

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:13-cv-00863-HEA
)	
JOSH P. TOLIN, KIMBERLY L. TOLIN,)	
ET AL.)	
)	
Defendants.)	

ORDER OF SALE

This Court entered a judgment in this action on October 3, 2013 in favor of the United States and against Defendant Josh P. Tolin for unpaid federal income tax liabilities. (Docket No. 29.) The judgment also ordered that the federal tax liens associated with those liabilities be enforced with a judicial sale of the land, along with all improvements, buildings, and appurtenances thereon, now known as and numbered 16609 Clayton Road, Ballwin, St. Louis County, Missouri (“Property”) and more fully described as follows:

Lot 356 of WINDING TRAILS PLAT 1, a subdivision of St. Louis County, Missouri, according to the plat thereof recorded in Plat Book 192, Page 12 of the St. Louis County Records.

On March 30, 2015, this Court determined the priority of creditors holding liens that encumber the Property and entered summary judgment in favor of the United States and against Defendant U.S. Bank National Association as Trustee Under Pooling and Servicing Agreement dated as of September 1, 2006 MASTR Asset Backed Securities Trust 2006-NC2 Mortgage Pass Through Certificates Series 2006-NC2 (“U.S. Bank”). (Docket Nos. 68-69.)

Accordingly, it is hereby ORDERED that the Property shall be sold, pursuant to 26 U.S.C. § 7403(c) and 28 U.S.C. §§ 2001 and 2002, in order to collect the unpaid federal tax liabilities as follows:

1. The Internal Revenue Service (“IRS”) Property Appraisal and Liquidation Specialists (“PALS”) is authorized to offer for public sale and to sell the Property.

2. The terms and conditions of the sale are set forth below.

a. The sale of the 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 the plaintiff United States and the defendants Josh Tolin, Kimberly Tolin, Ocwen Loan Servicing, LLC, Enterprise Bank and Trust, Missouri Department of Revenue, Citibank South Dakota NA, Winding Trails Subdivision Homeowners’ Association; and U.S. Bank, and any successors in interest or transferees of the defendants.

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, 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 Property is located or on the Property’s premises.

d. The PALS shall announce the date and time for sale. The IRS, PALS, and their representatives shall be permitted to enter the Property with prospective buyers in order to allow prospective buyers to inspect the interior and exterior of the Property at such times as the IRS 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 St. Louis County, and, at the discretion of the PALS, by any other notice or advertisement that the PALS deems appropriate. The notice of the sale shall contain a description of the Property and shall contain the material terms and conditions of sale set forth in this order of sale.

f. The Property shall be offered for sale "as is," with all faults and without any warranties either express or implied, and the sale shall be made without any right of redemption.

g. The PALS shall set, and may adjust, 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 adjust the minimum bid.

h. At the time of the sale, the successful bidder(s) shall deposit with the PALS, by money order, certified check, or cashier's check made payable to the Clerk of the United States District Court for the Eastern 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. The money order or certified or cashier's check shall be deposited with the Clerk of this Court. 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.

i. The successful bidder(s) shall pay the balance of the purchase price for the Property within sixty (60) days following the date of the sale. The money order, certified check, or cashier's check shall be made payable to the Clerk of the United States District Court for the Eastern District of Missouri and 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 applied to cover the expenses of the sale, with any amount remaining to be applied to the judgment for the federal tax liabilities entered in this case. The Clerk shall distribute the deposit as directed by the PALS by check made payable to the "United States Treasury." The 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. The successful bidder(s) at the new sale or second highest bidder, as the case may be, shall receive the Property free and clear of all rights, titles, claims, liens, and interests of the defaulting bidder(s).

j. The Clerk of the Court is directed to accept the deposits and 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.

k. The sale of the Property shall be subject to confirmation by this Court. On confirmation of the sale, ownership and possession of the Property shall transfer to the successful bidder(s), and all interests in, liens against, and titles and claims to, the Property that are held or asserted by the parties to this action are discharged and extinguished.

l. After the confirmation of the sale, the IRS shall execute and deliver a deed under the authority of this Court conveying the Property, effective as of the date of the

confirmation of the sale, to the successful bidder(s). Also, after this Court confirms the sale, and on receipt of the deed from the successful bidder, the Recording Official of St. Louis County, Missouri, shall cause the transfer of the Property to be reflected upon that county's register of title. The successful bidder(s) shall pay, in addition to the amount of the bid, any county or local documentary stamps and registry fees as provided by law.

