

App. 1

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

101 HOUSECO, LLC,
Intervenor-Appellant,

JAMES HOUSE,
Defendant.

No. 18-10305

D.C. No.
3:14-cr-00329-
SI-1

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

101 HOUSECO, LLC,
Intervenor-Appellant,

DAVID LONICH,
Defendant.

No. 18-10370

D.C. No.
3:14-cr-00139-
SI-2

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

101 HOUSECO, LLC,
Intervenor-Appellant,

DAVID LONICH,
Defendant.

No. 19-10043

D.C. No.
3:14-cr-00139-
SI-2
OPINION

App. 2

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Argued and Submitted February 10, 2021
San Francisco, California

Filed January 10, 2022

Before: Andrew D. Hurwitz and Daniel A. Bress,
Circuit Judges, and Clifton L. Corker,* District Judge.

Opinion by Judge Bress

COUNSEL

John D. Cline (argued), Law Office of John D. Cline,
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of Justice, Washington, D.C.; Adam A. Reeves, Robert
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United States Attorneys; David L. Anderson, United
States Attorney; United States Attorney's Office, San
Francisco, California; for Plaintiff-Appellee.

* The Honorable Clifton L. Corker, United States District
Judge for the Eastern District of Tennessee, sitting by designa-
tion.

OPINION

BRESS, Circuit Judge:

101 Houseco, LLC intervened in two criminal cases to challenge the district court’s forfeiture order, asserting that the criminal defendants lacked a forfeitable interest in the property. The principal question we consider is whether a third party may raise such a challenge or whether it is limited to arguing under 21 U.S.C. § 853(n)(6) that it has a superior interest in the property or was a bona fide purchaser for value.

We hold—agreeing with every circuit to have considered this question—that a third party in a criminal forfeiture proceeding may not relitigate the antecedent forfeitability question, but is instead restricted to the two avenues for relief that § 853(n)(6) confers. We further hold that § 853(n)(6) does not violate 101 Houseco’s procedural due process rights. If 101 Houseco had a valid interest in the property, § 853(n)(6) provided it the means to vindicate that interest. But, because 101 Houseco was created to perpetuate a fraud, § 853(n)(6) provides it no relief. We thus affirm the dismissal of 101 Houseco’s ancillary petitions.

I

David Lonich, James House, and others were involved in a complex fraud scheme designed to secure title to Park Lane Villas East (PLV East), a real-estate

App. 4

development in Sonoma County, California.¹ Bijan Madjlessi, a now-deceased real-estate developer, originally owned the property, which was secured through a construction loan of more than \$30 million from IndyMac, a financial institution.

After Madjlessi defaulted on the IndyMac loan, he and Lonich (Madjlessi's lawyer) came up with a plan to regain control of PLV East. IndyMac was in FDIC conservatorship and the FDIC was auctioning off the loan. But FDIC rules prohibited Madjlessi from bidding on his own defaulted note. To get around this, Lonich and Madjlessi had a straw buyer bid on the loan and then covertly return PLV East back to Madjlessi's control.

Madjlessi owed James House over \$200,000 for contracting work performed at PLV and other projects. Madjlessi and Lonich arranged for House to act as the straw buyer for PLV East; in return, Madjlessi agreed to pay House the money he owed him.

To carry out the scheme, Lonich created 101 Houseco as an LLC with two members: House owned 80.1% and 101 Park Lane, LLC—an LLC held by House but controlled by Lonich—owned the remaining 19.9%. Madjlessi and Lonich then conspired with Sean

¹ In a concurrently filed opinion and memorandum disposition in *United States v. Lonich*, No. 18-10298 (9th Cir. 2021), we address challenges to three defendants' convictions and sentences arising from some of the same fraudulent activity at issue here. Our *Lonich* opinion contains a more detailed recitation of the fraudulent schemes.

App. 5

Cutting and David Melland, officers at Sonoma Valley Bank (SVB), to assist House in securing a fraudulent loan for 101 Houseco.

Lonich arranged for House to submit false documentation in the FDIC auction process certifying that Madjlessi was not involved in the bid. 101 Houseco then used the SVB loan to bid at the auction. After 101 Houseco prevailed at the auction, it foreclosed on the Madjlessi note and acquired clear title to PLV East.

Despite House being 101 Houseco's owner on paper, the 101 Houseco operating agreement gave Lonich actual control over that entity. Lonich exclusively controlled 101 Houseco's bank accounts and any funds that PLV East generated. Lonich also could appoint, fire, and replace 101 Houseco's members and managers. Lonich used that power to appoint himself 101 Houseco's sole manager. And even after he was convicted on federal criminal charges, Lonich continued to receive monthly payments from revenue generated by PLV East.

After House pleaded guilty and a jury separately convicted Lonich, Cutting, and Melland of various federal crimes, the district court entered a preliminary order forfeiting PLV East. *See* Fed. R. Crim. P. 32.2(b). The court ordered the government to provide sufficient public notice of both the order and the anticipated sale of the property. 101 Houseco then filed third party petitions opposing the forfeiture in both criminal

App. 6

proceedings, arguing that neither Lonich nor House owned PLV East.²

The district court rejected 101 Houseco's petitions. Noting that "there was considerable evidence that Lonich and Madjlessi created 101 Houseco, LLC in order to carry out the fraud and the money laundering," the district court found that House and Lonich had forfeitable interests in PLV East because 101 Houseco was a sham entity, and its corporate form should therefore be disregarded. The court determined that House had a forfeitable interest through his legal ownership of PLV East during the relevant time frame, and that Lonich had a forfeitable interest because he exercised control over the property.

After rejecting 101 Houseco's ancillary petitions, the district court entered final forfeiture orders in both cases. 101 Houseco now appeals. The district court stayed the sale of PLV East pending the resolution of these consolidated appeals.

II

In considering ancillary criminal forfeiture proceedings, we review "the district court's findings of fact for clear error and its legal conclusions *de novo*." *United States v. Nava*, 404 F.3d 1119, 1127 n.3 (9th Cir. 2005). The district court dismissed 101 Houseco's

² It is unclear who currently owns 101 Houseco. As the district court noted, "101 Houseco has . . . been unable or unwilling to clearly identify who presently owns" that entity.

App. 7

petitions on the merits because it found that House and Lonich had forfeitable interests in PLV East. It did not address the government’s threshold argument that 101 Houseco could not challenge forfeitability in a third party proceeding.

We may affirm the district court on any ground supported by the record. *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008). We do so here, holding that 101 Houseco could only challenge the forfeiture order on the grounds that 21 U.S.C. § 853(n)(6) permits, namely, that 101 Houseco had either a superior or bona fide interest in the forfeited property. As a third party in a criminal forfeiture proceeding, 101 Houseco could not relitigate whether the defendants had a forfeitable interest in the property.

A

“Criminal forfeiture statutes empower the Government to confiscate property derived from or used to facilitate criminal activity.” *Honeycutt v. United States*, 137 S. Ct. 1626, 1631 (2017). For House’s and Lonich’s crimes of conviction, the government may seek forfeiture of criminally obtained proceeds. *See* 18 U.S.C. § 982. In that circumstance, a district court “shall order that the person forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.” *Id.* § 982(a)(2). Forfeitable property

App. 8

“vests in the United States upon the commission of the act giving rise to forfeiture.” 21 U.S.C. § 853(c).

The Federal Rules of Criminal Procedure and 21 U.S.C. § 853 provide the procedural framework for criminal forfeiture. *See* 18 U.S.C. § 982(b)(1). The district court must first “determine what property is subject to forfeiture under the applicable statute.” Fed. R. Crim. P. 32.2(b)(1)(A). “If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense.” *Id.* If the district court concludes “that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture.” *Id.* 32.2(b)(2)(A). At that point, “the government must publish notice of the order and send notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding.” *Id.* 32.2(b)(6)(A); *see also* 21 U.S.C. § 853(n)(1).

