

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**DISTRICT COURT OF GUAM
TERRITORY OF GUAM**

UNITED STATES OF AMERICA,

 Plaintiff,

 vs.

MARSHALLS 201,

 Defendant.

Civil Case No. 06-00030

**ORDER RE:
MOTION FOR SUMMARY
JUDGMENT**

This matter came before the court for a hearing on the Defendant’s Motion for Summary Judgment on April 3, 2008. The Defendant, Marshalls 201, argued that Summary Judgment should be granted pursuant to Fed.R.Civ. P. Rule 56, or in the alternative, Federal Supplemental Rule C(6)(Claim and Answer). Having considered the parties’ arguments and submissions, as well as relevant caselaw and authority, the court hereby **DENIES** the Defendant's motion and issues the following decision.

FACTUAL BACKGROUND

An Exclusive Economic Zone (“EEZ”) is a seazone over which a state (including its territories) has special rights over the exploration and use of marine resources. The EEZ starts at the coastal baseline and extends 200 nautical miles out into the sea, perpendicular to the baseline. The outer boundary of the zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline. United States EEZs were originally established by Presidential Proclamation in 1983. Even earlier, in 1976, the Fishery Conservation and Management Act of 1976 established a fishery conservation zone contiguous to the territorial sea of the United States, effective March 1, 1977. EEZs were designed to grant exclusive

1 jurisdiction to the United States for the purposes of “exploring, exploiting, conserving, and
2 managing natural resources.” Presidential Proclamation No. 5030.

3 The controlling law governing the territorial seas, EEZs, and fisheries of the United
4 States is the Magnuson-Stevens Fishery Conservation and Management Act (“Magnuson Act”).
5 *See* 16 U.S.C. § 1857. The Magnuson Act provides for the conservation and management of
6 United States fisheries. Since 1977, the United States has claimed an exclusive fishery zone
7 around both Baker and Howland Islands. These Islands are undisputed territories of the United
8 States, and are located on the equator, about 1,600 miles southwest of Hawaii. The Magnuson
9 Act also codifies the EEZs of Baker and Howland Islands, and other United States territories in
10 the Pacific.

11 On September 7, 2006, the United States Coast Guard (“USCG”) performed a routine
12 patrol of the EEZ of Baker and Howland Islands, and noticed a foreign flagged fishing vessel
13 (Marshall Islands flagged) within the EEZ.¹ (*See* Docket No. 120 at 1). At the time, the boom
14 was lowered and the fishing nets were not properly covered or stowed. This, in itself, is a
15 violation of the Magnuson Act 16 U.S.C. § 1857 (4)(A) and (B). *Id.* According to the USCG,
16 two other fishing vessels were detected inside the EEZ that day, the F/V KOO’S 101 and the F/V
17 KOO’S 108.²

18 On September 9, 2006, the USCG again spotted the F/V MARSHALLS 201 while on
19 patrol, and again it was located within the United States EEZ. When detected on this date, active
20 fishing on the vessel was observed within the EEZ, a clear violation of the Magnuson Act. *See*
21 16 U.S.C. § 1857(2). (*See* Docket No. 92 at 9). The USCG contacted a nearby USCG cutter to
22 intercept the fishing vessel and to determine whether the F/V MARSHALLS 201 was permitted
23 to fish in the EEZ. The USCG Cutter WALNUT viewed F/V MARSHALLS 201 actively
24 hauling nets, but the persons aboard the vessel refused to respond to repeated attempts at

25
26 ¹The vessel was later identified as F/V MARSHALLS 201.

27 ²These fishing vessels were later determined to be partially owned by Marshall Islands Fishing Company
28 (“MIFCO”).

1 communication. The Cutter WALNUT tried to reach F/V MARSHALLS 201 by radio and by
2 signal flag. After several minutes of effort by the USCG to make contact with F/V
3 MARSHALLS 201, the vessel abruptly headed out of the EEZ, with her nets still hanging from
4 the boom. (See Docket No. 120 at 2). The Cutter WALNUT pursued F/V MARSHALLS 201
5 out of the EEZ. *Id.*

6 The vessel eventually stopped, and the USCG boarded and secured the F/V
7 MARSHALLS 201 in order to investigate whether any illegal fishing activity had taken place.
8 (See Docket No. 92 at 9). The USCG determined that the F/V MARSHALLS 201 did not
9 possess a permit to fish in the EEZ, and it appeared that the vessel had a recent catch of 110
10 metric tons of tuna in its possession, from fishing in the United States EEZ on September 9,
11 2006. (See Docket No. 120 at 3).

