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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 United States of America,
10 Plaintiff,
11 v.
12 Louis F. DeSerio; Susan DeSerio,
13 Defendants.

No. CV-12-08117-PCT-GMS

ORDER

14
15 Pending before the Court is Plaintiff's Motion for Summary Judgment. (Doc. 26.)
16 For the following reasons, the Motion is granted.

17 **BACKGROUND**

18 This case arises from Plaintiff United States' effort to obtain payment for
19 Defendant Louis DeSerio's outstanding federal employment and unemployment tax
20 liabilities for the years 1993–1996, his outstanding federal income tax liabilities and
21 penalties for the years 1992–1994 and 2002–2003, and for Defendants' Louis and Susan
22 DeSerio's outstanding federal income tax liabilities for the years 1997–2000 and 2007.
23 (Doc. 26–1 at 1–2.) Plaintiff seeks a judgment in its favor against the DeSerios for these
24 liabilities and to foreclose its federal tax liens on two properties in Cornville, Arizona,
25 both titled in Louis DeSerio's name. The United States asks that the Court foreclose these
26 federal tax liens against the Cornville properties and apply the proceeds of those sales
27 toward the Defendants' outstanding tax liabilities. (*Id.*)

28 The United States moves for summary judgment on these claims. (Doc. 26.)

1 Defendants dispute neither the facts in this case nor the law cited by Plaintiff. (Doc. 32).
2 Defendants instead request that the Court craft an order that recognizes that the DeSerios
3 have made diligent attempts to reach a solution with the Internal Revenue Service
4 regarding this matter.

5 DISCUSSION

6 I. Legal Standard

7 Summary judgment is appropriate if the evidence, viewed in the light most
8 favorable to the nonmoving party, demonstrates “that there is no genuine dispute as to
9 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ.
10 P. 56(a).

11 II. Analysis

12 Here, Defendants concede that “the United States is entitled to summary judgment
13 as a matter of fact and of law.” (Doc. 32 at 3.) Defendants instead appeal to the Court’s
14 sense of fairness and equity to “design an order that is reasonable in light of the
15 DeSerios’ diligent efforts to resolve their issues with the IRS.” (*Id.*)

16 The DeSerios assert that they were the victim of their financial advisor who was
17 later convicted for tax evasion. But, as the Government notes, Mr. DeSerio admits he
18 knew that it was a mistake to follow the advisor’s guidance as early as 1995. (Doc. 32-1
19 at 2.)

20 The DeSerios acknowledge that they have a tax liability to the government that
21 exceeds one million dollars. Further, the parties apparently agree that the property on
22 which the government seeks to foreclose has an actual appraised value of \$455,000. The
23 DeSerios nevertheless propose, without citing any authority that would permit it, that the
24 Court oblige the government to take a reverse mortgage on the property, as opposed to
25 what it might realize at a foreclosure sale. The DeSerios believe that, based on the value
26 of the property, they can qualify for a reverse mortgage of around \$225,000 (Doc. 32 at
27 4). Nevertheless, the DeSerios argue that the real estate market is poor and that the
28 forced foreclosure sale “will probably only net about the same as the amount obtained

1 through the reverse mortgage.” (*Id.* at 5.)

2 The Court, in very narrow circumstances has the discretion to decline to authorize
3 a foreclosure sale. Section 7403(c) of the Internal Revenue code states that “the court . . .
4 in all cases where a claim or interest of the United States therein is established, may
5 decree a sale of such property, by the property officer of the court” 26 U.S.C. §
6 7403(c). This language “affords district courts limited discretion in determining whether
7 to order the sale of property to satisfy delinquent tax liabilities.” *United States v. Gibson*,
8 817 F.2d 1406, 1407 (9th Cir. 1987) (citing *United States v. Rodgers*, 461 U.S. 677, 680
9 (1983)). However, this limited discretion is not applicable in the present action.

10 “District courts may exercise this limited discretion in individual cases to take into
11 account both the government's interest in prompt and certain collection of delinquent
12 taxes and the possibility that innocent third parties will be unduly harmed by that effort.”
13 *Id.* Here, no such third party interests are alleged. (SOF ¶¶ 62, 63.) The Supreme Court
14 has stated that there are “virtually no circumstances . . . in which it would be permissible
15 to refuse to authorize a sale simply to protect the interests of the delinquent taxpayer
16 himself or herself.” *United States v. Rodgers*, 461 U.S. 677, 709-10 (1983). Defendants
17 have cited no authority to suggest their circumstance nonetheless warrants the Court’s
18 exercise of discretion. The Supreme Court has emphasized that “the limited discretion
19 accorded by § 7403 should be exercised rigorously and sparingly, keeping in mind the
20 Government's paramount interest in prompt and certain collection of delinquent taxes.”
21 *Id.* at 711. Therefore,

22 **IT IS ORDERED** that Plaintiff’s Motion for Summary Judgment (Doc. 26) is
23 **granted** and the Clerk of Court is directed to enter judgment as follows:

24 1. Judgment is entered in favor of the United States and against Louis DeSerio
25 in the amount of **\$175,369.75** plus interest accruing after June 30, 2013, pursuant to 26
26 U.S.C. § 6601, 6621, and 6622 and 28 U.S.C. § 1961(c) until paid, for the unpaid balance
27 of federal employment tax liabilities for all four quarters for tax years 1993 through 1996,
28 and for the unpaid balance of unemployment tax liabilities for the tax years 1993-1996.

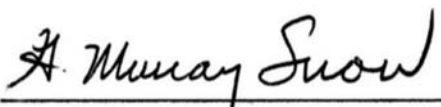
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2. Judgment is entered in favor of the United States and against Louis DeSerio, in the amount of **\$853,260.54**, plus interest accruing after June 30, 2013, pursuant to 26 U.S.C. § 6601, 6621, and 6622 and 28 U.S.C. § 1961(c) until paid, for the unpaid balance of federal income tax liabilities for 1992-1994 and 2002-2003.

3. Judgment is entered in favor of the United States and against Louis and Susan DeSerio, jointly and severally, in the amount of **\$202,425.11** plus interest accruing after June 30, 2013, pursuant to 26 U.S.C. § 6601, 6621, and 6622 and 28 U.S.C. § 961(c) until paid, for the unpaid balance of federal employment tax liabilities for the tax years 1997-2000 and 2007.

4. The United States is entitled to foreclose its tax liens against the properties identified in the Complaint. The Court directs the United States to file a proposed form order setting forth the terms and conditions of sale.

Dated this 12th day of February, 2014.



G. Murray Snow
United States District Judge