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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
JAMES O. MOLEN, et al.,
Defendants.

No. 2:10-cv-02591-MCE-KJN

MEMORANDUM AND ORDER

In the pending Motion for Summary Judgment (ECF No. 244), Plaintiff United States of America (“Plaintiff”) seeks an order stating that a federal tax lien against Defendants James O. Molen and Sandra L. Molen (collectively, “the Molens”) is senior to two California state tax liens against the Molens. Defendant California Franchise Tax Board filed an Opposition to the Motion (ECF No. 260), and Plaintiff filed a Reply (ECF No. 261). For the reasons that follow, the Court finds that the California state tax liens are senior to the federal tax lien and Plaintiff’s Motion for Summary Judgment is DENIED.¹

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¹ Because oral argument would not have been of material assistance, the Court ordered this matter submitted on the briefs. See E.D. Cal. Local Rule 230(g).

1 **BACKGROUND**

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3 Plaintiff and the California Franchise Tax Board do not dispute the following facts:

4 In 1976, the Molens acquired real property at 189 Connors Avenue in Chico,
5 California (“the residence”).

6 In 2001, a Notice of State Tax Lien against the Molens was recorded.

7 In 2002, a deed of trust against the residence was recorded.

8 In 2003, a Notice of State Tax Lien against the Molens was recorded.

9 In April 2004, La Jolla Cove Investors purchased the residence at a trustees’ sale
10 relating to the 2002 deed of trust.

11 In May 2004, a Notice of State Tax Lien against the Molens was recorded.

12 In November 2004, a trustees’ deed was recorded and the residence was
13 transferred to La Jolla Cove Investors.

14 In December 2004, a Notice of Federal Tax Lien against the Molens was
15 recorded.

16 In 2007, La Jolla Cove Investors transferred the residence back to the Molens.²

17 Thus, there are three state tax liens (recorded in 2001, 2003, and May 2004,
18 respectively), and each was recorded before the federal tax lien was recorded in
19 December 2004. Plaintiff concedes that the state tax lien recorded in 2001 is senior to
20 the federal tax lien. However, Plaintiff and the California Franchise Tax Board dispute
21 whether the state tax liens recorded in 2003 and May 2004 are also senior to the federal
22 tax lien.³

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26 ² Although La Jolla Cove Investors technically transferred the residence to an entity, the Court
27 previously determined that entity and another “are nominees of Defendants James O. Molen and Sandra
28 L. Molen with regard to the transfers of the [residence], and therefore have no ownership interest in the
property and no right to any distribution of sale proceeds.” ECF No. 235 at 2.

³ All subsequent references to “state tax liens” are to the state tax liens recorded in 2003 and May
2004.

1 tax lien, on the other hand, was extant for “first in time” priority purposes when it was
2 recorded in December 2004. Thus, applying McDermott, Plaintiff argues the federal tax
3 lien is senior to the state tax liens.

4 McDermott is factually distinguishable from this case. In McDermott, the state lien
5 was not perfected when it was recorded because “the property subject to the lien” was
6 not yet established. Id. at 452-53. That is, the McDermotts did not have property to
7 satisfy the lien when it was recorded. Rather, because the state lien extended to “after-
8 acquired-property,” the state lien was perfected later when the McDermotts purchased
9 real estate. Id. The critical distinction between McDermott and this case: the Molens
10 owned the residence when the state tax liens were recorded, and the state tax liens
11 were therefore perfected immediately upon recordation.⁴ That distinction matters. Cf. id.
12 at 450 (“The first question we must answer, then, is whether the Bank’s judgment lien
13 was perfected in this sense before the United States filed its tax lien If so, that is the
14 end of the matter; the Bank’s lien prevails.”).

15 Because McDermott is factually distinguishable and does not apply to this case,
16 the Court must resort to the general principle of “first in time, first in right.” Applying that
17 principle, the state tax liens—which were recorded before the federal tax lien—are
18 clearly senior to the federal tax lien.

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27 ⁴ That fact also distinguishes this case from the Sixth Circuit case that Plaintiff cites in its Reply.
28 See Woods v. Simpson, 46 F.3d 21, 23 (6th Cir. 1995) (“Both the federal and state tax liens were filed
before the debtor, David Simpson, acquired his inheritance.”).


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CONCLUSION

Plaintiff's Motion for Summary Judgment (ECF No. 244) is DENIED. The Court finds that the state tax liens recorded in 2001, 2003, and May 2004 are senior to the federal tax lien recorded in December 2004.

IT IS SO ORDERED.

Dated: February 29, 2016



MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT