NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Joseph A. Greenaway, Jr.
	:	Criminal No. 04-617
v.	:	**OPINION**
MARIA CAROLINA NOLASCO	:	

GREENAWAY, JR., U.S.D.J.

This matter comes before the Court on the motions for summary judgment by Petitioners,[1] pursuant to FED. R. CRIM. P. 32.2(c) and FED. R. CIV. P. 56. Although the Petitioners initially styled these motions in different ways (e.g., motion for the return of seized funds, motion to amend the Order of Forfeiture), these motions will be construed as motions for summary judgment.[2] For the reasons set forth below, Petitioners' motions will be granted.

BACKGROUND

Defendant Maria Nolasco ("Nolasco") was employed by Valley National Bank, where she

[1] Movants are twenty-two petitioners: (1) Armando Pereira Reis and Jose Moacir Guimaraes, (2) Avion Resources Ltd., (3) Bahia Blanca Ltd., (4) Best Consulting Ltd., (5) Beverly Hills Group. Inc., (6) Bradner Investments S.A., (7) Braza Corp., (8) Chettiar Business, Inc., (9) Fares Baptista Pinto and Jose Baptista Pinto Neto, (10) Farswiss Asset Management Ltd., (11) Fausto L. Guimaraes and Helder J.S.F. Taveira, (12) Gatex Corp., (13) Harber Corp., (14) Harborside Corp., (15) Mabon Corp., (16) Midland Financial, Inc., (17) Phoenix Export Import S.A., (18) Piedade Pedro de Almeida, (19) Pompeu Costa Maia and Isabel Cristina Dutra Pinheiro Maia, (20) Safe Port Investment Corp., (21) Silver Commodities Ltd., and (22) Tigrus Corp. (collectively, "Petitioners.") Best Consulting and Braza did not file motions, but were granted leave to join in the motions for summary judgment. (Hr'g Tr. 55, Apr. 12, 2006.)

[2] See FED. R. CRIM. P. 32.2(c)(1)(B) infra.

managed a number of bank accounts. On June 27, 2002, she was arrested and later charged with, inter alia, filing false tax returns and operating a money transmitting business without a license, pursuant to 18 U.S.C. § 1960. At the same time, the United States of America (the "Government") seized over 21 million dollars held in approximately thirty-nine different bank accounts that Nolasco managed.

On October 4, 2004, the Defendant pled guilty to tax evasion and operating an illegal money transmission business, and agreed to forfeit whatever interest she may have had in the seized funds. The Government commenced criminal forfeiture proceedings, pursuant to 18 U.S.C. § 982. On December 13, 2004, in accordance with a plea agreement, this Court entered a consent judgment and a Preliminary Order of Forfeiture. Following publication of notice, twenty-four petitions challenging the forfeiture were timely filed with this Court. The Government then filed twenty-four motions to dismiss the petitions for failing to meet the specific pleading requirements of 21 U.S.C. § 853(n)(3), and for failing to demonstrate that Petitioners had standing, pursuant to § 853(n), to seek judicial review of the criminal forfeiture. The Petitioners responded with opposition papers, as well as the instant motions. The Government declined to respond to the Petitioners' motions for summary judgment at that time, calling them "premature." (Gov.'s Mot. Dis. Reply Br. 2-3.)

This Court held a hearing on the Government's motions to dismiss the petitions on April 12, 2006. At this hearing, two of the Government's motions were granted, and twenty-two were denied. (Hr'g Tr. 61, Apr. 12, 2006; Order of April 25, 2006.) A schedule was set for briefing of the instant motions.

LEGAL STANDARD

I. Criminal forfeiture: the ancillary proceeding

When sentencing a defendant for a violation of 18 U.S.C. § 1960, the Court is authorized to order the forfeiture to the United States of property involved in the offense, pursuant to 18 U.S.C. § 982. Following the entry of an order of forfeiture, and publication of notice, third parties claiming an interest in the forfeited property may contest the forfeiture, pursuant to 21 U.S.C. § 853(n). This section sets forth a procedure to adjudicate the validity of the order of forfeiture, known as an ancillary proceeding. In brief, the petitioner may invalidate the order of forfeiture by establishing, by a preponderance of the evidence, that the petitioner has a legal right, title, or interest in the property that was superior to any right, title, or interest of the defendant at the time of the crime. 21 U.S.C. § 853(n)(6)(A).

