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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: Aug 19 2009

UNITED STATES OF AMERICA

INDICTMENT

-v.-

09 Cr.

MARK M. BENUN,

Defendant.

**09 CRIM 800**

-x

COUNTS ONE THROUGH FOUR

(Interstate Transportation of Stolen Property)

The Grand Jury charges:

BACKGROUND

1. At all times relevant to this Indictment, MARK M. BENUN, the defendant, represented himself to be the owner of MBM1 Owners LLC ("MBM1 Owners"), with offices located at 275 Madison Avenue, New York, New York 10016, and was involved in several real estate transactions in the New York metropolitan area.

2. At all times relevant to this Indictment, another individual (the "Co-Purchaser") operated a real estate company (the "Realty Company"), through which the Co-Purchaser engaged in real estate transactions in the New York metropolitan area.

3. In or about June 2006, MARK M. BENUN, the defendant, operating through MBM1 Owners, and with the financial assistance of the Co-Purchaser through the Realty Company, purchased the commercial property located at 67-79 E. 161st Street, Bronx, New York ("67-79 E. 161st Street"), for approximately \$9.5 million. Pursuant to the agreement with the

seller of the property (the "Seller"), the Co-Purchaser, through his company, paid the Seller approximately \$4.5 million in cash, with the Seller accepting a \$5 million mortgage on the property as security for the balance of the sales price, which was to be repaid by BENUN and the Co-Purchaser. BENUN, who brokered the transaction, received a 25 percent ownership interest in 67-79 E. 161st Street, which was to be held by MBM1 Owners, while the Co-Purchaser, through his company, owned a 75 percent interest in the property.

4. While 67-79 E. 161st Street had a master lease, which was set to expire in 2010, the lease payments were less than the mortgage payments to the Seller, so MARK M. BENUN, the defendant, and the Co-Purchaser were losing money on 67-79 E. 161st Street. Therefore, in or about July 2006, BENUN and the Co-Purchaser approached the Seller and requested a \$700,000 loan from the Seller, payable at nine percent interest, secured by a second mortgage against 67-79 E. 161st Street in favor of the Seller. The Seller provided this loan, and received the second mortgage in return.

5. Several months after entering into the second mortgage, MARK M. BENUN, the defendant, approached the Co-Purchaser, requesting that the Co-Purchaser be the guarantor on a \$2 million line of credit for which BENUN was applying from Amalgamated Bank. In exchange for the Co-Purchaser acting as a guarantor for this line of credit, BENUN agreed to give the

Co-Purchaser a \$2 million mortgage on MBM1 Owners's 25 percent interest in 67-79 E. 161st Street. The Co-Purchaser agreed, and in or about December 2007, therefore, a third mortgage was placed on the property in the amount of \$2 million, encumbering MBM1 Owners's 25 percent interest in 67-79 E. 161st Street.

6. Thus, by February 2009, 67-79 E. 161st Street was encumbered by three mortgages securing loans of approximately \$7.7 million.

**BENUN'S FRAUDULENT SALE OF 67-79 E. 161ST STREET**

7. As set forth more fully below, MARK M. BENUN, the defendant, fraudulently sold 67-79 E. 161st Street to an unsuspecting purchaser (the "Buyer") for approximately \$5.96 million, without the knowledge of the Co-Purchaser or the Seller, by, among other things, misrepresenting his ownership of 67-79 E. 161st Street and forging various documents which purported to establish BENUN's sole ownership of the property. As part of the Buyer's purchase of 67-79 E. 161st Street, the Buyer paid \$4 million in cash to BENUN and gave BENUN a note worth \$1.96 million. BENUN then sold the \$1.96 million note from the Buyer to a third-party real estate developer (the "Note Purchaser") at the discounted rate of \$1.46 million. BENUN thus obtained a total of \$5.46 million from the fraud, and subsequently caused at least \$450,000 of those funds to be transferred by wire from New York, New York to and from various locations within the United States.

8. In furtherance of the scheme to defraud, in or about February 2009, MARK M. BENUN, the defendant, contacted the Buyer, with whom he had previously discussed the sale of 67-79 E. 161st Street, and advised the Buyer that BENUN wanted to sell the property. BENUN and the Buyer agreed on a sale price of approximately \$5.96 million. At no time did BENUN advise the Buyer that he did not have the consent of the Co-Purchaser or the Seller to engage in the transaction.

