

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IN RE:

A MATTER UNDER INVESTIGATION
BY GRAND JURY NUMBER 1

NO. 3:07-mc-135

IN RE:

TONY B. POUGH, JOSEPH BRUNSON
and TIMOTHY McQUEEN,

Movants.

MOTION TO SET ASIDE RESTRAINING ORDERS

COME now the Movants, Tony B. Pough, Joseph Brunson, and Timothy McQueen [hereinafter "Movants"], through their undersigned counsel, and move to set aside the Pre-Indictment Restraining Orders filed on August 2 and 14, 2007. In support of said Motion, Movants show as follows:

BACKGROUND

Movants file this consolidated Motion as they are similarly situated as it relates to the facts in this matter. Movants are citizens and residents of Richland County, South Carolina. On July 13, 2007, the government filed Government's Application for the Entry of A Pre-Indictment Restraining Order and Appointment of A Federal Receiver seeking a Pre-Indictment Restraining Order.

On August 2 and 14, 2007, the Honorable Margaret B. Seymour entered Pre-Indictment Restraining Orders pursuant to Title 18, U.S.C. 982(b)(1), incorporating 21 U.S.C. 853(e)(2). Said Orders were entered *ex parte*.

As of the date of the filing of this motion, the Movants have not been indicted by the government but, in fact, have been subpoenaed to provide additional documents to the Grand Jury. Charges have been brought by the State of South Carolina alleging violations of S.C. Code Ann. § 35-1-101 et seq.

1. A pre-indictment restraining order can only be entered if the government shows that there is a substantial probability that the government will prevail and that failure to grant the restraining order will result in property being destroyed, removed from the jurisdiction or otherwise unavailable for forfeiture.

2. Furthermore, the government must show that the need to preserve the availability of the property outweighs the hardship on the party against whom the order is entered.

3. There exists little, if any, evidence to support the government's proposition that the property at issue in this case would be destroyed or removed from the jurisdiction or unavailable for forfeiture.

4. Similarly, the restraining order in this case has effected a significant hardship on the Movants which is not outweighed by the need to preserve the availability of the property.

5. The Movants are innocent until proven guilty and need access to the property restrained to mount an effective defense to the actions of the federal government.

6. Lastly, much of the property named by the government in its application for a pre-indictment restraining order is owned by the Movants and their family members individually and are not owned by the business entities which the government claims were used in the criminal acts alleged by the State or the apparent allegations of the government of which the Movants have not been indicted.

WHEREFORE, the Movants respectfully pray that this Court grant their motion to set aside the Pre-Indictment Restraining Orders previously entered.

Respectfully Submitted,

**Law Office
of
HEMPHILL P. PRIDE II**

s/Hemphill P. Pride II
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ATTORNEY FOR MOVANTS

August 29, 2007.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IN RE:)	
A MATTER UNDER INVESTIGATION)	
BY GRAND JURY NUMBER 1)	NO. 3:07-mc-135
IN RE:)	
TONY B. POUGH, JOSEPH BRUNSON)	
and TIMOTHY McQUEEN,)	
)	
Movants.)	

**MEMORANDUM OF LAW IN SUPPORT
OF
MOTION TO SET ASIDE PRE-INDICTMENT RESTRAINING ORDERS**

COME now the Movants, Tony B. Pough, Joseph Brunson, and Timothy McQueen [hereinafter "Movants"], through their undersigned counsel, and respectfully submit this Memorandum of Law in support of Movants' Motion to Set Aside the Pre-Indictment Restraining Order:

STATEMENT OF FACTS

The Movants are citizens and residents of Richland County, South Carolina. On July 13, 2007, the government filed Government's Application for the Entry of a Pre-Indictment Restraining Order and Appointment of a Federal Receiver seeking a Pre-Indictment Restraining Order.

On August 2 and 14, 2007, the Honorable Margaret B. Seymour entered Pre-Indictment Restraining Orders pursuant to Title 18, U.S.C. 982(b)(1), incorporating 21 U.S.C. 853(e)(2). Said Orders were entered *ex parte*.

As of the date of the filing of this motion, the Movants have not been indicted by the government but, in fact, have been subpoenaed to provide additional documents to the Grand Jury. Charges have been brought by the State of South Carolina alleging violations of S.C. Code Ann. § 35-1-101 et seq.

ARGUMENT

It is in the interests of justice for this Court to set aside the Pre-Indictment Restraining Orders entered on August 2 and 14, 2007.

Title 21 U.S.C. § 853(e)(1)(B) provides for a pre-indictment restraining order if the court determines that "(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture." Furthermore, the court must find that "(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered." A pre-indictment restraining order is only effective for ninety days unless the court finds good cause to extend the order.

In this case, there was no basis to enter the restraining order in the first place for several reasons. First, it is entirely speculative to believe that the government would prevail on a forfeiture. There has not even been an indictment so the Movants do not even know what, if anything, with which they would be charged. As there has been no indictment, there has been no exchange of discovery. Therefore, the Movants are unable to even see what evidence the government contends would establish guilt beyond a reasonable doubt. Even if there were an indictment and discovery, the Movants intend to assert an aggressive defense to establish their innocence to any wrongdoing. As such, the Movants reject any notion that the government can show that it would likely prevail on a speculative future forfeiture.

Furthermore, there is no evidence that a failure to enter this order would result in the property being destroyed or removed from the jurisdiction. The Movants are all residents of Richland County, South Carolina. They have no intention of destroying or removing any of their property. Certainly, the parcels of real property could not be moved or destroyed. Many of the automobiles are owned by the Movants individually rather than as property of business entities owned and controlled by the Movants. Such property is used by the Movants in the ordinary course of their daily lives. In that they are innocent until proven

guilty, they should not be unduly punished prior to ever being indicted, much less convicted of any federal crime. It has been stated that the "government may also restrain forfeitable assets prior to conviction if it appears that the defendant may otherwise transfer or conceal those assets by the time of conviction." United States v. Ripinsky, 20 F.3d 359, 361 (1994). Here, there is no evidence that any assets might be transferred or concealed.

Lastly, it should not go without notice to this court that the Movants should have the same rights as all citizens to the use of their property in order to mount an effective defense to charges brought by the federal government. What the government seeks is to seize all of the Movants' property – both business and personal – in order to demoralize and impoverish them so as to reduce their ability to defend themselves against these charges. Such actions are wrong and should not be accepted by this court.

CONCLUSION

The Movants respectfully move this court to set aside the Pre-Indictment Restraining Orders of August 2 and 14, 2007 and to allow them full access to their property.

Respectfully Submitted,

**Law Office
of
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ATTORNEY FOR MOVANTS

August 29, 2007.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

CERTIFICATE OF SERVICE

The undersigned certifies that on August 29, 2007 the foregoing Motion To Set Aside Restraining Orders and Memorandum of Law in support of Motion To Set Aside Pre-Indictment Restraining Orders IN RE: A Matter Under Investigation by Grand Jury Number 1 IN RE: *Tony B. Pough, Joseph Brunson and Timothy McQueen* was served on all parties to said action by the undersigned depositing or causing the deposit of a copy of said Motion and Memorandum on that date in the United States mail with sufficient postage affixed thereto and addressed as follows:

Winston D. Holliday, Jr.
Assistant United States Attorney
UNITED STATES ATTORNEY'S OFFICE
1441 Main Street, Suite 500
Columbia, South Carolina 29201

s/Hemphill P. Pride II
Hemphill P. Pride II

Columbia, South Carolina
August 29, 2007.