

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. ) Case No. 6:13-cv-03107-MDH  
)  
RICHARD L. JOHNSTON )  
d/b/a CIRCLE J CAMPGROUND, )  
MAREL A. JOHNSTON, LAZY-Y, INC., )  
and the MISSOURI DEPARTMENT )  
OF REVENUE, )  
)  
Defendants. )

**SECOND AMENDED ORDER OF SALE**

This Court entered judgment in this action on September 4, 2013, ordering that the federal tax liens at issue in this case be foreclosed, and that the United States was therefore authorized in accordance with 26 U.S.C. § 7403©, to foreclose its valid federal income tax liens against certain Properties of defendants Richard L. Johnston d/b/a Circle J Campground and Marel A. Johnston, by selling the properties identified in the United States' complaint.

The Court now **ORDERS** that the following properties, more particularly described as:

- (a) The first tract is real property legally described as: all of blocks 4, 6, 7 and 8 of Rainbow Terrace subdivision and Lots 1, 2, 3, 4, 5, 7, 14 and 15 of block 9, Rainbow Terrace subdivision, according to the recorded plat thereof, all being located in Laclede County, Missouri. This property comprises the north campground of Circle J;
- (b) The second tract is real property legally described as: the northwest quarter of the northeast quarter of Section 31, Township 35 north, range 17 west; and that part of the north half of Lot 1 of the northwest quarter (also known as NE ¼ NW ¼) of Section 31, Township 35 north, range 17 west, that lies north and east of the east right of way line of Missouri Highway 64, all in Laclede County, Missouri. Johnston's personal residence is located on this property;

- (c) The third tract is real property legally described as: beginning at the southeast corner of the south half of Lot 1 of the northwest quarter in Section 31, Township 35, range 17, thence north along the east line of the south half of Lot 1, 1329 feet, more or less, to the north line of said south half of Lot 1 thence west along the said north line of said south half of Lot 1, 681 feet, more or less, to the northeasterly right of way line of state Route 64, thence southeasterly along said right of way line to the south line of said south half of lot 1, thence east along the south line of said south half of Lot 1, 169 feet, more or less, to the point of beginning. All said Properties being within the south half of Lot 1 of northwest quarter of Section 31, Township 35, range 17, Laclede County, Missouri. This property comprises the south campground of Circle J;
- (d) The fourth tract is real property legally described as: all of lots 10 and 11 of block 9, Rainbow Terrace, Laclede County, Missouri, according to the recorded plat thereof. This property adjoins the north campground of Circle J;

be sold under Title 28, U.S.C. §§ 2001 and 2002 to satisfy or partially satisfy Johnston's tax liabilities as follows:

- 1. The Internal Revenue Service ("IRS") Properties Appraisal and Liquidation Specialists ("PALS") is authorized to offer for public sale and to sell the Properties.
- 2. The terms and conditions of the sale are as follows:
  - a. The sale of the Properties shall be free and clear of the interest of Richard L. Johnston d/b/a Circle J Campground, Marel A. Johnston, Lazy-Y, Inc., Sheri Gonzales, Doy A. Eilenstine, and Elisa Bick.
  - b. The sale shall be subject to building lines, if established, all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the Properties, and easements and restrictions of record, if any;
  - c. The sale shall be held either at the courthouse of the county or city in which the Properties are located or on the Properties' premises;
  - d. The PALS shall announce the date and time for sale;

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 Laclede County, and at the discretion of PALS, by any other notice that the PALS deems appropriate. The notice shall contain a description of the Properties and shall contain the terms and conditions of sale in this order of 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 the 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 cashier's check payable to the Clerk of the United States District Court for the Western District of Missouri, a deposit in an amount between five (5) and twenty (20) 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 bidder(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 Properties within sixty (60) days following the date of sale. The certified or cashier's check payable to the United States District Court for the Western District of Missouri 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 deposit shall be forfeited and shall be applied to cover the expenses of the sale, with any amount remaining to be applied to the liabilities of Richard L. Johnston at issue in this

case. The Clerk shall distribute the deposit as directed by PALS by check made to the “United States Treasury.” The Properties shall again be 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 interest-bearing registry account and hold them until distribution is directed as specified by the further Order of this Court and the terms of this Order.

j. The sale of the Properties shall be subject to confirmation by this Court. On confirmation of sale, the Internal Revenue Service shall execute and deliver its deed conveying the Properties to the purchaser. On confirmation of the sale, all interests in, liens against, or claims to, the Properties that are held or asserted by all parties to this action are discharged and extinguished.

k. When this Court confirms the sale, the Recording Official of Laclede County, Missouri shall cause transfer of the Properties to be reflected upon that county’s register of title. The successful bidder at the sale shall pay, in addition to the amount of the bid, any documentary stamps and Clerk’s registry fees as provided by law; and

l. The sale of the Properties is ordered in accordance with 28 U.S.C. § 2001, and is made without right of redemption.

