

ANSWER

The Defendant, by counsel, for his Answer to the Plaintiff's Complaint states the following:

1. The Defendant admits the allegations in [insert paragraph numbers].
2. The Defendant denies the allegations in [insert paragraph numbers].
3. The Defendant is without adequate knowledge to admit or deny the allegations made in [insert paragraph numbers].
4. The Defendant denies the allegations made in [insert paragraph numbers] to the extent that he believes that his house was searched pursuant to an unlawful search warrant.

WHEREFORE, the Defendant, by counsel, prays the Plaintiff take nothing by the complaint.

(Signature)

REFERENCES

CASEBANK W.3

I.C. 34-24-1-1 et seq. (seizure; forfeiture of property).

I.C. 34-24-1-4 (hearing; burden of proof; disposition of seized property).

I.C. 34-24-1-9 (transfer of property seized to federal authorities via motion by prosecutor under I.C. 35-33-5-5(j)).

I.C. 35-33-5-5 (return of seized property).

CASE LAW

Lipscomb v. State, 857 N.E.2d 424 (Ind.Ct.App. 2006) (State failed to prove by a preponderance of the evidence that the money in Defendant's possession at the time of his arrest was money received in consideration for his dealing cocaine when police arrested Defendant based on events which occurred more than two weeks prior; for the presumption in I.C. 34-24-1-1 to apply, the money must be found at the same time the person is committing, attempting to commit, or conspiring to commit any of the specifically enumerated drug offenses).

Katner v. State, 655 N.E.2d 345 (Ind. 1995) (Indiana's forfeiture statute requires the State to show the existence of "more than an incidental or fortuitous" relationship between property sought in forfeiture and underlying offense; to assure that adequate nexus exists, the State must demonstrate by a preponderance of evidence that property sought in forfeiture was used "for the purpose of committing, attempting to commit, or conspiring to commit" an enumerated offense; insufficient evidence to forfeit).

Serrano v. State, 946 N.E.2d 1149 (Ind. 2011) (State's evidence did not compel conclusion that the presence of cocaine was anything more than "incidental or fortuitous").

One 1968 Buick, 4 Door v. State, 638 N.E.2d 1313 (Ind.Ct.App. 1994) (because the State had to show owner at that time knew or had reason to know of vehicle's involvement in criminal activity, and there was no evidence presented here that the Defendant's brother (owner at that time) had such knowledge, there was insufficient evidence to support seizure of the vehicle).

Vitaniemi v. State, 440 N.E.2d 5 (Ind.Ct.App. 1982) (hunting implements are subject to confiscation and forfeiture under IC 14-2-9-2(b) (now I.C. 14-22-39-6) only when the Defendant is convicted of a violation of 1937 Fish and Game Act (fish, frogs, mussels, game, fur-bearing animals, birds); confiscation and forfeiture provisions of judgment ordered vacate).

State v. Klein, 702 N.E.2d 771 (Ind.Ct.App. 1998) (the Defendant provided clearest proof that despite civil nature of the forfeiture statute, sanction of forfeiting car in this case was so punitive that forfeiture transformed from civil to criminal; because there was no purpose for forfeiture of the Defendant's car other than punishment, jeopardy attached upon forfeiture and subsequent criminal proceedings against the Defendant constituted multiple punishments for the same offense in violation of double jeopardy), *trans. den'd*, 719 N.E.2d 386 (Ind. 1998). But See Davis v. State, 819 N.E.2d 863 (Ind. Ct.App. 2004); Willis v. State, 806 N.E.2d 817 (Ind.Ct.App. 2004); C.R.M. v. State, 799 N.E.2d 555 (Ind.Ct.App. 2003); O'Connor v. State, 789 N.E.2d 504 (Ind.Ct.App. 2003); Lewis v. State, 755 N.E.2d 1116 (Ind.Ct.App. 2001).

Ziegler v. State, 780 N.E.2d 1169 (Ind.Ct.App. 2003) (the trial court erred in denying the Defendant's motion to dismiss State's forfeiture complaint; filing of forfeiture action by the State is covered by one of three mandatory time period deadlines: 1) 90 days after receiving written notice from owner demanding return of seized property; 2) 180 days after property is seized; and 3) before statute of limitations runs for prosecuting offense; the last time period deadline will only occur when less than 180 days exist between seizure and limit to prosecute set forth in statute of limitations).

Florida v. White, 526 U.S. 559, 119 S.Ct. 1555, 143 L.Ed.2d 748 (1999) (where police officers have probable cause to believe that automobile is forfeitable contraband, they do not need warrant to seize it from public place).

U.S. v. Bajakajian, 524 U.S. 321 (1998) (forfeiture of \$357,144, for offense of failing to report transfer of that money out of U.S. violates Eighth Amendment Excessive Fines Clause because it is grossly disproportionate to the gravity of the offense).

U.S. v. Parcel of Land, Bldgs, Appurtenances and Improvements, Known as 92 Buena Vista Ave., Rumson, N.J., 507 U.S. 111, 113 S.Ct. 17, 122 L.Ed.2d 469 (1993) (a property owner who purchased property with proceeds traceable to illegal drug transaction, but who claimed lack of knowledge of illegal source of funds, is entitled to assert "innocent owner" defense to civil in rem forfeiture action commenced by the Government against property under above act).

Curtis v. State, 981 N.E.2d 625 (Ind. Ct. App. 2013) (State charged defendant with fraud for selling pirated movies out of his truck and obtained a judgment for forfeiture of his truck; the trial court erred by denying his motion for relief from judgment, as the forfeiture was based on the erroneous assumption that the content of the pirated movies constituted "stolen or converted property" under IC 34-24-1-1(a)(1)(B). In fact, the property rights of a copyright holder had a character distinct from the possessory interest of the owner of simple goods; therefore, appellant established extraordinary circumstances justifying relief).

Mesa v. State, 5 N.E.3d 488 (Ind. Ct. App. 2014) (trial court did not err by granting the State summary judgment in its forfeiture action against defendant because the State designated evidence showing that defendant's vehicle was subject to seizure under this section by including an informant's affidavit that defendant had stated he paid for his vehicle with money from selling cocaine and an officer's affidavit that defendant's title showed he owned the vehicle, and defendant failed to designate any evidence showing there were genuine issues of material fact).

Hughley v. State, 15 N.E.3d 1000 (Ind. 2014) (trial court erred by granting the State summary judgment as to cash found on defendant's person in its forfeiture action under this section because defendant's affidavit denying that the cash was proceeds of or used in furtherance of drug crimes was sufficient to raise a factual issue to be resolved at trial).