

ORIGINAL

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

JAN 26 2009

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES W. HATTEN, Clerk
Deputy Clerk

UNITED STATES OF AMERICA, :
 :
 :
 Plaintiff, :
 :
 :
 v. :
 :
 :
 1325 BUCKNER ROAD, SE, :
 MABLETON, COBB COUNTY, GEORGIA :
 30126; AND :
 5542 VALLEY BROOK ROAD, :
 MABLETON, COBB COUNTY, GEORGIA :
 30126, AND ALL BUILDINGS AND :
 APPURTENANCES THEREON, :
 :
 Defendants, :

CIVIL ACTION NO.

-GET

1:09-CV-0210

COMPLAINT FOR FORFEITURE

COMES NOW the United States of America, Plaintiff in the above-styled civil action, pursuant to 18 U.S.C. §§ 981 (a) (1) (A) and (C), and files this Complaint for Forfeiture, showing the Court as follows:

1

The Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1345 and 1355.

2

Venue is proper in this Court pursuant to 28 U.S.C. § 1395.

3

Pursuant to 18 U.S.C. §§ 1341, 1343, 1346, and 1349 it is a

crime for an individual to engage in an artifice or scheme to deprive an employer of its intangible right to the honest services from its employees, if the scheme involves the use of the mail and/or wires transmitted in interstate or foreign commerce. The acceptance of payments ("kickbacks") by an employee in the form of cash, goods and services or other benefit, extended by an individual or entity that conducts business with the individual's employer would be a violation of U.S.C. §§ 1341, 1343 and 1346 if the mail and/or wires were used to further the scheme.

4

Pursuant to 18 U.S.C. § 1957, it is a crime to engage or attempt to engage in a monetary transaction involving criminally derived property having a value greater than \$10,000, knowing that the property was derived from a specified unlawful activity as defined under 18 U.S.C. § 1961(1). Pursuant to 18 U.S.C. § 1961(1), mail fraud and wire fraud, 18 U.S.C. §§ 1341 and 1343, respectively, are listed as specified unlawful activities.

2

BACKGROUND

5

Special agents with the Internal Revenue Service - Criminal Investigation ("IRS-CI"), the Federal Bureau of Investigation, and the Bureau of Alcohol Tobacco and Firearms have been involved in an investigation of former Home Depot employees for violations of Title 18 U.S.C. §§ 1341, 1343, 1346 and 1349, conspiracy to use the mail and/or interstate wires to further a scheme to deprive their employer of the intangible right to honest services and violations of Title 18 U.S.C. § 1956 and 1957 (money laundering). Special Agent Craig Castiglia of IRS-CI has been involved in the investigation.

6

As a result of the investigation, between July of 2008 and January 2009, former Home Depot employees Anthony M. Tesvich, James P. Robinson, and Ronald K. Johnston were convicted in Federal District Court in the Northern District of Georgia after each entered guilty pleas to charges of conspiracy to commit theft of honest services wire fraud under Title 18 U.S.C. §§ 1343, 1346 and 1349 and tax crimes under Title 26 §§ 7201 and 7206(1).

7

Evidence developed throughout the course of the investigation relating to the above-mentioned individuals has identified other

3

individuals who engaged in similar activities that are possibly in violation of federal criminal laws.

8

Home Depot U.S.A, Inc., ("Home Depot") is the world's largest home improvement specialty retailer. Home Depot has more than 2,100 retail stores throughout the United States, Canada, and Mexico.

9

From November 18, 1996 through March 4, 2001, Ian Jay Evans ("Evans") was employed by Home Depot. From 1998 through March 4, 2001, Evans held a position titled Merchant. On March 4, 2001, Evans was terminated from Home Depot for performance-related issues.

10

From May 8, 1987 through July of 2007, Ronald Douglas Matheny ("Matheny") was employed by Home Depot. From approximately May of 2002 through April 25, 2005, Matheny was a product merchant in the flooring department. In his position as a product merchant, Matheny was responsible for the purchase of all rugs and related accessories, control of inventory levels and the maintenance of vendor relationships.

11

4

During the time period that Matheny was employed by Home Depot as a product development merchant, the company maintained corporate policies prohibiting its employees from engaging in activities in which their personal interests would interfere with company business and prohibited its employees from receiving improper benefits as a result of their positions with the company such as bribes and kickbacks from suppliers.

12

Home Depot enacted these policies to ensure that its employees performed their jobs in the best interests of Home Depot rather than in furtherance of their conflicting personal financial interests.