Additional procedural rules for conducting the ancillary proceeding are set forth in FED. R. CRIM. P. 32.2(c). The provision in Rule 32.2(c)(1)(B) states:

> After disposing of any motion filed under Rule 32.2(c)(1)(A) and before conducting a hearing on the petition, the court may permit the parties to conduct discovery in accordance with the Federal Rules of Civil Procedure if the court determines that discovery is necessary or desirable to resolve factual issues. When discovery ends, a party may move for summary judgment under Federal Rule of Civil Procedure 56.

II. Summary Judgment

Summary judgment is appropriate under FED. R. CIV. P. 56(c) when the moving party demonstrates that there is no genuine issue of material fact and the evidence establishes the moving party's entitlement to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). A factual dispute is genuine if a reasonable jury could return a verdict for

the non-movant, and it is material if, under the substantive law, it would affect the outcome of the suit. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). "In considering a motion for summary judgment, a district court may not make credibility determinations or engage in any weighing of the evidence; instead, the non-moving party's evidence 'is to be believed and all justifiable inferences are to be drawn in his favor.'" Marino v. Indus. Crating Co., 358 F.3d 241, 247 (3d Cir. 2004) (quoting Anderson, 477 U.S. at 255).

"When the moving party has the burden of proof at trial, that party must show affirmatively the absence of a genuine issue of material fact: it must show that, on all the essential elements of its case on which it bears the burden of proof at trial, no reasonable jury could find for the non-moving party." In re Bressman, 327 F.3d 229, 238 (3d Cir. 2003) (quoting United States v. Four Parcels of Real Property, 941 F.2d 1428, 1438 (11th Cir.1991)). "[W]ith respect to an issue on which the nonmoving party bears the burden of proof . . . the burden on the moving party may be discharged by 'showing' – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party's case." Celotex, 477 U.S. at 325.

Once the moving party has satisfied its initial burden, the party opposing the motion must establish that a genuine issue as to a material fact exists. Jersey Cent. Power & Light Co. v. Lacey Township, 772 F.2d 1103, 1109 (3d Cir. 1985). The party opposing the motion for summary judgment cannot rest on mere allegations and instead must present actual evidence that creates a genuine issue as to a material fact for trial. Anderson, 477 U.S. at 248; Siegel Transfer, Inc. v. Carrier Express, Inc., 54 F.3d 1125, 1130-31 (3d Cir. 1995). "[U]nsupported allegations . . . and pleadings are insufficient to repel summary judgment." Schoch v. First Fid.

Bancorporation, 912 F.2d 654, 657 (3d Cir. 1990); see also FED. R. CIV. P. 56(e) (requiring nonmoving party to "set forth specific facts showing that there is a genuine issue for trial"). "A nonmoving party has created a genuine issue of material fact if it has provided sufficient evidence to allow a jury to find in its favor at trial." Gleason v. Norwest Mortg., Inc., 243 F.3d 130, 138 (3d Cir. 2001).

If the nonmoving party has failed "to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial, . . . there can be 'no genuine issue of material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Katz v. Aetna Cas. & Sur. Co., 972 F.2d 53, 55 (3d Cir. 1992) (quoting Celotex, 477 U.S. at 322-23).

DISCUSSION

I. Petitioners' Motions for Summary Judgment

Petitioners' argument is straightforward: Nolasco had no right, title, or interest in the bank accounts, and so she had nothing to forfeit. Petitioners contend that the Government has not even alleged that Nolasco had any such right, title, or interest, no less offered evidence of it. Nor has the Government disputed that Petitioners are the registered holders of the seized bank accounts. As there is no dispute that Nolasco had no interest, and no dispute that the account holders have an interest in the accounts, Petitioners ask that summary judgment be entered in their favor.

At the hearing on the Government's motions to dismiss, this Court asked the Government repeatedly to articulate a basis on which this Court might conclude that Nolasco had a forfeitable

interest in the bank accounts, or a basis for the Government to continue to hold the funds if Nolasco had no such interest. (Hr'g Tr. 38, 40, 42, 52, Apr. 12, 2006.) The Government asked for the opportunity to brief a response. (Id. at 40.) This Court granted the Government's request and ordered the parties to brief two issues: 1) did Nolasco have a forfeitable interest in the accounts? 2) if the consent judgment is vacated, what order should take its place? (Id. at 53, 58.)

