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FOR PUBLICATION

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**

Plaintiff,

vs.

**2004 TOYOTA COROLLA, VIN#
INXBR32E94Z205299;
2001 TOYOTA CAMRY LE, VIN#
JT2BG22K910532940;
and,
2004 KIA RIO, VIN #
KNADC165246210293**

Defendants.

Civil Action No. 05-0285E

**ORDER GRANTING FIRST HAWAIIAN
BANK’S MOTION FOR RELEASE OF
VEHICLES UNDER FORFEITURE**

I. INTRODUCTION

THIS MATTER came for hearing on October 27, 2005 at 1:30 p.m. to address First Hawaiian Bank’s motion for release of vehicles to First Hawaiian Bank. Assistant Attorney General Eric O’Malley appeared on behalf of the Commonwealth of the Northern Mariana Islands (“Commonwealth”). First Hawaiian Bank (“FHB”) appeared through counsel Thomas E. Clifford. Counsel Perry B. Inos also appeared on behalf of Respondent 2001 Toyota Camry LE, VIN# JT2BG22K910532940.

II. BACKGROUND

1 On May 6, 2005 and May 13, 2005 the Attorney General investigations unit (AGIU) conducted
2 a sting operation targeting illegal taxis operating in Saipan. During the sting, officers arrested five
3 drivers who, allegedly, in exchange for money, transported AGIU witnesses around the island.
4 Following the arrest, vehicles identified in the caption as Respondents were seized by the
5 Commonwealth pursuant to the statutory forfeiture provision 6 CMC § 2150(b)(1).
6

7 On July 18, 2005, the Commonwealth filed an Action for Forfeiture in Rem against four
8 vehicles, three of which were financed through FHB by installment contracts. The Court Scheduled
9 a status conference on August 18, 2005, at which time Mr. Clifford appeared on behalf of FHB. FHB
10 filed a declaration by FHB Account Service Supervisor Ramon D. Untalan (“Untalan Declaration”),
11 setting forth the amounts outstanding and Blue Book values for each of its three vehicles. FHB also
12 attached copies of the Consumer Paper Credit Sale Contracts (“Contracts”) and Certificates of
13 Ownership, identifying FHB as “lienholder,” as exhibits to the Untalan Declaration.
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16 FHB answered the Commonwealth’s Complaint and claimed ownership of three of the vehicles.
17 FHB specifically asserted that its interest in the vehicles was protected from forfeiture by their status
18 as an “innocent third-party lienholder” whose interest could not be abrogated without “just
19 compensation.” In addition to seeking possession of the vehicles, FHB sought both a declaration that
20 its security interest is superior to the Government’s rights to forfeiture and attorney’s fees.
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23 At the August 18, 2005 hearing, FHB notified the Court of its intent to reclaim ownership of
24 the vehicles as the owners were in default of scheduled payments. However, FHB requested leave to
25 give the owners a brief period of time during which they could respond to the default notices and pay
26 off the remainder of their loans. This Court ordered a second status conference to be held on October
27 6, 2005.
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1 In advance of the October 6 status conference FHB filed a Motion for Release of Vehicles to
2 First Hawaiian Bank, and a motion to shorten time. At the October 6 status conference, it was revealed
3 that the owner of one of the vehicles, the Toyota Camry, apparently paid the vehicle off and satisfied
4 his obligation to FHB. With regard to the remaining vehicles, FHB requested a ruling on its Answer.
5 Petitioners objected and requested an opportunity to brief the issue of whether the law supported FHB's
6 claim that it was entitled to recover the vehicles as an "innocent lienholder."
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9 **III. ISSUES PRESENTED**

- 10 1. Whether the forfeiture provision under 3 CMC § 4365 provides for an "innocent lienholder" defense?
11
12 2. If the forfeiture statute provides for an innocent lienholder defense, who bears the burden of proof,
13 and what must that party demonstrate to satisfy that burden? .
14
15 3. If FHB is an innocent lienholder within the statute, to what extent is their interest preserved?

16 **IV. DISCUSSION**

17 **A. 3 CMC § 4365 Provides for an "Innocent Lienholder" Defense.**

18
19 The first issue requiring disposition regards whether the forfeiture provision under 3 CMC §
20 4365 provides for an "innocent lienholder" defense. The statute itself provides that:

21 All personal property, including conveyances, which is used or intended for use in any
22 violation of the immigration laws of the Commonwealth shall be forfeitable to the
23 Commonwealth by a proceeding brought by the Attorney General under 6 CMC § 2150
24 *et seq.*

25
26 3 CMC § 4365. Thus, the forfeiture provision under 3 CMC § 4365 incorporates by reference the
27 forfeiture provisions found in 6 CMC § 2150 *et seq.* to govern the proceedings.
28

1 FHB, the holder of a security interest in each of the vehicles involved in the alleged illegal taxi
2 operation, claims exception from forfeiture of its interest pursuant to 6 CMC § 2150(a)(4)(ii) and
3 alternatively (a)6, commonly known as “innocent owner or lienholder” provisions. The
4 Commonwealth objects to FHB’s claims of exception under § 2150 (a)(4)(ii) because FHB has not
5 demonstrated that the drivers involved in the alleged criminal taxi operation were driving the vehicles
6 without permission from FHB or the record owners. Furthermore, the Commonwealth objects to
7 application of § 2150(a)(6) on the ground that the statutory language of the innocent lienholder
8 provision listed within § 2150(a)(6) restricts its application solely to forfeitures involving contraband
9 offenses, and thus excluding their application to forfeitures brought pursuant to immigration violations.
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14 When interpreting a statute, this Court must take care to give statutory language its plain
15 meaning. *OAG v. Sagun*, 1999 MP 19 (quoting *Estate of Faisao v. Tenorio*, 4 N.M.I. 260, 265 (1995)).
16 “This Court’s objective in interpreting statutes, is to ‘ascertain and give effect to the intent of the
17 legislature.’” *Id.*
18

19 6 CMC § 2150(a)(4)(ii) provides that:

20
21 No conveyance shall be forfeited under the provisions of this section by reason of any
22 act or omission established by the owner thereof to have been committed or omitted
23 by any person other than the owner while the conveyance was *unlawfully in the*
possession of a person other than the owner in violation of the criminal laws of the
United States, or of any state, territory, or the Commonwealth.

24 The force of this exception turns on the meaning of the word *unlawfully* as it is used in the statute. FHB
25 claims that the facts underlying this case fit squarely within the language of § 2150(a)(4)(ii) because
26 when the vehicles were seized by the Commonwealth, they were in the possession of allegedly illegal
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1 aliens who were concurrently running a taxi operation in violation of the laws of the CNMI.
2 Consequently, under FHB’s interpretation of the statute, if the items subject to forfeiture were in the
3 possession of someone other than the record owners, both FHB and the other owners, and those in
4 possession of the vehicles were committing unlawful acts, the statutory exception should apply.
5

6 However, FHB misinterprets the use of the word *unlawfully* in its application of the statute.
7 “Unlawfully” is used as an adverb to describe “in the possession” and thus its meaning should be
8 interpreted solely to describe “in the possession.” Such a use of the word unlawfully therefore
9 grammatically connotes that this exception applies only to owners who were the victims of a theft,
10 conversion, or other incident wherein they were unlawfully relieved of their possession of property now
11 subject to forfeiture. To be sure, should FHB’s interpretation be given effect, any owner, who may
12 have willingly lent her car to another for the purpose of committing an unlawful act could avoid the
13 consequence of forfeiture, in spite of their culpability, by claiming shelter under such an interpretation
14 of § 2150(a)(4)(ii). Such a result, in which the exception would surely swallow the rule, was not the
15 intent of the legislature. Therefore, § 2150(a)(4)(ii) is inapplicable to the bank as its use is restricted
16 solely to owners who were wrongly relieved of their possessory interest in a thing subject to forfeiture.
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20 Next, the Commonwealth objects to FHB’s claim of exception under 6 CMC § 2150(a)(6). The
21 statutory language provides in relevant part that:
22

23 All . . . other things of value furnished or intended to be furnished by any person in
24 exchange for a controlled substance in violation of this title . . . except that no property
25 may be forfeited under this subsection, to the extent of the interest of an owner, by
26 reason of any act or omission established by that owner to have been committed without
27 the knowledge or consent of that owner.

28 The crux of the Commonwealth’s argument relies on its interpretation of the statutory language which
makes reference to the title and division that house this provision. Specifically, the language references

1 “controlled substances,” and the Commonwealth relies on such reference to restrict the application of
2 this classic “innocent lienholder” provision only to owners of property subject to forfeiture because of
3 its connection with a drug crime. A cursory glance at the statutory language would support the
4 Commonwealth’s proposition, for the statute explicitly references only crimes involving controlled
5 substances. Indeed, the Division 2, which houses § 2150(a)(6) governs drug trafficking crimes, so
6 nearly every subsection under 6 CMC § 2150 forfeiture provision makes reference to crimes involving
7 controlled substances.
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10 Although this Court appreciates the plainness of the Commonwealth’s argument, it cannot end
11 its investigation here and still give full effect to the intent of the legislature.
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13 ‘It is an elementary rule of construction that effect must be given, if possible, to every
14 word, clause and sentence of a statute.’ A statute should be construed so that effect is
15 given to all its provisions so that no part will be inoperative or superfluous, void or
16 insignificant, and so that one section will not destroy another unless the provision is the
17 result of obvious mistake or error.

