

**FILED**

SID J. WHITE

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By  Chief Deputy Clerk

IN THE SUPREME COURT  
OF THE STATE OF FLORIDA  
CASE NUMBER: 77,981

IN RE: FORFEITURE OF

ONE PIPER SENECA AIRCRAFT  
N300DE, SERIAL NO. 34-7770157

RANDALL C. BYROM,

Petitioner.

v.

WALTER J. GALLAGHER, as Sheriff  
of Orange County, Florida,

Respondent.

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ON CERTIFICATION OF A QUESTION OF  
GREAT PUBLIC IMPORTANCE  
FROM THE FIFTH DISTRICT COURT OF APPEALS

AMENDED BRIEF OF RESPONDENT

BY: Margaret S. Marshall  
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PRELIMINARY STATEMENT

This is a discretionary review of a Final Judgment of Forfeiture on a Piper Seneca Aircraft to the Sheriff of Orange County, Florida. The sole issue to be addressed is whether a person who is a bona fide purchaser of alleged contraband property in which he has equitable but not perfected interest has standing to contest a forfeiture of such property if it is seized pursuant to Section 932.702, Florida Statutes (1987) when the purchaser's record title is perfected subsequent to the seizure but prior to institution the forfeiture proceeding.

STATEMENT OF THE FACTS

On November 7, 1988, Joseph A. Capuzzo, a/k/a Joseph A. Comillo, flew himself and his attorney Dan Carusi from Fort Lauderdale, **Florida**, to Orlando Executive Airport. Mr. Capuzzo was scheduled to be sentenced to a fifteen **year** minimum sentence for a conviction of Trafficking in Cocaine. When Mr. **Capuzzo** was unable to obtain a continuance for his sentencing, he left the courthouse and failed to appear for the sentencing. Mr. Capuzzo flew the Piper Seneca from Orlando Executive Airport to the Pompano Beach Airport, where it **was** seized by authorities. (R35-37)

On November 15, 1988, the **Federal** Aviation Administration received an aircraft bill of sale, apparently executed by Joseph Comillo and dated November 1, 1988. There is no evidence that the bill of sale was notarized or witnessed. (R35-37) The acknowledgment on the face of the bill of sale is blank.

STATEMENT OF THE CASE

On May 26, 1989, Walter J. Gallagher, **as** Sheriff of Orange County, Florida, (hereinafter "**Sheriff**") filed his Complaint for Rule to Show **Cause** and **for** Final Judgment of Forfeiture of the Piper Seneca Aircraft N300DE (hereinafter "**Seneca**"). (R1) On May 31, 1989, the Notice of Forfeiture Proceedings was provided **to** all owners and lienholders of record of the Seneca. (R6-7)

Notice was published pursuant to Florida Statutes **932.701-704**. (R8)

On August 3, 1989, Judge Cecil Brown issued an Order for Rule to Show Cause naming every person who might claim an interest in the Seneca to file responsive pleadings to the complaint **and** to **go** forward to show why the Court should not enter final judgment. (R9-10)

On December 5, 1989, Judge Brown determined that Randall C. Byrom was not the registered owner of the Seneca at the time of seizure. and therefore lacked standing to contest the forfeiture. (R35-37)

On October 11, 1990, the Fifth District Court of Appeal affirmed Judge Brown's decision that Byrom lacked standing to contest the validity of the forfeiture. since Florida Statutes 329.01 prescribes that a bill of sale is effective from the date of its recordation, not from the **date** of its execution or the unknown date of mailing. (ARJ-4)

On May 9, 1991, the Fifth District Court of Appeal certified a question of great public concern to this Court:

Does a bona fide purchaser of alleged contraband property in which he **has** equitable but **not** perfected interest have standing to contest a forfeiture of such property if it is seized as contraband by a law enforcement **agency** pursuant to Section **932.702**, Florida Statutes (**1987**). when the purchaser's record title is perfected subsequent to the seizure but prior to the **forfeiture proceeding?** (AR14-17)

### SUMMARY OF ARGUMENT

The portion of Florida's Contraband Forfeiture Act immediately vesting in the state upon seizure all rights and interest in and title to contraband articles in property was placed there to **frustrate** the fraudulent transfer of property to others to avoid final judgment of forfeiture. The **statute** specifically protects owners from loss if they neither knew nor should have known that the property was being employed or was likely to be employed in criminal activity. Bona fide lienholders are protected, as are spouses who neither knew nor should have known after **a reasonable** inquiry that the property was employed or likely to be employed in criminal activity. It is not the intent nor the result of the statute to punish innocent owners.

