

**IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO**

THE STATE OF OHIO, *ex rel.*)
CONRAD A. STRAUBE, Chief of Police)
WILLOUGHBY POLICE DEPT.)

Petitioner)

vs.)

THE BUILDING AND REAL)
PROPERTY LOCATED AT 37415)
EUCLID AVENUE)
WILLOUGHBY, OHIO, *et al.*)

Respondents)

and)

LEARNING DEVELOPMENT AND)
ADVOCACY OF LAKE COUNTY, INC.)

Party in Interest)

CASE NO. 03CV001967

JUDGE EUGENE A. LUCCI

JUDGMENT
with
OPINION
and
**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

[¶1] This case comes to this court upon the petition of the State of Ohio, *ex rel.* Conrad A. Straube, Chief of Police, Willoughby Police Department, filed on October 3, 2003, asking for forfeiture and disposition of seized contraband and real property located at 37415 Euclid Avenue, Willoughby, Ohio. The court spent a considerable amount of time mediating this dispute before, and between, the trial dates, without success. The court conducted a bench trial on July 7, 2004 and June 10, 2005. Based upon the evidence and the law, the court finds the petition well-taken and grants it, for reasons set forth in this opinion.

Findings of Fact

[¶2] At all times relevant and material to these proceedings, Learning Development and Advocacy of Lake County, Inc. (“LDA”), the respondent’s party in interest (hereafter, “respondent”), and Learning Disabilities Association of Lake County, Inc. (“LDALC”), both Ohio not-for-profit corporations, were engaged in charitable works providing funds and guidance for children and adults who have learning impairments.

¶3 Differences between LDALC and its parent organization resulted in LDALC disassociating itself from the parent organization, subsequently forming LDA.

¶4 Despite the corporate distinction between LDALC and LDA, the principals of LDA remained substantially the same after the transition as they had been before the transition.

¶5 Prior to December 4, 2002, a parcel of real property commonly known as 37415 Euclid Avenue, Willoughby, Ohio (“the Premises”), was titled to LDALC.

¶6 On December 4, 2002, LDALC conveyed its interest in and to the Premises to LDA.

¶7 At all times relevant and material to these proceedings, LDALC, and thereafter LDA, possessed a license (“Bingo License”) issued by the Ohio Attorney General pursuant to R.C. 2915.08, then in effect, permitting bingo to be conducted upon the Premises.

¶8 From July 2001 through July 2003, LDALC, and then LDA, owned the real property located at 37415 Euclid Avenue, Willoughby, Ohio and conducted a regular bingo game on the Premises.

¶9 The purpose of the bingo games was to provide funds for LDA’s corporate purpose.

¶10 Only one bingo licensee, either LDALC or LDA, conducted bingo upon the premises at any one time.

¶11 Sometime prior to July 1, 2003, LDALC and LDA purchased “instant bingo” tickets upon the Premises, which were later sold upon the Premises.

¶12 In the spring of 2003, LDA chose not to renew its Bingo License, and thus was not authorized to conduct bingo as of July 1, 2003.

¶13 On and after July 1, 2003, LDA did not engage in any bingo or other bingo-related activity.

¶14 At all times relevant and material to these proceedings, the Bingo License issued to LDALC and to LDA remained in full force and effect.

¶15 At no time relevant and material to these proceedings was the Bingo License issued to LDALC and to LDA under suspension, revocation, or other sanction.

¶16 At all times relevant and material to these proceedings, first Fran Piunno, then Sue Balonic, followed by Richard McClain (“McClain”), were in charge of and operated the bingo games on behalf of LDALC and LDA.

¶17 From July 2001 through July 2003, McClain was an employee of Respondent LDA.

[¶18] LDALC and LDA relied upon volunteers, consisting primarily of its board of trustees and its general membership, to staff and conduct the bingo operations.

[¶19] From July 2001 through July 2003, “volunteers” were paid in cash (LDA funds) by agents, employees, and/or board members of LDA to sell tickets or otherwise conduct the regular bingo games.

[¶20] Phillip Adinaro (“Adinaro”), a member of LDALC’s and LDA’s board of trustees, was a volunteer for some of the bingo games conducted by LDALC and LDA, and received payment of \$50 at the end of each bingo session.