18 *Sablan v. Superior Court of the CNMI*, 2 N.M.I. 165 (1991).

19 As mentioned earlier, the immigration forfeiture provision under 3 CMC § 4365 clearly
20 incorporates the statutory language of 6 CMC § 2150, *et seq*, to govern forfeiture proceedings.
21 However, nearly every provision in 6 CMC § 2150, *et seq*. references, in some manner, crimes which
22 clearly involve controlled substances.¹ Should the Commonwealth’s interpretation of § 2150(a)(6)
23 control, none of the provisions under § 2150 could apply to govern forfeitures involving violations of
24 CNMI immigration law. Clearly, such an interpretation is at odds with the legislature’s intent behind
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26 ¹ See *e.g.* 6 CMC § 2150(a)(1) (“The following shall be subject to forfeiture to the Commonwealth and no
27 property right shall exist in them: (1) all *controlled substances*....”) (*emphasis added*); (a)(2) (“All raw materials... which
28 are used... in manufacturing, compounding, processing, delivering, importing, or exporting any *controlled substances* in
violation of this title.”) (*emphasis added*); (a)(5) (All books... which are used, or intended for use , *in violation of this
title*.”) (*emphasis added*). In short most of 6 CMC § 2150 *et seq* references controlled substances or title 6 crimes in one
way or another.

1 3 CMC § 4365, which specifically references § 2150, and this Court cannot read § 2150 in a manner
2 that will void § 4355 unless it is the result of obvious mistake or error.

3
4 Indeed, the language of 3 CMC § 4365 is sloppy and evidently a lazy attempt to avoid drafting
5 separate accompanying procedures for the forfeiture of property connected with immigration violations.
6 This Court suggests that the legislature strive to clarify its statutory language by either creating a
7 generic statutory framework for forfeiture proceedings, or develop one specific to forfeitures falling
8 under § 4365. Nevertheless, this Court cannot abide by the contention that section § 4365 references
9 6 CMC § 2150 by way of error, and therefore, must give effect to every provision in § 2150 including
10 the innocent owner provision under (a)(6).
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13 **B. The “Innocent Lienholder” Defense Burden**

14 The next issue asks whether FHB has demonstrated that they are an innocent lienholder, such
15 that the government may only forfeit property subject to FHB’s security interest. The Court must
16 answer this question in the affirmative.
17

18 The language of the innocent forfeiture provision under § 2150, *et seq.*, is similar to and
19 appears to be modeled after the federal forfeiture statute under 21 U.S.C. § 881, *et a seq.* Such is
20 evident in the similarities between the innocent owner/lienholder² clauses provided under both statutory
21 schemes. Thus, in the absence of CNMI’s jurisdictional authority on its application, this Court will
22 look to cases applying the federal counterpart for guidance. “In a proceeding under either of these
23 subsections [§§ 881(a)(6) and (a)(7)] the government bears the initial burden of proving that the
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27 ² For the purposes of applying the federal forfeiture statute, 21 U.S.C. § 881, federal courts have found
28 lienholders to be “owners” within the meaning of the statute. *See In re Newport Sav. & Loan Ass’n*, 928 F.2d 472, 476
(1st Cir. 1991) (section 881(a)(6) “permits an innocent mortgagee to recover the value of its interest as a matter of *right*
(emphasis in original)).

1 property was purchased with drug proceeds or used in a drug transaction. (*Citation omitted*). Once that
2 obligation has been met, the burden then shifts to establish that it is an innocent owner.” *See U.S. v.*
3 *Federal National Mortgage Association*, 946 F.2d 264, 265-266 (4th Cir. 1991).
4

5 Here, FHB has not explicitly contested that the vehicles subject to forfeiture under 3 CMC §
6 4365 were not involved in the unlawful activities alleged by the Commonwealth. Thus, even though
7 the Commonwealth should bear the initial burden of proving that the vehicles subject to forfeiture were
8 involved in the violation of CNMI immigration law, the Court will look past this initial burden to
9 address the critical issue determining the burden that FHB must carry to establish that they are an
10 innocent lienholder within the language of § 2150(a)(6).
11

