



IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 WILLIAM H. SMITH, et al.)
)
 Defendants.)

No. 1:11-cv-00420-CMH-IDD

ORDER

AND NOW, this 6th day of January, 2012

in accordance with the Judgment of the Court, which foreclosed tax liens in favor of the United States of America and ordered the sale of certain Real Property, it is hereby

ORDERED that

1. The term "Internal Revenue Service," as used herein includes its authorized deputies, agents, or officers, including its Property Appraisal and Liquidation Specialist ("PALS").

2. The PALS is authorized under 28 U.S.C. §§ 2001 and 2002 to offer for sale at public auction and to sell the property located at 4006 Belle Rive Terrace in Alexandria, Virginia ("the Real Property"), and more fully described in public records as follows:

Lot TWO (2), of the Subdivision known as FERRY LANDING ESTATES, Section TWO (2), as the same appears duly dedicated, platted and recorded in Deed Book 5545 at Page 1386 among the land records of Fairfax County, Virginia.

AND BEING a part of the same property conveyed to [Levin Construction Corporation] by deed recorded in Deed Book 5837 at Page 1659 among the aforesaid land records.

3. The time and place for the sale of the Real Property is to be decided and announced by the PALS. Notice of the sale of the Real Property shall be advertised once a week for four consecutive weeks preceding the time fixed for such sale in a daily newspaper of general circulation in the county, state, or judicial district of the United States where the Real Property is situated. The notice(s) of sale shall contain a description of the Real Property and shall contain the essential terms and conditions of sale as set forth in this Order. The PALS may, at its discretion, provide additional notice by other means.

4. The sale of the Real Property shall be free and clear of liens or interests of the defendants and any successors in interest or transferees to those parties. This sale will be made without the right of redemption.

5. The sale of the Real Property shall be subject to all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the Real Property and any easements and restrictions of record, if any.

6. The Real Property shall be sold by public auction within Fairfax County, Virginia, either on the premises of the Real Property or at any other place in accordance with the provisions of 28 U.S.C. §§ 2001 and 2002.

7. The PALS has the authority and discretion to set a minimum bid. If the minimum bid is not met or exceeded, the PALS is authorized to hold a new public sale under substantially similar terms and conditions as set forth in this Order and, if necessary, to reduce the minimum bid.

8. No bid on the Real Property shall be accepted unless the same is accompanied by a certified or cashier's check payable to the "Clerk of the United States District Court" for no less than ten percent (10%) of the amount of the bid. Before being permitted to bid at the sale, bidders shall display to the PALS proof that they are able to comply with this requirement. No bids will be received from any person who has not presented proof that, if they are the successful bidder, they can make the deposit required by this Order. However, the conditions of this paragraph do not apply to bids made on behalf of the United States, which may bid at the sale as a credit against its liens without tender of cash.

9. The balance of the purchase price for the Real Property shall be paid to the PALS within thirty (30) days after the date the bid is accepted. Payment shall be by a certified or cashier's check payable to the "Clerk of the United States District Court." If the bidder fails to fulfill this requirement, the ten percent (10%) deposit shall be forfeited and shall be applied to pay any costs incurred by the PALS by reason of the

default, including the costs of the initial offering or additional attempts to sell the Real Property. The balance of the deposit, if any, shall be turned over to or retained by the United States and applied against defendant William Smith's unpaid federal tax liabilities, in a manner at the discretion of the Internal Revenue Service. The Real Property again shall be offered for sale under the terms and conditions of this Order.

10. The Clerk of Court is hereby ORDERED to accept checks for payment of the purchase price of the Real Property, and to deposit and maintain such funds in the Registry of the Court, in an interest-bearing account, until the Court orders their distribution.

11. The sale of the Real Property shall be subject to confirmation by the Court. The sale shall stand confirmed as of course without any affirmative action by the Court unless (a) a written objection is filed with the Clerk within three (3) days of the sale, or (b) the bidder(s)/ purchaser(s) is/are in default, including failure to pay the balance due on the purchase price.

12. No later than thirty (30) days after the PALS receives the balance of the purchase price for the Real Property, the Internal Revenue Service, through counsel, shall file a report of sale with the Court, together with a proposed Order confirming the sale.

13. Upon confirmation of the sale of the Real Property (and receipt of full payment), the PALS shall execute and deliver a Certificate of Sale and Deed, conveying the property to the purchaser(s). Upon confirmation of the sale, all interests in, liens

against, or claims to the Real Property held by the plaintiff, any defendant, and any successors in interest or transferees to those parties will be extinguished.

14. The Clerk of Fairfax County, Virginia shall proceed to record the deed in favor of the purchaser(s). The responsibility for recording the deed and the payment of all costs, fees, and taxes of whatever kind relating to the recording of the deed shall be borne by the purchaser(s) as a term and condition of sale.

15. After confirmation of the sale of the Real Property, upon motion by counsel for the United States, the Court will issue an order directing the Clerk to distribute the sale proceeds from the Court's Registry in the following order:

- a. First, for reimbursement of the expenses incurred in connection with the sale of the Real Property;
- b. Second, to HSBC Bank USA, N.A., toward satisfaction of its deed of trust on the Real Property dated June 4, 1994;
- c. Third, two equal payments of \$25,000 each to defendant SunTrust Bank and the Commonwealth of Virginia, plus any interest accruing as set forth in paragraph 16 below; and
- d. Fourth, to the United States to be applied toward William Smith's unpaid tax liabilities.

16. If the Real Property is not sold in connection with this civil action on or before January 31, 2013, the equal amounts of \$25,000 to be distributed to SunTrust and Virginia will begin to accrue interest, as of February 1, 2013, at the rate of 4 percent per annum.

17. Until the Real Property is sold by the PALS, defendants William Smith and Linda Smith shall take all reasonable steps necessary to preserve the Real Property (including all improvements, fixtures, and appurtenances) in its current condition including, without limitation, maintaining fire and casualty insurance on the Real Property at their own expense. All defendants named in this action shall not commit waste against the Real Property, nor shall they cause or permit anyone else to do so. All defendants named in this action shall not do anything that tends to reduce the value or marketability of the Real Property, nor shall they cause or permit anyone else to do so. All defendants named in this action shall take no action which may tend to deter or discourage potential bidders from participating in the public auction(s).

18. The PALS is directed to take possession of the Real Property, including all buildings, improvements, fixtures, appurtenances, materials, and equipment thereon. All persons occupying the Real Property shall permanently leave and vacate the premises upon receiving thirty (30) day notice from the PALS, taking with them their personal property but leaving all improvements, buildings, fixtures, and appurtenances to the Real Property. If any person fails or refuses to vacate any of the Real Property by the time specified in this Order, the United States Marshal is authorized to take

whatever action it deems appropriate to remove such person from the premises of the Real Property. If any person fails or refuses to remove personal property, such property is deemed forfeited and abandoned, and the PALS is authorized to dispose of such personal property in any manner it deems appropriate, including, but not limited to, the sale of such personal property. The proceeds of the sale from any such personal property shall be applied first to the expenses of sale, and then remitted to the United States to be applied toward defendant William Smith's unpaid federal tax liabilities. Other than the expenses of the sale of abandoned personal property, any costs incurred or associated with a person's failure or refusal to vacate the Real Property or to remove personal property therefrom, shall be administrative costs of the sale and shall be recovered by the Internal Revenue Service from the proceeds of the sale.

19. If any person fails to vacate the premises on or before the date noticed by the Internal Revenue Service, the United States Marshal is authorized and directed to enforce this Order at any time that he/she deems appropriate after the date specified in the Internal Revenue Service's notice, by (1) entering the Real Property and any structures or vehicles thereon, and (2) evicting any unauthorized persons from all locations on the Real Property, and (3) using all force as necessary to accomplish this mission, including arrest. When the United States Marshal concludes that all unauthorized persons have vacated or been evicted from the Real Property, he/she shall relinquish possession and custody of the Real Property and any personal property found thereon, to the Internal Revenue Service.

