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ATTEST: BRUCE RIFKIN
Clerk, U.S. District Court
Western District of Washington

By [Signature]
Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL ALAN CASSINI,

Defendant.

No. CR05-166P

ORDER ON CLAIMANT
BENOLIEL'S MOTION FOR
SUMMARY ADJUDICATION OF HIS
PETITION TO AMEND
PRELIMINARY ORDER OF
FORFEITURE

This matter comes before the Court on a motion by claimant David Benoliel. (Dkt. No. 91). Mr. Benoliel seeks summary adjudication of his petition to amend the preliminary order of forfeiture entered in this criminal case. Mr. Benoliel claims that he is the bona fide purchaser of the security interest in two vehicles listed in the preliminary forfeiture order and seeks to have the order amended to remove the two vehicles. The motion is opposed, on different grounds, by the Commerce Bank of Washington, N.A. and the Government.

Having reviewed the materials submitted in support of and in opposition to this motion and having heard oral argument on this matter, the Court GRANTS Mr. Benoliel's motion and ORDERS that the preliminary order of forfeiture in this matter (Dkt. No. 31) be amended to remove two

1 automobiles: (1) a 2004 Ferrari 360 Modena, VIN # ZFFYU51A040138415; and (2) a 2003 Porsche
2 911 Turbo, VIN #WP0AB29993S686348. The reasons for the Court's order are set forth below.

3 **Background**

4 On July 28, 2005, the Court entered a preliminary order of forfeiture in this criminal case
5 against Defendant Michael Cassini. In September 2005, Mr. Benoliel filed a petition claiming an
6 interest in two vehicles listed in the preliminary forfeiture order: (1) a 2004 Ferrari 360 Modena
7 Coupe; and (2) a 2003 Porsche 911 Turbo Coupe.

8 The key facts related to Mr. Benoliel's petition are not disputed. In December 2004, Mr.
9 Benoliel loaned \$250,000 to Mr. Cassini. On December 13, 2004, Mr. Cassini signed a promissory
10 note in which he promised to pay Mr. Benoliel \$275,000 by January 15, 2005. The promissory note
11 stated that the note was secured by three automobiles, including the two vehicles listed above. The
12 note also stated that "[u]pon promissory note being paid in full, David Benoliel will release his interest
13 as legal owner in all said vehicles to Michael Cassini."

14 The vehicles listed in the promissory note were titled in the name of "Mac Automotive
15 Depository, LLC," a company associated with Mr. Cassini. Mr. Cassini provided Mr. Benoliel with
16 the Washington State Vehicle Certificates of Ownership for the two cars and executed releases of
17 interest in the vehicles as the CEO of Mac Automotive Depository, LLC. Mr. Cassini delivered the
18 cars to a mutual friend, who agreed to store the vehicles until the note was paid.

19 Mr. Benoliel never received any payment from Mr. Cassini on the promissory note. In
20 February 2005, federal agents spoke with Mr. Benoliel and informed him that Mr. Cassini was under
21 investigation for white-collar crimes. Mr. Benoliel claims that this was the first time he learned that
22 Mr. Cassini was involved in any illegal or improper activities. According to the Commerce Bank of
23 Washington, the vehicles were seized by the Government on February 16, 2005.

1 **Analysis**

2 Mr. Benoliel's petition is brought under 21 U.S.C. § 853(n), which governs the procedures for
3 third parties to establish their interest in property subject to a criminal forfeiture order. Mr. Benoliel
4 argues that he was a "bona fide purchaser" of the security interest in the vehicles. Mr. Benoliel bases
5 his petition on 21 U.S.C. § 853(n)(6), which provides as follows:

6 [I]f . . . the court determines that the petitioner has established by a preponderance of the
7 evidence that . . . (B) the petitioner is a bona fide purchaser for value of the right, title, or
8 interest in the property and was at the time of purchase reasonably without cause to believe
that the property was subject to forfeiture under this section . . . the court shall amend the
order of forfeiture in accordance with its determination.

9 The Court must look to state law to determine whether Mr. Benoliel is a "bona fide purchaser
10 for value" of the security interest in the vehicles. See United States v. Harris, 246 F.3d 566, 571 (6th
11 Cir. 2001). Under Washington law, a "bona fide purchaser" is "one who without notice of another's
12 claim of right to, or equity in, property prior to its acquisition of title, has paid the vendor valuable
13 consideration." In re Prof'l Inv. Props. of America, 955 F.2d 623, 627 (9th Cir. 1992) (quoting
14 Miebach v. Colasurdo, 102 Wn.2d 170, 175 (1984)).