[¶21] While in charge of bingo for LDALC and LDA, McClain, also the executive director of LDALC and LDA, was responsible for ordering bingo supplies.

[¶22] From July 2001 through July 2003, instant bingo tickets were purchased by agents, employees and/or board members of LDA from its vendor, in cash (LDA funds), without accounting for the purchase in the records of LDA; this practice was known as “off-the-books” purchasing. This activity was done deliberately in this manner to avoid scrutiny by the Ohio Attorney General.

[¶23] The boxes of instant bingo tickets purchased off the books would be sold by the volunteers at bingo sessions.

[¶24] From July 2001 through July 2003, all of the profits from the sale to patrons of the tickets purchased “off-the-books” were used illegally to pay the “volunteers,” except for the amount of money that was required to pay for the tickets themselves.

[¶25] From July 2001 through July 2003, McClain was paid illegally directly by LDA, in his regular paycheck, to work at bingo games.

[¶26] At times during the period from July 2001 through July 2003, McClain witnessed a member of the board of trustees of LDA illegally pay volunteers in cash.

[¶27] At times during the period from July 2001 through July 2003, members of the board of trustees of LDA were aware that bingo “volunteers” were being paid.

[¶28] At times during the period from July 2001 through July 2003, members of the board of trustees of LDA were paid in cash illegally as “volunteers” at the regular bingo game.

[¶29] At times during the period from July 2001 through July 2003, members of the board of trustees of LDA knew that “off-the-books” purchases of tickets were being undertaken and that the proceeds from the sale of those tickets were being used to pay volunteers illegally.

[¶30] At times during the period from July 2001 through July 2003, the board of trustees of LDA conducted discussions at regular meetings of the board of trustees about paying bingo “volunteers.”

[¶31] At times during the period from July 2001 through July 2003, the board of trustees of LDA conducted discussions at regular meetings of the board of trustees that payment of “volunteers” was irregular and possibly illegal.

[¶32] At times during the period from July 2001 through July 2003, members of the board of trustees of LDA were aware that the criminal penalty for paying bingo “volunteers” would change in July of 2003.

[¶33] As a result of his purchasing of instant bingo tickets “off the books” to pay volunteers during the above time period, McClain pled guilty to Attempted Engaging in a Pattern of Corrupt Activity, a third degree felony, and Money Laundering, a third degree felony, in Case No. 03CR000472 before Judge Richard L. Collins, Jr. of the Lake County Common Pleas Court on April 29, 2004. LDA’s treasurer during the relevant time period was Phillip Adinaro. Adinaro pled guilty to a misdemeanor count of Illegal Instant Bingo Game Conduct, in Case No. 03CR000529 before Judge Thomas P. Curran of the Lake County Common Pleas Court on March 11, 2004.

[¶34] On October 3, 2003, the State of Ohio filed its petition seeking a declaration that the Premises constituted contraband, thus subject to forfeiture.

[¶35] Upon motion by the state, this court ordered the Premises seized and held by the state until final resolution of the petition.

[¶36] Upon seizure of the Premises pursuant to this court’s October 3, 2003 order, LDA effectively ceased to operate, as it was and still is without other funds or assets.

[¶37] During the pendency of the case at bar, this court authorized the sale of the Premises, confirming the contract price of \$550,000, with the resulting net proceeds of \$234,387.55.

[¶38] The net proceeds from the sale of the Premises were placed in an interest-bearing account by and held in the custody of the Lake County Prosecuting Attorney.

[¶39] This court takes judicial notice that the offense of illegal instant bingo did not exist prior to July 1, 2003, the date R.C. 2915.091 became effective.

[¶40] This court takes judicial notice that the prosecution of McClain (felony charges were filed in the Willoughby Municipal Court and forwarded to this court on August 7, 2003) and of

Adinaro (felony charges were filed in the Willoughby Municipal Court and forwarded to this court on September 4, 2003) commenced before the initiation of the matter at bar (the petition was filed October 3, 2003).

[¶41] Petitioner herein presented evidence that, at times relevant and material to these proceedings, both LDALC and LDA, by and through their respective boards of directors, agents, or employees, ratified the conduct undertaken by their boards of directors, agents, or employees involving felonious activity, i.e., Attempted Engaging in a Pattern of Corrupt Activity, in violation of R.C. 2923.32(A)(1), a felony of the third degree, and Money Laundering, in violation of R.C. 1315.55(A), a felony of the third degree.