12 The Commonwealth contends that not only does the burden lie on FHB to demonstrate that they
13 are an innocent lienholder within § 2150(a)(6), but that such burden may only be overcome by a
14 showing that FHB performed some kind of character investigation of the prospective lienee before
15 entering into a financing agreement. In other words, the Commonwealth asks this court to impose a
16 due diligence requirement on prospective financiers of any transaction, which would require the lender
17 to investigate the moral character of a prospective borrower, purchaser, mortgagor or other applicant,
18 to detect possible future criminal behavior, involving the use of the item that is being financed with the
19 lender’s cash. By contrast, FHB argues that no such burden should be imposed, as no such language
20 is included in the statutory requirements of § 2150(a)(6), and that FHB has affirmatively performed
21 reasonably sufficient diligence, as evinced by the terms of its installment contract warning against
22 criminal uses of the vehicle, to establish that FHB is an innocent lienholder within § 2150(a)(6).
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26 “Forfeitures are not favored, and they should be enforced only when within both letter and spirit
27 of the law.” *U.S. v. One 1936 Model Ford V-8 De Luxe Coach, Motor No. 18-3306511*, 307 U.S. 219,
28

1 226, 59 S.Ct. 861, 865, 83 L.Ed. 1249 (1939) (“*One Model Ford*”). Consistent with the policy stated
2 *supra*, this Court must strictly interpret CNMI’s forfeiture statutes to prevent an improper forfeiture.
3 Here, the operative phrase in the innocent lienholder exception is “established by that owner to have
4 been committed without the knowledge *or* consent of that owner.” 6 CMC § 2150(a)(6) (*emphasis*
5 *added*).

7
8 A plain-meaning interpretation of the word “established” places the burden of establishing such
9 a defense on the party claiming it. However, the party claiming an innocent lienholder defense is
10 charged only with demonstrating to the court that the property became forfeitable “without the
11 knowledge *or* consent of the owner.” The word “or” implies that to overcome the presumption of
12 forfeiture, an innocent lienholder must either show by a preponderance of the evidence that the subject
13 property became subject to forfeiture either through activities *unknown* to the owner or *without the*
14 *consent* of the owner. *See U.S. v. One Parcel of Property, Located At 755 Forest Road, Northford,*
15 *Connecticut*, 985 F.2d 70, 72.

17
18 In addressing whether the illegal activity was known to FHB, this Court acknowledges the
19 practical difficulties attendant in proving a negative, i.e., that FHB had no knowledge of the alleged
20 unlawful activities. The Commonwealth has proffered no facts or circumstances that suggest FHB was
21 aware or that it willfully remained ignorant of the illegal activity, but such a burden, by law, does not
22 fall on the shoulders of the Commonwealth. Nevertheless, FHB need only demonstrate that they did
23 not consent to such activities in order to carry their burden.
24

25 In support of its innocent owner claim, FHB proffered the installment sales contracts, entered
26 into between FHB and the real owners and signed by the real owners of the vehicles. Specifically,
27 section 2 of the installment sales contracts contains several clauses where the real owner covenants “not
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1 to use the vehicle for any unlawful purpose” See Untalan Declaration and Attached Exhibits.
2 Moreover, the owner further consented to “not abandon, give possession of, sell or transfer the vehicle
3 . . . without our [FHB’s] prior written consent,” and “you must be the owner of the vehicle and keep
4 in complete and total control of it.” *Id.* Lastly, FHB included in each of its installment sales contracts,
5 an indication as to whether the vehicle is to be used for personal, family or household use. *Id.* In each
6 of the contracts, the personal use indication was checked, and not the business use case. *Id.*
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9 The Commonwealth, offers no evidence to rebut the sales contract covenants and
10 representations. Instead, the Commonwealth proffers the legal argument that FHB should be charged
11 with the requirement to reasonably investigate prospective borrowers, i.e., a due diligence requirement.
12 This Court holds, for the reasons stated *infra*, that imposing such requirements on a party claiming
13 exception from forfeiture on innocent lienholder grounds is overly burdensome, and not required by
14 statute or law.
15