The Government submitted a brief that makes no claim that Nolasco had any right, title, or interest in the accounts. Rather, the Government's answer to the first question is stated in a single sentence in a footnote: "Discovery of the parties in whose names those accounts were held – the petitioners – would be necessary to determine the nature and extent of defendant Nolasco's interest in the seized bank accounts."[3] (Gov.'s Opp. Br. 4 n.3.) This states the Government's response to this Court's question on Nolasco's interest in its entirety. Conspicuously absent is any legal theory of Nolasco's interest in the property, as well as any explanation of what evidence might be found through discovery to support such a theory. In sum, the Government asks this Court to continue to take on faith that it may, somehow, one day, demonstrate a right to this property. After four years, it is neither legal nor just to do so.

To defeat a motion for summary judgment, the Government must present actual evidence that creates a genuine issue as to a material fact for trial. Anderson, 477 U.S. at 248. The Government has offered no evidence whatever. No reasonable jury could find in the Government's favor based on the present record.

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[3] Even if this Court were to interpret this statement as a request for discovery pursuant to FED. R. CIV. P. 56(f), the substance of the response is insufficient to comply with Rule 56(f). The Government fails to set forth a good faith basis to believe that Nolasco might have a right, title, or interest in the accounts that discovery would uncover.

The Government has offered this Court no basis from which to conclude that Nolasco had any right, title, or interest in the forfeited property.[4] Petitioners have submitted sworn affidavits as evidence that they are the registered holders of the bank accounts, and the Government does not dispute this. Since Nolasco has no rights, Petitioners' rights to the accounts are necessarily superior to Nolasco's. Petitioners have satisfied the statutory requirement of establishing, by a preponderance of the evidence, that each petitioner has a legal right, title, or interest in the property that was superior to any right, title, or interest of the defendant Nolasco at the time of the crime. 21 U.S.C. § 853(n)(6).

The Government submitted a brief in which it ignored this Court's Order of April 12, 2006. Rather than answer the question that this Court asked – did Nolasco have a forfeitable interest in the accounts? – the Government is recycling the argument it made in its motions to dismiss: the petitioners lack standing to challenge the forfeiture. This Court rejected that argument when the Government made it before, and it rejects it now. Had this Court agreed with the Government's standing argument, the Government's motions to dismiss the Petitions would have been granted.

The doctrine of the law of the case bars relitigation of the issue of Petitioners' standing. This doctrine militates against re-deciding issues of law previously resolved in the same case, either expressly or by implication. Public Interest Research Group of N.J., Inc. v. Magnesium Elecktron, Inc., 123 F.3d 111, 116 (3d Cir. 1997). When this Court denied the motions to dismiss, it decided that the Petitioners had standing to contest the forfeiture. The law of the case

[4] Nor has the Government developed a theory under which Nolasco *might* have any right, title, or interest in the forfeited property.

prevents the Government from relitigating this issue.

The Government attempts to escape the law of the case with the contention that it is now arguing Article III standing, whereas the motions to dismiss involved statutory standing. This argument looks to form and ignores content; in the context of this case, the distinction is illusory. It is true that the Government moved to dismiss the petitions for failure to meet the statutory standing requirements of § 853(n)(3) – based on the failure to "set forth the nature and extent of 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." The Government now argues, in essence, that this Court's decision that the Petitioners met these statutory requirements did not decide whether they met the Constitutional "case or controversy" requirement. This is formalism without sense. A petitioner who has set forth the nature and extent of his or her right to property, and is seeking its return, cannot fail to meet the "case or controversy" requirement.

