

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:12-cv-820-BO

UNITED STATES,)
)
Plaintiff,)
) DEFAULT JUDGMENT
v.) AND ORDER OF SALE
) Fed. R. Civ. P. 55(b)(1) and (2)
) 28 U.S.C. §§ 2001 and 2002
GETTYS COHEN, JR., et al.)
)
Defendants.)

Default having been entered against defendant Gettys Cohen, Jr., and counsel for the United States having requested a default judgment against Gettys Cohen, Jr. on Count I, and having filed a proper declaration in accordance with Fed. R. Civ. P. 55(b)(1), it is hereby

ORDERED that the United States recover of Gettys Cohen, Jr. the sum of \$737,063.84 as of September 3, 2012, plus interest and costs that have accrued and will continue accruing according to law for the federal income tax liabilities of Gettys Cohen, Jr. for the years 1995 through 2003, inclusive, and 2008 and 2009, the federal employment tax liabilities of Gettys Cohen, Jr. for the periods ending June 30, 2009 through September 20, 2010, inclusive, and March 31, 2011, and the federal unemployment tax liabilities of Gettys Cohen, Jr. for the year 2009.

Default having been entered against defendant Gettys Cohen, Jr., and counsel for the United States having requested a default judgment against Gettys Cohen, Jr. on

Count II in accordance with Fed. R. Civ. P. 55(b)(2), and the United States having requested an order of sale pursuant to 28 U.S.C. §§ 2001 and 2002, and the non-defaulting defendants Shirley Cohen and the North Carolina Department of Revenue having consented to the order of sale, it is hereby

ORDERED that the federal tax liens are foreclosed and that the real property located at 3 Aspen Drive, Smithfield, North Carolina and described as

Being all of Lots Nos. 29, 30 and 31 of Section No. 1, Addition N. 4 of the Pine Acres Subdivision located in the Town of Smithfield, Johnston County, State of North Carolina, according to a map prepared by Ragsdale Engineers on March 28, 1979, a plat of which is recorded in Plat Book 18, Page 145, Johnston County Registry, reference is hereby made to said plat for a more accurate and complete description of said lots.

and the real property located at 302 Dogwood Circle, Smithfield, North Carolina and described as

BEGINNING at a stake at the intersection of the Northern property line of Dogwood Drive with the westerly property line of Sumner Street in the Town of Selma, and running thence with the Northern property line of Dogwood Drive North 84 degrees 15 minutes 40 seconds West 109.34 feet to a stake at the intersection of the northern property line of said Drive with the Eastern Property line of an unnamed 50.01 foot street intersecting said drive from the north and leading to a cul-de-sac in the Cottonwood Subdivision; thence with the Eastern property line of said unnamed street North 4 degrees 30 minutes 44 seconds East 85.98 feet to a stake, the southwestern corner of Lot No. 49 on the plat hereinafter referred to; thence with the southern line of Lot No. 49 South 85 degrees 29 minutes 16 seconds East 99.01 feet to a stake, another corner of Lot 49; thence South 49 degrees 48 minutes 34 seconds East 60 feet to a stake in the westerly property line of Sumner Street; thence with the western property line of

Sumner Street South 40 Degrees 17 minutes 34 seconds West 65.73 feet to a stake, the point of beginning and being Lot No. 50 of the Cottonwood Subdivision, as shown on plat by Ragsdale Engineers, dated September, 1975, recorded in Plat Book 16, Page 101 Johnston County Registry, to which reference is hereby made for a more particular description. The above property is conveyed subject to the Indenture of Covenants from S.R. Hinnant & Sons. Inc. dated June 10, 1974, and recorded in Book 771, Page 346, Johnston County Registry, and also subject to the minimum building set back lines and utility and drainage esements as shown on recorded plat. See Book 774, Page 282, Johnston County Registry. References made to that deed of trust dated October 10, 1978 to E. Craig Jones, Jr. Trustee, in the sum of \$26,000.00 and recorded in Book 844, Page 402 of the Johnston County Registry.

and the real property located at 405 Reid Circle, Selma, North Carolina and described as

Being all of Lot No. 37 in Briarwood Subdivision, Section II, as shown on map recorded in Plat Book 25, Page 211, Johnston County Registry.

and the real property located at 14 Noble Street, Smithfield, North Carolina and described as

Lot Number 11 of Triple "S" Plaza as recorded in Plat Book 26, page 109, of Johnston County Registry. Said plat prepared by Ragsdale Consultants, P.A. dated October 4, 1983.

and the real property located on Aspen Drive, Smithfield, North Carolina and described

as

Being all of Lot No. 48, Section No. 1, Addition no. 4 of the Pine Acres Subdivision located in the Town of Smithfield, Johnston County, State of North Carolina, according to a map prepared by Ragsdale Engineers on March 28, 1979, a plat of which is recorded in Plat Book 22, page 173, Johnston County Registry, reference is hereby made to said plat for a more accurate and complete description of said lot.