[¶42] The conduct of McClain of attempted engaging in a pattern of corrupt activity and/or of money laundering was performed by and/or on behalf of, and/or is attributable to LDALC and/or LDA, and was within the scope of his employment and agency. The felonious conduct furthered LDA's interests and assisted it in raising its charitable dollars.

[¶43] This court takes judicial notice that at no time relevant and material to these proceedings has either of the corporations, LDALC or LDA, been charged with or convicted of any criminal offense, be it felony or misdemeanor. However, the corporate officers, directors, employees, and agents encouraged and incited the misconduct, did nothing to prevent the misconduct, and never disciplined the persons engaged in the illegal conduct; it only discontinued the conduct after the state legislature made certain of those activities a felony.

[¶44] The court finds, by a preponderance of the evidence, that LDA knew, or should have known after a reasonable inquiry, that the Premises was used, or was likely to be used, in a crime that was a felony.

[¶45] At all times relevant and material to these proceedings, the Premises were not, *per se*, contraband, but became contraband, as declared by this court, because of its use in committing the violation.

[¶46] The state proved by a preponderance of the evidence that the Premises were used by either LDALC or LDA in violation of law constituting a felony offense, namely, attempted engaging in a pattern of corrupt activity and money laundering.

[¶47] LDA is out of business and can perform no further eleemosynary mission, except to donate the net proceeds of the sale of the Premises to some other charity. Forfeiture of the net proceeds from the sale of the Premises would not adversely affect the community, because (1)

the recipient of the forfeited property is the law enforcement community, (2) LDA has not performed any charitable work since 2003, (3) no one is now dependent upon it, and (4) no one is expecting funds from it. LDA has no other assets and is poised for winding up its affairs and dissolution, if this has not already occurred.¹

[¶48] LDA acted knowingly or deliberately in allowing the illegal use of its property, and was directly involved in the illegal activity, the same as if it had drafted a formal resolution of the board of directors to commit the corrupt activity or money laundering. LDA was an accomplice before and after the illegal acts. The harm caused by the illegal activity, including the amount of illicit activity, the duration of the illegal activity, and the effect on the community are pervasive, especially considering the number of bingo games being operated throughout the county and state, the amount of dollars spent by patrons on bingo, the amounts collected by operators for charitable organizations, the actual and potential corruption and conversion by operators and volunteers because of the large amount of dollars involved, and the extensive amount of time, effort, and resources devoted by law enforcement to enforce these laws.²

[¶49] The harshness of the forfeiture is not grossly disproportionate to LDALC's and LDA's conduct, given that the felonious activity occurred upon the Premises and was deliberate, notwithstanding the apparent lesser gravity of the offense and the sentence which could be imposed.

[¶50] The harshness of the forfeiture is not grossly disproportionate to LDALC's and LDA's conduct given the fair market value of the Premises (\$550,000), net proceeds of \$234,387.55, and the hardship to LDA, including the effect of the forfeiture on its financial condition.

[¶51] Notwithstanding the culpability of LDALC and/or LDA in committing the offense or knowingly and deliberately allowing the Premises to be used for the commission of the felony offenses, the harshness of the forfeiture is not grossly disproportionate to LDALC's and LDA's conduct taking into consideration the harm caused by the illegal activity, including the amount of illicit activity, the duration of the illegal activity, and the effect on the community.

Conclusions of Law and Analysis

[¶52] The relevant sections of the Revised Code relating to the petition for forfeiture are R.C. 2933.41, R.C. 2933.42, and R.C. 2933.43.

¹ This information was provided to the court during discussions with counsel at pre-trial conferences.

² The court is aware of many of these facts because of the number of cases that it has decided, and the greater number of these cases that this court is aware of, that have been filed in this court and in courts in other counties.

[¶53] A person cannot lawfully possess property that is contraband. R.C. 2933.42(A) provides that “(n)o person shall possess, conceal, transport, receive, purchase, sell, lease, rent, or otherwise transfer any contraband.”

[¶54] R.C. 2933.43 provides the procedure regarding the forfeiture of R.C. 2933.42 contraband.