A third party may not challenge the forfeiture order in the preliminary forfeiture proceedings or through a separate lawsuit. Under 21 U.S.C. § 853(k), and “[e]xcept as provided in subsection (n)” —of which we will have more to say in a moment— “no party claiming an interest in property subject to forfeiture under this section” may “(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or (2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property.” Consistent with the statutory text, the Federal Rules

App. 9

specify that a district court must enter its preliminary forfeiture order “without regard to any third party’s interest in the property.” Fed. R. Crim. P. 32.2(b)(2)(A).

A third party wishing to challenge a district court’s criminal forfeiture order must do so in an ancillary proceeding under 21 U.S.C. § 853(n) and Federal Rule of Criminal Procedure 32.2(c). *See United States v. Lazarenko*, 476 F.3d 642, 648 (9th Cir. 2007) (“The law appears settled that an ancillary proceeding constitutes the only avenue for a third party claiming an interest in seized property.”). A third party may obtain relief in such an ancillary proceeding on limited grounds:

If, after [a] hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the

App. 10

property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

21 U.S.C. § 853(n)(6). In other words, a third party may only show it is the “‘rightful owner[.]’ of forfeited assets.” *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 629 (1989).

B

101 Houseco argues, as it did below, that House and Lonich never sufficiently owned PLV East, so the district court could not order the property forfeited as obtained through the proceeds of their offenses. Effectively, 101 Houseco seeks to invalidate the district court’s original forfeiture order, with the result that ownership of PLV East would presumably remain with 101 Houseco. The problem, however, is that this “argument is not [101 Houseco’s] to make.” *United States v. Fabian*, 764 F.3d 636, 637 (6th Cir. 2014).

101 Houseco must have statutory standing to bring its claim. The question is thus whether 101 Houseco has a right of action—a legally recognized remedial right—to obtain the relief it seeks. *See Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125, 127–28 & n.4 (2014). A statute or some other source of law must give a petitioner the right to sue to redress his claimed injury. *See id.* at 128–29. Here, the only possible basis for 101 Houseco’s claim is statutory. To answer whether 101 Houseco has statutory

standing, we therefore employ “traditional principles of statutory interpretation” to determine whether Congress provided 101 Houseco a right of action to challenge the underlying forfeiture order. *Id.* at 128. It did not.

We read statutes (and the Federal Rules) in their most natural sense and as parts of a broader whole. *See, e.g., Sturgeon v. Frost*, 136 S. Ct. 1061, 1070 (2016) (“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” (quoting *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012))); *United States v. Petri*, 731 F.3d 833, 839 (9th Cir. 2013) (“Because the Federal Rules of Criminal Procedure, once effective, have the force and effect of law . . . we apply ‘traditional tools of statutory construction’ to interpret them.” (citing *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 163 (1988))).

Here, the statutory scheme is clear, providing that a third party may not challenge a forfeiture order “[e]xcept as provided in subsection (n).” 21 U.S.C. § 853(k) (emphasis added). And § 853(n) provides but two grounds under which a third party can seek amendment of a criminal forfeiture order: (1) the third party has a superior interest in the property at the time of the commission of the wrongful acts; or (2) it was a bona fide purchaser for value at the time of the purchase. *Id.* § 853(n)(6). The clear design of Congress’s scheme is that a third party may challenge a criminal forfeiture order only on these two bases.

That is consistent with the Federal Rules of Criminal Procedure. Those Rules similarly require the district court to enter a preliminary forfeiture order “without regard to any third party’s interest in the property.” Fed. R. Crim. P. 32.2(b)(2)(A). And they require that a district court’s determination “whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding,” *id.*, “as prescribed by statute,” Fed. R. Crim. P. 32.2(c)(1) (emphasis added).

In harmony with the statutory provisions, the Federal Rules thus direct that a third party is limited to those challenges that Congress has allowed. And Congress has allowed only two such challenges, which do not include a claim that the property was not forfeitable in the first place. An ancillary proceeding “does not involve relitigation of the forfeitability of the property; its only purpose is to determine whether any third party has a legal interest in the forfeited property.” Fed. R. Crim. P. 32.2, Advisory Comm. Notes (2000).

Although we have not previously addressed this precise question, our precedents strongly forecast the conclusion. In *United States v. Hooper*, 229 F.3d 818 (9th Cir. 2000), we stated that “[t]he criminal forfeiture statute . . . protects *only* two types of transferees of forfeitable property: bona fide purchasers and those whose interest in the property antedated the crime.” *Id.* at 822 (emphasis added). Several years later, in *United States v. Nava*, 404 F.3d 1119 (9th Cir. 2005), we similarly explained that “[t]he petitioner [in an ancillary proceeding] may prevail *only upon showing*, by

a preponderance of the evidence, that he possessed a vested or superior legal right, title, or interest in the property at the time the criminal acts took place, or that he was a bona fide purchaser for value.” *Id.* at 1125 (emphasis added). Then, in *United States v. Liquidators of European Federal Credit Bank*, 630 F.3d 1139 (9th Cir. 2011), we observed that “[m]any legal sources . . . support the government’s view” that “§ 853(n)(6) provides the *only* theories by which a third party may challenge the forfeiture: superior title and bona fide purchaser.” *Id.* at 1147. Our holding today is in accord with our past statements on this issue.

Our holding is also in line with the other circuits to have addressed the question, all of which agree that § 853(n)(6) provides the exclusive grounds by which a third party may challenge a criminal forfeiture order. *See, e.g., Fabian*, 764 F.3d at 638 (explaining that § 853(n) provides “the sole avenue for a third party to assert an interest in forfeitable property” and that “[b]y its plain terms, therefore, § 853(n) does not permit ‘relitigation’ of the district court’s antecedent determination that an item of property is subject to forfeiture” (first quoting *United States v. Erpenbeck*, 682 F.3d 472, 480 (6th Cir. 2012), then quoting Fed. R. Crim. P. 32.2, Advisory Comm. Notes (2000))); *United States v. Holy Land Found. for Relief & Dev.*, 722 F.3d 677, 689–90 (5th Cir. 2013) (“Section 853(n) provides only two avenues of relief in an ancillary proceeding, and both require a party to establish an ownership interest in the forfeited [property]. . . . [A] third party has no standing to challenge a preliminary order’s

finding of forfeitability.”); *United States v. Davenport*, 668 F.3d 1316, 1320–21 (11th Cir. 2012) (holding that third party “lacked standing to challenge the validity of the . . . determination of forfeitability,” as “[h]er sole mechanism for vindicating her purported interest in the forfeited [property] was within the context of the ancillary proceeding described by § 853(n) and Rule 32.2(c)”); *United States v. Porchay*, 533 F.3d 704, 710 (8th Cir. 2008) (explaining that “there is no provision in § 853(n)” allowing a third party “to relitigate the outcome” of underlying forfeiture proceedings); *United States v. Andrews*, 530 F.3d 1232, 1236 (10th Cir. 2008) (“[A] third party has no right to challenge the preliminary order’s finding of forfeitability. . . .”); *DSI Assocs. LLC v. United States*, 496 F.3d 175, 185 (2d Cir. 2007) (explaining that third party challenges to criminal forfeiture orders “are forbidden by section 853(k) unless they fall within the exception carved out by section 853(n)”)³.

