

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CIVIL ACTION
 :
 v. :
 :
 ABIGAIL ROBERTS, et al. : NO. 04-01608

MEMORANDUM AND ORDER

Fullam, Sr. J. July , 2004

By using the social security number of a very wealthy resident of Hawaii, the respondents Abigail Roberts and James E. Roberts, residents of Chester, Pennsylvania, caused the Internal Revenue Service to mistakenly issue to them a tax-refund in excess of \$2,000,000, which they then proceeded to spend. Among other things, they deposited \$100,000 in their son's bank account in Hawaii.

Invoking 28 U.S.C. § 1655, the government has brought this *in rem* action seeking to establish its entitlement to various sums which represent the proceeds of the Roberts's misdeeds. The government now seeks an order requiring the son, Brennan Roberts, to appear or plead by a date certain. The cited statute provides:

In an action in a district court to enforce any lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to, real or personal property within the district, wherein a defendant cannot be served within the state, or does not voluntarily appear, the court may order the

absent defendant to appear or plead by a date certain.

This statute may be invoked only with respect to "real or personal property within the district." I therefore, on June 15, 2004, entered an order inviting the government to clarify "whether any property of Brennan E. Roberts is located within this district."

In its supplemental response, the government asserts that it is claiming ownership of or a lien upon the \$100,000 which had been deposited in the West Oahu Community Federal Credit Union; that "on April 6, 2004, the United States seized \$100,000 from West Oahu Community Bank"; and that "the recovered monies have been placed in a suspense account of the Treasury Department."

The statute invoked by the government, 28 U.S.C. § 1655, provides extra-territorial jurisdiction over persons who cannot be served within the state, but only to the extent of *in rem* determinations involving property which is within this district.

The bank account in Hawaii constitutes intangible property, which is located in its owner's domicile. See G.P. Credit Co., LLC v. Orlando Residence, Ltd., 349 F.3d 976 (7th Cir. 2003). Until at least April 6, 2004, respondent Brennan Roberts was the owner of the bank account in question, and he was and is domiciled in Hawaii. It follows that, at least until that

date, the bank account - more specifically, the money on deposit in that account - was not located within this district.

The present record, even as supplemented, provides no information as to the alleged seizure of the bank account by the government. Presumably, the validity of that seizure would be subject to litigation in Hawaii, not in this district. Moreover, the present record provides no explanation as to why, if the bank account was validly seized, there is any need for the present proceeding under § 1655.

Quite apart from the answers to the foregoing questions, application of § 1655 in the present circumstances remains problematic: even assuming, as the government argues, that money now resting in the United States Treasury in Washington, D.C. could be considered to be within this district simply because some IRS official in Pennsylvania has the authority to draw upon these funds, I do not believe that the government can, consistent with due process requirements, remove property from Hawaii to this district and then invoke the extra-territorial reach of § 1655 to compel a resident of Hawaii to litigate in this forum.

The government may have some further explanation which would vitiate the concerns expressed above, but no such explanation has yet been provided. An Order follows.

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ORDER

AND NOW, this day of July, 2004, upon
consideration of the United States' motion for an order requiring
defendant Brennan E. Roberts to appear or plead by a date
certain, IT IS ORDERED:

1. That the motion is DENIED, without prejudice to
 - (a) litigating the underlying dispute in the District
of Hawaii, or
 - (b) a properly supported application for
reconsideration of this ruling.

John P. Fullam, Sr. J.