[¶55] Forfeiture of R.C. 2933.42 contraband pursuant to R.C. 2933.43 requires a felony conviction.³

[¶56] Forfeiture of R.C. 2933.42 contraband pursuant to R.C. 2933.43 requires that the prosecution of the criminal cases commence prior to the filing of a petition seeking forfeiture.

[¶57] Although neither LDALC nor LDA has been charged with or convicted of a felony, the state is nonetheless entitled to relief through R.C. 2933.42 and R.C. 2933.43 as requested in its petition because of the doctrines of respondeat superior and ratification, and because LDA was the direct beneficiary of the felonious conduct of its officers, directors, employees, and agents, and was cognizant of the relationship between the illegal activity and its corporate fundraising effort.

[¶58] The state also seeks forfeiture through R.C. 2933.41(C), which reads: “A person loses any right that the person may have to the possession, or the possession and ownership, of property if any of the following applies: (1) The property was the subject, or was used in a conspiracy or attempt to commit, or in the commission, of an offense other than a traffic offense, and the person is a conspirator, accomplice, or offender with respect to the offense. (2) A court determines that the property should be forfeited because, in light of the nature of the property or the circumstances of the person, it is unlawful for the person to acquire or possess the property.”

[¶59] The burden of proof is upon the state to prove by a preponderance of the evidence entitlement to forfeiture of LDA’s asset. Pursuant R.C. 2933.43(C), the standard of proof for a forfeiture proceeding is a preponderance of the evidence as to whether the person from whom the subject property was seized was in violation of R.C. 2933.42(A).

[¶60] Although R.C. 2933.41 is not a forfeiture statute, deprivation of a party’s right to possession of its property is as onerous as if the state had declared a forfeiture.⁴

³ *State v. Selbak* (12th Dist.), 2003-Ohio-2688, appeal not allowed, 100 Ohio St.3d 1423, 2003-Ohio-5232, citing *State v. Casalicchio* (1991), 58 Ohio St.3d 178, 182.

⁴ *State v. Baumholtz* (1990), 50 Ohio St.3d 198, 202.

[¶61] This court construes R.C. 2933.41 in accord with the general principle that statutes imposing restrictions upon the use of private property, in derogation of private property rights, must be strictly construed.⁵

[¶62] “Property” is defined by R.C. 2901.01(A)(10)(a), in pertinent part, as “any property, real or personal, tangible or intangible, and any interest or license in that property.” Real property can be subject to forfeiture by virtue of its use or relationship with unlawful activity.

[¶63] “Contraband” is defined by R.C. 2901.01(A)(13)(b) as, “[p]roperty that is not in and of itself unlawful for a person to acquire or possess, but that has been determined by a court of this state, in accordance with law, to be contraband because of its use in unlawful activity or manner, of its nature, or of the circumstances of the person who acquires or possesses it, including but not limited to, goods and personal property described in division (D) of section 2913.34 of the revised code.”

[¶64] R.C. 2933.43(C) also provides, in pertinent part: “[n]o property shall be forfeited pursuant to this division if the owner establishes, by a preponderance of the evidence, that the owner neither knew, nor should have known after a reasonable inquiry, that the property was used, or was likely to be used, in a crime or administrative violation.”

[¶65] An employer is liable for the criminal conduct of its employees when the employer has ratified the criminal conduct.

[¶66] An employer has ratified the criminal conduct of an employee when the employer has full knowledge of the facts related to the employee’s criminal conduct and acts in such a way as to approve said conduct.

[¶67] An employer has full knowledge of the facts of the employee’s criminal conduct and acts in such a way as to approve said conduct when the following factors have been satisfied: a) the criminal conduct of the employee furthered the employer’s interest; b) the employer’s officers or agents encouraged, participated in, or initiated the criminal conduct; c) the employer’s officers failed to take steps to prevent repeated criminal conduct or failed to discipline employees who engaged in repeated criminal conduct; and d) the criminal conduct was never enjoined by the employer or the criminal conduct continued after it was enjoined.

⁵ *State v. Baumholtz* (1990), 50 Ohio St.3d 198, 202; *State v. Lilliock* (1982), 70 Ohio St.2d 23, 26; *State v. Thompson* (5th Dist.), 2004-Ohio-7269, ¶32.

