

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. CIV 14-579 JB/CG
	)	
ROBERT L. RIVERA, LINDA K. RIVERA,	)	
and NEW MEXICO DEPARTMENT OF	)	
TAXATION AND REVENUE,	)	
	)	
Defendants.	)	

**AMENDED ORDER FOR FORECLOSURE SALE AND TO VACATE**

On July 31, 2015, the Court entered an Order of Foreclosure Sale and to Vacate Real Property (doc. 33). Pending is the United States’ Motion for Relief From Order under Fed. R. Civ. P. 60(a) to correct mistakes arising from oversight of counsel in the Order of Foreclosure Sale and to Vacate Real Property. The Court finds that the Motion should be granted and the Order of Foreclosure Sale and to Vacate Real Property should be amended.

IT IS THEREFORE ORDERED that:

1. The United States’ Motion for Relief From Order under Fed. R. Civ. P. 60(a) is GRANTED;

2. The real property to be sold is located at 21 Sandia Lane, Placitas, in Sandoval County, New Mexico (“the property” or “the subject property”), which is more particularly described as follows:

Lot Numbered Seventy-five (75) of Ranchos De Placitas, Unit 2, a Subdivision in Section 36, T 13 N, R 4 E, N. M. P. M., Sandoval County, New Mexico, as the same is shown and designated on Plat thereof, filed in the Office of the County Clerk of Sandoval County, New Mexico, on December 7, 1959 (“the property” or “the subject property”).

3. The Internal Revenue Service Property Appraisal and Liquidation Specialist (PALS) shall sell the property, together with any improvements, buildings and appurtenances, under 28 U.S.C. §§ 2001, 2002, and 2004.

4. The PALS Unit and its representatives shall have free access to the property and the ability to take all actions appropriate to preserve the property, including, without limitation, retaining a locksmith or other person, if necessary, to change or install locks or other security devices on any part of the property, until the deed thereto is delivered to the successful purchaser.

5. The property is sold to satisfy the federal tax liens held by the United States and the United States may bid at the sale such sum, not exceeding the amount of such liens with expenses of sale, as a credit against its judgment against Defendants Robert L. Rivera and Linda K. Rivera up to the amount due under the judgment.

6. The terms and conditions of the sale of the property are as follows:

a. The sale of the property shall be free and clear of all liens or other claims of any party to this proceeding, including additional fees and costs from sale proceeds;

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

c. The sale of the property by public auction shall be held on the front steps of the Sandoval County Courthouse, Sandoval County, New Mexico, on the property, or at any other location that the PALS deems appropriate, in accordance with the provisions of 28 U.S.C. §§ 2001, 2002, and 2004;

d. The PALS shall announce the date and time for sale of the property;

e. After the PALS has determined the date and time for sale, they shall insert the same in a Notice of Sale and shall promptly mail a copy of the Notice of Sale, by regular mail and by certified mail, return receipt requested, to each of the following:

Robert L. Rivera  
21 Sandia Lane  
Placitas, New Mexico 87043

Linda K. Rivera  
21 Sandia Lane  
Placitas, New Mexico 87043

Waymon G. DuBose, Jr.  
Trial Attorney, Tax Division  
U.S. Department of Justice  
717 N. Harwood, Suite 400  
Dallas, Texas 75201

Lewis J. Terr  
Special Assistant Attorney General  
Post Office Box 630  
Santa Fe, New Mexico 87504-0630  
Lewis.terr@state.nm.us

f. The PALS must also announce the date and time of the public auction sale by advertising the Notice of Sale, once each week for four consecutive weeks before the sale in at least one newspaper regularly issued and of general circulation in Sandoval County, New Mexico, and at the discretion of the PALS, by any other means that the PALS deems appropriate. The Notice of Sale shall contain a description of the property and the terms and conditions of the sale in this order of foreclosure of sale and to vacate;

g. The PALS will determine the minimum bid and shall insert it into the Notice of Sale. 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;

h. Each successful bidder, with the exception of the United States in the event that it is the successful bidder, must deposit a minimum of ten percent (10%) of the bid at the time of the sale with the PALS, with the deposit to be made by certified check or cashier's check, payable to United States District Court, immediately upon the property being struck off and awarded to the highest and best bidder. Before being permitted to bid at the sale, bidders shall display to the PALS proof that they can comply with this requirement. The PALS will not accept bids from anyone who has not presented that proof;

i. The successful bidder shall pay the balance of the purchase price for the property to the PALS within thirty (30) business days after the date the bid is accepted, by a certified or cashier's check, payable to the United States District Court. If the successful 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 United States' judgment against Robert L. Rivera and Linda K. Rivera in this action. The Clerk shall distribute the deposit as directed by the PALS by check made payable to the "United States Department of Justice." The PALS shall again offer the property for sale under the terms and conditions of the order of sale and to vacate or, in the alternative, sell the property to the second highest bidder.

j. The Clerk of the Court shall receive and deposit all funds collected from the foreclosure sale of the property into the Registry of the Court. The Clerk of the Court shall then deposit such funds into an interest-bearing account for later distribution;

k. The sale of the property will be complete within thirty-five (35) days from the date of the foreclosure sale, unless an objection is filed with this Court. Upon this confirmation of the sale, the Internal Revenue Service will execute and deliver a deed conveying the property

to the purchaser. On confirmation of the sale, all interests in, liens against, or claims to, the property that are held or asserted by any parties to this action are discharged and extinguished;

1. The sale is ordered under 28 U.S.C. §§ 2001, 2002, and 2004 and is made without right of redemption.

7. Until they vacate the property, Defendants Robert L. Rivera and Linda K. Rivera, shall take reasonable steps necessary to preserve the property (including any and all buildings, improvements, fixtures and appurtenances on the property) in its current condition. They shall not commit waste against the property, nor shall they cause or permit anyone else to do so. They shall not do anything that tends to reduce the value or marketability of the property, nor shall they cause or permit anyone else to do so. They shall not record any instruments or liens against the property, publish any notice, or engage in any other action (such as running newspaper advertisements) that may directly or indirectly tend to adversely affect the value of the property or that may tend to discourage potential bidders from participating in the public auction, nor shall they cause or permit anyone else to do so.