Turning now to the two grounds for relief that § 853(n)(6) affords third parties, it is clear 101 Houseco cannot prevail (and 101 Houseco does not argue otherwise). As the district court noted, 101 Houseco “does

³ While some circuits have referred to this as a “standing” issue without further elaboration, the issue is one of statutory standing. See *Fabian*, 764 F.3d at 638. It is not a question of Article III standing, and the district court thus had subject matter jurisdiction to address 101 Houseco’s petition. See *Lexmark*, 572 U.S. at 128 n.4 (“[T]he absence of a valid . . . cause of action does not implicate subject-matter jurisdiction.” (quoting *Verizon Md. Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 642–643 (2002))).

App. 15

not contest” that it “was created to perpetrate the fraud in this case.” It therefore cannot show a superior property interest “at the time of the commission of the acts which gave rise to the forfeiture of the property.” 21 U.S.C. § 853(n)(6)(A); *see also Hooper*, 229 F.3d at 821–22 (observing that § 853(n)(6)(A) is “likely never to apply to proceeds of the crime” because a defendant’s crimes “had to have been committed before there could be any proceeds resulting from them”).

Nor was 101 Houseco a bona fide purchaser. A bona fide purchaser, at the time of the purchase, must not have reasonable cause “to believe that the property was subject to forfeiture.” 21 U.S.C. § 853(n)(6)(B). But 101 Houseco clearly had such reasonable cause. Lonich had knowledge of the fraud at the time it was perpetrated. And, as a 101 Houseco officer at the time, his knowledge is imputed to 101 Houseco. *See Salyers v. Metro. Life Ins. Co.*, 871 F.3d 934, 939–40 (9th Cir. 2017) (“[A] principal is generally charged with notice of facts that an agent knows or has reason to know and that are material to her duties as an agent.”).

III

101 Houseco protests that interpreting § 853(n) to prohibit it from challenging the forfeitability of PLV East violates its procedural due process rights under the Fifth Amendment. That argument is unavailing.

The Supreme Court has already rejected a similar argument. In *Libretti v. United States*, 516 U.S. 29 (1995), the defendant argued that, before accepting a

guilty plea, the district court must make a factual inquiry into the basis for the forfeiture order. *Id.* at 37–38. Such an inquiry, he argued, was “essential to preserving third-party claimants’ rights” because a “defendant who has no interest in particular assets . . . will have little if any incentive to resist forfeiture of those assets, even if there is no statutory basis for their forfeiture.” *Id.* at 44. The defendant further asserted that § 853(n)’s ancillary proceedings were “inadequate to safeguard third-party rights.” *Id.* In rejecting this procedural due process argument, the Supreme Court stressed that “Congress has determined that § 853(n) . . . provides the means by which third-party rights must be vindicated.” *Id.*

Two of our sister circuits have since held that *Libretti* resolves the due process challenge that 101 Houseco raises here. See *United States v. Dong Dang Huynh*, 595 F. App’x 336, 340–41 (5th Cir. 2014) (“The Supreme Court’s rejection of a due-process argument concerning § 853 controls this case.”); *United States v. McHan*, 345 F.3d 262, 270 (4th Cir. 2003) (“In *Libretti*, the Supreme Court rejected the defendant’s argument that a § 853(n) proceeding inadequately protected third parties’ interests.”). But even assuming that *Libretti* does not conclusively resolve the issue, it strongly suggests that § 853(n) does not violate 101 Houseco’s procedural due process rights.

Other precedents confirm this. To show a procedural due process violation, 101 Houseco must prove “two distinct elements: (1) a deprivation of a constitutionally protected liberty or property interest, and (2)

a denial of adequate procedural protections.” *Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998).

Even if 101 Houseco had a legitimate property interest in PLV East (it did not), § 853(n) provided it with adequate procedural safeguards. Section 853(n) permits rightful owners in ancillary proceedings to establish their claims to the property by showing they have superior title or are bona fide purchasers. 21 U.S.C. § 853(n)(6). This provides sufficient protection because “criminal forfeiture is an *in personam* action in which only the *defendant’s interest* in the property may be forfeited.” Fed. R. Crim. P. 32.2(b), Advisory Comm. Notes (2000) (emphasis added). Section 853(n)(6) does not raise due process concerns in the general course because it still permits third parties to prove their *own* cognizable interests in the property. *See Liquidators*, 630 F.3d at 1146 (explaining that, if a third party proves a valid interest under § 853(n)(6), it “would prevail in the ancillary proceeding *on the merits*, regardless of any possible legal challenges to the forfeitability of the property generally”); *McHan*, 345 F.3d at 270 (“[Section] 853(n) provides all of the process due.”). 101 Houseco could not show a valid interest in PLV East because it was an entity created to perpetrate a fraud.

Moreover, third parties may also petition the Attorney General for discretionary relief to mitigate, remit, or restore a forfeited property or take “any other action to protect the rights of innocent persons which is in the interest of justice.” 21 U.S.C. § 853(i)(1). That provides even further protection for those claiming a

legitimate interest in forfeited property. *See DSI Assocs. LLC*, 496 F.3d at 186–87.⁴

101 Houseco nonetheless points to two cases to argue that § 853(n)(6)’s protections are insufficient. *See United States v. Daugerdas*, 892 F.3d 545 (2d Cir. 2018); *United States v. Reckmeyer*, 836 F.2d 200 (4th Cir. 1987). Both are inapposite.

Reckmeyer dealt with the scope of “bona fide purchaser for value” under 21 U.S.C. § 853(n)(6)(B). The court noted that “[s]erious due process questions would be raised . . . if third parties asserting an interest in forfeited assets were barred from challenging the validity of the forfeiture.” *Reckmeyer*, 836 F.2d at 206. So, it determined that it must “resolve all ambiguities in the text of the statute in a manner that will avoid this possible constitutional infirmity.” *Id.* In doing so, however, the court did not expand the types of permissible challenges under § 853(n), nor did it suggest that a third party could assert a claim outside the grounds § 853(n)(6) sets forth. The court instead held that it must interpret “‘bona fide purchaser for value’ . . . liberally to include all persons who give value to the defendant in an arms’-length transaction with the expectation that they would receive equivalent value in return.” *Id.* at 208. But, again, 101 Houseco does not claim it is a bona fide purchaser. *Cf. DSI Assocs. LLC*, 496 F.3d at 185 n.13 (distinguishing *Reckmeyer*

⁴ Indeed, 101 Houseco concedes that allegedly “innocent investors” in 101 Houseco, who do not themselves have an ownership interest in PLV East, have apparently been able to use § 853(i) to receive some redress.

because, unlike in *Reckmeyer*, the third party before it did “not assert that it has standing under section 853(n)”).

Daugerdas likewise does not suggest that third parties may challenge the antecedent question of whether the property was forfeitable. It dealt with a third party’s due process challenge for a defendant forfeiting “substitute property,” 892 F.3d at 553–58, which involves a distinct set of statutory provisions. *See* 21 U.S.C. § 853(p); *see also Daugerdas*, 892 F.3d at 550, 554 (describing the particular due process concern with substitute property as arising from a “glitch in § 853’s procedural structure”). As to the provisions at issue here, the Second Circuit has recognized what we now hold: “section 853(n) provides the exclusive means by which a third party may lay claim to forfeited assets,” and it does not allow “relitigation of the forfeitability of the property.” *DSI Assocs. LLC*, 496 F.3d at 185 (quoting Fed. R. Crim. P. 32.2, Advisory Comm. Notes (2000)).

AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES
OF AMERICA,

Plaintiff,

v.
DAVID LONICH, *et al.*,

Defendants.

Case No. 14-cr-00139-SI-1

**ORDER DISMISSING
101 HOUSECO'S PETI-
TION CHALLENGING
FORFEITURE**

Re: Dkt. No. 777

On September 28, 2018, the Court held a hearing on 101 Houseco's petition in opposition to the forfeiture of Park Lane Villas East. 101 Houseco's petition raises the same arguments that the Court has already considered and rejected in the litigation regarding the forfeiture of Park Lane Villas East. For the reasons set forth in the Court's prior order, the Court finds that defendant Lonich has a forfeitable interest in Park Lane Villas East and that 101 Houseco, LLC does not have a valid interest in that property. *See generally* Dkt. No. 745. Accordingly, the Court DISMISSES 101 Houseco's petition challenging the forfeiture.