13

Additionally, Home Depot stressed to its employees the importance of disclosing any conflicts or potential conflicts of interest, and Home Depot maintained its compliance policies in writing.

14

After his termination from Home Depot, Evans formed Vendor Efficiencies, LLC, to perform consulting and sales representation services for flooring vendors. Vendor Efficiencies, LLC was created on February 14, 2002 with the Georgia Secretary of State's Office. Evans signed as a Member on the Articles of Organization

5

and was listed as the registered agent on the Certificate of Organization.

15

On March 24, 2002, Evans established bank account XXXXXXXX5307 at Wachovia Bank, N.A. in the name of Vendor Efficiencies, LLC. Evans was the signer on the account. On November 2, 2004, Evans' wife, Lynn Evans, was also added as a signer on the bank account.

16

On November 2, 2004, Evans established bank account XXXXXXXX4739 at Wachovia Bank, N.A. in the name of Vendor Efficiencies, LLC. Evans and Lynn Evans were listed as the signers on the bank account.

17

On January 17, 2003, JDJ Distributing, LLC was created with the Georgia Secretary of State. Evans signed as a Member on the Articles of Organization and was listed as the registered agent on the Certificate of Organization. Evans, Matheny and James Wargo were listed on the Articles of Organization as the Organizers of JDJ Distributing, LLC. JDJ Distributing, LLC is involved in the sale of motorcycles, parts and accessories.

18

In approximately March of 2003, Evans established bank account XXXXXXXX4841 at Wachovia Bank, N.A. in the name of JDJ

6

Distributing, LLC. Evans was the signer on the account. The signature card was amended on August 20, 2003 to include James Wargo. On November 2, 2004, Wargo's name was removed from the signature card and Lynn Evans's name was added.

19

On November 16, 2004, JL Evans Holdings, Inc. was created with the Georgia Secretary of State. Evans was listed as the registered agent, chief executive officer and chief financial officer. Lynn Evans was listed as the secretary of the corporation.

20

On November 20, 2004, a bank account XXXXXXXX2291 at Wachovia Bank, N.A. was established for JL Evans Holdings. Evans and Lynn Evans were listed as signers on the account.

21

Between June of 2002 and May of 2005, approximately the same time period that Matheny was the Home Depot product merchant over rugs, Evans received over \$8.3 million in payments, primarily from various Home Depot rug vendors. The checks were made payable to Vendor Efficiencies, LLC or JDJ Distributing, LLC and were deposited into Wachovia Bank, N.A. accounts XXXXXXXX5307 (Vendor Efficiencies, LLC), XXXXXXXX4841 (JDJ Distributing, LLC), and XXXXXXXX4739 (Vendor Efficiencies, LLC) controlled by Evans. Account XXXXXXXX5307 received approximately \$6.6 million in Home

Depot vendor deposits; account XXXXXXXX4841 received approximately \$1.3 million in Home Depot vendor deposits; and account XXXXXXXX4739 received over \$400,000 in Home Depot vendor deposits.

22

FBI Special Agent John Iacovelli and IRS-CI Special Agent Craig Castiglia have met with representatives of Home Depot during the course of the investigation. Home Depot has explained that the purchase order process and payment of vendors for goods involves the use of interstate wires and/or the mail.

23

Mahdavis and Trade Am International, Inc. were two of the rug vendors that each made approximately \$1 million in payments to Vendor Efficiencies, LLC and JDJ Distributing, LLC during the period 2002 and 2005. Doug Matheny, as a product development merchant for Home Depot, purchased millions of dollars of rugs to Home Depot between 2002 and 2005.

24

FBI Special Agent John Iacovelli and IRS-CI Special Agent Craig Castiglia interviewed representatives of Mahdavis and Trade Am International, Inc. and reviewed internal records from the two companies. The interviews and records showed that the payments made by the two companies to Vendor Efficiencies, LLC and JDJ Distributing, LLC were for consulting work and sales representation

with Home Depot. Payments were made based on a percentage of rug sales to Home Depot.

25

Between June 2002 and May 2005, checks totaling over \$1.4 million were made payable to Xenza Consulting, LLC from the Vendor Efficiencies, LLC Wachovia Bank Account XXXXXXXX5307 and JDJ Distributing, LLC Wachovia Bank Account XXXXXXXX4841.