15 In this case, there is no dispute that Mr. Benoliel paid valuable consideration to Mr. Cassini,
16 nor is it disputed that Mr. Cassini executed a promissory note to Mr. Benoliel. The promissory note
17 was secured by two of the vehicles listed in the preliminary forfeiture order and stated that "[u]pon
18 promissory note being paid in full, David Benoliel will release his interest as legal owner in all said
19 vehicles to Michael Cassini." There is no contention that Mr. Benoliel had any cause to believe that
20 the vehicles were subject to forfeiture at the time the promissory note was executed.

21 Mr. Benoliel argues that these actions are sufficient to make him a bona fide purchaser for
22 value of the security interest in the two automobiles under Washington law. Mr. Benoliel notes that a
23 security interest "means an interest in personal property or fixtures which secures payment or
24 performance of an obligation." RCW 62A.1-201(37). Under Washington law, a security interest
25 becomes enforceable when: (1) value has been given; (2) the debtor has rights in the collateral or the

1 power to transfer rights in the collateral to a secured party; and (3) the debtor has authenticated a
2 security agreement that provides a description of the collateral. RCW 62A.9A-203(b)(1)-(3)(A).
3 There is no dispute that these criteria have been satisfied here.¹ Mr. Benoliel also argues that his
4 position as a bona fide purchaser is supported by In re Trustee's Sale of the Real Property of Michael
5 E. Smith, 93 Wn. App. 282, 286-87 (1998), a case that involved somewhat analogous facts to those
6 presented here. In Smith, the court held that lenders were "bona fide purchasers" when they acquired
7 an interest in real estate by making a collateralized loan secured by the property. Id. at 286-87.

8 As Mr. Benoliel notes, courts have held that a secured creditor may be a "bona fide purchaser"
9 for value under 21 U.S.C. § 853(n)(6)(B). See United States v. Carmichael, 433 F. Supp.2d 1259,
10 1263 (M.D. Ala. 2006); Cf. United States v. Frykholm, 362 F.3d 413, 416 (7th Cir. 2004) (suggesting
11 that "the holder of a security interest given in exchange for an antecedent debt can be a bona fide
12 purchaser for value"). The Carmichael court also indicated that "[t]he interests of qualifying bona fide
13 purchasers under [Section 853(n)(6)(B)] are protected no matter when they vested."

14 The Commerce Bank of Washington, which is one of Mr. Cassini's creditors, has filed a brief
15 in opposition to Mr. Benoliel's motion. The Bank argues that Mr. Benoliel never perfected a security
16 interest in the vehicle because he did not file the certificates of title with the state Department of
17 Licensing (DOL). The Bank notes that RCW 46.12.095 sets forth explicit requirements for perfecting
18 the security interest in a vehicle, which generally includes filing the existing certificate of ownership

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20 ¹ To be sure, 21 U.S.C. § 853(c) provides that "[a]ll right, title, and interest" in property
21 subject to criminal forfeiture "vests in the United States upon the commission of the act giving rise to
22 forfeiture." Here, it would appear that Mr. Cassini committed the acts giving rise to the forfeiture
23 before the promissory note was executed in December 2004. However, Mr. Cassini's company Mac
24 Automotive Depository LLC still held a voidable title to the vehicles in December 2004. See United
25 States v. Lavin, 942 F.2d 177, 186 (3d Cir. 1991). The Court regards voidable title as a sufficient
"right in the collateral" under RCW 62A.9A-203(b)(2). See, e.g., RCW 62A.2-403(1) ("A person
with voidable title has power to transfer a good title to a good faith purchaser for value"); see also
National Pawn Brokers Unlimited v. Osterman, Inc., 500 N.W.2d 407, 429-30 (Wis. App. 1993)
(person with voidable title to property has power and right to transfer a security interest to a creditor
under Article 9 of the Uniform Commercial Code).

1 with the DOL. Mr. Benoiel does not dispute that he failed to perfect his security interest in the
2 vehicles pursuant to RCW 46.12.095. However, he argues that he was not required to perfect his
3 security interest in the vehicles in order to be regarded as a bona fide purchaser of the security interest
4 in the vehicles under Washington law.