12 The next day, USCG law enforcement seized the F/V MARSHALLS 201 and her catch
13 and escorted the vessel to Guam. On September 20, 2006, the F/V MARSHALLS 201 reached
14 port in Apra Harbor, where the current market value of the F/V MARSHALLS 201 was
15 determined to be \$2,650,000.00, and the current market value of the tuna onboard was found to
16 be \$350,000.00. (See Docket No. 120 at 3).

17 **PROCEDURAL BACKGROUND**

18 On October 4, 2006, the United States filed a Complaint of Forfeiture of
19 the vessel and its catch and appurtenances under 16 U.S.C. § 1860.³ (See Docket No. 1). In the
20 Complaint, the United States alleged violations of the Magnuson Act, for illegally fishing
21 without a permit in the EEZ of the United States. On October 17, 2006, U.S. Magistrate Judge
22 Manibusan granted a Stipulated Motion for Release of the vessel. (See Docket No. 15).

23
24
25 ³This statute governs civil forfeitures, and states that “any fishing vessel (including its fishing gear, furniture,
26 appurtenances, stores, and cargo) used, and any fish (or fair market value thereof) taken or retained, in any manner, in
27 connection with or as a result of the commission of any act prohibited by section 1857 of this title...shall be subject to
28 forfeiture to the United States.” 16 U.S.C. § 1860(a).

1 Substituting for the vessel *in rem* was a bond in the amount of \$2,950,000.00, which represented
2 the value of the vessel and the catch. F/V MARSHALLS 201 left Guam soon after her release.

4 DISCUSSION

5 Summary judgment is appropriate when the evidence, read in the light most favorable to
6 the nonmoving party, demonstrates that there is no genuine issue as to any material fact, and the
7 moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The party
8 opposing summary judgment cannot rest on conclusory allegations, but must set forth specific
9 facts showing that there is a genuine issue for trial. *Leer v. Murphy*, 844 F.2d 628, 631 (9th Cir.
10 1988). Moreover, to defeat a summary judgment motion, the nonmoving party must come
11 forward with evidence sufficient to establish the existence of any disputed element essential to
12 that party's case, and for which that party will bear the burden of proof at trial. *Celotex Corp. v.*
13 *Catrett*, 477 U.S. 317, 322, 102 S.Ct. 2548 (1986).

14 The court must draw inferences from the evidence in a light most favorable to the
15 nonmovant, and resolve all reasonable doubts in that party's favor. *Matsushita Elec. Indus. Co.*
16 *v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Facts are considered "material" if they "might
17 affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477
18 U.S. 242, 248 (1986). Summary judgment should not be granted if the evidence indicates that a
19 reasonable fact-finder could find in favor of the non-moving party. *Id.*

20 Where the moving party does not bear the burden of proof on an issue at trial, the moving
21 party may discharge its burden of production by either of two methods. *Nissan Fire & Marine*
22 *Ins. Co., Ltd., v. Fritz Cos., Inc.*, 210 F.3d 1099, 1106 (9th Cir.2000). The moving party may
23 produce evidence negating an essential element of the nonmoving party's case, or, after suitable
24 discovery, the moving party may show that the nonmoving party does not have enough evidence
25 of an essential element of its claim or defense to carry its ultimate burden of persuasion at trial.
26 *Id.*

27 The Defendant's claim for Summary Judgment is based on the Civil Asset Forfeiture
28

1 Reform Act (“CAFRA”), which holds that innocent owners are not subject to forfeitures. 18
2 U.S.C. § 983(i)(1). CAFRA was enacted in the year 2000, for the purpose of increasing the due
3 process safeguards for property owners whose property had been seized by the United States.
4 CAFRA applies to all civil forfeiture statutes, and defines a civil forfeiture as “any provision of
5 Federal law providing for the forfeiture of property other than as a sentence imposed upon a
6 conviction for a criminal offense.” 18 U.S.C. § 983(i)(1). Both parties agree that CAFRA
7 applies to actions brought under the Magnuson Act, and that CAFRA is the applicable law for
8 determining whether summary judgment should be granted.