[¶68] This court concludes that the state has proven by a preponderance of the evidence that the Premises was the subject, or was used in a conspiracy or attempt to commit, or in the commission, or in complicity, of an offense other than a traffic offense, and that LDALC and/or LDA is a conspirator, accomplice, or offender with respect to the offense, pursuant to R.C. 2933.41(C)(1).

[¶69] This court concludes that forfeiture of the Premises with a fair market value of \$550,000, and a net value of \$234,387.55, is not grossly disproportionate to LDALC's and/or LDA's conduct.⁶ Nor does such a forfeiture constitute an excessive fine under the Eighth Amendment to the United States Constitution or under Section 9, Article I of the Ohio Constitution.

[¶70] Ohio law recognizes that real property that is used or has a direct relationship with illegal activity is subject to forfeiture.

[¶71] Ohio courts have held that real property that bears a nexus to the underlying unlawful conduct is subject to forfeiture pursuant to R.C. 2933.43. *In re Forfeiture of Real Property at 363 Durfee Drive, Marion, Ohio*,⁷ the Third District Court of Appeals determined that a personal residence, owned by a defendant who was convicted of felony offenses involving theft from his employer, and who used those stolen funds to renovate his home, was contraband due to its relationship with the offense. The Third District relied upon the current definition of "contraband" and found that the circumstances of the theft "placed the personal residence squarely within the definition of contraband . . ."⁸ Therefore, improvements upon real property that are the product of illegal conduct constitute a sufficient basis to deem the real property to be contraband that is properly forfeited under R.C. 2933.43.

[¶72] The doctrine of ratification is an exception to the doctrine of respondeat superior.

[¶73] Ohio law provides that the doctrine of respondeat superior imputes liability to an employer when there is an employee-employer relationship and the subject conduct was committed in the scope of agency.⁹ In considering the application of respondeat superior to tortious conduct by an employee, the *Blaser* court noted: "If the tort consisted of a willful and malicious act, then it is generally not considered within the scope of employment. For that type of act to be within the scope of employment, the behavior giving rise to the tort must have been

⁶ See, *State v. Harold* (9th Dist. 1996), 109 Ohio App.3d 87, 93-94.

⁷ 111 Ohio App.3d 89 (1996).

⁸ *Id* at 91.

⁹ *Blaser v. BW-3* (May 19, 1999), No. 98CA007054, unreported (Lorain Cty.), 1999 WL 311216 (citing *Kuhn v. Yaulten* (1997), 118 Ohio App.3d 168, 176).

“calculated to facilitate or promote the business for which the [employee] was employed.”¹⁰ The Ninth District Court of Appeals has held that an employee’s malicious or willful conduct is not per se outside the scope of his employment.¹¹ The Davis court found that an employee’s conduct which would otherwise be outside the scope of employment and, correspondingly, remove liability from an employer, may still give rise to an employer’s liability when that employer has ratified the subject conduct. Therefore, the doctrine of respondeat superior does not provide a shield to an employer’s liability for willful, tortious, or criminal conduct by an employee that is typically outside the scope of employment when the employer has ratified the relevant conduct.

[¶74] Ratification by an employer is demonstrated when there is evidence that the employer had knowledge of the facts and acted in a manner to approve the subject conduct.

[¶75] Ohio courts have announced that ratification occurs upon showing that an employer has “full knowledge of the facts [and] acts in manner that manifests an intention to approve the unauthorized act of the agent-employee.”¹² In *Davis*, the Ninth District also stated that, “[e]ven slight acts of ratification will be sufficient to support a claim for punitive damages against an employer.”¹³ Other Ohio courts have utilized factors to determine whether an employer has full knowledge of the facts and acted in a manner to approve the subject conduct.

[¶76] In *Fulwiler v. Schneider*,¹⁴ the First District Court of Appeals addressed whether the owner of a bar could be held liable for a bouncer committing the intentional tort of assault on the plaintiff. After noting that continued employment, alone, is insufficient to show ratification, the *Fulwiler* court held that the following factors provided sufficient evidence for reasonable minds to conclude that the bouncer’s actions were ratified: (1) other employees permitted the bouncer back into the bar through a locked door after the assault, (2) other employees tried to sneak the bouncer out of the back door of the bar wearing a jacket bearing the bar’s name, (3) other employees would not allow police to enter the bar after the assault, (4) the bouncer or the other employees who provided assistance were not disciplined for their conduct, and (5) the bouncer continued his employment in the same capacity after the assault. The touchstone of the First District’s opinion in *Fulwiler* is that participation in the illegal activity itself or providing assistance in escaping detection or accountability for the illegal activity coupled with the

¹⁰ Citations omitted. *Id.* at 3, quoting *Osborne v. Lyles* (1992), 63 Ohio St.3d 326.