3. Up until the date that this Court confirms the sale of the Property, Josh Tolin and Kimberly Tolin shall take all reasonable steps necessary to preserve the Property (including all buildings, improvements, fixtures and appurtenances on the Property) in its current condition including, without limitation, maintaining a fire and casualty insurance policy on the Property and Josh Tolin, Kimberly Tolin, and all occupants of the Property shall neither commit waste against the Property nor cause or permit anyone else to do so. All of the defendants in this case shall neither do anything that tends to reduce the value or marketability of the Property nor cause or permit anyone else to do so. Such 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 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. If the Property is destroyed before its sale and any defendant is entitled to insurance proceeds, the insurance proceeds shall be paid into the registry of this Court. Violation of this paragraph shall be deemed a contempt of court and punishable as such.

4. All persons occupying the Property shall vacate the Property permanently within 30 days of the date of this order of sale, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances to the Property). If any person

fails or refuses to vacate the Property by the date specified in this order of sale, the PALS is authorized to coordinate with the United States Marshal to take all actions that are reasonably necessary to have those persons ejected or excluded. The U.S. Marshals Service is authorized to and directed to take any and all necessary actions, including 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 this Order.

5. Any personal property remaining on the Property 30 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 first to the costs and expenses of sale and the balance shall be paid into the Court for further distribution. Money orders and checks for the purchase of the personal property shall be made payable to the Clerk of the United States District Court for the Eastern District of Missouri and the Clerk of the Court is directed to accept cash and checks and deposit such items into the Court's registry for distribution pursuant to further order of this Court. This order of sale shall also serve as a Writ of Assistance or Writ of Possession, as appropriate, and no further order from the Court shall be required for these purposes.

6. No later than two business days after vacating the Property pursuant to the deadline set forth in paragraph 4, above, Josh Tolin shall notify counsel for the United States of a forwarding address where he/she/they can be reached. Notification shall be made by contacting the U.S. Department of Justice Tax Division's trial attorney at (202) 353-2452.

7. Up until the date that this Court confirms the sale of the Property, the IRS, PALS, and their representatives are authorized to have free and full access to the Property in order to take any and all actions necessary to preserve the 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 Property.

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

a. First, to PALS, and payable to the “United States Treasury,” for the costs and expenses of the sale, including any costs and expenses incurred to secure or maintain the property pending sale and confirmation by the Court;

b. Second to St. Louis County, or other local taxing authority, for real property taxes and other local assessments due and owing which are entitled to priority under 26 U.S.C. § 6323(b)(6), to the extent not fully paid;

c. Third, to plaintiff United States, payable to the “U.S. Department of Justice” (and sent to the Tax Division – FLU Unit, USDOJ, P.O. Box 310 - Ben Franklin Station, Washington, D.C. 20044) for application to the liability then outstanding in connection with the unpaid federal tax liabilities of the defendant Josh Tolin for the tax period 2004, including all accrued statutory additions (including interest and any penalties), until fully paid;

d. Fourth to the State to satisfy the unpaid individual state income tax liabilities of Josh Tolin for tax years 2001, 2002, 2003, and 2004. If Tolin’s state income tax liabilities for 2001, 2002, 2003, and 2004 are fully satisfied and proceeds remain;

e. Fifth, to U.S. Bank to satisfy the March 26, 2004 loan. If the March 26, 2004 U.S. Bank loan is fully satisfied and proceeds remain;

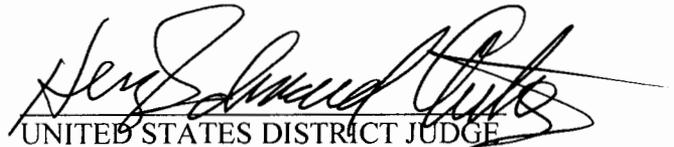
f. Sixth, to plaintiff United States, payable to the "U.S. Department of Justice" (and sent to the Tax Division – FLU Unit, USDOJ, P.O. Box 310 - Ben Franklin Station, Washington, D.C. 20044) for application to the liability then outstanding in connection with the unpaid federal tax liabilities of the defendant Josh Tolin for the tax period 2001, 2002, and 2006, including all accrued statutory additions (including interest and any penalties), until fully paid;

g. Seventh, to Josh P. Tolin.

9. Any further remaining sale proceeds shall be held in the Court's registry pending further order of the Court.

IT IS SO ORDERED:

Signed this 26th day of June, 2015.


UNITED STATES DISTRICT JUDGE