IT IS SO ORDERED.

Dated: September 28, 2018

/s/ Susan Illston

SUSAN ILLSTON
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. DAVID LONICH, <i>et al.</i> , Defendants.	Case No. 14-cr-00139-SI-1 ORDER GRANTING IN PART RECONSID- ERATION OF ORDER DENYING FORFEI- TURE, GRANTING PRELIMINARY FORFEITURE, AND ORDERING THE GOVERNMENT TO POST NOTICE OF FORFEITURE Re: Dkt. Nos. 725, 726, 727
UNITED STATES OF AMERICA, Plaintiff, v. JAMES HOUSE, Defendant.	Case No. 14-cr-00329-SI-1 Re: Dkt. Nos. 65, 68 ORDER DISMISSING 101 HOUSECO'S PETI- TION CHALLENGING FORFEITURE (Filed Aug. 1, 2018)

On July 20, 2018, the Court held a hearing on 101 Houseco's petition in opposition to the forfeiture of Park Lane Villas East in *United States v. House*, CR 14-329 SI, and on July 31, 2018, the Court held a hearing on the government's motion for reconsideration of the denial of the government's motion for preliminary forfeiture of Park Lane Villas East in *United States v.*

Lonich, CR 14-139 SI. For the reasons set forth below, the Court DISMISSES 101 Houseco’s petition in *United States v. House*, CR 14-329 SI. The Court also GRANTS IN PART the government’s motion for reconsideration in *United States v. Lonich*, CR 14-139 SI, GRANTS preliminary forfeiture, and ORDERS the government to post notice of the forfeiture.

BACKGROUND¹

On April 9, 2018, the government sought a preliminary order of forfeiture of Park Lane Villas East and a money judgment of \$20,800,000 dollars against defendant David Lonich in *United States v. Lonich*, CR 14-139 SI. Lonich Dkt. No. 707 at 11.² While the Lonich Forfeiture Application was pending, the government renewed its application for forfeiture of Park Lane Villas East (or “PLV East”) and a money judgment of \$12,270,000 against defendant James House in the related criminal case, *United States v. House*, CR 14-329 SI. House Dkt. No. 49 at 10-11. The Court held a joint hearing on the government’s applications on June 1, 2018. Lonich Dkt. No. 724; House Dkt. No. 55. The Court subsequently issued an order denying forfeiture

¹ The Court incorporates by reference the Court’s Order Denying Defendants’ Post-Trial Motions (Dkt. No. 713 in the Lonich Dkt.), which sets forth the background regarding the trial and Lonich’s convictions for conspiracy to commit bank fraud, bank fraud, conspiracy to commit wire fraud, wire fraud, money laundering, false bank entries, and obstruction of justice.

² Filings in Case No. 14-cr-00139 are identified as “Lonich Dkt.” and filings in Case No. 14-cr-00329 are identified as “House Dkt.”

against Lonich and an order granting forfeiture against House. Lonich Dkt. No. 725, Order Denying Lonich Forfeiture; House Dkt. No. 56, Order Granting House Forfeiture.

On June 29, 2018, 101 Houseco, LLC petitioned the Court to vacate the Order Granting House Forfeiture. House Dkt. No. 65. The government opposed the petition and simultaneously requested reconsideration of the Order Denying Lonich Forfeiture. House Dkt. No. 68, Opp'n & Recons. Mot.; *see also* Lonich Dkt. No. 726. Lonich did not file a response to the government's reconsideration motion, but instead filed a motion to strike the government's reconsideration motion. Lonich Dkt. No. 727, Mot. to Strike. The government opposed Lonich's motion to strike. Lonich Dkt. No. 728, Opp'n to Mot. to Strike.

LEGAL STANDARD

District courts have “the inherent procedural power to reconsider, rescind, or modify an interlocutory order” before entry of final judgment. *City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001); *see also* Fed. R. Civ. P. 52(b) (providing that any findings may be amended up to 28 day after judgment is entered). Reconsideration is appropriate where a party can demonstrate (1) “reasonable diligence in bringing the motion,” and (2) “[t]hat . . . a material difference in fact or law exists from that which was presented to the Court . . . that in the exercise of reasonable diligence the party applying

for reconsideration did not know,” “[t]he emergence of new material facts or a change of law,” or “[a] manifest failure by the Court to consider material facts or dispositive legal arguments.” Civil L.R. 7-9(b).³

The criminal forfeiture statute, 21 U.S.C. § 853, and Federal Rule of Criminal Procedure 32.2 establish the framework for assessing the validity of criminal forfeitures of property. *United States v. Lazarenko*, 575 F. Supp. 2d 1139, 1145 (N.D. Cal. 2008). Section 853 “paints in broad strokes the proper standards and procedures,” while Rule 32.2 “sets forth the procedure governing criminal forfeiture in greater detail.” *Id.* Once a defendant is convicted, the district court must order the forfeiture of:

- (1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;
- (2) any of the person’s property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

³ Criminal Local Rule 2-1 provides that “The provisions of the Civil Local Rules of the Court shall apply to criminal actions and proceedings, except where they may be inconsistent with these criminal local rules, the Federal Rules of Criminal Procedure or provisions of law specifically applicable to criminal cases.” Civil Local Rule 7-9 is not inconsistent with any of the criminal rules or provisions, and thus the Court applies that rule to the government’s motion for reconsideration.

- (3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of [21 U.S.C. § 848], the person shall forfeit, in addition to any property described in [21 U.S.C. § 853(a)(1) or (2)], any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

21 U.S.C. § 853(a).

Criminal forfeiture occurs in a two-stage process. *Id.* § 853; Fed. R. Crim. P. 32.2; *see also United States v. Liquidators of European Fed. Credit Bank*, 630 F.3d 1139, 1144-45 (9th Cir. 2011) (describing forfeiture process). In the first stage, “the court must determine what property is subject to forfeiture under the applicable statute. If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense.” Fed. R. Crim. P. 32.2(b)(1). This stage is therefore intended to determine whether the property at issue “is subject to forfeiture.” *Id.* 32.2(b)(2)(A). Once the government establishes the requisite nexus, “the court orders the forfeiture of the defendant’s interest in the property—whatever that interest may be—in the criminal case.” Fed. R. Crim. P. 32.2, advisory committee’s note to 2000 adoption (emphasis added); *see also id.* (“Subdivision (b)(2) provides that it is not necessary to determine at this stage what interest any defendant might have in the property.”).

“If the court [preliminarily] orders the forfeiture of specific property, the government must publish notice of the order and send notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding.” Fed. R. Crim. P. 32.2(b)(6)(A). “Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to [21 U.S.C. § 853] may . . . petition the court for a hearing to adjudicate the validity of his alleged interest in the property.” 21 U.S.C. § 853(n)(2). “If, as prescribed by statute, a third party files a petition asserting an interest in the property to be forfeited, the court must conduct an ancillary proceeding.” Fed. R. Crim. P. 32.2(c)(1).

In the second stage, “the sole legal issue before the court is the ownership interests of the competing parties.” *United States v. Nava*, 404 F.3d 1119, 1124 (9th Cir. 2005) (quoting *United States v. McHan*, 345 F.3d 262, 281 (4th Cir. 2003) (Luttig, J., concurring in part and concurring in the judgment in part)). During this stage, the court must determine the extent of the defendant’s interest in the property before finalizing the preliminary order of forfeiture. Fed. R. Crim. P. 32.2(c)(2). Additionally, if a third-party files a petition under 21 U.S.C. § 853(n), the court must “adjudicate the validity of [a petitioner’s] alleged interest in the property.” 21 U.S.C. § 853(n)(2). The alleged interest is valid if the petitioner establishes by a preponderance of the evidence that either:

- (A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or
- (B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section.