26

A thorough review and analysis of the Wachovia Bank, N.A. accounts XXXXXXXX5307 (Vendor Efficiencies, LLC) and XXXXXXXX4841 (JDJ Distributing, LLC) was conducted. A pattern of deposits into the accounts and checks written out of the two accounts was identified. In particular, a check from specific Home Depot vendors would be deposited into one of the two accounts. A check made payable to Xenza Consulting, LLC would be written from the account within a short period of time of the deposit (usually a few days to a few weeks). The check payable to Xenza Consulting, LLC would be exactly or close to 50% of the amount of the initial deposit into the account. As an example, on or about 11/6/2003, a check from Trade Am International in the amount of \$22,454.79 was deposited into Vendor Efficiencies, LLC Wachovia Bank, N.A account XXXXXXXX5307. On or about 11/11/2003, a check payable to Xenza

Consulting, LLC was written from account XXXXXXXX5307 in the amount of \$11,227.35.

27

Xenza Consulting, LLC was created on July 16, 2002 with the Georgia Secretary of State. The registered agent was National Registered Agents, Inc. No officers were listed for the company. The mailing address for the company was 1141 Queensgate Drive, Smyrna, Georgia 30082, the home address of Matheny.

28

The approximately \$1.4 million in checks payable to Xenza Consulting, LLC from the Evans' controlled companies, were deposited into SunTrust Bank account XXXXXXXX5673 held in the same name. The Xenza Consulting, LLC account at SunTrust Bank was established in October 2002. Janice Matheny, the wife of Matheny, wrote checks and endorsed deposits on the account.

29

Of the \$1.4 million in checks deposited into the SunTrust Bank account XXXXXXXX5673 held in the name Xenza Consulting, LLC, funds were traceable from Xenza Consulting, LLC to the purchase of assets and/or living expenses for the benefit of Matheny, his wife Janice Matheny and his family.

10

Of the \$1.4 million in payments made to Xenza Consulting, LLC from Vendor Efficiencies, LLC and JDJ Distributing, LLC, four payments for a total of \$502,000 were made between December 2004 and February 2005.

During the late part of 2004 into 2005, Home Depot was involved in a nationwide rug reset of all of its stores. The reset involved changing the rug product mix and modifying the existing layout of the vendor products in Home Depot store bays.

Vendor Efficiencies, LLC, controlled by Evans, was selected by Matheny and Home Depot to provide third party logistics support for the nationwide reset. In this capacity, Vendor Efficiencies, LLC operated a warehouse that received rug samples and stock from various Home Depot rug vendors. The company would centrally separate the products from each vendor and load trucks with multiple vendor products. The trucks would transport the products to specific Home Depot stores. Once at the stores, a company unaffiliated with Vendor Efficiencies, LLC would unload the trucks and reset the Home Depot store bays with the rug products.

Matheny was the contact point for the reset and as the rug product merchant for Home Depot, was responsible for its design, implementation and execution. Vendor Efficiencies, LLC was selected to provide the logistics support for the reset despite the company not having prior experience in such a venture.

TRACEABILITY OF CRIMINALLY DERIVED PROCEEDS

(Exhibit C)

On or about November 17, 2004, \$175,000 was transferred from Vendor Efficiencies, LLC Wachovia Bank, N.A. business account XXXXXXXX4739 to Wachovia Bank, N.A. individual account XXXXXXXX3320 in the name of Ian Jay Evans and Lynn Evans.

On or about November 19, 2004, check number 5181, in the amount of \$150,000, payable to Countrywide Mortgage, was issued from Wachovia Bank, N.A. individual account XXXXXXXX3320 in the name of Ian Jay Evans and Lynn Evans.

The \$150,000 payment from Wachovia Bank, N.A. individual account XXXXXXXX3320 to Countrywide Home Loans, Inc. was applied to the outstanding mortgage note # XXX1385 in the name of Ian Jay

Evans for the property located at 4558 Willow Oak Trail, Powder Springs, Georgia 30127. According to Cobb County, Georgia property records, the home was purchased by Evans on April 12, 1999. On the same day, Ian Jay Evans granted a security instrument to Sun America Mortgage Corporation for \$327,600 on the home. The security deed was immediately assigned from SunAmerica Mortgage Corporation to Country Wide Home Loans, Inc.

37

On or about December 22, 2004, checks 3118 and 3119 in the amounts of \$60,000 and \$20,000 respectively, were written from JDJ Distributing, LLC Wachovia Bank N.A. business account XXXXXXXX4841. The two checks were payable to JL Evans Holdings, Inc. and were deposited into Wachovia Bank, N.A. business account XXXXXXXX2291 in the name of JL Evans Holdings, Inc.

