

8-24-99

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

OFFICE OF THE ATTORNEY GENERAL)
Petitioner,)
v.)
GARMENTS SEIZED AT MAN ON)
ENTERPRISES, INC.,)
Respondent Property,)
MAN ON ENTERPRISES, INC.,)
Potential Claimant.)

Civil Action No. 98-1228

**ORDER GRANTING IN PART
POTENTIAL CLAIMANT'S
MOTION FOR SUMMARY
JUDGMENT**

I. PROCEDURAL BACKGROUND

This matter came before the Court on Potential Claimant Man On Enterprises, **Inc.'s** motion for summary judgment. Robert Goldberg, Esq. appeared on behalf of Petitioner. David A. **Wiseman**, Esq. appeared on behalf of Potential Claimant Man On Enterprises, Inc. The Court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the **arguments** of counsel, and being fully informed of the premises, now renders its written decision.

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*Goldberg
Wiseman*

FOR PUBLICATION

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II. FACTS

On the night of October 21, 1998, officers from the Department of Labor and Immigration (“DOLI”) conducted an **immigration** raid at the garment factory of **Potential Claimant Man On Enterprises, Inc.** (“Man On”) in Garapan. As a result of the raid, 46 sacks of garments were seized containing in excess of 5,500 items.

In December 1998, Man On filed the instant motion for summary judgment seeking return of the garments on the basis that the warrantless seizure was illegal and/or that the garments were not used to violate immigration laws.

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III. ISSUES

1. Whether Immigration officers may seize property without a warrant?
2. Whether 3 CMC § 4365 provides for civil forfeitures?
2. Whether the garments were used or intended for use in connection with the employment of illegal aliens?

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Iv. ANALYSIS

A. Summary Judgment Standard

The standard for summary judgment is set forth in Rule 56 of the Commonwealth Rules of Civil Procedure. Rule 56(a) provides:

A party seeking to recover upon a claim . . . may . . . move with or without supporting affidavits for a summary judgment in the party’s favor upon all or any part thereof.

Corn. R. Civ. P. 56(a). Rule 56(c) continues:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Corn. R. Civ. P. 56(c). Once a movant for summary judgment has shown that no genuine issue of material fact exists, the burden shifts to the opponent to show that such an issue does exist. Riley v. Public School Sys., 4 N.M.I. 85, 89 (1994).

1 B. Warrantless seizures

2 Man On contends that Commonwealth Immigration officers have no authority to seize **property**
3 without a warrant. Thus, the **seizure** of Man On's garments was unlawful.

4 An immigration forfeiture under 3 CMC § 4365 is governed by the terms of 6 CMC § 2150
5 the Commonwealth drug forfeiture statute. Under this statute, the government may make a
6 warrantless seizure of property **if:**

7 "The Attorney **General** has probable cause to believe that the property has been used or is
8 intended to be used in violation of this title. "

9 6 CMC § 2150(b)(4)(**emphasis** added). Man On contends that the Commonwealth Entry and
10 Deportation Act of 1983^{1/} is a comprehensive statutory scheme which provides for various types of
11 warrantless actions, including warrantless **searches^{2/} and arrests.^{3/}** Such a comprehensive scheme
12 demonstrates that the legislature intended to preclude any alternative remedies, to wit, the warrantless
13 seizure of property. However, the Court is not persuaded by this argument. Although the legislature
14 didn't create a separate statute for warrantless seizures, it did incorporate the terms of the drug
15 forfeiture statute into the immigration forfeiture statute which, as noted above, expressly provides for
16 warrantless seizures so long as probable cause exists.

17 C. Civil vs. criminal forfeiture

18 Man On contends that 3 CMC § 4365, the immigration forfeiture statute, is a criminal
19 forfeiture statute. As such, a criminal conviction is required before Man On's property can be
20 forfeited.

21 There are two types of forfeiture: criminal and civil. A criminal forfeiture is an *in personam*
22 judgment against a person convicted of a crime, while a civil forfeiture is an *in rem* proceeding in
23 which liability attaches to particular property and not to particular institutions or individuals. See
24 Alexander v. United States, 509 U.S. 544, 557-559, 113 S.Ct. 2766, 2775-2776, 125 L.Ed.2d 441

25 ^{1/}See 3 CMC §4301, et seq.