(together, the "Real Property") be sold under 28 U.S.C. §§ 2001 and 2002, to satisfy the liens on the Real Property as follows:

1. The Internal Revenue Service ("IRS") Property Appraisal and Liquidation Specialists ("PALS") and/or the United States Marshals Service ("Marshals") are authorized to offer for public sale and to sell the Real Property.

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

a. The sale of the Real Property shall be free and clear of the interests of all 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 Real Property, and easements and restrictions of record, if any;

c. The sale shall be held either at the courthouse of the county or city in which the Real Property is located or on the Real Property's premises;

d. The PALS and/or Marshals shall announce the date and time for sale;

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 Johnston County, and, at the discretion of the PALS and/or Marshals, by any other notice that the PALS and/or Marshals deem appropriate. The notice shall contain a description of the Real Property, and shall contain the terms and conditions of sale in this order of sale;

f. The PALS and/or Marshals shall set the minimum bid. If the minimum

bid is not met or exceeded, the PALS and/or Marshals 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;

g. At the time of the sale, the successful bidder(s) shall deposit with the PALS and/or Marshals, by cash or by certified or cashier's check payable to the United States District Court for the Eastern District of North Carolina, a minimum of 20 percent of the bid. Before being permitted to bid at the sale, potential bidders shall display to the PALS and/or Marshals 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;

h. The successful bidder(s) shall pay the balance of the purchase price for the Real Property to the Clerk of the Court within 30 days following the date of the sale, by a certified or cashier's check payable to the "Clerk, U.S. District Court." This payment shall be placed into the registry of the Court, and the payment shall not accrue interest. 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 paid to the United States. The Real 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 United States may bid as a creditor against its judgment without tender of cash;

i. The sale of the Real Property shall be subject to confirmation by this Court. On confirmation of the sale, the PALS and/or Marshals shall execute and deliver its deed conveying the Real Property to the purchaser. On confirmation of the sale, all interests in, liens against, or claims to, the Real Property that are held or asserted by all parties to this action are discharged and extinguished;

j. When this Court confirms the sale, the Recording Official of Johnston County, North Carolina, shall cause transfer of the Real Property to be reflected upon that county's register of title. The successful bidder at the sale shall pay, in addition to the amount of the bid, any documentary stamps and Clerk's registry fees as provided by law;

k. The sale of the Real Property is ordered pursuant to 28 U.S.C. § 2001, and is made without right of redemption.

3. Until the Real Property is sold, Gettys Cohen, Jr. and Shirley Cohen shall take all reasonable steps necessary to preserve the Real Property (including all buildings, improvements, fixtures and appurtenances) in current condition including, without limitation, maintaining a fire and casualty insurance policy on the Real Property. They shall neither commit waste against the Real Property nor cause or permit anyone else to do so. They shall neither do anything that tends to reduce the value or marketability of the Real Property 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 Real 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.

4. Gettys Cohen, Jr. and Shirley Cohen shall vacate the real property located at 3 Aspen Drive, Smithfield, North Carolina permanently within 90 days of the date of this Order, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances to the Real Property). If they fail or refuse to vacate the 3 Aspen Drive property within 90 days of the date of this Order, the PALS are authorized to coordinate with the Marshals to take all actions that are reasonably necessary to have those persons ejected. Any personal property remaining on the 3 Aspen Drive property 90 days after the date of this Order is deemed forfeited and abandoned, and the PALS and/or Marshals are 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 expenses of sale and the balance to be paid into the Court for further distribution.