ARGUMENT

I. BYROM'S BILL OF **SALE**  
DATED NOVEMBER 1, 1988,  
DID NOT PROVIDE STANDING  
TO CONTEST THE FORFEITURE.

The Trial Court held, after receiving evidence, that the Petitioner lacked standing to contest the forfeiture of the aircraft. The record **reflects** that the only evidence presented to the Court proving Petitioner's ownership of the Seneca was an unwitnessed, un-notarized aircraft bill of sale received by the FAA on November 15, 1988. The Florida Statutes Section 329.01 provides that:

No instrument which affects the title to or interest in any civil aircraft of the United States... is valid in respect to such aircraft...until such instrument is **recorded** in the office of the Federal Aviation Administrator...

The Trial Court record is **devoid** of any other **proof** of ownership, purchase or acquisition on the part of Randall C. Byrom. Petitioner never presented any evidence of **a contract** for sale, or of Consideration. The bill of sale reflects a purchase price of **\$23,000.00**, yet Byrom did not submit any proof **of** payment or satisfaction of existing liens. The Court **only** had the bill of sale, which according **to** Florida Law was

ineffective to the title until recording with the FAA. to confer standing on **Mr.** Byrom.

A claimant in a forfeiture action has the burden of proving an interest in the propesty sufficient to establish his standing to contest the forfeiture. United States v. Premises Known as 526 Liscum Drive, 866 F.2d 213 (6th Cir. 1988). The Court may exercise its legal authority and look beyond bare title **in** making a determination as to whether the "title holder" is merely a "straw man" used to prevent the forfeiture of property to the authorities.

Standing is a threshold issue. If standing cannot be established by the Claimant, he has no ability to challenge the forfeiture. United States v. One 1988 36 Foot Cigarette ocean Racer. 624 F. Supp. 290 (S.D. Fla. 1985) Only owners of **record** may claim ownership interest in aircraft. In Re: Forfeiture of One 1946 Lockheed L-18 Loadstar, Mathews v. City of Zephyrhills **493 So.** 2d 10 (Fla. 2nd DCA 1986). The Appellate Court **did** not err **in** affirming the Trial Court's determination that Byrom lacked standing. Lauderdale Investments, Inc. v. Miller **456 So.** 2d 539 (Fla. 5th DCA 1984).

- II. A BONA FIDE PURCHASER OF ALLEGED CONTRABAND PROPERTY IN WHICH HE HAS EQUITABLE BUT NOT PERFECTED INTEREST HAS NO STANDING TO CONTEST A FORFEITURE OF SUCH PROPERTY IF IT IS SEIZED AS CONTRABAND BY A LAW ENFORCEMENT AGENCY PURSUANT TO SECTION 932.702 FLORIDA STATUTES**

**(1987) WHEN THE PURCHASER'S RECORD  
TITLE IS PERFECTED SUBSEQUENT TO  
THE SEIZURE BUT PRIOR TO THE  
FORFEITURE PROCEEDING.**

Joseph Capuzzo. also known as Joseph Comillo **was** arrested on October 7. 1982. by the Winter **Park** Police Department for Trafficking in Cocaine over 400 grams. use of a Firearm in the Commission of **a** Felony. and Carrying a Concealed Firearm. On July 13, 1988. Capuzzo pled guilty **to** the charge of Trafficking in Cocaine over **400** grams and posted \$10,000.00 bond awaiting sentencing. Meanwhile, the Federal Drug Enforcement Administration continued to monitor Capuzzo a/k/a Comillo.

Petitioner Byrom was employed by World Wide Air Services. Inc. **as a** pilot. Byrom flew **Capuzzo** a/k/a Comillo's attorney **to** Orlando on July 13, 1988, for the **plea** hearing. Mr. Byrom also accompanied the attorney to the Orange County Jail to post the bond and collect Mr. Capuzzo a/k/a Comillo. Petitioner then flew Mr. Capuzzo a/k/a Comillo and the attorney back to Fort Lauderdale. In August of 1988 Assistant **State** Attorney **Louis** Weiss informed Byrom that Comillo's real name was Joseph Capuzzo and that he was engaged in illegal narcotics activities. and the Petitioner still accepted **a** "bill of sale" for the Seneca with Joseph Comillo **as** the seller. There was no person by the **name** Joseph Comillo to sell anything on behalf of World Wide Air Services. Inc.

World Wide Air Services, Inc., a for profit organization incorporated in the State of Florida in July 1987, originally had two members of the Board of Directors. Corporate records reflect that Joseph Comillo became the sole officer in January of 1988, and remained the sale officer until November 4, 1988, when the corporation was involuntarily dissolved. It is unknown whether the disposition of **corporate assets** was ratified by the corporation, **as** the bill of sale was signed by Joseph Comillo as Secretary/Treasurer. This question can only be answered by "Joseph **Comillo**", a/k/a Joseph Capuzzo, a fugitive from justice.