Moreover, as a matter of substantive law, the Petitioners, as named account holders, have an interest in the property. "Property interests are created and defined by state law." Butner v. United States, 440 U.S. 48, 55 (1979). The ownership of bank accounts held in New York is decided under New York law. United States v. Khan, 1997 U.S. App. LEXIS 31870 (2d Cir. 1997). Generally, bank deposits are divided into two categories: general and special. Peoples Westchester Sav. Bank v. Federal Deposit Ins. Corp., 961 F.2d 327, 330 (2d Cir. 1992). "A deposit made in the ordinary course of business is presumed to be general." Id. When a general deposit is made, the transaction is considered to be essentially a loan to the bank, with a contractual right to repayment on demand. United States v. $ 79,000 in Account No. 2168050/6749900 at the Bank of N.Y., 1996 U.S. Dist. LEXIS 16536 (S.D.N.Y. 1996). The

Petitioners have submitted sworn statements in which their deposit of the funds is either stated or implied. The Government has not disputed that Petitioners deposited the funds into the accounts. They have a contractual right to repayment of the funds on demand.

Furthermore, the named holder of a bank account has an ownership interest in the funds in the account. See, e.g., United States v. Contents of Account Numbers 208-06070 & 208-06068-1-2, 847 F. Supp. 329, 333 (S.D.N.Y. 1994). "The fact that funds are deposited in a person's name is prima facie evidence that the funds belong to such person." 9 C.J.S. *Banks and Banking* § 280 (2005). At a minimum, then, the Petitioners have submitted prima facie evidence of ownership of the funds in the accounts.

The Government does not dispute that the Petitioners are the named holders of the bank accounts. Nor does the Government attempt to circumvent their rights under New York property law. Rather, the Government relies on a "true owner" argument to challenge standing: even though Petitioners are the named account holders, someone else is the true owner of the funds. Because someone else is the true owner of the funds, the Government argues, the named account holders have no standing to contest the forfeiture. The Government cites no law to support this argument, which has no apparent legal foundation. Even if it were true that some other party has a right to the funds superior to a petitioner's, that neither nullifies the petitioner's right against Nolasco, nor deprives the petitioner of standing. The "true owner" argument fails from the start. Nothing that discovery might produce can rescue it.

To defeat the motions for summary judgment, the Government has cloaked the standing argument in two related procedural arguments. First, the Government argues that there are material factual disputes about the Petitioners' standing. Second, the Government argues that

discovery as to these disputed issues of standing is needed, and that, in the absence of discovery, summary judgment is premature. Because this Court rejects the premise of these arguments, and holds that the Petitioners have established their standing, these procedural arguments must fail.

A. Do outstanding factual issues preclude summary judgment?

The Government contends that genuine issues as to material fact concerning the Petitioners' interests in the property preclude summary judgment, and points to three matters:

1. Escrow Agents

The Government argues that some of the property is held in escrow, and that "rights to property in escrow can be complicated." (Gov.'s Opp. Br. 6.) The Government points to one petition, that of Farswiss Asset Management Ltd., which states that it operates as an escrow agent and "disburses funds previously deposited in the VNB account pursuant to customers' instructions to it as escrow agent." (Farswiss Pet. ¶ 8.) Yet Farswiss also states that the funds in its account were either owned by Farswiss or held in escrow for clients, none of whom is Nolasco.

Even if it is true that rights to property in escrow can be complicated, it is not complicated to determine who has superior rights to funds, as between someone with no rights and an agent holding the funds in escrow. This Court need not address whatever complications may be involved in determining the rights of the escrow agent relative to the principals. The Government argues that the statements of Farswiss provide a basis to infer that the "true" owner of the funds is someone other than Farswiss. This may be so, but this Court is not charged with determining who in the world has the ultimate right to the funds. Under § 853(n)(6), the inquiry is limited to determining whether the interest of any petitioner was superior to that of Nolasco.

The Government has provided no foundation for its assumption that identifying the "true" owner has legal relevance to the matter before the Court.

The Government's escrow argument fails to persuade this Court that factual disputes on this subject preclude summary judgment.

2. Conflicting Statements of Petitioners

The Government argues that joint petitioners Fausto L. Guimaraes and Helder J.S.F. Taveira made conflicting statements about the source of the funds in their account. On this basis alone, the Government argues that "[f]actual issues with respect to the genuineness of their ownership interest are rife." (Gov.'s Opp. Br. 7.) This is unpersuasive. While this might raise a question about the source of the funds in their account, it does not raise any question about whether their interest in the account is superior to Nolasco's.