¹¹ *Davis v. May Dept. Stores Co.* (Sept. 26, 2001), No. 20396, unreported (Lorain Cty.), 2001 WL 1148054.

¹² *Davis*, *supra.* at 6.

¹³ *Id.*, citing *Saberton v. Greenwald* (1946), 146 Ohio St. 414, 430.

¹⁴ 104 Ohio App.3d 398 (1995).

employer's failure to discipline any persons involved in the aforementioned conduct constitutes ratification.

[¶77] More recently, the First District reviewed a case involving whether a union ratified the illegal conduct of individual members during a labor strike. In *Callen v. Int'l Brotherhood of Teamsters, Local 100*,¹⁵ the court set forth the following factors to be considered in deciding that the union authorized, ratified, or condoned unlawful conduct by its agents, members, and officers: (1) the misconduct furthered the union's interests, (2) the union's officers or agents encouraged or incited the misconduct, (3) the officers took steps to prevent repeated misconduct or failed to discipline strikers who engaged in repeated misconduct, and (4) the misconduct continued after it had been enjoined.¹⁶ One of the primary elements of ratification is the failure of individuals in a supervisory position to discipline misconduct. Ratification is also shown when supervisors take affirmative steps to facilitate the misconduct which would inure to the benefit of the organization. Therefore, Ohio courts have found that participation, by way of encouragement or actual assistance, in the illegal conduct, and the failure to discipline employees or take other measures to discourage the illegal conduct, comprise the foundation of ratification.

[¶78] The court has considered and determined whether the forfeiture is unduly harsh or grossly disproportionate to the violation.

[¶79] The following factors may determine the harshness of the forfeiture: (1) the fair market value of the property; (2) the intangible, subjective value of the property and (3) the hardship to the defendant, including the effect of the forfeiture on defendant's family or financial condition.¹⁷

[¶80] Concerning the culpability of the owner, the trial court should consider the following factors: (1) whether the owner was negligent or reckless in allowing the illegal use of his property; or (2) whether the owner was directly involved in the illegal activity, and to what extent; and (3) the harm caused by the illegal activity, including (a) the amount of illicit activity, (b) the duration of the illegal activity, and (c) the effect on the community.¹⁸

[¶81] This court concludes that the harshness of the forfeiture is not grossly disproportionate to LDALC's and LDA's conduct given that the felonious activity occurred upon the Premises and

¹⁵ 144 Ohio App.3d 575 (2001).

¹⁶ Citing *Quick Air Freight, Inc. v. Teamsters Local Union 413* (1989), 62 Ohio App.3d 446, 457.

¹⁷ *State v. Harold* (9th Dist. 1996), 109 Ohio App.3d 87, 93-94.

¹⁸ *State v. Harold* (9th Dist. 1996), 109 Ohio App.3d 87, 93-94.

was deliberate notwithstanding the apparent lesser gravity of the offense and the sentence which could be imposed.

[¶82] This court concludes that the harshness of the forfeiture is not grossly disproportionate to LDALC's and LDA's conduct given the fair market value of the Premises (\$550,000), net proceeds of \$234,387.55, and the hardship to LDA, including the effect of the forfeiture on its financial condition.

[¶83] This court concludes that, notwithstanding the culpability of LDALC and/or LDA in committing the offense as previously discussed, the harshness of the forfeiture is not grossly disproportionate to LDALC's and LDA's conduct taking into consideration the harm caused by the illegal activity, including the amount of illicit activity, the duration of the illegal activity, and the effect on the community.

[¶84] The building and real property located at 37415 Euclid Avenue, Willoughby, Ohio is contraband as it was the site of illegal gaming activity, corrupt activity and money laundering.

