

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

WILLIAM B. ACHEFF,)
)
Plaintiff and Counter-Defendant,)

v.)

CIVIL ACTION NO. 1:12-cv-00100-JCH-RHS

PETER B. LAZARE, as Trustee)
of the EDELMAN TRUST a/k/a the)
JON J. EDELMAN TRUST U/T/A)
dated March 19, 1996, as Amended;)
UNITED STATES OF AMERICA,)
BY AND THROUGH THE INTERNAL)
REVENUE SERVICE (IRS); and)
JOHN DOE and JANE DOE (true names)
unknown), tenants,)
)
Defendants,)

UNITED STATES OF AMERICA,)
)
Defendant, Counter-Plaintiff,)
Cross-Plaintiff, and Third-Party)
Plaintiff)

v.)

PETER B. LAZARE, as Trustee)
of the EDELMAN TRUST a/k/a the)
JON J. EDELMAN TRUST U/T/A)
dated March 19, 1996, as amended; and)
JOHN DOE and JANE DOE (true names)
unknown), tenants,)
)
Cross-Defendants.)

v.)

DENNIS L. STEIN, as Trustee)
of the EDELMAN TRUST a/k/a the JON J.)
EDELMAN TRUST dated March 19, 1996,)
as amended; and JON EDELMAN a/k/a)
JON J. EDELMAN or JOHN J. EDELMAN,)
)
Third-Party Defendants.)

ORDER FOR FORECLOSURE SALE AND TO VACATE

On March 30, 2015, the Court entered a Memorandum Opinion and Order (doc. 217) granting in part and denying in part the Motion for Judgment and Decree of Foreclosure filed by Williams B. Acheff (doc.199), and granting the Motion of United States For Order of Foreclosure Sale and to Vacate Real Property (doc. 204).

IT IS THEREFORE ORDERED that:

1. the real property to be sold consists of nearly 30 acres with an 8,500 square-foot residence with an indoor swimming pool, a 2,200 square foot guesthouse, and a five-car garage situated on three parcels referred to as Tract A-1, Tract A-2, and Tract B, is located at 35 Vista Del Mesa, Arroyo Hondo in Taos County, New Mexico (“the property,” “the subject property,” or “the Taos property”), and is more particularly described in Government Exhibit 1 attached.

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

3. The PALS Unit and its representatives shall have free access to the Taos 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.

4. Plaintiff William B. Acheff’s mortgage lien has priority over the federal tax liens of the United States and he is entitled right to bid as a credit against any judgment against the Edelman Trust up to the amount due under any such judgment..

5. The terms and conditions of the sale of the Taos 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 Taos County Courthouse, Taos County, New Mexico, on the Taos 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:

John N. Patterson
Jessica R. Terrazas
Rodey, Dickason, Sloan, Akin & Robb, P.A
119 East Marcy Street, Suite 200
Santa Fe, New Mexico 87501
jpatterson@rodey.com
jterrazas@rodey.com

Scott H. Sanger
Attorney at Law, P.C.
5434 NDCBU
Taos, New Mexico 87571

William B. Acheff
P. O. Box 3767
Taos, New Mexico 87571

Ronald J. VanAmberg, Esq.
VanAmberg, Rogers, Yepa, Abeita & Gomez, LLP
347 East Palace Avenue
Santa Fe, New Mexico 87504-1447
rvanamberg@nmlawgroup.com

Peter B. Lazare
140 Cherry Street
Katonah, New York 10536

Jon J. Edelman
3704 Mactibby Street
San Diego, California 92117-6134
jon.edelman@att.net

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

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 Taos 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 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 the Edelman Trust in this action. The Clerk shall distribute the deposit as directed by the PALS by check made payable to "William B. Acheff" or the "United States Department of Justice" as appropriate. 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;

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

6. Until they vacate the property, Plaintiff William Acheff, and Defendant, Peter Lazare, Trustee of the Edelman Trust, 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.

7. All persons occupying the property in any manner, if any, 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 Marshal 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 Marshal 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.

8. 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 William B. Aceff, and any other resident of the property by hand delivery or by leaving it in a prominent location at the property.

