

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 13-2194-CEJ
)	
GERALD McPEEK, et al.)	
)	
Defendants.)	
_____)	

AMENDED ORDER OF SALE

This Court entered a final judgment in this action on April 28, 2014 (Docket Entry No. 30), in favor of plaintiff United States and against defendant Theresa McPeek for unpaid federal income tax liabilities and against Gerald McPeek for unpaid federal income tax liabilities and for civil penalties pursuant to 26 U.S.C. § 6651(f). 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 4137 Mexico Road and 4139 Mexico Road, St. Peters, Missouri (the "Properties"), and more fully described as follows:

UNITS 7 AND 8 OF LINJAN BUILDING NO. 2, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 21 PAGE 197 OF THE ST. CHARLES COUNTY RECORDS, TOGETHER WITH THE UNDIVIDED SHARE OF COMMON ELEMENTS THERETO BELONGING, ALL ACCORDING TO AND MORE PARTICULARLY DESCRIBED IN LINJAN BUILDING NO. 2 DECLARATION OF CONDOMINIUM BY-LAWS AND RESTRICTIONS RECORDED IN BOOK 896 PAGE 1180 OF THE ST. CHARLES COUNTY RECORDS.

ADDRESS: 4137 MEXICO ROAD AND 4139 MEXICO ROAD

Being the property conveyed to Gerald McPeek and Theresa McPeek by deed of quitclaim, dated July 7, 2004, and recorded with the St. Charles County Registry of Deeds at Book DE 3919, Pages 1030 to 1032.

The Court amended its judgment on October 28, 2015, (Docket Entry No. 37) in order to correct the Properties' legal description. The Court now amends its prior Order of Sale (Docket Entry No. 33), and ORDERS that the Properties 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 Properties.

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

a. The sale of the Properties shall be by public auction to the highest bidder, free and clear of all rights, titles, claims, liens, and interests of the Missouri Department of Revenue and all parties to this action, including the plaintiff United States and the defendants Gerald McPeek, Theresa McPeek, Want Ads of St. Charles, Inc., and St. Charles County, and any successors in interest or transferees of those parties.

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, 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 Properties are located or on the premises of the Properties.

d. The PALS shall announce the date and time for sale. The IRS, PALS, and their representatives shall be permitted to enter the Properties with prospective buyers in order to

allow prospective buyers to inspect the interior and exterior of the Properties 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. Charles 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 Properties and shall contain the material terms and conditions of sale set forth in this order of sale.

f. The Properties 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 bidders(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 Properties 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 Properties 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 Properties 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 Properties shall be subject to confirmation by this Court. On confirmation of the sale, ownership and possession of the Properties shall transfer to the successful bidder(s), and all interests in, liens against, and titles and claims to, the Properties 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 Properties, 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. Charles County, Missouri shall cause the transfer of the Properties 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 Properties, Gerald McPeck and Theresa McPeck shall take all reasonable steps necessary to preserve the Properties (including all buildings, improvements, fixtures and appurtenances on the Properties) in their current condition including, without limitation, maintaining a fire and casualty insurance policy on the Properties and Gerald McPeck, Theresa McPeck, and all occupants of the Properties shall neither commit waste against the Properties 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 Properties 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 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. If the Properties are destroyed before their sale and Gerald McPeck and Theresa McPeck are 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 Properties shall vacate the Properties 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 Properties 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 Properties 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. Up until the date that this Court confirms the sale of the Properties, the IRS, PALS, and their representatives are authorized to have free and full access to the Properties 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.

7. After the Court confirms the sale of the Properties, 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. Charles County, or other local taxing authority, for real property taxes and other local assessments due and owing, if any, which are entitled to priority under 26 U.S.C. § 6323(b)(6);
- c. Third, all remaining proceeds shall be distributed between the United States for defendants Gerald McPeck and Theresa McPeck's federal tax liabilities, as reflected in the Amended Agreed Judgment entered on October 2015, (Docket Entry No. 37), and the Missouri Department of Revenue for 1996, 2003, 2004, and 2005 state tax liabilities, in accordance with the priority of the respective tax lien interests described in the stipulation between the United States and the Missouri Department of Revenue (Docket Entry No. 34).

IT IS SO ORDERED:

Signed this 16th day of December, 2015.



THE HONORABLE CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE