

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE: 650 FIFTH AVENUE AND
RELATED PROPERTIES

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KIRSCHENBAUM, et al.,

Plaintiffs,

-v-

650 FIFTH AVENUE and RELATED
PROPERTIES,

Defendants.

-----X

KATHERINE B. FORREST, District Judge:

Beginning on May 30, 2017, and continuing through June 29, 2017, a jury trial was held in the above-captioned forfeiture action, Case No. 08-cv-10945 (the “Forfeiture Action”). On June 29, 2017, the unanimous jury returned a verdict in favor of the Government requiring forfeiture of a number of properties.

Beginning on May 30, 2017, and continuing through June 28, 2017, a bench trial was also held in a number of above-captioned private turnover actions (the

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08 Civ. 10934 (KBF)
and all member and
related cases

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09-cv-165 (KBF)

09-cv-166 (KBF)

09-cv-553 (KBF)

09-cv-564 (KBF)

10-cv-1627 (KBF)

10-cv-2464 (KBF)

11-cv-3761 (KBF)

12-mc-19 (KBF)

12-mc-20 (KBF)

12-mc-21 (KBF)

12-mc-22 (KBF)

13-mc-71 (KBF)

13-cv-1825 (KBF)

13-cv-1848 (KBF)

OPINION & ORDER

“TRIA/FSIA Action” or “Turnover Action”) On June 29, 2017, the Court issued an Opinion & Order finding that the Judgment Creditors have proven entitlement to attach and execute upon the same properties as well as additional properties under both § 201(a) of the Terrorism Risk Insurance Act and § 1610(b)(3) of the Foreign Sovereign Immunities Act. (ECF No. 1895.)

Before Judgment can be entered in either action, however, the Court must resolve a number of post-trial motions¹:

Motion 1: A motion by the Government to dismiss claims by the Levin Judgement Creditors, the Texas Islamic Education Center (“IEC”), and the Maryland IEC (see ECF Nos. 1988, 2001, 2012, 2015, 2023, 2034, 2038)²;

Motion 2: The Alavi Foundation and the 650 Fifth Avenue Company’s (“Claimants”) motion pursuant to Rules 50 and 59 of the Federal Rules of Civil Procedure for judgment as a matter of law or a new trial with respect to the Forfeiture Action (see ECF Nos. 1999, 2018, 2033);

Motion 3: A motion by Claimants to reduce the amount awarded by the jury in the Forfeiture Action as contrary to the 8th Amendment (see ECF No. 1998, 2017);

¹ Additional motions have been filed that are not addressed in this Opinion & Order. Among those are applications by certain judgment creditors, the Levins; the Levins are not parties in the above-captioned consolidated and coordinated proceedings and the Court addresses their applications separately. In addition, there are a number of motions dealing with issues of priority of judgment that the Court also addresses separately.

² On August 18, 2017, Amir Reza Oveissi voluntarily withdrew his previously filed notice of claim. (ECF No. 2029.)

Motion 4: A motion by Claimants to dismiss the Forfeiture Action on the basis of a lack of subject matter jurisdiction (see ECF No. 1992, 2021, 2032); and

Motion 5: A motion by Alavi and the 650 Fifth Avenue Company for stays pending appeal of judgment in both the Forfeiture Action and the Turnover Action (see ECF No. 1989, 2022, 2036).

The Court addresses each of these motions in turn.

A. Motion 1: The Government's Motion to Dismiss

The Government has moved to dismiss three outstanding claims³ with respect to certain of the properties at issue in the Forfeiture Action.

1. The Levins's claim

The first claim addressed in the Government's motion is that brought by the "Levin Judgment Creditors" on February 4, 2015, purporting to make a "Claim to any Distribution of Forfeited Properties in Lieu of Notice of Claim under Rule G." (ECF No. 1271 at 1.) In their claim, the Levins assert an interest in the building located at 650 Fifth Avenue (the "Building") and certain other real property owned by Alavi and located in Queens, New York. The Government is correct that the claim should be dismissed.

As an initial matter, the claim does not even purport to be a valid claim under the Civil Asset Forfeiture Reform Act ("CAFRA") or Rule G of the

³ The motion was initially made as to four claims but one of the entities at issue, Amir Reza Oveissi, has withdrawn his claim (ECF No. 2029), thereby mooting that portion of the Government's motion.

Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (“Rule G”).

In addition, the Levins’s claim is untimely. Once a forfeiture action has been commenced—as it was here in November 12, 2009—rule G(5) sets deadlines by which potential claimants must come forward. These requirements “force claimants to come forward as quickly as possible after the initiation of forfeiture proceedings, so that the court may hear all interested parties and resolve the dispute without delay, and to minimize the danger of false claims by requiring claims to be verified or solemnly affirmed.” United States v. \$8,221,877.16 in United States Currency, 330 F.3d 141, 150 n.9 (3d Cir. 2003) (internal quotations omitted). Rule G(8) provides for dismissal (or, in Rule G parlance, “striking”) of a claim that has failed to comply with filing requirements.

The Government duly published notice that it had filed its claim on an Internet site commencing December 1, 2009, and running for 30 consecutive days. Accordingly, the Levins’s claim had to be filed not later than January 31, 2010—60 days from first publication. It was not. The Levins obtained their judgment against Iran in 2007—but failed to file a claim until 2015. By this time, all of the parties in the consolidated and coordinated cases had spent enormous amounts of time in discovery, district court motion practice, and in connection with certain appeals. Throughout this time the Levins remained on the sidelines.

Third, even if the Levins’s claim was timely, they lack standing under Rule G(8). Statutory standing here requires that a claimant have an interest in the

defendant property. The Levins do not. The Levins are, at most, general creditors. The law is clear that a general, unsecured creditor without a lien lacks any specific interest in defendant property and thus lacks standing to contest its forfeiture. 18 U.S.C. § 983(d)(6)(B)(i); DSI Assocs. LLC v. United States, 496 F.3d 175, 184 (2d Cir. 2007).

For these reasons, the Court dismisses the Levins' claim in the Forfeiture Action.

2. The Texas IEC claim

The Government has also moved to dismiss the claim asserted by the Texas IEC. On February 16, 2010, the Texas IEC, claiming a leasehold interest in the defendant property located in Texas, filed a "Verified Claims and Statement of Interest." (ECF No. 63.) On its face, that claim concedes that it does not challenge Alavi's interest in the property. The Forfeiture Action was directed at any interest that Alavi had in the property—an interest, therefore, which the Texas IEC claim did not address. On June 29, 2017, the jury awarded the Government a 15% interest in Alavi's interest in the Texas property. The forfeited interest may therefore be fulfilled without impingement on any valid leasehold interest.⁴ The Texas IEC claim is therefore dismissed as moot.

3. The Maryland IEC claim

The third and final remaining claim that the Government seeks to dismiss from the Forfeiture Action is asserted by the Maryland IEC. That entity filed a

⁴ This Court need not, and does not, reach the validity of any leasehold interest.

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