

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

JARED WHEAT, JOHN BRANDON  
SCHOPP, and HI-TECH  
PHARMACEUTICALS, INC.,

Defendants.

CRIMINAL ACTION NO.

1:17-cr-229-AT-CMS

**ORDER**

Before the Court is the Emergency Motion for Release of Improperly Seized Assets filed on October 23, 2017 by the three defendants in this case, Jared Wheat, John Brandon Schopp, and Hi-Tech Pharmaceuticals, Inc. (collectively “Defendants”). [Doc. 36]. In the motion, Defendants move, pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure, for the return of more than \$3.4 million that the Government seized in October 2017. [Id.]. The seizure was done pursuant to two Seizure Warrants signed by United States Magistrate Judge Alan Baverman—one for an account with Touchmark National Bank [Doc. 36-1] and the other for an account with Bank of America [Doc. 36-2]. Defendants argue that in seizing the funds, the Government deprived them of due process, seized assets

that cannot be traced to the offenses charged in the indictment, and failed to demonstrate probable cause to justify the massive seizure. [Doc. 36 at 14-38].

Shortly after Defendants filed their motion, the Government agreed to return approximately \$424,000 that was “improperly sent to the Government.” [Doc. 42 at 4]. Thereafter, on November 6, 2017, the Government filed a Bill of Particulars adding the remainder of the funds seized from the two bank accounts as being subject to forfeiture. [Doc. 41]. The Government also instituted a civil forfeiture action in this district, United States v. \$1,810,490.34 Seized from Touchmark Nat’l Bank Acct No. XXXXXX0855, et al., Civil Action No. 1:17-cv-4442-CAP (N.D. Ga. Nov. 6, 2017).

In its response to the motion, the Government argues that the motion is now moot due to the filing of the Bill of Particulars and the institution of the civil forfeiture action. I agree.

Rule 41(g) is titled “Motion to Return Property” and provides that “[a] person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property’s return.” Fed. R. Crim. P. 41(g). It is well settled that this rule does not apply to property that is subject to forfeiture. See United States v. Eubanks, 169 F.3d 672, 674 (11th Cir. 1999) (stating that a Rule 41(g) motion is unavailable “when property is retained

pursuant to civil forfeiture instead of for use as evidence.”). Thus, now that the subject funds have been specifically listed as being subject to forfeiture in the Bill of Particulars, Rule 41(g) no longer applies. Moreover, a Rule 41(g) motion is not the proper remedy to obtain release of the seized property that is the subject of a civil forfeiture action. See Matter of \$49,065.00 in U.S. Currency, 694 F. Supp. 1559, 1559 (N.D. Ga. 1987) (holding that this court did not have jurisdiction to return the seized money pursuant to the predecessor to Rule 41(g) because the Federal Rules of Criminal Procedure are not applicable to civil forfeiture proceedings).

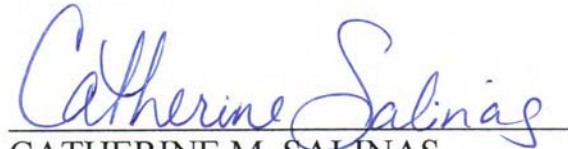
In their reply brief, Defendants acknowledge that the Government’s recent filings create “an impediment to this Court’s ability to release all or a portion of the subject funds at this time.” [Doc. 42 at 5]. Defendants state that they intend, at an unspecified later date, to address multiple instances of the Government’s “overreaching” (including the Government’s seizure of the funds at issue in this motion) and that all such motions should be considered at the same time. Defendants ask the Court to hold their emergency motion in abeyance until that time. [Id. at 5-7].

While Rule 41(g) may have been the correct vehicle for Defendants to use when they originally filed their motion, the posture of the case has changed, and

Rule 41(g) is no longer a proper legal basis for Defendants to pursue. If Defendants persist in their desire to challenge the Government's seizure of the disputed funds, they may do so using the appropriate legal tools at their disposal, but it makes no sense to hold this motion in abeyance when the legal analysis will necessarily need to be revised or abandoned.

Accordingly, for the reasons stated, Defendants' Emergency Motion for Release of Improperly Seized Assets [36] is **DENIED** without prejudice.

**IT IS SO ORDERED**, this 29th day of November, 2017.

  
CATHERINE M. SALINAS  
UNITED STATES MAGISTRATE JUDGE