9. 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 William B. Acheff up to the amount of \$1,345,873.03, including costs and accrued interest to February 11, 2014, plus default interest at the monthly rate of \$7,000.00, or the daily rate of \$233.33, from February 11, 2014, to date of Judgment;

c. Third, to the United States of America to be applied against its judgment against Edelman Trust for a constructive trust up to the amount of \$1,601,000, plus statutory interest accruing thereafter under 28 U.S.C. § 1961 and 26 U.S.C. § 6601 and 6621 until paid;

d. Any balance remaining after the above payments, shall be held by the Clerk until further order of the Court.

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

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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

SO ORDERED.

SIGNED April 6, 2015.


UNITED STATES DISTRICT JUDGE

EXHIBIT "A"

Page 1 of 3

Tract "A-1"

A certain tract of land in Arroyo Hondo, Taos County, New Mexico, within the Arroyo Hondo and Antoine Leroux Grants, located within projected Section 34, Township 27 North, Range 12 East, NMPM; described as part of Tract 24, Map 46, and part of Tract 2, Map 29, Survey 4, of the 1941 Taos County Reassessment survey; and more particularly described by metes and bounds as follows:

BEGINNING at the NE corner of this tract, a 1/2 inch rebar found at a fence line from whence the "Landmark of Pablo Lucero", a USBLM brass cap monument, bears: S 12° 09' 21" E, 2158.1 feet distant, thence along said fence line:

S 01° 10' 56" E, 402.29 feet to a spike set at a fence intersection, thence:
S 00° 23' 43" W, 309.38 feet to a 1 inch iron pipe found, thence:
S 01° 43' 42" E, 344.88 feet to the SE corner, a 1/2 inch rebar found on the northerly edge of a roadway, thence along said roadway:
N 81° 46' 00" W, 81.10 feet to a point, thence:
N 74° 10' 00" W, 293.10 feet to a point, thence:
N 55° 13' 00" W, 219.20 feet to a point, thence:
N 39° 48' 00" W, 117.20 feet to a point, thence:
N 49° 58' 00" W, 163.20 feet to a point, thence:
N 68° 12' 00" W, 48.50 feet to a point, thence:
N 89° 43' 00" W, 110.30 feet to the SW corner, a 1/2 inch rebar found, thence leaving said roadway and along an old row of fence posts:
N 01° 53' 17" W, 203.85 feet to a spike set, thence:
N 02° 08' 01" E, 45.99 feet to a spike set, thence:
N 01° 39' 03" W, 22.67 feet to a spike set, thence:
N 00° 52' 32" W, 24.93 feet to a spike set, thence:
N 01° 29' 42" W, 106.94 feet to a spike set, thence:
N 01° 11' 20" W, 103.47 feet to a spike set, thence:
N 00° 59' 12" W, 107.66 feet to a spike set, thence:
N 00° 28' 53" W, 114.49 feet to the NW corner, a 1/2 inch rebar set on the easterly edge of a roadway, thence along said roadway:
N 46° 46' 07" E, 96.44 feet to a 1/2 inch rebar set, thence leaving said roadway:
S 78° 22' 09" E, 841.62 feet to the POINT AND PLACE OF BEGINNING.

EXHIBIT "A"

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Tract "A-2"

A certain tract of land in Arroyo Hondo, Taos County, New Mexico, within the Arroyo Hondo and Antoine Leroux Grants, located within projected Section 34, Township 27 North, Range 12 East, NMPM; described as part of Tract 2, Map 29, Survey 4 of the 1941 Taos County Reassessment survey, and more particularly described by metes and bounds as follows:

BEGINNING at the SE corner of this tract, a 1/2 inch rebar found at a fence line from whence the "Landmark of Pablo Lucero", a USBLM brass cap monument, bears: S 12°09'21" E, 2138.1 feet distant, thence along said fence line

N 78°22'09" W, 841.62 feet to the SW corner, a 1/2 inch rebar set on the easterly edge of a roadway, thence along said roadway,

N 46°46'07" E, 30.23 feet to a point, thence,

N 43°34'01" E, 455.30 feet to a point, thence;

N 41°12'44" E, 130.48 feet to a point, thence;