The rationale for the rule that bare legal title may be insufficient for standing is based upon the candid determination that things are often not what they seem in the world of drug trafficking where people often attempt to disguise their interest in property. United States v. One 1977 36 Foot Cigarette Ocean Racer, 624 F. Supp. 290 (S.D. Fla. 1985). Comillo a/k/a Capuzzo could just as easily have signed the bill of sale the day after the seizure and dated it prior to the authorities taking the aircraft into custody, in an attempt to transfer the property to avoid forfeiture. In the present case, the authorities notified the Federal Aviation Administration the day of the seizure. The FAA is the agency that records changes to the record title of aircraft. The FAA is required to notify **any** and all persons attempting to receive an interest in the Seneca from Joseph Comillo a/k/a Joseph Capuzza d/b/a World Wide

Air Services, Inc. that his interest had been forfeited to the authorities. The right to property vests in the government immediately upon commission of the criminal act and **voids** all intermediate sales and alienations even to purchasers in good faith. United States v. Stowell, 133 U.S. 1, 10 S.Ct. 244, 33 L. Ed. 555 (1890).

This is similar to the Vehicle Registration Act which is the exclusive means of **perfecting** a security interest in a motor vehicle. The law was created to protect innocent purchasers from fraudulent transfers of titled property, to protect them from purchasing vehicles with liens without notice, or from persons who do not hold legal title. The fact **that** the authorities notify the registration agency puts potential purchasers on notice of the pending forfeiture. Persons who obtain **assets** with notice of forfeiture proceedings assume the risk that the government may forfeit them. Payden v. United States 605 F. Supp. 839 (D.C. N.Y. 1985). Innocent purchasers have no legal interest in forfeitable property and are in **the** same position **as** purchasers of stolen property. Florida Dealers and Growers Bank v. United States, 279 F.2d 673 (5th Cir. 1960).

The **Florida** Contraband Forfeiture **Act** has within it safeguards for true innocent owners whose property has been used in **violation** of Section **932.701-704**, Florida Statutes (1987). Section 932.703(2) prohibits forfeiture if the owner neither

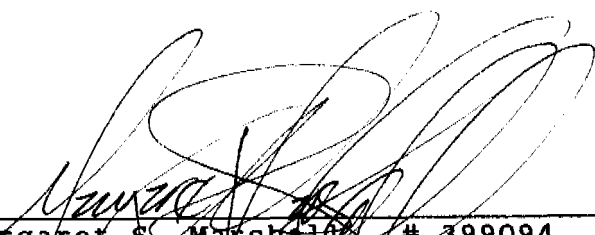
knew nor should have known after reasonable inquiry that the property was employed or likely to be employed in criminal activity. Bona fide lienholders interests are preserved as well: **Section 932.703(3)** Florida Statutes (1987). In the **present case**, notwithstanding **the failure** of Petitioner to **have** the bill of sale recorded with the Federal Aviation Administration, he cannot possibly establish himself as an innocent owner. **The** Trial Court did not rule on **this** based upon the lack of evidence of the sale **transaction** and the failure of **Petitioner** to **record** the **title**.

### CONCLUSION

The intention and the result of Florida's Contraband Forfeiture **Act** is to forfeit from persons involved in criminal activity the fruits and instrumentalities of their crimes. The Act relates the final judgment of forfeiture **to** the seizing governmental agency to the date of the seizure, subject to perfection of title, rights, **and** interests in accordance with the Act itself. This operates to prevent the fraudulent transfer of property after seizure in an attempt to shield assets from forfeiture. The seizing agency is required to notify each and **every** person having **a** secured interest in the property of the seizure **and** pending litigation, and to notice the registration and recording agency of the government's newly acquired interest. This operates to notify potential **purchasers** of the government's action.

The question certified to this Court has been answered by the legislature through the Florida Contraband Forfeiture Act itself. **A** true bona fide purchaser would not suffer **a** loss from the relation back doctrine of the Act, though he may suffer from the attempted fraudulent transfer of property by the owner. It is **up** to the buyer of titled property to determine if the seller is in fact the title holder of property.

Respectfully submitted by,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and Correct copy of the foregoing was furnished by United States Mail to the Office of David Paul Horan, Attorney for the Petitioner, 608 Whitehead Street, Key West, Florida, 33040 on this 18th day of November, 1991.

  
\_\_\_\_\_  
Margaret S. Marshall, Esquire

1453B/tc