[¶85] The record is replete with evidence that the building and real property located at 37415 Euclid Avenue, Willoughby, Ohio was the location of felony offenses related to bingo operations conducted over a period of years and, therefore, the proceeds of the sale of said building and real property are subject to forfeiture pursuant to R.C. 2933.43. The testimony at the trial of this matter is clear that bingo games were regularly held at the subject premises from July of 2001 through July 2003. Further, the record also shows that the "volunteers" were routinely paid for their assistance in conducting the bingo games with revenues generated from the sale of "off the books" instant bingo tickets. Richard McClain, Executive Director of LDA, an employee and agent, acting within the scope of his employment with the owner of the Premises, pled guilty to felony charges, namely, Attempted Engaging in a Pattern of Corrupt Activity and Money Laundering, both felonies of the third-degree, related to the payment of the "volunteers" at the subject premises. The subject premises was the venue for the entirety of the unlawful activity and, therefore, it was contraband under R.C. 2901.01(A)(13)(b). The relationship of the subject premises to McClain's illegal activities stand one step closer than circumstances contemplated by the Third District Court of Appeals in *In re Forfeiture of Real Property at 363 Durfee Drive, Marion, Ohio*,¹⁹ as the Premises in this case actually hosted the unlawful conduct rather than

¹⁹ 111 Ohio App.3d 89 (1996).

merely benefited from the activity. Likewise, the proceeds derived from the sale of the Premises remain contraband.

[¶86] Petitioner has demonstrated, by a preponderance of the evidence, that LDA possessed the Premises as contraband in violation of R.C. 2933.42(A). Respondent offered no evidence that it “neither knew, nor should have known after a reasonable inquiry, that the property was used, or was likely to be used, in a crime” as set forth by R.C. 2933.43(C). Accordingly, the proceeds from the sale of the subject premises are contraband and should be forfeited pursuant to R.C. 2933.43(C).

[¶87] LDA ratified the illegal conduct of McClain.

[¶88] In this case, the participation and encouragement of McClain’s illegal activity by corporate officers and board members demonstrates that LDA had full knowledge of his actions and manifested an intention to approve McClain’s criminal conduct. McClain testified during the bench trial that LDA’s officers and board members were aware of his purchasing of instant bingo tickets “off the books” to provide a source of revenue to pay volunteers. Pursuant to R.C. 2915.091 of the Revised Code, effective during the relevant time period, it was illegal to “[p]ay fees to any person for any services performed in relation to an instant bingo game.” Further, McClain testified that some board members were “volunteers” he paid to conduct the instant bingo games. The active participation of LDA’s officers and board members in receiving payment for conducting the bingo games falls squarely within the scenarios contemplated in *Fulwiler* and *Callen* in which supervisors assisted in illegal activity or encouraged the activity. As discussed in the foregoing cases, the subject criminal conduct furthered LDA’s interests in having workers available to conduct the bingo games and there was no evidence of any discipline or discouragement from LDA relating to McClain’s conduct. Adinaro testified, consistently with McClain’s testimony, that he was paid and he observed other officers and board members getting paid following LDA’s bingo sessions at the Premises. Therefore, there was sufficient evidence to demonstrate that LDA “manifested an intention to approve” McClain’s illegal conduct under the Ninth District’s holding in *Davis*,²⁰ LDA ratified the actions of McClain, and LDA should be liable for said conduct under R.C. 2933.41, 2933.42, and 2933.43.

²⁰ *Davis v. May Dept. Stores Co.* (Sept. 26, 2001), No. 20396, unreported (Lorain Cty.), 2001 WL 1148054.

Order

[¶89] This court hereby orders that the petition for forfeiture be granted, and that the respondent be denied disposition of the proceeds of the sale of the Premises.

[¶90] This court further orders that the proceeds of \$234,387.55, plus interest, currently in the possession of the Lake County Prosecuting Attorney, be distributed in accordance with R.C. 2933.43(D) to the Lake County Prosecuting Attorney and other law enforcement agencies, as applicable. In the event of any dispute as to the allocation or distribution of such proceeds, the court shall retain jurisdiction to settle and decide such dispute and equitably divide the proceeds.

IT IS SO ORDERED.

JUDGE EUGENE A. LUCCI

c: Robert J. Patton, Esq. & Patricia A. Nocero, Esq., Assistant Prosecuting Attorneys
for Petitioner
Lester S. Potash, Esq., Attorney for LDA, Party in Interest