Id. § 853(n)(6); *see also United States v. Hooper*, 229 F.3d 818, 821 (9th Cir. 2000). If the court determines that the petitioner met its burden, “the court shall amend the order of forfeiture in accordance with its determination.” 21 U.S.C. § 853(n).

DISCUSSION

I. Reconsideration of the Order Denying Forfeiture in *United States v. Lonich*, CR 14-139 SI is Appropriate

The Court construes the government’s filing as a combined motion for leave to file and a motion for reconsideration, and additionally grants the government leave to file the motion for reconsideration as lodged.

Reconsideration is appropriate where a party can demonstrate (1) “reasonable diligence in bringing the motion,” and (2) “[t]hat . . . a material difference in fact or law exists from that which was presented to the Court . . . that in the exercise of reasonable diligence the party applying for reconsideration did not know,” “[t]he emergence of new material facts or a change of law,” or “[a] manifest failure by the Court to consider material facts or dispositive legal arguments.” Civil L.R. 7-9(b).

The government explains that reconsideration is necessary for two reasons. First, the accounting filed in the forfeiture proceedings in the *House* case demonstrates that “as recently as May 23, 2018, Lonich was still receiving thousands of dollars in payments from PLV East.” Opp’n & Recons. Mot. at 1. Second, reconsideration is necessary “to extinguish [Lonich’s] fraudulent controlling interest in 101 Houseco.” *Id.* at 8. Lonich countered at the hearing that the government’s motion does not raise any new facts meriting reconsideration.

The Court finds that the government exercised reasonable diligence in bringing its motion for reconsideration. *See* Civil L.R. 7-9(b). The government bases the reconsideration motion on the accounting submitted to the government in response to the Court’s June 5 Restraining Order. *See* House Dkt. No. 58 at 3 ¶ 2. The accounting indicates that on May 23, 2018, Lonich received an automatic payment of \$2,500 from Park Lane Villas East. Opp’n & Recons. Mot., Attach. A. The accounting was sent to the government on June 26,

2018. Opp’n to Mot. to Strike, Attach. A at 2. Thus, the government requested reconsideration within ten days of discovering that Lonich received direct payments from Park Lane Villas East.

Additionally, the Court finds that reconsideration is appropriate because, *inter alia*, “a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order for which reconsideration is sought.” Civil L.R. 7-9(b)(1).⁴ Lonich asserted that he “never had an ownership interest in 101 Houseco, nor in PLV East.” Lonich Dkt. No. 714, Lonich Forfeiture Opp’n at 4-9. However, Lonich failed to disclose that he was receiving regular payments from Park Lane Villas East. Opp’n & Recons. Mot., Attach. A (“05/23/18 AP Pymt - David Lonich: auto-pay . . . 2,500.00”). Indeed, Park Lane Villas East paid Lonich \$112,500 between June 2017 and May 2018. Opp’n to Mot. to Strike, Attach. A at 4. The government asserted at the hearing that the payments are evidence of Lonich’s de facto ownership of PLV East. Lonich counters that receiving payments does not lead to ownership. Rather, according to Lonich, the payments are being made pursuant to an indemnification agreement between 101 Houseco and Lonich for expenses Lonich incurred as an employee of 101 Houseco.

⁴ In addition, as set forth in this order, the Court is persuaded by the government’s arguments that Lonich has a forfeitable interest in PLV East based upon the extensive evidence at trial that Lonich and Madjlessi created 101 Houseco for the fraudulent purpose of acquiring PLV East, and that Lonich exercised control over 101 Houseco and House.

This Court finds that 101 Houseco's payments to Lonich are a benefit Lonich is enjoying as the result of his fraud. Lonich's argument is premised on the notion that 101 Houseco is a legitimate entity. However, as this Court previously recognized, "there was considerable evidence that Lonich and Madjlessi created 101 Houseco, LLC in order to carry out the fraud and the money laundering." Order Denying Lonich Forfeiture at 2. Lonich would not be receiving any indemnification from 101 Houseco but for his work to fraudulently create 101 Houseco and to subsequently obtain Park Lane Villas East.

II. Park Lane Villas East Is Subject To Forfeiture

This Court must order the forfeiture of "any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation." 21 U.S.C. § 853(a)(1). "If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense." Fed. R. Crim. P. 32.2(b)(1)(A).

Park Lane Villas East constitutes the proceeds of defendants' offenses. As this Court previously recognized, "there was considerable evidence [at trial] that Lonich and Madjlessi created 101 Houseco, LLC in order to carry out the fraud and the money laundering." Order Denying Lonich Forfeiture at 2. Further, "[t]he evidence at trial showed that the loans were obtained

by 101 Houseco, LLC, and then payments were made from 101 Houseco, LLC to various entities (such as DebtX, House Construction, and Masma Construction).” *Id.* Finally, the evidence established that Lonich and Madjlessi used the payments from 101 Houseco to obtain the note secured by Park Lane Villas East. Thus, there is a clear nexus between Park Lane Villas East and defendants’ offenses, rendering Park Lane Villas East subject to forfeiture.

III. Defendants Have Forfeitable Interests in Park Lane Villas East

A. The Alter Ego Doctrine is Applicable

Under California law, “[t]he corporate entity may be disregarded when it is used to evade the law.” *H.A.S. Loan Serv. v. McColgan*, 133 P.2d 391, 394 (Cal. 1943). “[W]hen the corporate form is used to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, the courts will ignore the corporate entity and deem the corporation’s acts to be those of the persons or organizations actually controlling the corporation, in most instances the equitable owners.” *Sonora Diamond Corp. v. Super. Ct.*, 83 Cal. App. 4th 523, 538 (2000). “[T]he two requirements for the application of [the alter ego] doctrine are (1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow.” *Automotriz Del Golfo De*

California S.A. De C.V. v. Resnick, 306 P.2d 1, 3 (Cal. 1957). Additionally, Ninth Circuit precedent establishes that “[o]wnership is a prerequisite to alter ego liability, and not a mere ‘factor’ or ‘guideline.’” *S.E.C. v. Hickey*, 322 F.3d 1123, 1128 (9th Cir. 2003), *amended on denial of reh’g on other grounds by* 335 F.3d 834 (9th Cir. 2003).

The requirements for applying the alter ego doctrine are met in the present case. First, there is a unity of interest such that the separate personalities of 101 Houseco, Lonich, and House never existed. Again, “there was considerable evidence that Lonich and Madjlessi created 101 Houseco, LLC in order to carry out the fraud and the money laundering.” Order Denying Lonich Forfeiture at 2. Thus, 101 Houseco’s sole purpose at the time of its creation was to perpetrate defendants’ fraud to reclaim Park Lane Villas East.

Nor is 101 Houseco’s ownership distinguishable from Lonich, House, and Madjlessi. The evidence presented at trial demonstrated that Lonich and Madjlessi installed House as an 80.1% owner of 101 Houseco while Lonich and Madjlessi also retained control over 101 Houseco. Between 101 Houseco’s creation in March 2009 and March 2011, House “managed” 101 Houseco and 101 Houseco’s members were entities “controlled” by House. Lonich Forfeiture Opp’n at 2. Sometime after March 2011 and before September 2012, “Lonich was appointed the manager of [101 Houseco] with a 1% percentage interest in [101 Houseco] and the manager of Park Lane.” Lonich Dkt. No. 715, Lonich Decl. Opposing Forfeiture, Ex. O at 1.