38

On or about December 22, 2004, check 5152 in the amount of \$90,000 was written from Vendor Efficiencies, LLC Wachovia Bank N.A. business account XXXXXXXX5307. The check was payable to JL Evans Holdings, Inc. and was deposited into Wachovia Bank, N.A. business account XXXXXXXX2291 in the name of JL Evans Holdings, Inc.

13

On or about December 23, 2004, check 1501 in the amount of \$165,000 was written from JL Evans Holdings, Inc. business account XXXXXXXX2291. The check was deposited into Wachovia Bank, N.A. account XXXXXXXX3320 in the name of Ian Jay Evans and Lynn Evans.

On or about December 24, 2004, check 6026 in the amount of \$149,000 was written from Wachovia Bank, N.A. individual account XXXXXXXX3320 in the name of Ian Jay Evans and Lynn Evans. The check was payable to Countrywide Mortgage and was applied to the outstanding mortgage note # XXX1385 in the name of Ian Jay Evans for the property located at 4558 Willow Oak Trail, Powder Springs, Georgia 30127.

On February 14, 2005, the security deed granted by Ian Jay Evans on April 12, 1999 to Countrywide Home Loans, Inc. (assigned from SunAmerica Mortgage Corporation) was cancelled and filed in Cobb County, Georgia, after being paid in full. As a result, there were no encumbrances on Evans' property located at 4558 Willow Oak Drive, Powder Springs, Georgia 30127.

42

On July 13, 2007, Evans and his wife Lynn Evans obtained an equity line of credit (loan #XXXXXXXXXXXX5998) with Branch Banking & Trust Company for \$300,000. The line of credit was secured with Evans' property located at 4558 Willow Oak Drive, Powder Springs, Georgia 30127. The deed to secure debt was filed with the Cobb County Clerk of Superior Court in Georgia.

43

On August 9, 2007, an electronic advance of \$130,000 was made from Evans' equity line of credit # XXXXXXXXXXXXXXX5998, held with Branch Banking & Trust Company. The \$130,000 in equity line proceeds were transferred to Branch Banking & Trust Company individual bank account XXXXXXXXXXXXXXX3837 in the name of I Jay Evans and Lynn Evans.

44

On August 10, 2007, Lynn R. Evans and Ian J. Evans purchased approximately 3.8 acres of land from Pearl Development, Inc. for \$300,000. The property was described as a tract or parcel of land lying and being in Land Lots 540 and 541 of the 17th District, 2nd Section, Cobb County, Georgia (Exhibit A). The General Warranty Deed was filed with the Clerk of Superior Court, Cobb County, Georgia. The closing attorney listed on the General

15

Warranty Deed is Kitchens, Kelley Gaynes, P.C. in Atlanta, Georgia.

45

On August 10, 2007, an official check #78703267 in the amount of \$294,501.62 was purchased on Branch Banking & Trust Company account XXXXXXXXXXXX3837 in the name of I. Jay Evans and Lynn Evans. The official check was made payable to Kitchens, Kelley Gaynes, P.C.

46

On October 2, 2007, an electronic advance of \$126,150 was made from Evans' equity line of credit # XXXXXXXXXXXX5998, held with Branch Banking & Trust Company. The \$126,150 in equity line proceeds were transferred to Branch Banking & Trust Company individual bank account XXXXXXXXXXXX3837 in the name of I Jay Evans and Lynn Evans.

47

On October 3, 2007, Lynn R. Evans and Ian J. Evans purchased property at 5542 Valley Brook Road, Mableton, Georgia 30126 from Michael J. Searles for \$150,000. (Exhibit B.) The General Warranty Deed was filed with the Clerk of Superior Court, Cobb County, Georgia. The closing attorney listed on the General Warranty Deed is Kitchens, Kelley Gaynes, P.C. in Atlanta, Georgia.

16

On October 3, 2007, an official check #78737979 in the amount of \$146,150.62 was purchased on Branch Banking & Trust Company account XXXXXXXXXXXX3837 in the name of I. Jay Evans and Lynn Evans. The official check was made payable to Kitchens, Kelley Gaynes, P.C.

On October 3, 2007, Ian J. Evans and Lynn R. Evans sold the property located at 5542 Valley Brook Road, Mableton, Georgia 30126 to Jessica K. Davis, Evans' daughter for \$150,000. Jessica K. Davis granted a promissory note to Evans and Lynn Evans for \$150,000, payable on September 3, 2010. A security deed on 5542 Valley Brook Road, Mableton, Georgia 30126 was granted by Jessica K. Davis to Evans and Lynn Evans and filed in Cobb County, Georgia.

