

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA
 CHARLOTTESVILLE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
 AT LYNCHBURG, VA
 FILED

AUG 06 2015

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 PATSY TANNER, *a/k/a*,)
 PATRICIA T. TANNER, *a/k/a*,)
 PAT T. TANNER, *a/k/a*,)
 PATSY T. PAYNE, *a/k/a*,)
 PAT T. PAYNE, *individually, and as*)
trustee of PATS ENTERPRISES &)
 ASSOCIATES TRUST,)
 WELLS FARGO BANK, N.A., and,)
 VIRGINIA DEP'T OF TAXATION,)
)
 Defendants.)
 _____)

JULIA C. DUDLEY, CLERK
 BY: *Julia C. Dudley*
 DEPUTY CLERK

No. 3:13-cv-00016-NKM
 Judge Moon

ORDER OF FORECLOSURE AND SALE

The Court entered the Default Judgment against Patsy Tanner, Pats Enterprises & Associates Trust, and Elvin H. Tanner on August 4, 2014 (Dkt. No. 25) ("Default Judgment").

The Default Judgment is in favor of the United States and against Patsy Tanner in the amount of \$3,655,230.61, plus interest accruing by law from March 3, 2014; determines that the United States has valid and subsisting federal tax liens against Patsy Tanner; and orders that those tax liens be foreclosed against her interest in the Subject Real Property, described below.

Further, the Default Judgment is in favor of the United States and against Pats Enterprises & Associates Trust in the amount of \$1,146,506.35, plus interest accruing by law from March 3, 2014; determines that the United States has valid and subsisting federal tax liens against Pats Enterprises & Associates Trust; and orders those tax liens be foreclosed against its interest in the Subject Real Property, described below.

Finally, the Default Judgment is in favor of the United States and against Elvin H. Tanner and determines that Elvin H. Tanner has no right, title, claim or interest in the Subject Real Property, described below, or in the proceeds of its sale.

Defendants Wells Fargo Bank, N.A., and the Virginia Department of Taxation each has an interest in the Subject Real Property, described below.

IT IS THEREFORE HEREBY ORDERED that, pursuant to 28 U.S.C. §§2001 and 2002, the Court now enters this Order of Foreclosure and Sale directing the sale of the real property located at 22216 Constitution Highway, Unionville, Virginia (the "Subject Real Property"), with the legal description:

ALL that certain tract or parcel of land with all improvements thereon and together with appurtenances thereunto bellowing, lying and being situate in the Taylor District of Orange County, Virginia, fronting along the southern margin of State Route No. 20, containing 28.038 acres, and being more particularly shown and described on that certain plat of survey entitled "Plat of a Portion of Land of Ruby S. Guthrie . . ." by Stearns L. Coleman, C.L.S., dated November 5, 1987 Reference to the said plat is hereby made for a more complete description of the said property.

in order to satisfy the United States' tax liens as follows.

IT IS THEREFORE FURTHER ORDERED that:

1. The Internal Revenue Service Property Appraisal and Liquidation Specialist ("PALS") is authorized to offer for public sale and to sell the Subject Real Property.

2. The terms and conditions of the sale are:

a. The sale of the Subject Real Property shall be by public auction to the highest bidder, free and clear of all rights, titles, claims, liens, and interests of all parties to this action, including plaintiff United States, and defendants Patsy Tanner, Pats Enterprises & Associates Trust, Elvin H. Tanner, Wells Fargo Bank, N.A., and the Virginia Department of Taxation, and any successors in interest.

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

c. The sale shall be held either at the courthouse of the county or city in which the Subject Real Property is located or on the Subject Real Property's premises.

d. The PALS shall announce the date and time for sale. The Internal Revenue Service, PALS, and their representatives shall be permitted to enter the Subject Real Property with prospective buyers in order to allow prospective buyers to inspect the interior and exterior of the Subject Real

Property at such times as the Internal Revenue Service or PALS shall determine are reasonable and convenient.

e. Notice of the sale shall be published once a week for at least four consecutive weeks before the sale in at least one newspaper regularly issued and of general circulation in Orange County, Virginia, and at the discretion of the PALS, by any other notice that the PALS deems appropriate. The notice shall contain a description of the Subject Real Property and shall contain the terms and conditions of sale in this order of sale. Notice of sale shall also be provided to counsel for Wells Fargo Bank, N.A. no less than two (2) weeks prior to sale;

f. The PALS shall set the minimum bid. If the minimum bid is not met or exceeded, the PALS may, without further permission of this Court, and under the terms and conditions in this order of sale, hold a new public sale, if necessary, and reduce the minimum bid.

g. At the time of the sale, the successful bidder(s) shall deposit with the PALS, by money order or by certified or cashier's check payable to the Clerk of the United States District Court for the Western District of Virginia, a deposit in an amount of ten (10) percent of the minimum bid as specified by the PALS in the published Notice of Sale. Before being permitted to bid at the sale, potential bidders shall display to the PALS proof that they are able to comply with this requirement. No bids will be accepted from any person(s) who have not presented proof that, if they are the successful bidders(s), they can make the deposit required by this order of sale;

h. The successful bidder(s) shall pay the balance of the purchase price for the Subject Real Property within sixty (60) days following the date of the sale. The certified or cashier's check payable to the United States District Court for the Western District of Virginia shall be given to PALS who will deposit the funds with the Clerk of this Court. If the bidder fails to fulfill this requirement, the sale shall be treated as null and void and the deposit shall be forfeited as damages and shall be applied to cover the expenses of the sale, with any amount remaining to be applied to the tax liabilities of Patsy Tanner at issue herein. The Clerk shall distribute the deposit as directed by the PALS by check made to the "United States Treasury." The Subject Real Property shall be again offered for sale under the terms and conditions of this order of sale or, in the alternative, sold to the second highest bidder.

i. The Clerk of the District Court is directed to accept the proceeds of the sale and deposit them into the Court's registry for distribution as provided for herein or pursuant to further order of this Court.

j. The sale of the Subject Real Property shall be subject to confirmation by this Court. On confirmation of the sale, the Internal Revenue Service shall execute and deliver its deed conveying the Subject Real Property to the successful bidder(s); ownership and possession of the Subject Real Property shall transfer to the successful bidder(s); and all interests in, liens against, or claims to the Subject Real Property that are held or asserted by all parties to this action are discharged and extinguished, provided, however, that lienholders

shall receive payment from any sale proceeds to apply to and/or potentially satisfy their applicable lien(s) in accordance with their respective lien priorities as as detailed in Paragraph 9 below.

k. When this Court confirms the sale, the Recording Official of Orange County, Virginia, shall cause transfer of the Subject Real Property to be reflected upon that jurisdiction's register of title. The successful bidder(s) at the sale shall pay, in addition to the amount of the bid, any documentary stamps and registry fees as provided by law;

l. The sale of the Subject Real Property is ordered pursuant to 28 U.S.C. § 2001, and is made without right of redemption.

m. All rights to rents of or from the Subject Real Property arising after the issuance of this order of sale and before the confirmation of the sale of the Subject Real Property shall constitute proceeds of the Subject Real Property and such rents shall be turned over to, and paid to, the PALS for deposit and distribution in the same manner as the proceeds of the sale of the Subject Real Property. On confirmation of the sale of the Subject Real Property, all rights to rent and profits of or from the Subject Real Property arising thereafter shall transfer to the successful bidder(s).

3. Until the Subject Real Property is sold, Patsy Tanner, Pats Enterprises & Associates Trust, and Elvin H. Tanner shall take all reasonable steps necessary to preserve the Subject Real Property (including all buildings, improvements, fixtures and appurtenances on the Subject Real Property) in their

current condition including, without limitation, maintaining a fire and casualty insurance policy on the Subject Real Property. Each defendant shall neither commit waste against the Subject Real Property nor cause nor permit anyone else to do so. Each defendant shall neither do anything that tends to reduce the value or marketability of the Subject Real Property nor cause or permit anyone else to do so. The defendants shall not record any instruments, publish any notice, or take any other action (such as running newspaper advertisements, posting signs, or making internet postings) that may directly or indirectly tend to adversely affect the value of the Subject Real Property or that may tend to deter or discourage potential bidders from participating in the public auction, nor shall they cause or permit anyone else to do so.