5 The Bank's primary support for its argument is United States v. One 1987 Cadillac Deville,
6 774 F. Supp. 221 (D. Del. 1991), a case in which the court held that a claimant who held an
7 unperfected security interest in an automobile lacked standing to contest a civil forfeiture of the
8 vehicle. However, the Cadillac Deville case was a civil forfeiture action, rather than a criminal
9 forfeiture action under 21 U.S.C. § 853. As Mr. Benoiel notes, the two statutes are not identical.
10 The civil forfeiture statute contains an "innocent owner defense" in which the claimant must establish
11 that he or she is either a "lienholder" or "owner" of seized property. Id. at 224. Under the criminal
12 forfeiture statute, however, the burden on the claimant is to establish that he or she is a "bona fide
13 purchaser for value of the right, title, or interest in the property." As such, Cadillac Deville is not
14 persuasive authority for evaluating whether Mr. Benoiel is a "bona fide purchaser" under the criminal
15 forfeiture statute.

16 At oral argument, the Bank also pointed to United States v. Carmichael, 433 F. Supp.2d 1259
17 (M.D. Ala. 2006). In Carmichael, a criminal forfeiture case, the court considered whether the
18 claimant's security interest in the property had been perfected in analyzing whether the claimant was a
19 "bona fide purchaser" under 21 U.S.C. 853(n)(6)(B). However, the security interest at issue in
20 Carmichael was a materialman's lien, which remained "inchoate – or unattached to the property – until
21 action is taken to perfect and enforce it." Id. at 1263. By contrast, Mr. Benoiel's security interest
22 was attached to the vehicles, regardless of whether the security interest was perfected. Under
23 Washington law, "[a] security interest attaches to collateral when it becomes enforceable against the
24 debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment."
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1 RCW 62A.9A-203(a). In this case, where the promissory note did not expressly postpone the time of
2 attachment, Mr. Benoliel's security interest attached to the vehicles when the note was executed.

3 In sum, the Court agrees with Mr. Benoliel that his status as a bona fide purchaser of the
4 security interest in the vehicles does not depend on whether he perfected his security interest. The
5 Court further finds that under the undisputed facts of this case, Mr. Benoliel has demonstrated that:
6 (1) he is a "bona fide purchaser" for value of the security interest in the 2004 Ferrari and the 2003
7 Porsche identified in the preliminary order of forfeiture; and (2) at the time of the purchase, Mr.
8 Benoliel was reasonably without cause to believe that the property was subject to forfeiture.
9 Accordingly, the Court will grant Mr. Benoliel's motion for summary adjudication under 21 U.S.C. §
10 853(n)(6)(B) and will order that the preliminary order of forfeiture in this matter be amended to
11 remove the two automobiles.²

12 **B. Government's Arguments**

13 The Government also filed a response to Mr. Benoliel's motion. The Government takes no
14 position on whether Mr. Benoliel is a secured creditor or a bona fide purchaser. Instead, the
15 Government opposes Mr. Benoliel's motion to the extent he argues that the forfeiture of the two
16 vehicles is procedurally barred. Because the Court finds that Mr. Benoliel's motion should be granted
17 because he is a bona fide purchaser for value of the security interest in the vehicles – a question on
18 which the Government takes no position – it is not necessary to reach the parties' additional
19 arguments on whether the forfeiture of the two vehicles is procedurally barred.

20 **Conclusion**

21 Consistent with the discussion above, the Court finds that Mr. Benoliel has established: (1) he
22 is a bona fide purchaser for value of the security interest in the 2004 Ferrari and the 2003 Porsche
23 listed in the preliminary order of forfeiture; and (2) at the time of the purchase, Mr. Benoliel was

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25 ² Because the Court is ruling in Mr. Benoliel's favor, it is not necessary to reach his argument
that Commerce Bank lacks standing to challenge his petition to modify the forfeiture order.

1 reasonably without cause to believe that the property was subject to forfeiture. Therefore, the Court
2 GRANTS Mr. Benoliel's motion pursuant to 21 U.S.C. § 853(n)(6)(B). It is hereby ORDERED that
3 the preliminary order of forfeiture in this matter (Dkt. No. 31) is amended to remove two automobiles:
4 (1) a 2004 Ferrari 360 Modena, VIN # ZFFYU51A040138415; and (2) a 2003 Porsche 911 Turbo,
5 VIN #WP0AB29993S686348.

6 The Clerk is directed to send copies of this order to all counsel of record.

7 Dated: March 15, 2007

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9 s/Marsha J. Pechman
10 Marsha J. Pechman
11 United States District Judge
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