The Government's conflicting statements argument fails to persuade this Court that factual disputes on this subject preclude summary judgment.

3. Shells and Straw Owners

The Government alleges that several of the account holders were shell companies or straw owners. This argument suffers from two problems. First, it is based on mere conclusory allegations, as the government points to no evidence whatever. Second, this is another version of the "true owner" argument. As already discussed, this Court is not charged with considering all possible owners and determining whose interest among them will trump. Pursuant to § 853(n)(6), this Court must only compare the interest of each petitioner to that of Nolasco. The Government provides no legal basis for its assumption that determining whether a petitioner is a shell company has relevance to this task.

The Government has not persuaded this Court that any factual issues preclude summary judgment, nor that discovery of these matters is needed.

B. Is summary judgment premature?

The Government contends that, under FED. R. CRIM. P. 32.2(c)(1)(B), summary judgment is procedurally premature. The Government has misread the clear language of the rule, which states that "the court *may* permit the parties to conduct discovery . . . if the court determines that discovery is necessary or desirable to resolve factual issues." FED. R. CRIM. P. 32.2(c)(1)(B) (italics added). As discussed above, the Government has failed to show that there are genuine issues as to any material facts. Nor has the Government persuaded this Court that discovery is needed or desirable.

Courts manage discovery requests in an ancillary proceeding using procedures analogous to those available under the Civil Rules. The Advisory Committee's notes to Rule 32.2(c) state: Subdivision (c) "describes several fundamental areas in which procedures analogous to those in the Civil Rules may be followed. These include . . . conducting discovery, disposing of a claim on a motion for summary judgment . . ." The principles of discovery under the Civil Rules are set forth in FED. R. CIV. P. 26. Under FED. R. CIV. P. 26(b)(1), discovery is limited to that which is relevant.

Considering the relevance standard of Rule 26, this Court determines that the Government's request to be allowed discovery is problematic and unpersuasive. First, as discussed above, the Government has not developed any legal theory of Nolasco's interest in the

property.[5] Such a theory is needed to show how discovery in regard to the account holders would produce information relevant to the § 853(n)(6) inquiry. Second, although the single sentence in the footnote states that discovery is needed to determine Nolasco's interest in the property, not one item in the Government's list of proposed subjects of discovery even mentions Nolasco. (Gov.'s Opp. Br. 11.) Nor do any of the items in the list appear to be relevant to Nolasco's interest.[6]

The Government has provided no basis for this Court to infer that the proposed discovery will lead to information relevant to the § 853(n)(6) inquiry. Rather, the proposed discovery is directed to investigating whether some other third parties have rights to the property superior to the account holders of record.[7] This is irrelevant to the analysis this Court must perform pursuant to § 853(n).

"Rule 26 vests the trial judge with broad discretion to tailor discovery narrowly and to dictate the sequence of discovery." Crawford-El v. Britton, 523 U.S. 574, 598 (1998). Because

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[5] At the hearing on the motions to dismiss, the Government suggested that one theory might be that Nolasco acquired a right to the property by virtue of her role as agent for the account holders. (Hr'g. Tr. 39, Apr. 12, 2006.) The Government omitted this theory in its brief, perhaps realizing that the law of agency would not support arguing that an agent's right to the principal's property could be superior to the principal's. The Government has also previously speculated that the Petitioners might be mere bailees. (Gov.'s Mot. Dis. Reply Br. 13.) That theory, too, has fallen by the wayside.

[6] Curiously, in all of the speculation in its briefs about the "true owner" of the property, the Government never even hints that Nolasco was the true owner.

[7] In summing up its argument, the Government states: "Discovery is necessary to resolve a multitude of issues related to whether petitioners have Article III standing in this matter." (Gov.'s Opp. Br. 11.) Since this Court does not believe that there is any question about whether account holders have standing in regard to the forfeiture of their accounts, the Government has not shown that discovery is necessary. Moreover, this Court has decided the issue of standing. Discovery cannot be granted to litigate a settled issue.

the Government has not pointed to any relevant areas for discovery, this Court determines that discovery is neither necessary nor desirable to resolve factual issues. As there need be no discovery, FED. R. CRIM. P. 32.2(c)(1)(B) specifically authorizes this Court to resolve the issue before it on a motion for summary judgment.