4. All persons occupying the Subject Real Property, specifically including Patsy Tanner, Pats Enterprises & Associates Trust, and Elvin H. Tanner, shall vacate the Subject Real Property permanently within thirty (30) days of the date of this Order, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances to the Subject Real Property). If any person fails or refuses to vacate the Subject Real Property within thirty (30) days of the date of this Order, the PALS are authorized to coordinate with the United States Marshal to take all actions that are reasonably necessary to have those persons ejected. Any personal property remaining on the Subject Real Property thirty (30) days after the date of this Order is deemed forfeited and abandoned, and the PALS are authorized to

dispose of it in any manner they see fit, including sale, in which case the proceeds of the sale are to be applied first to the expenses of sale and the balance to be paid into the Court for further distribution. Checks for the purchase of the personal property shall be made out to the Clerk of the District Court for the Western District of Virginia, and the Clerk is directed to accept cash and checks and deposit them into the Court's registry for distribution pursuant to further Order of this Court.

5. Pending the sale of the Subject Real Property and until the deed to the Subject Real Property is delivered to the successful bidder(s), the PALS is authorized to have free access to the premises in order to take any and all actions necessary to preserve the Subject Real Property, including, but not limited to, retaining a locksmith or other person to change or install locks or other security devices on any part of the Subject Real Property.

6. No later than two business days after vacating the Subject Real Property pursuant to the deadline set forth in paragraph 4, above, Patsy Tanner, Pats Enterprises & Associates Trust, and Elvin H. Tanner shall notify counsel for the United States of a forwarding address where they can be reached. Notification shall be made by contacting counsel for the United States, Joseph E. Hunsader at (202) 307-6346.

7. In accordance with the Default Judgment in this case, the United States has valid and subsisting tax liens against Patsy Tanner in the amount of \$3,655,230.61 as of March 3, 2014, plus interest accruing according to law.

8. In accordance with the Default Judgment in this case, the United States has valid and subsisting tax liens against Pats Enterprises & Associates Trust in the amount of \$1,146,506.35 as of March 3, 2014, plus interest accruing on that amount.

9. After the Court confirms the sale of the Subject Real Property, the sale proceeds deposited with the Clerk of this Court should be applied to the following items, in the order specified:

a. First, to the United States for the expenses of the sale, including any expenses incurred to secure or maintain the Subject Real Property pending sale and confirmation by the Court.

b. Second, to Unionville, Virginia, or other local taxing authorities for any real property taxes and other local assessments due and owing having priority over the United States' tax liens;

c. Third, to Wells Fargo Bank, N.A. for its purchase money mortgage secured by a deed of trust lien against the Subject Property with a lien payoff in the amount \$53,602.38 good through August 31, 2015, with interest accruing from that date, and additional attorney's fees of \$3,500.00 as agreed by the United States;

d. Fourth, to the United States for Patsy Tanner's Form 1040 income tax liabilities for 1994, 1995, 1996, 1997, 1998, and 1999, in the amount of \$3,219,958.89, as of March 3, 2014, with interest accruing according to law;

f. Fifth, to the Virginia Department of Taxation in the amount of \$383,806.21 as of August 4, 2015, with interest accruing according to law;

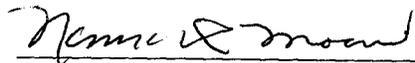
g. Sixth, to the United States for Patsy Tanner's Form 1040 income tax liabilities for 2000, 2001, 2002, and 2004 in the amount of \$435,271.72 as of March 3, 2014, with interest according to law.

h. Seventh, to the United States for Pats Enterprises & Associates Form 1041 income tax liabilities for 1999 and 2000 in the amount of \$1,146,506.35, as of March 3, 2014, with interest according to law.

i. Eighth, with any remaining proceeds to Patsy Tanner and Pats Enterprises & Associates Trust.

IT IS SO ORDERED.

DATE: 8-6-2015


UNITED STATES DISTRICT JUDGE