

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF FLINT,

Plaintiff-Appellee,

v

TWO THOUSAND TWO HUNDRED
DOLLARS,

Defendant,

and

EDWARD HILTON LEE,

Claimant-Appellant.

UNPUBLISHED

April 23, 2002

No. 228981

Genesee Circuit Court

No. 99-065276-CZ

Before: Bandstra, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Claimant Edward Lee Hilton appeals as of right from the circuit court's order granting summary disposition to plaintiff in this forfeiture action. We affirm.

First, claimant argues that, because he invoked his right to remain silent following his criminal arrest, the trial court erred in ordering him to answer plaintiff's interrogatories in this forfeiture action. We review a trial court's ruling on a motion to compel discovery for an abuse of discretion. *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 343; 497 NW2d 585 (1993).

Claimant's reliance on *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), as authority for his position that he properly could remain silent and not answer plaintiff's interrogatories is misplaced. In *Miranda*, the United States Supreme Court held that when an individual is taken into custody or otherwise deprived of his freedom by police authorities in any significant way and subjected to questioning, he must be warned of his right to remain silent. Here, claimant was advised of his *Miranda* rights when he was arrested for manufacturing marijuana. However, that criminal proceeding was separate and distinct from the instant forfeiture proceeding. There is no indication in the lower court record that there was any occasion to give claimant *Miranda* warnings in connection with this case, because there is no indication that claimant was ever subject to custodial interrogation.

Claimant also argues that the trial court erroneously ordered him to answer plaintiff's interrogatories because he invoked his Fifth Amendment privilege against self-incrimination. "The privilege against self-incrimination not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant, but also permits him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." *Phillips v Deihm*, 213 Mich App 389, 399-400; 541 NW2d 566 (1995). However, the protection against compulsory self-incrimination is only properly invoked if the answers elicited would in fact tend to incriminate claimant. *Larrabee v Sachs*, 201 Mich App 107, 110; 506 NW2d 2 (1993).

Here, the only conceivably incriminating question contained in plaintiff's interrogatories was question number sixteen, which asked claimant about his prior history with controlled substances. As far as the remaining questions, claimant made no attempt to show that he would incriminate himself by responding to them. Furthermore, the remaining questions are not obviously incriminating. Thus, we conclude that the court erred only insofar that it ordered claimant to answer question number sixteen. The court did not abuse its discretion in granting plaintiff's motion to compel discovery with regard to the remaining questions. *Id.*

Finally, we conclude that the circuit court properly granted summary disposition to plaintiff. We review a circuit court's decision on a motion for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). In reviewing a motion under MCR 2.116(C)(10), the court must consider the affidavits, pleadings, admissions, and documentary evidence filed in the action or submitted by the parties, in the light most favorable to the party opposing the motion. *Id.* The motion may be granted if the affidavits and other documentary evidence show that there is no genuine issue in respect to any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Contrary to claimant's assertion, the circuit court did not grant summary disposition to plaintiff as a sanction for claimant's refusal to answer the interrogatories. Instead, the court sanctioned claimant by prohibiting him from asserting or supporting any defense or claim that would have been disclosed had he answered the interrogatories as ordered. Summary disposition was merely a consequence of that sanction. The circuit court granted summary disposition after considering the evidence and determining that no genuine issue of fact existed.

Under MCL 333.7521(1)(f), property is subject to forfeiture if it can be traced to an exchange for a controlled substance. *In re Forfeiture of \$1,159,420*, 194 Mich App 134, 146; 486 NW2d 326 (1992).

Forfeiture proceedings are in rem civil proceedings, and the party bringing the action must prove its case by a preponderance of the evidence. In order for an asset to be ordered forfeited, the trial court must find that there is a substantial connection between that asset and the underlying criminal activity. In contrast, property that has only an incidental or fortuitous connection to the unlawful activity is not subject to forfeiture. [*Id.* (citations omitted).]

Here, the evidence submitted by plaintiff showed that the police found a marijuana growing operation in claimant's home, that Sherry Givens admitted obtaining marijuana from

claimant, and that claimant was arrested at the home, at which time the police seized \$2,211 from his person. Plaintiff also submitted an affidavit averring that illegal drugs, combined with large quantities of money, typically constitute evidence of criminal conduct and that a person involved in the illicit distribution of drugs generally maintains substantial amounts of money on the premises. Also, plaintiff offered evidence indicating that claimant had obtained a waiver of fees and costs on the basis of his unemployment and lack of income. The submitted evidence, cumulatively considered, establishes a substantial connection between the \$2,211 and the marijuana growing operation.

Although claimant attempted to establish a factual issue concerning the source of the \$2,211, whether the plants in question were actually marijuana, and whether Ms. Givens gave truthful information, the circuit court properly refused to consider claimant's evidence because claimant was prohibited from asserting or supporting any defense or claim that would have been disclosed had he answered the interrogatories.¹ Because claimant failed to properly demonstrate an issue of fact, the circuit court did not err in granting plaintiff's motion for summary disposition.

Affirmed.

/s/ Richard A. Bandstra
/s/ Michael R. Smolenski
/s/ Patrick M. Meter

¹ Although we have determined that the circuit court erred in compelling claimant to answer question number sixteen of plaintiff's interrogatories, none of the evidence submitted by claimant applied to that question. Therefore, the error did not affect the court's disposition of the case.