9 One of the main purposes of CAFRA was to create an innocent owners defense, which
10 would allow those owners who were unaware of illegal activity regarding their property, to
11 retain their property after proving their innocence to the court. The statute provides that “an
12 innocent owner’s interest in property shall not be forfeited under any civil forfeiture statute,” and
13 that the person must prove their innocence “by a preponderance of the evidence.” 18 U.S.C. §
14 983(d)(1).

15 The first step in applying the innocent owner defense is determining whether the party in
16 question had an ownership interest in the forfeited property. Here, there is no dispute that the
17 Marshall Islands Fishing Company (“MIFCO”) had an ownership interest in F/V MARSHALLS
18 201 at the time of forfeiture, and as such is eligible for the innocent owner defense under
19 CAFRA. Both parties clearly state in their briefings, their belief that CAFRA is the applicable
20 law governing this innocent owner dispute.

21 In order to prove oneself an innocent owner under CAFRA, the owner must be either an
22 owner who “did not know of the conduct giving rise to the forfeiture” or “upon learning of the
23 conduct giving rise to the forfeiture, did all that reasonably could be expected under the
24 circumstances to terminate such use of the property.” 18 U.S.C. § 983(d)(2)(A). The Defendant
25 first argues that, MIFCO is an innocent owner who had no knowledge of the conduct giving rise
26 to the forfeiture. Alternatively, Defendants contend that as soon as they became aware of the
27 conduct that they immediately took proper steps to ensure that it would not happen again. They
28

1 cite to the firing of Captain Lu, and of their formal adoption of recognition of the United States
2 EEZ, in April of 2007, nearly seven months after the incident. In order to show that the owner
3 took reasonable steps under the second prong of the statute, the owner may show that they “(I)
4 gave timely notice to an appropriate law enforcement agency of information that led the person
5 to know the conduct giving rise to a forfeiture would occur or has occurred; (II) in a timely
6 fashion revoked or made a good faith attempt to revoke permission for those engaging in such
7 conduct to use the property or took reasonable actions in consultation with a law enforcement
8 agency to discourage or prevent the illegal use of the property.” 18 U.S.C. § 983(d)(B)(1).

9 The Defendant also argues its innocence through the fact that Captain Lu, the Master of
10 F/V MARSHALLS 201 had no prior arrests or convictions on his record prior to the September
11 9, 2006 incident. For this reason, Defendant argues that MIFCO had no reason to know that
12 Captain Lu could have been violating United States fishing laws. Captain Lu also stated at his
13 deposition that he did not believe he was in the United States EEZ at the time of the incident,
14 even though he had maps clearly defining the EEZ in the wheelhouse.⁴

15 Finally, MIFCO argues that even though Captain Lu faxed and called in daily updates
16 about his location and catch, these updates were only collected and monitored once a week by
17 MIFCO. As such, Defendant argues that it would have no way to prevent the illegal fishing
18 before it took place, because it would not have become aware of it for another week.

19 In its Opposition, the United States argued that there are sufficient facts to argue that
20 MIFCO cannot be considered an Innocent Owner under either prong of the statute. To support
21 their argument they cited to the daily updates Captain Lu faxed to MIFCO about his catch and
22 his location. Additionally, they stated that Captain Lu engaged in daily radio communications
23 with a MIFCO fleet commander about their location and catch. The United States argues the
24 Defendant willfully ignored the daily information it was receiving by only collecting the data
25 once a week.

26
27 ⁴As discussed on p. 8 of this Order, scienter is not a requirement for violations under the Magnuson Act.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

Based upon the foregoing the court finds that the issues raised by the Plaintiff create a genuine issue of material fact as to whether MIFCO was an innocent owner under CAFRA. Accordingly, the court **DENIES** the Defendant's Motion for Summary Judgment.

SO ORDERED.



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: May 08, 2008