9. In furtherance of the scheme to defraud, on or about February 10, 2009, pursuant to the agreement with the Buyer, MARK M. BENUN, the defendant, sold 67-79 E. 161st Street to the Buyer for approximately \$5.96 million. To facilitate this sale, and to deceive the Buyer into believing that BENUN had clear title to the property, BENUN produced at the closing various forged documents, including false satisfactions of the three mortgages on the property detailed above, a termination of rent assignment agreement, and a deed purporting to transfer the Realty Company's 75 percent interest in 67-79 E. 161st Street to MBM1 Owners, the company controlled by BENUN, for \$4 million. However, as BENUN well knew, the mortgages on 67-79 E. 161st Street had not been satisfied, the outstanding loans totaling almost \$7.7 million had not been repaid, and BENUN did not have the authorization of the Co-Purchaser or the Seller to proceed with the transaction. Nevertheless, BENUN caused several of

these forged number of documents to be recorded in the chain of title of 67-79 E. 161st Street.

10. In furtherance of the scheme to defraud, MARK M. BENUN, the defendant, caused a notary public (the "Notary"), whose stamp and signature appear on these documents, to fraudulently certify that the Seller and a purported representative of the Realty Company had personally appeared before the Notary and executed the documents, including the satisfaction of mortgages.

11. At the real estate closing for 67-79 E. 161st Street on or about February 10, 2009, the Buyer gave MARK M. BENUN, the defendant, \$4 million in cash in the form of multiple cashier's checks, and agreed that the remaining \$1.96 million would be held as a 60-day short term note (the "Note").

12. In furtherance of the scheme to defraud, approximately two weeks after the February 10, 2009 real estate closing, MARK M. BENUN, the defendant, contacted the Buyer and advised that he wanted to sell the Note for approximately \$1.5 million to a third-party. The Buyer then contacted the Note Purchaser, who was willing to purchase the Note from BENUN. On or about February 25, 2009, BENUN sold the Note for \$1.486 million to the Note Purchaser.

13. On or about February 10 and 11, 2009, MARK M. BENUN, the defendant, endorsed several cashier's checks totaling approximately \$4 million with his signature and caused those

checks to be deposited into an account with Citibank, located in New York, New York, belonging to MBM1 Owners.

14. On or about February 25, 2009, MARK M. BENUN, the defendant, endorsed a cashier's check in the amount of \$1.486 million with his signature and caused that check to be deposited into an account with Citibank, located in New York, New York, belonging to MBM1 Owners.

15. After MARK M. BENUN, the defendant, obtained the proceeds of the fraudulent sale of 67-79 E. 161st Street and the Note, BENUN attempted to conceal and distribute the proceeds in various ways. BENUN transferred at least approximately \$450,000 to other bank accounts through interstate wires. In addition, BENUN withdrew approximately \$1.4 million of the proceeds from accounts he controlled and purchased gold bars in New York, New York.

#### **STATUTORY ALLEGATION**

16. On or about February 11, 2009, MARK M. BENUN, the defendant, unlawfully, willfully and knowingly, did transport, transmit and transfer in interstate and foreign commerce goods, wares, merchandise, securities and money, of the value of \$5,000 and more, knowing the same to have been stolen, converted and taken by fraud, to wit, BENUN transferred the following amounts, obtained as a result of his fraudulent sale of 67-79 E. 161st Street, by interstate wire from MBM1 Owners's Citibank account in New York, New York to the following accounts:

Count	Approximate Amount of Wire Transfer	Name of Bank and Location of Account to Which Wire Transfer Made
ONE	\$67,000	Bank of America account in New Jersey
TWO	\$89,000	SunTrust Bank account in Georgia
THREE	\$200,000	Commerce Bank account in Brooklyn, New York, through the Federal Reserve System in New Jersey
FOUR	\$100,000	Signature Bank account in New York, New York, through the Federal Reserve System in New Jersey

(Title 18, United States Code, Sections 2314 and 2.)

**FORFEITURE ALLEGATION**

(As to Counts One through Four)

17. As the result of committing the offenses in violation of Title 18, United States Code, Sections 2314 and 2, as alleged in Counts One through Four of this Indictment, MARK M. BENUN, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of the charged offenses, including but not limited to a sum of money representing the amount of proceeds obtained as a result of, or

otherwise traceable to the commission of, the offenses charged in Counts One through Four of this Indictment.

Substitute Asset Provision

18. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third person;

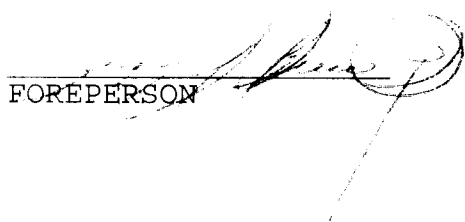
(3) has been placed beyond the jurisdiction of the Court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Section 981; Title 28, United States Code, Section 2461; and Title 21, United States Code, Section 853.)

  
FOREPERSON

  
PREET BHARARA JSK  
United States Attorney

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(18 U.S.C. §§ 2314 and 2.)

PREET BHARARA

United States Attorney.

A TRUE BILL

  
Foreperson.

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August 19, 2009  
Bill indictment. Case assigned to  
J. [unclear]  
- Francis