On October 3, 2007, Jessica K. Davis granted to Evans and Lynn Evans an Option to purchase 5542 Valley Brook Road, Mableton, Georgia 30126 at a price of \$150,000 if the Option is exercised within 36 months of October 3, 2007. The Option Agreement was filed in Cobb County, Georgia.

51

On October 30, 2007, Lynn Evans and Ian Jay Evans received a construction loan XXXXXX9140 from Branch Banking & Trust Company for \$952,500. A security deed dated October 30, 2007 was granted by Lynn R Evans and Ian Jay Evans to Branch Banking & Trust Company for the Defendant 3.8 Acres of Land in Cobb County.

52

Building permits issued by Cobb County, Georgia show that Ian Jay Evans acted as his own general contractor on building a home located at 1325 Buckner Road, SE, Mableton, Georgia 30126. The home was built on the Defendant 3.8 Acres of Land.

53

From the investigation, Special Agent Castiglia learned that 1325 Buckner Road, SE, Mableton, Georgia 30126 is for sale and is listed with an agent for Prudential. A copy of the listing, which is available online at the following address:

http://www.cobbhome.info/prudential_ga/modules/agent/agent.asp?p=featuredproperties.asp (MLS 3839324). (Exhibit D)

54

On January 4, 2008, I. Jay Evans and Lynn Evans sold the property located at 4558 Willow Oak Trail, Powder Springs, Georgia 30127. The Warranty Deed was filed with the Clerk of

18

Superior Court, Cobb County, Georgia. Almand & Cohen, LLC were the closing attorneys.

55

On or about January 7, 2008, an official check for \$303,248.46 from Almand & Cohen, LLC and made payable to Branch Banking & Trust Company was used to payoff Evans' equity line of credit # XXXXXXXXXXXX5998 on 4558 Willow Oak Trail, Powder Springs, Georgia 30127.

56

On November 14, 2008, the Security Deed granted by Evans to Branch Banking & Trust Company was cancelled, having been paid in full.

Conclusion

57

As described above, Evans conspired with Home Depot employee Matheny to transmit and cause to be transmitted wires in interstate and foreign commerce and also caused the deposit of any matter or thing with the U.S. postal service or private and commercial interstate carrier, to effectuate a scheme to fraudulently deprive Home Depot of its intangible right to the honest services of its employees, in violation of 18 U.S.C. §1341, 1343, 1346 and 1349.

19

In violation of 18 U.S.C. § 1957, Evans engaged or attempted to engage in one or more monetary transactions in criminally derived property having a value greater than \$10,000, knowing that the property was derived from unlawful activity. Furthermore, said property was, in fact, derived from specified unlawful activity.

Evans used proceeds derived from or traceable to his violations of 18 U.S.C. §§ 1341, 1343, 1346, and 1957 to payoff the mortgage note on his property at 4558 Willow Oak Trail, Powder Springs, Georgia 30127. With no encumbrances on the property, Evans obtained an equity line of credit that was used to purchase the following property:

- (1) 3.8 Acre Tract or Parcel of Land Lying and Being In Land Lots 540 and 541 of the 17th District, 2nd Section, Cobb County, Georgia. Construction of a home would later occur resulting in an address of 1325 Buckner Road, SE, Mableton, Georgia 30126 on the land. (Exhibit A)
- (2) Tract or Parcel of Land Lying and Being in Land Lots 540 and 541, 17th District, 2nd Section, Cobb County, Georgia known as 5542 Valley Brook Road, Mableton, Georgia 30126. (Exhibit B)

The Defendant Assets and Real Properties and all buildings and appurtenances thereon are subject to forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(C), because they constitute or were derived from proceeds traceable to a violation of 18 U.S.C. § 1343 (wire fraud) or 18 U.S.C. § 1341 (mail fraud).

60

The Defendant Assets and Real Properties and all buildings and appurtenances thereon are subject to forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(A), because they were involved in or are traceable to a money laundering transaction or an attempted money laundering transaction in violation of 18 U.S.C. § 1957.

Respectfully submitted,

DAVID E. NAHMIAS
UNITED STATES ATTORNEY


GERALD S. SACHS
SPECIAL ASSISTANT U.S. ATTORNEY

600 U.S. COURTHOUSE
75 SPRING STREET, S.W.
ATLANTA, GEORGIA 30303
(404) 581-6057
(404) 581-6181 (Fax)
GA. BAR NO. Admitted Per L.R. 83.1