8. All persons occupying the property in any manner shall leave and vacate the property permanently within thirty (30) days from the date of this Order, each taking his or her personal property, but leaving all improvements, buildings, fixtures, and appurtenances to the property. If any person fails or refuses to leave and vacate the property by the time specified in this Order, the PALS is authorized to coordinate with the United States Marshals Service to take all actions that are reasonably necessary to of those persons ejected. This includes that 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, the buildings, vehicles and any structures located thereon, for the

purpose of executing this Order. The United States Marshals Service is further authorized and directed to arrest and/or evict from the premises any and all persons who obstruct, attempt to obstruct, or interfere or attempt to interfere, in any way with the execution of the order of sale. If any person fails or refuses to remove his or her personal property from the property by the time specified herein, the personal property remaining on the property thereafter is deemed forfeited and abandoned and the Internal Revenue Service and its employees or representatives are authorized to remove and to dispose of such personal property in any manner the Internal Revenue Service sees 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.

9. Anyone who attempts to reenter the property thirty (30) days after entry of this order could subject that person to being found in contempt of the Court, and such contempt could be punishable by a fine, incarceration, or both. The United States Marshal, in coordination with the PALS, shall provide notice of the order to Defendants Robert L. Rivera and Linda K. Rivera and any other resident of the property by hand delivery or by leaving it in a prominent location at the property.

10. No later than three (3) business days after vacating the property under the deadline set forth in paragraph 7 above, Defendants Robert L. Rivera and Linda K. Rivera shall notify counsel for the United States of a forwarding address where they can be reached. Notification shall be provided to Waymon G. DuBose, Jr., Trial Attorney, Tax Division, U.S. Department of Justice, 717 N. Harwood, Suite 400 Dallas, Texas 75201, waymon.g.dubose@usdoj.gov, (214) 880-9726.

11. After the sale is confirmed, the Court shall distribute the proceeds of the sale, as far as they shall be sufficient, to the following items, in the order specified:

- a. First, to the Internal Revenue Service for the costs of the sale;
- b. Second, to the payment of any ad valorem taxes due on the property;
- c. Third, to the United States of America to be applied to (a) federal tax liens notices of which were filed against Defendants Robert L. Rivera and Linda K. Rivera on June 15, 2010, November 29, 2010, and August 1, 2012, for \$205, 992.22, (b) federal tax liens notices of which were filed against Defendant Robert Rivera on November 29, 2010, for \$75,027.35, (c) federal tax liens notices of which were filed against Defendant Linda Rivera on February 20, 2009, for \$54,436.76, and its judgment against Defendants Robert L. Rivera and Linda K. Rivera for those amounts, plus statutory interest accruing thereafter under 28 U.S.C. § 1961 and 26 U.S.C. § 6601 and 6621 until paid;
- d. Fourth, to the New Mexico Department of Taxation and Revenue to be applied to its liens filed on October 1, 2012, for \$19,563.33, and on October 22, 2012, for \$53,608.83 against Robert Rivera.
- e. Fifth, to the United States of America to be applied to (a) federal tax liens notices of which were filed against Defendants Robert L. Rivera and Linda K. Rivera on June 10, 2013, and July 1, 2013, for \$1,166,244.98, and its judgment against Defendants Robert L. Rivera and Linda K. Rivera for those amounts, plus statutory interest accruing thereafter under 28 U.S.C. § 1961 and 26 U.S.C. § 6601 and 6621 until paid;
- f. Any balance remaining after the above payments, shall be held by the Clerk until further order of the Court.

12. The Clerk shall immediately mail a copy of this order to all counsel and parties of record, as follows:

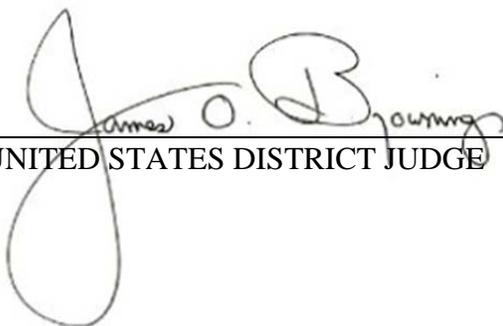
Robert L. Rivera  
21 Sandia Lane  
Placitas, New Mexico 87043

Linda K. Rivera  
21 Sandia Lane  
Placitas, New Mexico 87043

Lewis J. Terr  
Special Assistant Attorney General  
Post Office Box 630  
Santa Fe, New Mexico 87504-0630  
Lewis.terr@state.nm.us

Waymon G. DuBose, Jr.  
Trial Attorney, Tax Division  
U.S. Department of Justice  
717 N. Harwood, Suite 400  
Dallas, Texas 75201  
waymon.g.dubose@usdoj.gov

Property Appraisal & Liquidation Specialist  
Internal Revenue Service  
Attn: Darlene Jones  
4041 N Central Ave M/S 5021  
Phoenix, AZ 85012-3330  
darlene.Jones2@irs.gov

  
UNITED STATES DISTRICT JUDGE