3. Until the Properties are sold, Richard L. Johnston shall take all reasonable steps to preserve the Properties (including all buildings, improvements, fixtures, and appurtenances on the Properties) in its current condition including, without limitation, maintaining a fire and casualty insurance policy on the Properties. He shall neither commit waste against the Properties nor cause or permit anyone else to do so. He shall neither do anything that tends to reduce the value or marketability of the Properties nor cause or permit anyone else to do so. Richard L.

Johnston 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 Properties or that may tend to deter or discourage potential bidders from participation in the public auction, nor shall they cause or permit anyone else to do so.

4. All persons occupying the Properties shall vacate the Properties permanently within 30 days of the date of this Order, each taking with them his or her personal Properties (but leaving all improvements, buildings, fixtures, and appurtenances to the Properties). If any person fails or refuses to vacate the Properties by the date specified in 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 Properties 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 Western District of Missouri, and the Clerk is directed to accept these checks and deposit them into the Court's registry for distribution in accordance with the further orders of this Court.

5. No later than two business days after vacating the Properties pursuant to the deadline set forth in Paragraph 4 above, Richard L. Johnston shall notify counsel for the United States of a Forwarding address where he can be reached. Notification shall be made by contacting counsel for the United States in this matter, LaQuita Taylor-Phillips, at (202) 305-7945.

6. In accordance with the Judgment in this case, the United States has an interest of \$192,001.19, as of August 2, 2013, plus lien costs and statutory interest and additions accruing on that amount after that date. If any other named defendant wishes to claim an interest in the sale proceeds (other than as set forth in Paragraph 8 below), they must submit to the Court evidence of their claim, the amount, and the priority it should be given within 45 days from the date of entry of this Order.

7. Pending the sale of the Properties and until the deeds to the Properties are delivered to the successful bidder, the PALS is authorized to have free access to the premises in order to take any and all actions necessary to preserve the Properties, 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 Properties.

8. After the Court confirms the sale, the sale proceeds are to be paid to the Clerk of this Court and applied to the following items, in the order specified:

a. First, to the United States Treasury for the expense of the sale, including any expenses incurred to maintain the Properties pending sale and confirmation by the Court.

b. Second, to any real Properties taxes due and owing, to the extent not paid by the mortgage holder, with interest calculated to the estimated date of the confirmation of sale;

c. Third, one half of the balance to defendant Marel A. Johnston for her one-half interest in the Properties;

d. Fourth, \$6,704 to Sheri Gonzales for her interest in the parcel of real property described on page 1, paragraph (a), of this Amended Order by virtue of Lazy-Y, Inc.'s assignment of its interest in that parcel to her.

e. Fifth, \$6,704 to Doy A. Eilenstine for his interest in the parcel of real property described on page 1, paragraph (a), of this Amended Order by virtue of Lazy-Y, Inc.'s assignment of its interest in that parcel to him.

f. Sixth, \$13,409 to Elisa Bick for her interest in the parcel of real property described on page 1, paragraph (a), of this Amended Order by virtue of Lazy-Y, Inc.'s assignment of its interest in that parcel to her.

g. Seventh, to the United States of America, the first \$140,728.61 of the remaining balance for application to Richard L. Johnston's federal income tax liabilities as reflected in the Notices of Federal Tax Liens filed in Laclede County; and

h. Eighth, all remaining proceeds shall be distributed between the United States of America and the Missouri Department of Revenue in accordance with the matrix previously submitted to the Court, which sets forth the payment priority of the United States' and the State of Missouri's competing notices of federal tax liens based upon the dates the respective liens were filed.

IT IS SO ORDERED this 11th day of July, 2014.

*/s/ Douglas Harpool*  
**DOUGLAS HARPOOL**  
**UNITED STATES DISTRICT JUDGE**