

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 11-567
)	
ELAINE A. BROWN, et al.,)	Judge George Z. Singal
)	
)	
Defendants.)	
_____)	

AMENDED ORDER OF SALE

The Court entered a final judgment in this action on June 5, 2013, ordering that the real properties located at 401 Center of Town Road, Plainfield, New Hampshire, (“Property A”) and 27 Glenn Road, West Lebanon, New Hampshire, (“Property B”) may be sold, with proceeds from the sale to be distributed according to law.

The Clerk of the Court entered the default of defendants A T T Trust, Appletree Trust, Diane Marie Kelly individually and as trustee of ATT Trust, Norma Denise Menard individually and as trustee of the Rock Solid Trust, Simonds Properties, Inc., and The Rock Solid Trust, on March 22, 2012. On April 25, 2012, the Clerk of the Court entered the default of defendants Elaine A. Brown, individually and as Trustee of the Center of Town Road Realty Trust, and as Trustee of the Edward and Elaine Brown Living Trust; Edward L. Brown, individually and as Trustee of the Center of Town Road Realty Trust, and as Trustee of the Edward and Elaine Brown Living Trust; Thomas Eugene Ouverson, individually and as Trustee of the TQS Trust; Edward and Elaine Brown Living Trust; Center of Town Road Realty Trust; TQS Trust; David

Hatch Bernier; Michael Laraway; Robert Hall; Diane Marie Kelly, individually and as Trustee of ATT Trust, and as Trustee of the Appletree Trust; Appletree Trust; and ATT Trust. The Clerk of the Court entered the default of defendant George Bernier on August 8, 2012. The Court being fully advised as to the premises, and for good cause shown, it is hereby,

ORDERED, ADJUDGED, AND DECREED that judgment by default is entered against the following defendants: George Bernier, A T T Trust, Appletree Trust, Diane Marie Kelly individually and as trustee of ATT Trust, Norma Denise Menard individually and as trustee of the Rock Solid Trust, Simonds Properties, Inc., The Rock Solid Trust, Elaine A. Brown, individually and as Trustee of the Center of Town Road Realty Trust, and as Trustee of the Edward and Elaine Brown Living Trust; Edward L. Brown, individually and as Trustee of the Center of Town Road Realty Trust, and as Trustee of the Edward and Elaine Brown Living Trust; Thomas Eugene Ouverson, individually and as Trustee of the TQS Trust; Edward and Elaine Brown Living Trust; Center of Town Road Realty Trust; TQS Trust; David Hatch Bernier; Michael Laraway; Robert Hall; Diane Marie Kelly, individually and as Trustee of ATT Trust, and as Trustee of the Appletree Trust; Appletree Trust; and ATT Trust.

ORDERED, ADJUDGED, AND DECREED that the United States has valid and subsisting federal tax liens on all property and rights to property of defendants Elaine A. Brown and Edward L. Brown, including their interest in the Property.

This Order of Sale amends and supersedes all prior orders entered regarding the sale of this property. The Court ORDERS that the Property be sold pursuant to 26 U.S.C. § 7403.

Property A is legally described as follows:

A certain tract or parcel of land together with the buildings and improvements now or hereafter located thereon situate in Plainfield, Sullivan County, New

Hampshire, as shown on a plan entitled "Location Survey, Goodwin Lot, Being Land of Land-East Corporation", drawn by Land East Corp./Atkinson-Davis Corp., dated April 2, 1980, and recorded at the Sullivan County Registry of Deeds at Plan File #2, Pocket #5, Folder #4, Plan No. 42. Said tract is more particularly bounded and described as follows:

Beginning at an iron pin set at the intersection of two stone walls at the common corner of the tract herein conveyed, and land now or formerly of Cecil Davis, and land now or formerly of Atkinson-Davis Corp.; thence running North 06 East a distance of 913 feet along said Atkinson-Davis Corp. land to an iron pin set at the end of said stone wall near a wire fence on the boundary of said Atkinson-Davis Corp. land; thence turning and running still along said Atkinson-Davis Corp. land and along said wire fence the following five courses and distances: North 12 East a distance of 162.2 feet to an iron pin set; thence North 06 East a distance of 100 feet to an iron pin set; thence North 08 East a distance of 100 feet to an iron pin set; thence North 11 East a distance of 100 feet to an iron pin set; thence North 09 East a distance of 100 feet to an iron pin set at the end of said wire fence at the common corner of the premises herein conveyed and said Atkinson-Davis Corp. land; thence turning and running along said Atkinson-Davis Corp. land the following seventeen courses and distances: South 54 30" East a distance of 134 feet to an iron pin set; thence South 62 East a distance of 100 feet to an iron pin set; thence South 67 East a distance of 200 feet to an iron pin set; thence South 64 East a distance of 400 feet to an iron pin set; thence South 57 East a distance of 200 feet to an iron pin set; thence South 61 East a distance of 100 feet to an iron pin set; thence South 65 East a distance of 200 feet to an iron pin set; thence South 68 East a distance of 500 feet to an iron pin set; thence South 67 East a distance of 100 feet to an iron pin set; thence South 65 East a distance of 100 feet to an iron pin set; thence South 73 East a distance of 100 feet to an iron pin set; thence South 69 East a distance of 100 feet to an iron pin set; thence South 75 East a distance of 100 feet to an iron pin set; thence South 68 East a distance of 140 feet to an iron pin set; thence South 72 East a distance of 300 feet to an iron pin set; thence South 84 East a distance of 100 feet to an iron pin set; thence South 72 East a distance of 400 feet to an iron pin set at the end of a wire fence at the common corner of said Atkinson-Davis Corp. land and land now or formerly of Davis & Symonds Lumber Co.; thence turning and running along said Davis & Symonds Lumber Co. land and partially along said wire fence the following sixteen courses and distances: South 39 West a distance of 154 feet to an iron pin set; thence South 10 West a distance of 100 feet to an iron pin set; thence South 14 30" West a distance of 100 feet to an iron pin set; thence South 38 West a distance of 318 feet to an iron pin set; thence South 30 West a distance of 100 feet to an iron pin set; thence South 32 West a distance of 100 feet to an iron pin set; thence South 10 West a distance of 100 feet to an iron pin set; thence South 36 West a distance of 100 feet to an iron pin set; thence South 59 West a distance of 100 feet to an iron pin set; thence South 74 West a distance of 79 feet to an iron pin set; thence South 63 West a distance of 100 feet to an iron pin set; thence South 69 West a distance of 100 feet to an iron pin set; thence South 89 West a distance of 85 feet to an iron pin set; thence South 69 West a distance of 80 feet to an iron pin set; thence South 60 West a distance of 100 feet to an iron pin set; thence South 46 West a distance of 200 feet to an iron pin set at a corner of wire fences at the common corner of said Davis & Symonds Lumber Co. land and land now or formerly of Davis, as shown on said Plan; thence turning and running along said

Davis land and partially along said wire fence the following six courses and distances; North 48 West a distance of 91 feet to an iron pin set; thence North 40 West a distance of 100 feet to an iron pin set; thence North 04 West a distance of 65 feet to an iron pin set; thence North 82 West a distance of 134.5 feet to an iron pin set; thence North 58 West a distance of 100 feet to an iron pin set; thence North 04 West a distance of 97.5 feet to an iron pin set at the end of said wire fence near the end of a stone wall on the boundary of said Davis land; thence turning and running along said stone wall and still along said Davis land the following five courses and distances; North 61 West a distance of 470 feet to an iron pin set; thence North 67 West a distance of 100 feet to an iron pin set; thence North 80 West a distance of 100 feet to an iron pin set; thence North 84 30" West a distance of 100 feet to an iron pin set; thence South 28 West a distance of 87 feet to an iron pin set; thence turning and running still along said Davis land and still along said stone wall and then along a wire fence North 74 West a distance of 113 feet to an iron pin set in said wire fence on the boundary of said Davis land; thence turning and running still along said Davis land and along said wire fence the following five courses and distances: North 69 West a distance of 100 feet to an iron pin set; thence North 66 West a distance of 100 feet to an iron pin set; thence North 63 West a distance of 100 feet to an iron pin set; thence North 70 West a distance of 100 feet to an iron pin set; thence North 64 West a distance of 100 feet to an iron pin set at the end of said wire fence near the end of a stone wall on the boundary of said Davis land; thence turning and running along said stone wall and still along said Davis land the following two courses and distances: North 16 30" West a distance of 144 feet to an iron pin set in said stone wall; North 66 West a distance of 300 feet to the point of beginning. Said parcel contains 103 acres, more or less, according to said Plan, which is hereby incorporated herein by reference.

ALSO CONVEYING HEREIN, with QUITCLAIM covenants, all right, title and interest in and to a certain easement over land in Plainfield, Sullivan County, New Hampshire, presently or formerly owned by Cecil Davis on the northerly side of the highway known as the Hill Road leading from Plainfield to Meriden, which is also known as Farnum Road. Said easement may be more particularly bounded and described as follows:

An easement and right-of-way for the passage of men vehicles over a strip of land 25 feet in width from a break in the stone wall, which forms a part of the southerly boundary near the southwest corner of land which the grantor herein is conveying to the grantees hereinabove described, and crossing the so-called southwest mowing on the said Davis property to the northerly right-of-way line of said Hill Road.