The Government attempts to support its argument that summary judgment is premature by quoting the Second Circuit out of context: "Only after some discovery has taken place may a party move for summary judgment." Pacheco v. Serendensky, 393 F.3d 348, 352 (2d Cir. 2004). Pacheco did not involve summary judgment but, instead, a motion to dismiss the petition. The Second Circuit's point was that no evidentiary burden should be placed on the petitioner at that early stage in the ancillary proceeding; the court did not address any issues of the timing of a motion for summary judgment.

The Government also cites United States v. Bennett, 423 F.3d 271, 275 (3d Cir. 2005) in support of its position. Bennett, however, does no more on these issues than to cite without comment FED. R. CRIM. P. 32.2.

Finally, the Government cites Sames v. Gable, 732 F.2d 49, 51 (3d Cir. 1984), in which the Third Circuit stated: "This court has criticized the practice of granting summary judgment motions at a time when pertinent discovery requests remain unanswered by the moving party." The key word here is "pertinent." As discussed above, the Government has pointed to no unanswered pertinent areas of discovery.

C. The policy underlying criminal forfeiture

The Supreme Court has called it a "simple fact" that criminal forfeiture is a punishment of a defendant for criminal conduct. Libretti v. United States, 516 U.S. 29, 41 (1995). A

criminal forfeiture must punish the defendant. In this case, the Government seized bank accounts belonging to third parties pursuant to a plea agreement entered into with Nolasco. It is worth noting that the Government has not argued that seizing the bank accounts punished Nolasco, perhaps because it is obvious that a bank employee is not punished by the seizure of accounts in which she has no property interest.

D. The Government's Supplementary Declaration

On May 22, 2006 – well past the Government's May 3 briefing deadline, and past Petitioners' May 17 reply deadline – the Government submitted the supplementary declaration of Thomas Dombrowski. The Government did not seek leave of this Court to submit this declaration, nor was any leave granted. Were this Court inclined to consider the submission, the Government's conduct would be unfair to the Petitioners, who completed their reply briefing without the benefit of the complete materials relied on by the Government.

Even if this Court agreed to consider this declaration – which it does not – the conclusions stated above would not be affected. Dombrowski's declaration raises questions about the legality of the Petitioners' activities in Brazil. Yet at no point has the Government presented a legal argument to establish the relevance of this information. Even if every allegation is true, and Petitioners have used these bank accounts in connection with violations of Brazilian law, this Court has no basis to consider this in determining rights to the property pursuant to § 853(n)(6). The Government does not point to any legal authority to establish relevance, nor does this Court see how consideration of it is permissible.

Again, Congress intended the criminal forfeiture statutes to punish defendants. The Petitioners are not defendants in this case. The legality of their conduct is not at issue. If

Nolasco had a right to these accounts, it might be just to punish her by making her forfeit them. If Nolasco has no right to the accounts, she is not punished by their seizure.

Dombrowski's declaration also supports the Government's "true owner" argument. Again, the Government has not laid the legal foundation for the inference that this has relevance to the § 853(n)(6) determination.

Dombrowski's declaration suggests to this Court that the Government seeks to transform this criminal forfeiture proceeding into a tool for investigation of Brazilian crime and international financial wrongdoing. Were this Court to comply, it would far exceed the bounds of the role assigned to it by the criminal forfeiture statutes.

CONCLUSION

The parties do not dispute that the Petitioners are the named holders of the accounts seized by the Government. The Government has offered no evidence nor any other basis for this Court to infer that Maria Carolina Nolasco held any right, title, or interest in the forfeited property. Petitioners have demonstrated that "there is no genuine issue as to any material fact and that [they are] entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). Petitioners have proven, by a preponderance of the evidence, that their right, title or interest in the forfeited property is superior to that of Nolasco. Pursuant to 21 U.S.C. § 853(n)(6)(A), this determination renders the Order of Forfeiture invalid as to every Petitioner named herein. Petitioners' motions for summary judgment are granted. This Court shall amend the Order of Forfeiture in accordance with this determination.

S/Joseph A. Greenaway, Jr.
JOSEPH A. GREENAWAY, JR., U.S.D.J.

Date: June 6, 2006