While Lonich “withdrew as the manager of [101 Houseco] and of Park Lane and relinquished his 1% percentage interest” before September 6, 2012, 101 Houseco had already taken control over the entirety of Park Lane Villas East by that time. *Id.*, Ex. O at 1-2 (“As of the Effective Date, [101 Houseco] owns 100 residential condominiums and 14 commercial condominiums. . . .”). Thus, Lonich and House both held an ownership interest in 101 Houseco during the relevant time frame, and nothing separated the personality of 101 Houseco from Lonich, House, and Madjlessi.

Under the second requirement, there will be an inequitable result if the defendants’ offenses are treated as those of the corporation alone. The overwhelming evidence presented at trial established that Lonich and Madjlessi created 101 Houseco to perpetrate a fraud. Recognizing “the separate existence of [101 Houseco] would sanction a fraud and permit . . . injustice.” *Marr v. Postal Union Life Ins. Co.*, 105 P.2d 649, 656 (Cal. 1940).

B. David Lonich Obtained a Forfeitable Interest in Park Lane Villas East

A person convicted of a violation must forfeit “any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation.” 21 U.S.C. § 853(a)(1). The government argues that “defendant David Lonich successfully acquired the mortgage note from the FDIC that was secured by all but eleven of the residential units

within Park Lane Villas East and thereby unlawfully gained control over those properties.” Lonich Forfeiture Appl. at 4. The government adds that “defendant Lonich thereafter committed additional wire fraud . . . to obtain financing for the acquisition of the remaining 11 residential units not secured by the FDIC’s note.” *Id.* Lonich asserts that “nothing in [the documentary record] provides Mr. Lonich any ownership interest in 101 House [sic] or with respect to PLV East.” Lonich Forfeiture Opp’n at 4-5. Thus, Lonich argues, he could never have obtained any part of 101 Houseco or Park Lane Villas East. *Id.* at 6.

However, California law recognizes that a party can obtain property through possession and without legal title. “The concept of ownership refers not to a single right, but a collection of legal rights to use and enjoy property. There are several indicia of ownership. Title is one. Possession is another. The rights to transfer and to exercise control over property are also indicia of ownership.” *Hoffman v. Connell*, 73 Cal. App. 4th 1194, 1200 (1999) (citations omitted). The Supreme Court recognizes this concept as well.

At the time Congress enacted § 853(a)(1), the verb “obtain” was defined as “*to come into possession of*” or to “get or acquire.” Random House Dictionary of the English Language 995 (1966); *see also* 7 Oxford English Dictionary 37 (1933) (defining “obtain” as “[*t*]o come into the possession or enjoyment of (something) by one’s own effort, or by request; to procure or gain, as the result of purpose and effort”). That definition persists today. *See*

Black's Law Dictionary 1247 (10th ed. 2014) (defining "obtain" as "[t]o bring into one's own possession; to procure, esp. through effort").

Honeycutt v. United States, 137 S. Ct. 1626, 1632 (2017) (emphasis added).

When § 853(a)(1) was enacted, "possession" was defined as "the act or condition of having in or taking into one's control or holding at one's disposal." Webster's Third New International Dictionary 1770 (1961); see also Black's Law Dictionary 1325 (rev'd 4th ed. 1968) (defining "possession" as "[t]he detention and control, or the manual or ideal custody, of anything which may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name."). The same holds true today. See Merriam-Webster's Collegiate Dictionary 968 (11th ed. 2003) ("a: the act of having or taking into control"; "b: control or occupancy of property without regard to ownership"); see also Black's Law Dictionary 1351 (10th ed. 2014) ("The fact of having or holding property in one's power; the exercise of dominion over property.").

Thus, Lonich's reliance on *Honeycutt* is misplaced. While Lonich insists that he never "obtained" 101 Houseco or Park Lane Villas East, his ownership of Park Lane Villas East is reflected by his control over the property. The evidence at trial showed that Lonich and Madjlessi created 101 Houseco to obtain Park Lane Villas East between March 2009 and September

2012. During this time, Lonich and Madjlessi controlled 101 Houseco through House. Thus, Lonich maintained an ownership interest in Park Lane Villas East through House as well.

Furthermore, Lonich held at least a “1% percentage interest” in 101 Houseco on paper between March 2011 and September 2012, which was the time in which defendants used 101 Houseco to obtain Park Lane Villas East. *Compare* Lonich Forfeiture Opp’n at 4-5, *with* Lonich Decl. Opposing Forfeiture, Ex. O at 1. Similarly, Lonich still maintains an interest in 101 Houseco as the trustee for 101 Houseco Investment Trust. Lonich Forfeiture Opp’n at 2-3, 5. While Lonich claims that his position as a trustee does not confer any ownership interest in Park Lane Villas East, trustees retain legal title to property owned by the trust. *Allen v. Sutter Cnty. Bd. of Equalization*, 139 Cal. App. 3d, 887, 890 (1983). Further, the Court finds significant the fact that Lonich has continued to receive payments from 101 Houseco. Thus, this Court finds that defendant Lonich possesses a forfeitable interest in Park Lane Villas East.

C. James House Has a Forfeitable Ownership Interest in Park Lane Villas East

Defendant James House does not challenge the government’s request to forfeit Park Lane Villas East through him. However, this Court must still ensure House has a forfeitable interest in the property before

it may enter a final order of forfeiture against House. Fed. R. Crim. P. 32.2(c)(2).

The government argues that House has a forfeitable interest in Park Lane Villas East because “the property is legally owned by House.” House Dkt. No. 63, June 1, 2018 Hr’g Tr. at 13. The evidence presented at trial established that House was an 80.1% owner of 101 Houseco when that entity was created and when 101 Houseco acquired PLV East. Trial Ex. 876 at 4. 101 Houseco responds that “the evidence is unequivocal that House never ‘actually acquired’ or ‘owned’ PLV East.” Pet. at 4. Petitioner relies upon House’s testimony that 101 Houseco and Park Lane Villas East was really owned and controlled by Lonich and Madjlessi at all times. *Id.* at 4-6. Petitioner also claims that “House’s fictional, paper ownership of 101 Houseco was extremely short-lived.” *Id.* at 5 n.6.

The Court does not find any tension between the government’s arguments at trial and the government’s current arguments in support of forfeiture of Park Lane Villas East from House. As previously discussed, “[t]here are several indicia of ownership. Title is one. Possession is another.” *Hoffman*, 73 Cal. App. 4th at 1200. Thus, House may hold title to 101 Houseco and Park Lane Villas East while Lonich and Madjlessi controlled and possessed the same property.

Petitioner argues that under the alter ego doctrine, “the courts will ignore the corporate entity and deem the corporation’s acts to be those of the persons or organizations *actually controlling the corporation.*”

House Dkt. No. 69, Reply at 4 (quoting *Sonora Diamond*, 83 Cal. App. 4th at 538 (emphasis added in Reply)). Petitioner claims that because House testified that 101 Houseco was truly controlled by Lonich and Madjlessi, House could not have actually controlled 101 Houseco. *Id.* However, petitioner's argument disregards the fact that the only way Lonich and Madjlessi exercised any control over 101 Houseco and Park Lane Villas East was through House. The evidence presented at trial established that neither Lonich nor Madjlessi could have obtained Park Lane Villas East without using House as a straw purchaser to obtain loans or place bids. Nor could Lonich and Madjlessi control Park Lane Villas East without an intermediary, in this case, House. As such, this Court finds that House maintained a degree of control over 101 Houseco and Park Lane Villas East, in conjunction with Lonich and Madjlessi, and used 101 Houseco to obtain Park Lane Villas East and a forfeitable interest in the property.