26 ^{2/}See 3 CMC §§ 4334(a),(d); 4381(c),(d); 4442.

27 ^{3/}See 3 CMC §§ 4334(c); 4382(b).

1 (1993). Thus, the defendant in a criminal forfeiture proceeding is the **person**, and the defendant in
2 a civil forfeiture proceeding is **the** particular **property**. See Austin v. United States, 509 U.S. 602.
3 614-617, 113 **S.Ct.** 2801, ~~2808-2809~~, **125 L.Ed.2d** 488 (1993). However, unless a forfeiture statute
4 specifically requires it, a criminal conviction is not a prerequisite to forfeiture. State v. Lincoln
5 County, 605 **So.2d** 802,804 (Miss. 1992); State v. One 1978 Chevrolet Corvette, 667 **P.2d** 893,896
6 (**Kan.App.** 1983); Marks v. State, 416 **So.2d** 872, 874 (Fla.App. 1982); City of Tallahassee v. One
7 Yellow 1979 Fiat, 414 **So.2d** ~~1100~~, 1102 (**Fla.App.** 1982).

8 In construing 3 CMC § 4365 with the authorities cited above, the Court finds that forfeitures
9 occurring through this statute are civil in nature and not criminal. Not only do the forfeitures proceed
10 against the seized property and not against the person, there is no mention in **the** statute of a criminal
11 action or conviction being a prerequisite **to** forfeiture. See Office of Attorney General v. Construction
12 Equipment, Civil Action No. 98-731 (N.M.I. **Jan.25,1999**)(**Order Denying Tower Construction**
13 **Corporation's Motion to Dismiss and Motion to Strike at 3-4**).

14 D. **Garments**

15 As a **final** argument, Man On contends that the seized garments cannot be subject to forfeiture
16 under 3 CMC § 4365 because the garments, in and of themselves, were not used to violate
17 Commonwealth immigration laws.

18 In its Petition for Forfeiture of Personal Property, the government alleges two grounds for the
19 forfeiture of **the** garments: (1) that the garments were used or intended for use in connection with
20 employment of illegal aliens in violation of 3 CMC § 4361(e); and (2), that the garments were used
21 or intended for use in connection with harboring illegal aliens in violation of 3 CMC § 4361(c). The
22 question for determination is whether Man On, in fact, **used** the garments in connection with the
23 employment or harboring of illegal aliens. Words and phrases shall be read within their context and
24 shall be construed according to the common and approved usage of the English language. 6 CMC §
25 104. The term "use" has a number of different meanings. Black's Law Dictionary defines "use" as
26 "to make use of, to convert to one's service; to employ; to avail oneself of; to utilize; to carry out a
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1 purpose or action by means of: to put into action or service, especially to attain an end." Black's Law
2 : Dictionary 1541 (6th ed. 1990).

3 Reading the immigration statutes above and applying **the word** "use" in accordance with
4 grammar, common usage, and common sense, the Court finds that Man On did not use the garments
5 in the employment of illegal aliens. Although the garments might be seen as a by-product of illegal
6 employment, there is nothing to show that the finished products were somehow utilized to violate the
7 law as would, for example, a vehicle used to transport illegal aliens to a workplace. Likewise, there
8 is nothing before the Court to indicate that the garments at issue were used to clandestinely shelter or
9 conceal any alleged aliens from immigration authorities.

10 Based on the foregoing, the Court finds that the garments are not subject to forfeiture as they
11 were not used in the employment or harboring of illegal aliens. Therefore, Man On is entitled to have ,
12 the garments returned to it.

13 V. CONCLUSION

14 For all the reasons stated above, Man On's motion for summary **judgment** is GRANTED in
15 part. The government shall immediately release the garments to a representative of Man On
16 Enterprises, Inc. at the Department of Labor and Immigration or wherever the garments are currently
17 being secured.

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20 So ORDERED this 24 day of August, 1999.

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24 TIMOTHY H. BELLAS, Associate Judge