SUBJECT TO Current Use Taxation by the Town of Plainfield, recorded at the Sullivan County Registry of Deeds on July 17, 1981 at Book 685, Page 161.

Property B is legally described as follows:

A certain tract of land, together with the buildings and improvements thereon, located on the northerly side of Glen Road in West Lebanon, in the City of Lebanon, New Hampshire, as shown on a Plan entitled "Annexation Plan,

Former Merrihew Parcel to Former Welch Parcel, Bayne Stevenson, Glen Road, West Lebanon, N.H., Scale 1" = 20', Date Sept. 11, 1985, Last revised November 6, 1990, Proj. No. 100985, K.A. LeClair Assoc., Inc., Hanover, N.H." which Plan is recorded in the Grafton County Registry of Deeds as Plan No. 6606. The single tract conveyed herein is shown as consisting of two areas, the first containing approximately 34,200 square feet or 0.78 acre; and the second containing approximately 8,230 or 0.19 acre. Said tract is shown on said Plan as bounded and described as follows:

Beginning at an iron rod existing at a point where the northerly sideline of Glen Road intersects with the common boundary of the premises herein conveyed and property now or formerly of Netta J. Gilson; Thence North 58° 43' West along the northerly sideline of Glen Road a distance of 16.0 feet to an iron pipe existing along said northerly sideline of Glen Road; Thence North 63° 34' 30" West along the northerly sideline of Glen Road a distance of 125.8 feet to a stone bound existing along said northerly sideline of Glen Road; Thence North 68° 50' West along the northerly sideline of Glen Road a distance of 33.0 feet to an iron rod set along said northerly sideline of Glen Road; Thence westerly along the northerly sideline of Glen Road a distance of 222 feet, more or less, to an iron rod set at a point where the northerly sideline of Glen Road intersects with the common boundary of the premises herein conveyed and property now or formerly of Block Plant, Inc.; Thence North 05° 12' East along the common boundary of the premises herein conveyed and property now or formerly of Block Plant, Inc. a distance of 57.4 feet to an existing iron rod; Thence North 10° 34' West along the common boundary of the premises herein conveyed and property now or formerly of Block Plant, Inc. a distance of 46.4 feet to an existing granite bound; Thence North 79° 04' East along the common boundary of the premises herein conveyed and property now or formerly of Block Plant, Inc. a distance of 153.9 feet to an existing granite bound; Thence South 65° 23' East along the common boundary of the premises herein conveyed and property now or formerly of Block Plant, Inc. a distance of 123.4 feet to an existing granite bound; Thence South 05° 31' West along the common boundary of the premises herein conveyed and property now or formerly of Block Plant, Inc. a distance of 48.0 feet to a set iron rod; Thence continuing South 05° 31' West along the common boundary of the premises herein conveyed and property now or formerly of Block Plant, Inc. a distance of 20.0 feet to an existing iron pipe; Thence South 55° 23' 30" East along the common boundary of the premises herein conveyed and property now or formerly of Block Plant, Inc. a distance of 93.6 feet to a set iron rod; Thence continuing South 55° 23' 30" East along the common boundary of the premises herein conveyed and property now or formerly of Block Plant, Inc. a distance of 98.6 feet to an existing iron pipe; Thence South 58° 18' West along the common boundary of the premises herein conveyed and property now or formerly of Netta J. Gilson a distance of 43.8 feet to the point of beginning. Containing 42,430 square feet, more or less, or 0.97 acre, more or less.

Vehicular and pedestrian travel easement. The premises herein conveyed are subject to a perpetual easement for vehicular and pedestrian travel conveyed by Easement Deed from Bayne Stevenson d/b/a The BaySon Company to Arthur Whitcomb, Inc. and Block Plant, Inc. dated November 22, 1985, and recorded in the Grafton County Registry of Deeds at Book 1575, Pages 341-342, and by Deed of Easement from Timothy B. Merrihew and Nancy A. Merrihew to

Arthur Whitcomb, Inc. dated September 28, 1981 and recorded in the Grafton County Registry of Deeds at Book 1434, Pages 30-31. Reference is made to said Easement Deed from Bayne Stevenson d/b/a The BaySon Company to Arthur Whitcomb, Inc. and Block Plant, Inc., and said Deed of Easement from Timothy B. Merrihew and Nancy H. Merrihew to Arthur Whitcomb, Inc. for a metes and bounds description of the boundaries of each respective easement. The area of easement conveyed by Easement Deed of Bayne Stevenson d/b/a The BaySon Company and Arthur Whitcomb, Inc. and Block Plant, Inc. is shown on the above described Plan as a shaded, triangular area situated adjacent to and westerly of the easement area conveyed by Deed of Easement from Timothy B. Merrihew and Nancy A. Merrihew to Arthur Whitcomb, Inc. With respect to the latter easement granted by Timothy B. Merrihew and Nancy A. Merrihew to Arthur Whitcomb, Inc. by Deed of Easement dated September 28, 1981, Arthur Whitcomb, Inc., its successors and assigns covenanted with the grantor, his heirs, successors, administrators and assigns, that the easement described therein shall not be used for truck traffic (excluding pickups and vehicles of similar type, characteristic and description) between the hours of 7:00 p.m. and 7:00 a.m.

The above described vehicular and pedestrian easements are to be used in common by the owner of the premises herein conveyed, its successors and assigns, and the owners of the adjoining property of Arthur Whitcomb, Inc. and/or Block Plant, Inc., their successors and assigns.

Subject to the effect, if any, of a utility right of way described as being located “off the easterly end of the aforementioned premises of the Grafton County Electric Company, now called the Granite State Electric Company” which right of way is described in a warranty deed from Timothy B. Merrihew and Nancy Merrihew to Bayne Stevenson d/b/a The BaySon Company dated October 28, 1983 and recorded in the Grafton County Registry of Deeds at Book 1488, Page 724.

Both Property A and Property B are hereinafter referred to as the “Properties” when aggregated.

Accordingly, it is hereby ORDERED as follows:

1. The Internal Revenue Service Property 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 of the Properties are as follows:
 - a. The sales shall be free and clear of the interests of all parties to this action;

b. The sales 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 sales of the Properties shall be held at the United States District Court, District of New Hampshire, 55 Pleasant Street, Room 110, Concord, New Hampshire 03301;

d. The PALS shall announce the date and time for the sales;

e. Notice of the sales shall be published once a week for at least four consecutive weeks before the sales in at least one newspaper regularly issued and of general circulation in the county in which the Properties are located, and at the discretion of PALS, by any other notice PALS deems appropriate. The notice shall contain an adequate description of the Properties, but need not contain the full legal description, and shall contain the terms and conditions of sales set forth in this Order of Sale.

f. The minimum bid for Property A shall be \$125,000 and the minimum bid for Property B shall be \$250,000. If the minimum bids are not met or exceeded, the PALS may, in its discretion and without further permission of this Court, hold new public sales immediately after the unsuccessful auction, with a reduced minimum bid.

g. At the time of the sales, 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 District of New Hampshire, 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 sales, 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 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 Property A and/or Property B within forty-five (45) days following the date of the sale. The certified or cashier's check payable to the United States District Court for the District of New Hampshire 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 federal tax liens. The Properties shall be again offered for sale under the terms and conditions of this Order of Sale or, in the alternative at the discretion of PALS, sold to the second highest bidder;

i. The Clerk of the District Court is directed to accept the deposit and proceeds of the sales and deposit them into the Court's registry for distribution pursuant to further order of this Court;

j. The sales of the Properties shall be subject to confirmation by this Court. On confirmation of the sales, the PALS shall execute and deliver its deed conveying Property A and/or Property B to the purchaser(s). On confirmation of the sales, 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 sales, the Recording Officials of the county in which the Properties are located shall cause the transfer of the Properties to be reflected upon that county's register of title. The successful bidders at the sales shall pay, in addition to the amount of the bid, any documentary stamps and Clerk's registry fees as provided by law;

3. The sales of the Properties are ordered pursuant to 26 U.S.C. § 7403 and are made without right of redemption.

4. Until the Properties are sold and the purchasers are in possession, the following defendants shall take all reasonable steps necessary to preserve the properties (including all buildings, improvements, fixtures, and appurtenances on each property) without limitation: George Bernier, A T T Trust, Appletree Trust, Diane Marie Kelly individually and as trustee of ATT Trust, Norma Denise Menard individually and as trustee of the Rock Solid Trust, Simonds Properties, Inc., The Rock Solid Trust, Elaine A. Brown, individually and as Trustee of the Center of Town Road Realty Trust, and as Trustee of the Edward and Elaine Brown Living Trust; Edward L. Brown, individually and as Trustee of the Center of Town Road Realty Trust, and as Trustee of the Edward and Elaine Brown Living Trust; Thomas Eugene Ouverson, individually and as Trustee of the TQS Trust; Edward and Elaine Brown Living Trust; Center of Town Road Realty Trust; TQS Trust; David Hatch Bernier; Michael Laraway; Robert Hall; Diane Marie Kelly, individually and as Trustee of ATT Trust, and as Trustee of the Appletree Trust; Appletree Trust; and ATT Trust.