IV. 101 Houseco Does Not Have a Valid Interest in Park Lane Villas East

A petitioner has a valid interest in property subject to forfeiture if the petitioner establishes by a preponderance of the evidence that either:

- (A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in

the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

- (B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of the purchase reasonably without cause to believe that the property was subject to forfeiture under this section.

21 U.S.C. § 853(n)(6); *see also Hooper*, 229 F.3d at 821. If the court determines that petitioner met its burden, “the court shall amend the order of forfeiture in accordance with its determination.” 21 U.S.C. § 853(n)(6).

A. Petitioner Never Obtained a Valid Interest in Park Lane Villas East

Petitioner asserts that it “has title to the parcels that constitute PLV East.” Pet. at 2. In response, the government argues that “101 Houseco’s petition must . . . be denied because it was created by the defendants solely as a vehicle to perpetrate the fraud in this case.” Opp’n & Recons. Mot. at 4. Petitioner does not contest that 101 Houseco was created to perpetrate the fraud in this case, and admits that “there was plenty of evidence in the Lonich trial that [101 Houseco] was used for a fraudulent purpose.” House Dkt. No. 73, July 20, 2018 Hr’g Tr. at 5; *see also id.* at 6 (“The Court: And the fraud [101 Houseco] perpetrated got the title to [Park

Lane Villas East] into [101 Houseco]. Mr. Cline: That may be. And I'm not here to argue that either."). Petitioner provides two replies: first, 101 Houseco is not House's alter ego, Reply at 2-5; and second, "101 Houseco is not a sham entity. It is a real entity that exists to this day, and it owns property." July 20, 2018 Hr'g Tr. at 5.⁵

⁵ The record in this case regarding the "ownership" of 101 Houseco throughout its history to the present is murky at best. As the government noted in its motion for forfeiture:

From the original formation of 101 Houseco, LLC by Defendant Lonich in March 2009, numerous members and managers have been appointed, fired and replaced by and through multiple fraudulent and misleading corporate documents. Some of these documents, signed on or near the same date, directly contradict each other and directly contradict representations made to others (*e.g.*, Terra Capital and Freddie Mac) about who owns and controls 101 Houseco, LLC. *See, e.g.*, Trial Exhibits 1830 and 1831 (James House resigns as Manager of 101 Houseco, 101 Park Lane and as Trustee for Houseco Investment Trust and appoints David Lonich over all three entities); *See* Trial Exhibit 2228 (Park Lane Villas Management removed as Manager of 101 Park Lane, LLC and Defendant Lonich appointed as Manager). The only consistent theme throughout all of the misleading and fraudulent corporate documents transferring ownership interests in 101 Houseco, LLC, is that Defendant Lonich was the person responsible for selecting and appointing who will serve as the member or manager of the company. *See, e.g.*, Trial Exhibit 0735 (101 Park Lane, LLC and 101 Houseco, LLC operating agreements, providing Sixells, LLC, a corporation owned and controlled by Defendant Lonich, control over any quorum of the company); trial testimony of James House, November 7, 2017, page 125 (Sixells is a corporation associated with David Lonich); *See* Trial

As previously explained, it is appropriate to apply the alter ego doctrine in the present case. Consequently, 101 Houseco’s ownership of Park Lane Villas East must be attributed to “the persons or organizations actually controlling” 101 Houseco: Lonich, Madjlessi and House. *Sonora Diamond*, 83 Cal. App. 4th at 538. Even if 101 Houseco currently “has title to the parcels that constitute PLV East,” Pet. at 2, petitioner did not obtain a valid interest in Park Lane Villas East “at the time of the commission of the acts which gave rise to the forfeiture of the property under [21 U.S.C. § 853].” *See* 21 U.S.C. § 853(n)(6)(A); *see also* 21 U.S.C. § 853(c) (“All right, title, and interest in property described in subsection (a) of this section vests in the United States *upon the commission of the act giving rise to forfeiture* under this section.”) (emphasis added); *United States v. Nava*, 404 F.3d 1119, 1124 (9th Cir. 2005) (“The title to the forfeited property vests in

Transcript of attorney David Packer, November 15, 2017(page 81) (there were no limitations on who Defendant Lonich could appoint as the owner of 101 Houseco, LLC).

Dkt. No. 707 at 5-6 in Lonich Dkt.

Further, counsel for 101 Houseco has also been unable or unwilling to clearly identify who presently owns 101 Houseco. *See* House Dkt. No. 73, July 20, 2018 Hr’g Tr. at 24 (“The Court: Who owns 101 Houseco now? Mr. Cline: There are at least two LLCs that own it. I think 114 Park Lane is one of them and Ananda Partners I, LLC, is the other. The Court: Who owns Ananda? Mr. Cline: Ananda, I believe, is owned by – there are a number of investors. I think it’s owned by Ananda Advisers. I can’t tell you for sure.”) (emphasis added).

the United States at the time the defendant commits the unlawful acts. . . .”) (citing 21 U.S.C. § 853(c)).

Additionally, petitioner’s argument that 101 Houseco “is a real entity that exists to this day” is not persuasive. While 101 Houseco may be “a real California Limited Liability Company,” July 20, 2018 Hr’g Tr. at 4-55, that does not change the fact that 101 Houseco was an alter ego. As discussed above, Lonich and Madjlessi controlled 101 Houseco through House until at least September 6, 2012, by which point 101 Houseco had obtained all of Park Lane Villas East. Petitioner’s reflection that “Madjlessi is dead[;] Lonich is convicted[; and] 101 Houseco goes on,” *id.* at 4, is irrelevant. The question is whether 101 Houseco obtained an interest in Park Lane Villas East at or before “the time of the commission of the acts which gave rise to the forfeiture of the property under [21 U.S.C. § 853].” 21 U.S.C. § 853(n)(6)(A). To the extent that petitioner is asserting that 101 Houseco’s interest in Park Lane Villas East was somehow legitimized after Madjlessi and Lonich stopped controlling 101 Houseco, petitioner must establish that it “is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under [21 U.S.C. § 853].” *Id.* § 853(n)(6)(B).

B. Petitioner Cannot Be a Bona Fide Purchaser of Park Lane Villas East

As the government notes, “[p]etitioner in this case did not assert that it was a bona fide purchaser; it relied instead on § 853(n)(6)(A).” Opp’n & Recons. Mot. at 2. However, even if petitioner attempted to claim that it is a bona fide purchaser of Park Lane Villas East, it could not prevail. A petitioner must be able to establish two elements to be a bona fide purchaser: (1) that it purchased for value its asserted right, title, or interest in the property; and (2) that at the time of purchase, it was reasonably without cause to believe that the property was subject to forfeiture under 21 U.S.C. § 853. 21 U.S.C. § 853(n)(6)(B). Petitioner cannot satisfy the second element.

Under California law, “the knowledge of a corporate officer within the scope of his employment is the knowledge of the corporation.” *Meyer v. Glenmoor Homes, Inc.*, 246 Cal. App. 2d 242, 264 (1966). Once a corporation has notice and knowledge, “no subsequent change of officers could take away this notice and knowledge.” *Sanfran Co. v. Rees Blow Pipe Mfg. Co.*, 335 P.2d 995, 1003 (Cal. App. 1959) (citing *Mechanics’ Bank of Alexandria v. Seton*, 26 U.S. 299, 309 (1828)).

101 Houseco cannot establish that it had no reason to believe that Park Lane Villas East was subject to forfeiture under 21 U.S.C. § 853. Lonich and Madjlessi created 101 Houseco to obtain Park Lane Villas East by fraudulent means. The evidence at trial established that Lonich and Madjlessi installed House

as 101 Houseco's 80.1% owner and manager, and House understood that Lonich and Madjlessi planned to obtain Park Lane Villas East by fraudulent means. Consequently, House's knowledge as 101 Houseco's sole officer that Park Lane Villas East was fraudulently obtained is 101 Houseco's knowledge. *See Meyer*, 246 Cal. App. 2d at 264. No subsequent change of officers can take away this knowledge. *Sanfran*, 335 P.2d at 1003. Thus, 101 Houseco cannot assert that it was reasonably without cause to believe that Park Lane Villas East was subject to forfeiture under 21 U.S.C. § 853.