5. In the alternative as to the real property located at 3 Aspen Drive, Smithfield, North Carolina, within 90 days of the date of this Order, Shirley Cohen may purchase the real property by paying the United States half of the fair market value of the real property within 90 days of the date of this Order. Counsel for the United States and counsel for Shirley Cohen agree that the fair market value of the 3 Aspen Drive is \$191,090. Shirley Cohen's payment of \$95,545 must be paid to the Clerk of the Court, by

certified funds payable to the "Clerk, U.S. District Court." This payment shall be placed into the registry of the Court, and the payment shall not accrue interest. The sale of the 3 Aspen Drive property to Shirley Cohen will be confirmed according to the procedures set out in paragraphs 2.i., 2.j., and 12, herein. The proceeds of the sale will not be distributed according to the procedures set out in paragraph 13, but will be paid directly to the United States and applied to the tax liabilities of Gettys Cohen, Jr. at issue in this case.

6. Gettys Cohen, Jr. and Shirley Cohen shall vacate the real property located at 14 Noble Street, Smithfield, North Carolina permanently within 60 days of the date of this Order, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances to the Real Property). If they fail or refuse to vacate the 14 Noble Street property within 60 days of the date of this Order, the PALS are authorized to coordinate with the Marshals to take all actions that are reasonably necessary to have those persons ejected. Any personal property remaining on the 14 Noble Street property 60 days after the date of this Order is deemed forfeited and abandoned, and the PALS and/or Marshals are 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 expenses of sale and the balance to be paid into the Court for further distribution.

7. Additionally, Gettys Cohen, Jr. and Shirley Cohen must notify any other occupants of the real property located at 302 Dogwood Circle, Smithfield, North

Carolina, the real property located at 405 Reid Circle, Selma, North Carolina, and the real property located on Aspen Drive, Smithfield, North Carolina that they must vacate these properties within 30 days of the date of this Order. Any personal property remaining on these properties 30 days after the date of this Order is deemed forfeited and abandoned, and the PALS and/or Marshals are 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 expenses of sale and the balance to be paid into the Court for further distribution.

8. Pursuant to the Default Judgment in this case, the United States has an interest in the Real Property in the amount of \$737,063.84 as of September 3, 2012, plus interest and costs that have accrued and will continue accruing according to law.

9. Pursuant to the certificates of tax liability, the North Carolina Department of Revenue, has an interest in the Real Property in the amount of \$21,565.36 as of June 5, 2009, plus interest and costs that have accrued and will continue accruing according to law.

10. Pursuant to her ownership interests, Shirley Cohen has an interest in the Real Property.

11. Pending the sale of the Real Property and until the deed to the Real Property is delivered to the successful bidder, the IRS is authorized to have free access to the premises in order to take any and all actions necessary to preserve the Real 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 Real Property.

12. No later than 30 days after receipt of the balance of the purchase price of the Real Property sold, the United States shall file a report of sale with the Court, together with a proposed order of confirmation of the sale that includes a proposed distribution of proceeds and proposed deed of sale.

13. After the Court confirms the sale, the sale proceeds are to be applied to the following items, in the order specified:

a. First, for the expenses of the sale, to the United States Treasury, including any expenses incurred to secure or maintain the property pending sale and confirmation by the Court, and to Johnston County for any unpaid and matured real property taxes.

b. Second, one-half of the remaining proceeds to Shirley Cohen, and one-half to the United States for the federal income tax liabilities of Gettys Cohen, Jr. for the years 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003 in the amount of \$690,657.57 as of September 3, 2012, plus all accrued interest, penalties, and other additions permitted by law.

c. To the extent any funds remain available, third to the North Carolina Department of Revenue for the state income tax liabilities of Gettys Cohen, Jr. for the years 1995 and 1996 in the amount of \$21,565.36 as of June 5, 2009, plus interest and costs that have accrued and will continue accruing according to law.

d. To the extent any funds remain available, fourth to the United States for the federal income tax liabilities of Gettys Cohen, Jr. for the years 2008 and 2009, the federal employment tax liabilities of Gettys Cohen, Jr. for the periods ending June 30, 2009 through September 20, 2010, inclusive, and March 31, 2011, and the federal unemployment tax liabilities of Gettys Cohen, Jr. for the year 2009, in the amount of \$46,406.27 as of September 3, 2012, plus all accrued interest, penalties, and other additions permitted by law.

e. To the extent any funds remain available, fifth to Gettys Cohen, Jr.

DATE:

7-9-13


UNITED STATES DISTRICT JUDGE