They shall neither commit waste against the Properties nor cause or permit anyone else to do so. They shall neither do anything that tends to reduce the value or marketability of the Properties nor cause or permit anyone else to do so. They 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 participating in the public auction, nor shall they cause or permit anyone else to do so.

5. All persons occupying the Properties shall vacate the property within 14 days of the date of this Order of Sale, each taking with them his or her personal property (but leaving all buildings or other improvements, including fixtures, and appurtenances to the property, and all such persons are enjoined from acting in any manner intended to cause damage to the property or to such improvements and are also subject to the injunctive provisions of paragraph 4 above). If any person fails or refuses to vacate the Properties by the date specified in this Order of Sale, the PALS is authorized to coordinate with the United States Marshals Service to take all actions that are reasonably necessary to have those persons ejected. The United States Marshals Service is authorized and directed to take any and all necessary actions, including but not limited to the use of reasonable force, to enter and remain on the premises, which includes, but is not limited to, the land, buildings, vehicles, and any other structures located thereon, for the purpose of executing this Order of Sale. The United States Marshals Service is further authorized to arrest or evict from the premises any persons who obstruct, attempt to obstruct, or interfere or attempt to interfere, in any way with this Order of Sale.¹

6. Any personal property remaining on the Properties 14 days after the date of this Order of Sale is deemed forfeited and abandoned, and the PALS is 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 to the liens of the United States. Checks for the purchase of personal property shall be made out to the Clerk of District Court for the District of New Hampshire, and the Clerk is directed to accept these checks and deposit them into the Court's registry for distribution pursuant to further order of this Court.

¹ For the purposes of this paragraph, police forces of the town, county, or state in which the Properties are located are included within the authorization given to the "United States Marshals Service" if their assistance is requested .

7. Pending the sales of the Properties and until the deeds to the Properties are 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 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 of Property A, the sale proceeds deposited with the Clerk of this Court shall be distributed in the following order of priority:

a. First by agreement of the parties, to the Town of Plainfield, New Hampshire to repay the costs of advertising the first unsuccessful sale of the property.

b. Second, to the United States Treasury, for the expenses and sale, including any expenses incurred to secure or maintain the property. Should the Town of Plainfield credit bid at the sale, it shall be required to reimburse the United States, in cash within a reasonable time after the sale, for all of the expenses of the sale, including any expenses incurred to secure or maintain the property.

d. Third, to the Town of Plainfield, New Hampshire, or other local taxing authority, for real property taxes and other local assessments due and owing, if any, in accordance with 26 U.S.C. § 6323(b)(6).

e. Fourth, to the plaintiff United States of America to be applied toward the federal tax liens securing the tax liabilities of defendants Edward and Elaine Brown.

f. Fifth, to the Clerk of the United States District Court for the District of New Hampshire pending a further determination of entitlement to any remaining proceeds.

9. After the Court confirms the sale of Property B, the sale proceeds deposited with the Clerk of this Court shall be distributed in the following order of priority:

a. First, by agreement of the parties, to the City of Lebanon, New Hampshire to repay the costs of advertising the first unsuccessful sale of the property.

b. Second, to the United States Treasury, for the expenses of the sale, including any expenses incurred to secure or maintain the property pending sale and confirmation by the Court.

d. Third, to the City of Lebanon, New Hampshire, or other local taxing authority, for real property taxes and other local assessments due and owing, if any, in accordance with 26 U.S.C. § 6323(b)(6). Should the City of Lebanon credit bid at the sale, it shall be required to reimburse the United States, in cash within a reasonable time after the sale, for all of the expenses of the sale, including any expenses incurred to secure or maintain the property.

e. Fourth, to the plaintiff United States of America to be applied toward the federal tax liens securing the tax liabilities of defendants Edward and Elaine Brown.

f. Fifth, to the Clerk of the United States District Court for the District of New Hampshire pending a further determination of entitlement to any remaining proceeds.

IT IS SO ORDERED:

Dated: July 28, 2015

/s/ George Z. Singal
Judge George Z. Singal