

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

2018 NOV 27 P 12: 54

UNITED STATES OF AMERICA,)	
Respondents,)	
)	
v.)	Civil Case No. 15-CV-00191-S-LDA
)	
PATRICK CHURCHVILLE,)	
Movant.)	

**MOTION TO WITHDRAW WITHOUT PREJUDICE
AND
STAY RELEASE OF UNTAINTED FUNDS**

COMES NOW, PATRICK CHURCHVILLE, Movant, appearing through Pro se representation, and Respectfully requests Withdrawal, without prejudice, of pending actions involving the Motion To Modify the Restraining Order to Release Assets for the Defense of the Related Criminal Case, and to Stay proceedings to release any and all untainted funds until the claims are resolved the pending Criminal docket. In support of this request, Churchville would show this Court as follows:

I. Introduction

On September 20th, 2018, Churchville (“Movant”) filed the Motion To Modify the Restraining Order to Release Assets for the Defense of the Related Criminal Case (“Motion for Release of Funds”) into the Criminal Case No. 16-CR-068-S, but the record will show that the Court Clerk for the District of Rhode Island failed to docket the Motion into the criminal case and instead filed the Motion into the instant pending SEC Civil Case. (See docket entry No. 123, Case No. 15-cv-00191). Churchville had assistance in monitoring the Criminal Docket

for a few weeks to see if the Motion would appear filed on the Docket, it did not. As the Supreme Court has reasoned, “even the intelligent and educated layman has small and sometimes no skill in the science of law,” Movant admittedly falls directly into that category of men, and abandoned faith that his Motion would be filed on the Criminal Docket and proceeded with the adjudication of his Motion on the Civil Docket. *Halbert v. Mich.*, 545 U.S. 605 (2005).

Movant subsequently had assistance in searching the Criminal Docket and was informed that the Clerk docketed the ‘Motion to Release Funds’ as being filed on September 20th 2018 (Doc. No. 46, Criminal Case No. 16-CR-068-S). Movant is now prosecuting his claims for Release of Funds on two fronts.

II. Argument for Withdrawal

Movant’s request for relief of ‘Release of Funds’ is pending adjudication on the Criminal Docket where it was his intention, albeit request, to be filed and a decision in this Civil Docket, where it was filed in error, would affect its outcome there.

In *United States v. Moran*, 393 F.3d 1 (1st Cir. 2004), the Court discussed the law of the case doctrine which “posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *Arizona v. California*, 460 U.S. 605, 618, 103 S.Ct. 1382, 75 L.Ed.2d 318 (1983). The doctrine has two branches. The first branch — the mandate rule — prevents relitigation in the trial court of matters that were explicitly or implicitly decided by an earlier appellate decision in the same case. *United States v. Vigneau*, 337 F.3d 62, 67 (1st Cir. 2003). The second branch, which concerns the instant case, contemplates that a legal decision made at one stage of a criminal or civil proceeding should remain the law of that case throughout the litigation, unless and until the decision is modified or

overruled by a higher court. See *Christianson v. Colt Indus. Oper'g Corp.*, 486 U.S. 800, 816-17, 108 S.Ct. 2166, 100 L.Ed.2d 811 (1988).

Movant requests this Honorable Court to take into account the public interests in judicial economy, convenience, fairness, comity and to avoid the need for further adjudication in the instant cause and allow Movant to Withdraw the Motion To Modify the Restraining Order to Release Assets for the Defense of the Related Criminal Case filed on this Civil Docket in error, without prejudice, so that he can prosecute this claims in the Criminal Court, the venue where he had requested the motion to be filed.

III. Argument for Stay

Movant's pending Motion To Modify the Restraining Order to Release Assets for the Defense of the Related Criminal Case pending before the Court's requests release of funds from specifically identified untainted funds presently under control of the Receiver appointed in the Civil Action.

The Receiver has initiated payment from the account of seized assets to creditor/victims that includes the sum of untainted funds. Movant requests that a Stay of the release of the specific identified untainted funds be entered until adjudication of his claims in the Criminal Docket. These are funds resulting from assets obtained by Movant before 2010, or which are not included in the SEC Complaint nor any Criminal charges. (See Doc. 46, page 3, on the Civil Docket)

A hearing concerning the Order Granting Motion to Authorize Initial Distribution to Approved Class 3 Claims by the Receiver is tentatively set for November 20, 2018.

Distribution of the untainted funds as identified by Movant would prejudice his

meritorious claims on the portion of said funds requesting release pending the resolution of the issues before this Court and the on the Criminal docket.

Conclusion

Patrick Churchville, Movant Pro se, Respectfully requests Withdrawal, without prejudice, of pending actions involving the Motion To Modify the Restraining Order to Release Assets for the Defense of the Related Criminal Case, and to Stay proceedings to release any and all untainted funds until the claims are resolved on the pending Criminal docket.

Respectfully submitted,

Dated November 20, 2018

PATRICK CHURCHVILLE
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Movant Pro se

Certificate of Service

Pro se Movant Patrick Churchville is currently incarcerated and without access to ECF or any electronic filing into this Honorable Court and respectfully requests that the Clerk of U.S. Court electronically serve the Respondents in this cause a true and exact copy of the foregoing “MOTION TO WITHDRAW WITHOUT PREJUDICE AND STAY RELEASE OF UNTAINTED FUNDS” on this 20th day of November, 2018.

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