N 50°00'50" E, 61.72 feet to a point, thence;

N 38°54'43" E, 43.82 feet to a point, thence;

N 26°34'23" E, 91.08 feet to a point, thence;

N 17°27'15" E, 69.52 feet to a point, thence;

N 30°22'22" E, 28.15 feet to a point, thence;

N 43°20'38" E, 58.28 feet to a point, thence;

N 51°00'48" E, 30.14 feet to the NW corner, a 1/2 inch rebar set, thence continuing along said roadway;

N 68°02'46" E, 34.26 feet to a point, thence;

N 77°41'52" E, 33.44 feet to a point, thence;

S 87°04'23" E, 41.95 feet to a point, thence;

S 73°52'59" E, 29.10 feet to a point, thence,

S 63°16'46" E, 46.14 feet to the NE corner, a 1/2 inch rebar set at a fence line, thence leaving said roadway and along said fence line;

S 00°48'49" E, 914.65 feet to the POINT AND PLACE OF BEGINNING

EXHIBIT "A"

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Tract "B"

A certain tract of land in Arroyo Hondo, Taos County, New Mexico, within the Arroyo Hondo and Antoine Leroux Grants, located within projected Section 34, Township 27 North, Range 12 East, NMPM; described as part of Tract 2, Map 29, Survey 4, of the 1941 Taos County Reassessment Survey, and more particularly described by metes and bounds as follows:

BEGINNING at the SE corner of this tract, a 1/2 inch rebar set at a fence line on the northerly edge of a roadway, from whence the "Landmark of Pablo Lucero", a USBLM brass cap monument, bears: S 08° 43' 19" E, 3.082.6 feet distant, thence leaving said fence line and along said roadway,

N 63° 16' 48" W, 37.40 feet to a point, thence:

N 73° 52' 53" W, 33.27 feet to a point, thence:

N 87° 04' 21" W, 46.93 feet to a point, thence:

S 77° 41' 41" W, 37.24 feet to the West corner, a 1/2 inch rebar set, thence along the southerly edge of a second roadway,

N 43° 23' 54" E, 42.86 feet to a point, thence:

N 61° 15' 20" E, 41.57 feet to a point, thence:

N 78° 45' 55" E, 28.77 feet to a point, thence,

S 88° 39' 33" E, 53.42 feet to the NE corner, a 1/2 inch rebar set at a fence line, thence leaving said roadway and along said fence line,

S 00° 28' 25" E, 42.11 feet to a spike set, thence:

S 01° 16' 28" E, 33.90 feet to the POINT AND PLACE OF BEGINNING.

EXHIBIT "B"

11. Reservations as contained in patent from the United States of America to Arroyo Hondo Grant, dated August 2, 1910, as recorded in Book A-20 at pages 372-383.

12. Reservations as contained in patent from the United States of America to Antonio Leroux Grant, dated February 1, 1955, as recorded in Book M-25 at page 110, and also recorded in Book M-27 at page 393.

13. Restrictions, easements and reservations as contained in Warranty Deed dated December 8, 1978 to William B. Acheff and filed for record in Book A-167 at pages 460-462.

14. Restrictions, easements and reservations as contained in Warranty Deed dated June 28, 1989 to Barbara Edelman and filed for record in Book A-192 at pages 132-135.

15. Easement dated June 21, 1989 to William and Catherine Acheff, and filed for record in Book M-130 at pages 579-586.

16. Easements, utilities, as reflected on survey plat entitled "Acheff to Edelman", dated May 5, 1989 by Rio Grande Surveying Service as job #L1369.

17. Right of Way Easement, dated November 1995 in favor of Kit Carson Electric and filed for record in Book M-184 at pages 374-375.



COUNTY OF TAOS } SS
STATE OF NEW MEXICO }

I Herby certify that this instrument was filed for record on the 28 day of July A.D. 19 2012 at 2:40 o'clock 40 m. and was duly recorded in book A-192 page 417 of the records of Taos County.

Witness my Hand and Seal of Office
Jeannette G. Rios
County Clerk, Taos County, N.M.

[Handwritten signature]
Deputy