

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 05/05/2017

TIME: 04:32:00 PM

DEPT: C-64

JUDICIAL OFFICER PRESIDING: Tamila Ipema

CLERK: Lucy Pena-Sanchez

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: M. Salazar

CASE NO: **37-2016-00006958-CU-AF-CTL** CASE INIT.DATE: 03/02/2016

CASE TITLE: **The People of the State of California vs. Pacific Heights Partners Inc [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Asset forfeiture

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**APPEARANCES**

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The Court, having taken the above-entitled matter under submission on 03/27/2017 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

After careful review of the entire record, the court now rules as follows in this submitted Demurrer matter: After reviewing all the documents and hearing the parties' arguments on 3/27/2017, the court rendered a ruling (See the minute order dated 3/27/17). Claimant's attorney asked the court to reconsider its decision basically stating that Claimant "had specified in the Demurrer their request for the return on the currency", and further stating that if the court sustains the Demurrer without leave to amend on statute of limitations grounds, as the court has indicted, the court must also order return of the moneys under Health and Safety Code Section 11488.5(e). The court did take the matter under submission.

After review of the entire record, the court now rules as follows:

The Court Sustains the Demurrer to the First-Amended Complaint without leave to amend.

Claimants are also asking the court to order the return of the property at this time.

The court notes that while the Claimants did discuss their "return of property argument" in the Memorandum of Points and Authorities in support of their demurrer, the Demurrer, itself, states only the following:

"The Slatics generally demur to the Amended Petition on the ground that it fails to allege facts sufficient to constitute a cause of action with regard to the \$34,175.14, \$5,616.38, \$5,643.73, and \$55,258.60. First, the People's claims are time-barred under the one-year statute of limitations for civil forfeiture proceedings set forth in Health and Safety Code section 11488.4(a). The Slatics' money was seized on February 2, 2016, and the People did not amend their Petition for Forfeiture in Rem against the money seized from James Slatic's businesses to add the Slatics' personal money until February 9, 2017. Second, the Slatics did not receive proper notice that their money was seized under Health and Safety Code section 11488.4(c). Therefore, the People's claims against the \$34,175.14, \$5,616.38, \$5,643.73,

and \$55,258.60 belonging to the Slatics should be dismissed with prejudice pursuant to California Code of Civil Procedure section 430.10(e)."

So, it is clear the Demurrer itself did not specified the issue of return of the money and this was only discussed in the Memorandum of Points and Authorities submitted by the claimants.

However, People did not object to the Claimants verbally raising the issue of return of the property during the Demurrer Proceedings. Furthermore, the People actually joined in the oral arguments in court stating their detailed reasoning against return of the money.

Therefore, court finds that both parties have had sufficient notice and opportunity to argue their respective views on this issue that was also discussed in detail before Judge Bloom during the criminal proceedings (Judge Bloom ruled that the civil forfeiture proceedings was a better venue to decide this issue). The court therefore will rule on the issue of "return of the property" later in this decision.

Furthermore, claimants argue that the court has an obligation to order return of the property at the demurrer hearing pursuant to 11488.5(e) if the court sustains the demurrer without leave to amend, as the court has done in this case.

Section 11488.5(e) discusses rulings after the trial in a contested civil forfeiture action. In such cases, after trial, subdivision (e) states that the property "shall" be released to the claimant unless the court or jury determines "the seized property was used for a purpose for which forfeiture is permitted." Since this case did not proceed to a jury or court trial on the merits of the contested petition, one could argue that Sec. 11488.5(e) does not apply here. In the present case, the demurrer did not reach the merits of the Petition or Claims opposing the forfeiture. On the other hand, the demurrer proceeding technically disposes of the entire matter since it is sustained without leave to amend. Therefore, since this civil forfeiture action is dismissed based on the Statute of Limitation argument, then People would have to return the money they have confiscated. There is no other action civil or criminal currently pending in this case. The court does not see any other authority for People to hold on to the money after the forfeiture case is dismissed because the action is time-barred.

Furthermore, the court heard arguments from both sides at the Demurrer hearing about why the money should or should not be returned. The People argued that currently criminal investigations are on-going and have been on-going close to a year and half with no criminal charges having been filed as of yet. The criminal Judge, Judge Bloom, during November 2016 hearing, found violations of Health and Safety Code Sec. 11379.6. Judge Bloom had to decide whether or not there was probable cause to seize this currency for state forfeiture proceedings. Court takes judicial notice and Judge Bloom's decision in this case; judge Bloom declined to rule on the motion for return of property that was filed in his criminal court based on the fact that civil forfeiture proceedings were filed and pending in the present court and civil court is in a better position to render a decision on the return of the money during the civil forfeiture proceedings.


The People are not sure and could not tell this court about probability of filing criminal charges in this case in the near future. The People have the evidence and documentation regarding the transfers of this currency between accounts, which is what they would need to show that the money is profits from an illegal cannabis extraction business; so the court does not see how returning the actual currency would harm any criminal investigation or the ultimate criminal that they might eventually file (or not). Besides as Claimants argue merely possession over \$100,000 derived from unlawful manufacturing or sale of a controlled substance is considered a felony. The court sees no value in ordering the People to hang on to this money unless the money itself is somehow marked and is going to be used as evidence

of the crime. The People have made no such allegations that this court is aware of. The Claimants argue that the People have been aware that this case is time-barred and yet filed a civil forfeiture action in this court.

The Claimants rightly worry about the ping-pong action between the civil and criminal courts if this court returns the matter back to the criminal court for judge Bloom to determine whether money should be returned to the Claimants or not after the dismissal of the civil case. Judge Bloom has already rejected the notion believing that the civil court should probably make that determination. Judge Bloom did not decide whether or not the money is contraband because that issue was not yet adjudicated in a civil forfeiture case; and the issue will never be adjudicated in a civil case because it is time-barred and parties have been aware of it for some time now. Therefore, money that People are holding does not appear to have any evidentiary value on its own, and it cannot be declared contraband without due process. The People's investigations have been on-going since January 2016 and there is no indication from the People that criminal charges are going to be filed in this case in the near future. The People cannot hold on to Claimants' money indefinitely without having filed any charges against any of them at the present time.

This court is tasked with deciding whether the money has to be forfeited or returned. The court has already decided that the action is time-barred and has dismissed the action, and there is no other criminal action currently pending. Having heard arguments from both sides as to why this money should or should not be returned under Health and Safety Code Section 11488.4(g), and having considered the entire record, this court now orders the People to return the money to the Claimants. Respondent is to prepare and submit a judgement within 5 business days.

IT IS SO ORDERED.



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Judge Tamila Ipema