

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-012190

04/04/2023

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
A. Meza
Deputy

IN RE THE MATTER OF

\$39,500.00 U S CURRENCY

PAUL VINCENT AVELAR
DALLEN DARRELL GARDNER
JUDGE WARNER

MINUTE ENTRY

Before the Court and fully briefed are the State's February 9, 2023 Request for Order of Dismissal and Claimant Jerry Johnson's February 24, 2023 Motion for Judgment on the Pleadings. Johnson's Motion for Judgment on the Pleadings is denied. The State's Request for Order of Dismissal is granted in part. This matter will be dismissed with prejudice but Johnson is awarded loss of use damages and may file an attorneys' fees application.

Like a Rule 12(b)(6) motion, a claimant's Rule 12(c) motion challenges the sufficiency of the State's complaint. When evaluating the Motion, the Court assumes all well-pleaded factual allegations are true and indulges reasonable inferences from them. It can only grant the Motion if the State "would not be entitled to relief under any interpretation of the facts susceptible of proof." *State ex rel. Brnovich v. Arizona Bd. of Regents*, 250 Ariz. 127, 130 (2020), quoting *Coleman v. City of Mesa*, 230 Ariz. 352, 355 (2012). Applying this standard to the State's complaint, the Court concludes it is sufficient to sustain a forfeiture claim under the law as it existed when the complaint was filed.

The State's dismissal request is governed by Rule 41. Because the parties do not stipulate to dismissal, this matter may be dismissed at the State's request only "by court order, on terms that the court considers proper." Ariz. R. Civ. P. 41(a)(2).

The Court concludes that dismissal should be with prejudice. An evidentiary hearing was held on substantive issues and the State sought to dismiss only after losing on appeal. To permit

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the State to refile (as unlikely as that would be now that it has given the money back to Johnson) would be unjust.

The Court further finds that Johnson is eligible for an award of costs and reasonable attorneys' fees under A.R.S. § 13-4314(E), which states:

The court may award reasonable attorney fees, expenses and damages for loss of the use of the property to any claimant who substantially prevails by an adjudication on the merits of a claim. If the court finds that reasonable cause did not exist for the seizure for forfeiture or the filing of the notice of pending forfeiture, complaint, information or indictment and that the seizing agency or attorney for the state intended to cause injury or was grossly negligent, the court shall award the claimant treble costs or damages. The court must apportion the award for treble costs or damages between the agency that made the seizure and the office of the attorney for the state.

Johnson has "substantially prevail[ed] by an adjudication on the merits." The Court will decide whether to award fees and how much to award once Johnson files a fee application.

Johnson further requests interest both under A.R.S. § 44-1201, and as damages for loss of use under A.R.S. § 13-4314(E). Aside from Johnson's entitlement to post-judgment interest on any attorneys' fees awarded, A.R.S. § 44-1201 does not apply here.

The parties' arguments regarding loss of use damages are equitable. They cite no authority to guide the Court on whether and when loss of use damages should be awarded. A.R.S. § 13-4314(E) provides no guidance either, except to say such damages "may" be awarded, which makes an award discretionary. Considering the equities, the Court will award Johnson loss of use damages consisting of interest at the legal rate of 9% from the date of seizure until the return of the money.

IT IS ORDERED granting the State's Request for Order of Dismissal in part. This matter will be dismissed with prejudice upon resolution of attorneys' fees. The Court further awards Claimant loss of use damages, the calculation of which should be included in the form of judgment lodged.

IT IS FURTHER ORDERED that the State must and Claimant may lodge a form of judgment with Rule 54(c) language no later than **April 27, 2023**.

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IT IS FURTHER ORDERED that Claimant file his application for attorneys' fees and statement of costs no later than **April 27, 2023**.

IT IS FURTHER ORDERED denying Claimant's Motion for Judgment on the Pleadings.