16 First, the statute does not explicitly require that a party claiming exception to forfeiture under
17 § 2150(a)(6) perform any investigation or diligence to discover whether their property is being used
18 in connection with any illegal activity. This is not to say that a party claiming to be an innocent
19 owner/lienholder may “deliberately avoid actual knowledge through willful blindness” to such unlawful
20 activity. *United States v. Real Property At 2659 Roundhill Dr.*, 194 F.3d 1020, 1028 (9th Cir. 1999);
21 *see also United States v. One Jeep Wagoneer*, 976 F.2d 1172 (8th Cir. 1992); *United States v. Aleman*,
22 728 F.2d 492 (11th Cir. 1984); *United States v. Batencourt* 592 F.2d 916 (5th Cir. 1979). However,
23 the Ninth Circuit determined that showing “innocence” for the purposes of proving an innocent
24 owner/lienholder claim, “is compatible with knowledge that puts the owner on notice that he should
25 inquire further.” *Id.* Nothing in the facts before this Court suggest that FHB was put on any notice to
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1 suspect that the owners/borrowers, whose vehicle purchases FHB financed, were engaged in or
2 planning to engage in any illegal activity involving the property in which FHB retained a security
3 interest. To the contrary, the indications on the installment sales contracts represented that the buyer
4 intended only to possess the cars for personal use. Consequently, this Court cannot constructively hold
5 FHB knowledgeable by their failure to inquire about possible unlawful uses when there were no facts
6 available to put them on notice at the outset.
7

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9 Secondly, FHB's contracts affirmatively forbade the use of their vehicles for any unlawful
10 purpose. *See supra*, page 11. While this Court cannot view this act as the equivalent of a due diligence
11 investigation, it must again demur from reading a due diligence requirement into the statutory scheme
12 when none exists on its face. FHB's contracts, however, provide a firm example of how companies,
13 engaged in ventures involving risk, e.g., lending, affirmatively discourage unlawful uses of the objects
14 which they finance, and by doing so self-regulate. For the owners/borrowers who break such
15 covenants, there are very real civil consequences in the form of breach of contract actions that FHB
16 may enforce upon them.
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19 Moreover, banks in the Commonwealth are already regulated by several well-established laws.
20 *See, e.g.*, Commonwealth Banking Code of 1984, 4 CMC §§ 6101, *et seq.*; *see also*, Uniform
21 Commercial Code of the Northern Mariana Islands, 5 CMC §§ 1101, *et seq.* The CNMI's forfeiture
22 laws, as interpreted by the Commonwealth in this case, however, are not consistent with any of the
23 banking regulatory system in place. This Court sees no reason to outwardly impose more
24 encumbrances upon what is already a heavily regulated industry without specific direction from the
25 legislature. To interfere with such well established banking practices authorized by the Banking Code
26 and the UCC, without specific authorization from the legislature, would be imprudent and irresponsible
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1 in the eyes of the Court.

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3 Lastly, the connection between FHB and the unlawful activity is far too attenuated to deny FHB
4 its legally secured property interest in the subject vehicles. FHB as a lienholder, essentially purchased
5 the sales contract from the original financier, Microl Toyota, and had minimal contact with the
6 owners/borrowers, whose involvement in the underlying immigration violations is still unknown. It
7 is therefore inequitable to impose such an enormous risk on a lender engaged in a well-established
8 business practice of purchasing sales contracts by depriving them of the innocent lienholder defense
9 on the bases of their failure to perform due diligence.
10

11 **C. The Extent of FHB's Interest**

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13 FHB lastly argues that, as an innocent lienholder, its security interest in the vehicles subject to
14 forfeiture under § 4365 must be protected to the extent of its interest, i.e., its “net equity” or the
15 principal amount left on the contract plus interest up to the date remission is granted. The
16 Commonwealth, however, suggests another formula which awards FHB “the percentage of value still
17 outstanding on each vehicle multiplied either by: (1) the Blue Book value if the government keeps the
18 vehicle; or (2) any proceeds obtained from selling the vehicle at auction.” See Petitioner’s Brief at 8,
19 citing *U.S. v. All That Tract and Parcel of Land: 2306 North Eiffel Court*, 602 F. Supp. 307 (N.D.Ga.
20 1985) (“*North Eiffel*”).
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23 The federal case law developed around calculating the extent of an innocent lienholder claim
24 to property subject to a lien draws from the Takings Clause of the Fifth Amendment to determine what
25 is included in the calculation of “just compensation.” Both parties cite the same case, *North Eiffel*, to
26 support their divergent calculations. However the court in *North Eiffel* held that the innocent bank’s
27 ownership interest, that being a security deed, includes unpaid principal due pursuant to the underlying
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1 by FHB, i.e. FHB's net equity interest in the vehicles, be remitted to the CNMI, together with an
2 accounting of such disposition.

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So ORDERED this 6th day of December 2005.

/s/
David A. Wiseman, Associate Judge