CONCLUSION

For the foregoing reasons, the Court hereby GRANTS IN PART⁶ the government's motion for reconsideration, VACATES the Order Denying Lonich Forfeiture, VACATES the Order Granting House Forfeiture, and DISMISSES 101 Houseco's petition challenging forfeiture of Park Lane Villas East.

IT IS HEREBY ORDERED that the following property is preliminarily forfeited to the United States:

⁶ The Court does not find it appropriate to enter a money judgment of forfeiture against Lonich, and instead only orders that Lonich's interest in PLV East be forfeited.

- Real Property located at 3751 Sebastopol Road, Santa Rosa, California, A PNs 035-920-001 through 035-920-048, inclusive; 035-930-001 through 035-930-027, inclusive; 035-940-001 through 035-940-026, inclusive; 035-950-001 through 035-950-013, inclusive; and 035-880-008 (commonly referred to as the “Park Lane Villas East”), including all interest and appreciation accrued thereon.

IT IS FURTHER ORDERED that the United States, through its appropriate agency, shall publish on www.forfeiture.gov, a government website, the following information for at least 30 days: (1) this Order; (2) notice of the government’s intent to dispose of the property in such manner as the Attorney General may direct; and (3) notice that any person, other than the defendant, having or claiming a legal interest in the property, must file a petition with the Court and serve a copy on government counsel, David B. Countryman, Assistant United States Attorney, 450 Golden Gate Avenue, Box 36055, San Francisco, CA 94102, within 30 days of the final publication of notice or of receipt of actual notice, whichever is earlier.

IT IS FURTHER ORDERED that the government may conduct discovery in order to identify, locate, or dispose of property subject to forfeiture in accordance with Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction to enforce this Order, and to amend

it as necessary, pursuant to Federal Rule of Criminal Procedure 32.2(e).

IT IS FURTHER ORDERED that, pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, this Order shall become final as to the defendants at the time of sentencing and shall be made part of the sentence and included in the judgment.

IT IS SO ORDERED.

Dated: August 1, 2018

/s/ Susan Illston

SUSAN ILLSTON
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES
OF AMERICA,

Plaintiff,

v.
DAVID LONICH, *et al.*,

Defendants.

Case No. 14-cr-00139-SI

Case No. 17-cr-00139-SI

**ORDER DENYING
THE GOVERNMENT'S
APPLICATION FOR
A PRELIMINARY OR-
DER OF FORFEITURE
MONEY JUDGMENT;
DENYING REQUEST
FOR RESTRAINING
ORDER; AND DENY-
ING MOTION TO IN-
TERVENE AND STAY**

Re: Dkt. Nos. 707, 718

(Filed Jun. 5, 2018)

On June 1, 2018, the Court held a hearing regarding the government's renewed application for a preliminary order of forfeiture, the government's request for a restraining order, and the motion to intervene and stay filed by 101 Houseco L LC, Ananda Partners I, and 114 Park Lane Santa Rosa LLC.

The government seeks a forfeiture money judgment in the amount of \$20,800,000.00 against defendant David Lonich, "as the amount of criminal proceeds obtained directly and indirectly from wire fraud and money laundering violations, and thus forfeitable to the United States pursuant to 18 U.S.C.

§ 981(a)(1)(C) and 28 U.S.C. § 2461(c) and the procedures outlined in Rule 32.2 of the Federal Rules and Criminal Procedures.” Proposed Order at 1 (Dkt. No. 707-2).¹ The government asserts that the money judgment consists of the amount of proceeds Lonich obtained from the wire fraud and money laundering violations, \$13,333,839.10, plus an additional \$7,466,160.90 in appreciation. Dkt. No. 707 at 8-9. The government cites trial testimony and exhibits for the proposition that Lonich obtained the fraudulent loan proceeds through the various loans made to 101 Houseco, LLC, and that those proceeds were used to purchase PLV East. The government states that it will credit the money judgment with the net proceeds from the successful forfeiture and sale of the PLV East.

Defendant opposes the forfeiture. Defendant argues that the government has not shown that he has ever had an ownership interest in 101 Houseco, LLC or with respect to PLV East, and that the government did not show that defendant “obtained” the loan proceeds that were disbursed to 101 Houseco, LLC. Lonich has also filed a declaration in support of his opposition in which he states, “At no time was I a member of any entity that owned all or any portion of the real property commonly referred to as Park Lane Villas East. At no time have I ever held an ownership interest in 101 Houseco, LLC, or any of its members, or Park Lane Villas East. . . .” Lonich Decl. ¶ 21 (Dkt. No. 715).

¹ This order cites the docket numbers in 14-cr-139 SI and not the corresponding docket numbers in 17-cr-139 SI.

The Court concludes that the government has not demonstrated that forfeiture money judgment is warranted against defendant Lonich. The government’s argument that Lonich (and Madjlessi) controlled 101 Houseco, LLC is supported by the record of the criminal trial, and indeed there was considerable evidence that Lonich and Madjlessi created 101 Houseco, LLC in order to carry out the fraud and the money laundering. However, the government did not show that Lonich *owned* 101 Houseco, LLC, or that Lonich *obtained* the loan proceeds made to 101 Houseco, LLC. The government seeks a forfeiture money judgment against Lonich based upon the loans to 101 Houseco, LLC. The evidence at trial showed that the loans were obtained by 101 Houseco, LLC, and then payments were made from 101 Houseco, LLC to various entities (such as DebtX, House Construction, and Masma Construction); the loan proceeds were not disbursed to Lonich. Under these circumstances, the Court cannot find that Lonich “obtained directly or indirectly” property that is subject to forfeiture. *See* 18 U.S.C. § 982(a)(2)(A); *Honeycutt v. United States*, 137 S. Ct. 1626, 1635 (2017) (holding that criminal forfeiture under 21 U.S.C. § 853(a)(1), which authorizes forfeiture of property the defendant “obtained, directly or indirectly, as the result of” the crime, “is limited to property the defendant himself actually acquired as the result of the crime,” and there is no joint and several liability for criminal forfeiture).

Accordingly, the Court DENIES the government’s application for a preliminary order of forfeiture money

App. 50

judgment, and DENIES AS MOOT the request for a restraining order and the motion to intervene.

IT IS SO ORDERED.

Dated: June 5, 2018

/s/ Susan Illston

SUSAN ILLSTON
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES
OF AMERICA,
Plaintiff-Appellee,
v.
101 HOUSECO, LLC,
Intervenor-Appellant,
JAMES HOUSE,
Defendant.

No. 18-10305
D.C. No. 3:14-cr-00329-SI-1
Northern District of
California, San Francisco
ORDER
(Filed Apr. 21, 2022)

UNITED STATES
OF AMERICA,
Plaintiff-Appellee,
v.
101 HOUSECO, LLC,
Intervenor-Appellant,
DAVID LONICH,
Defendant.

No. 18-10370
D.C. No. 3:14-cr-00139-SI-2

Before: HURWITZ and BRESS, Circuit Judges, and
CORKER,* District Judge.

* The Honorable Clifton L. Corker, United States District Judge for the Eastern District of Tennessee, sitting by designation.

Judge Hurwitz and Judge Bress voted to deny the petition for rehearing en banc, and Judge Corker so recommended. The petition for rehearing en banc was circulated to the judges of the Court, and no judge requested a vote for en banc consideration. Fed. R. App. P. 35. The petition for rehearing en banc is **DENIED**.
