, LLC; Pangea Island Grille, LLC; Pangea Island Market, LLC, will waive and release any and all claims to the Defendant Restaurant and Market Equipment or the Substitute *Res*.

25. Each party agrees to bear its own costs and attorneys' fees.

26. A final order of forfeiture shall be entered forfeiting the Substitute *Res* to the United States.

C. Further Representations by Bartram Springs and Accelerated Contractors

27. Bartram Springs and Accelerated Contractors shall release and hold harmless the United States, and any agents, servants, and employees of the United States (and any involved state or local law enforcement agencies and their agents, servants, or employees), in their individual or official capacities, from any and all claims by Bartram Springs, Accelerated Contractors, and their agents that currently exist or that may arise as a result of the Government's actions against and relating to any of the defendant properties.

28. Bartram Springs and Accelerated Contractors shall further agree not to pursue any other rights they may have under with regard to the defendant properties or the Substitute *Res*, including but not limited to the right to foreclose upon and sell the Defendant Restaurant and Market Equipment, any right to assess additional interest or penalties, any right to litigate interests in the defendant properties or Substitute *Res* further, and any right to petition for remission or mitigation of the forfeiture.

29. Bartram Springs and Accelerated Contractors understand and agree that the United States reserves the right to withdraw its consent to an interlocutory sale if, before the sale, the Department of Justice obtains new information indicating that Bartram Springs or Accelerated Contractors is not an "innocent owner" or "bona fide purchaser" pursuant to the applicable forfeiture statutes.

III. Local Rule 3.01(g) Certification

30. Pursuant to Local Rule 3.01(g), the undersigned has conferred with

Jennifer Mansfield, Esquire, counsel for Bartram Springs; Mary Mulligan, counsel for Mamadie Touré; and has been authorized to represent that they consent on behalf of their clients and/or employers to the relief sought in this motion. The undersigned has also conferred with Bradley Hollett of Accelerated Contractors, and has been authorized to represent that Accelerated Contractors consents to the relief sought in this motion.

IV. Conclusion

31. WHEREFORE, the United States requests that this Court enter two orders: an Order of Interlocutory Sale of the Defendant Restaurant and Market Equipment directing that the sale proceed as set forth above and substituting the sale proceeds as a *res*, and a Final Order of Forfeiture as to the Substitute *Res*.

32. Respectfully submitted,

Dated: May 4, 2015

Respectfully Submitted,

M. KENDALL DAY, CHIEF,
Asset Forfeiture and Money Laundering Section
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