

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLORADO  
Honorable Marcia S. Krieger

Civil No. 07-cv-00978-MSK-KMT

UNITED STATES OF AMERICA,

Plaintiff,

v.

DENNIS WAGNER;  
CAROL WAGNER;  
KEY BANK; AND  
COLORADO DEPARTMENT OF REVENUE,

Defendants.

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**ORDER OF FORECLOSURE AND SALE**

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THIS MATTER comes before the Court on the Motion for Order (#79). The motion is **GRANTED**. Pursuant to 28 U.S.C. §§ 2001 and 2002 and 26 U.S.C. §§ 7402 and 7403, the Court enters this Order of Foreclosure and Decree of Sale. **IT IS HEREBY ORDERED THAT:**

1. The United States' federal tax liens against Dennis Wagner arising out of the Internal Revenue Service assessment of Form 1040 federal income tax liabilities against him for the 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002 tax years, and the United States' judgment lien against Dennis Wagner, arising out of the United States' claim to reduce these same assessments to judgment in the above-captioned civil action are foreclosed.
2. The United States Marshal for the District of Colorado, or an Internal Revenue

Service Property Appraisal and Liquidation Specialist (“IRS Specialist”), is authorized and directed under 28 U.S.C. §§ 2001 and 2002 to offer for public sale and to sell the parcel of real property, including all improvements, buildings, and fixtures on the real property, described as follows (hereinafter the “Property”):

Tract 3, Brookwood Estates, located in a portion of the NE 1/4 of Section 2, Township 6 North, Range 69 West of the 6<sup>th</sup> P.M., Larimer County, Colorado, according to the recorded Plat thereof; TOGETHER WITH 16/100ths of one share of Pleasant Valley and Lake Canal Company, and one sewer tap on the South Fort Collins Sanitation District.

The Property has the following street address: 4820 Crest Road, Fort Collins, Colorado 80526.

An IRS Specialist shall make the arrangements for any sale as set forth in this Order.

3. The Marshal, his or her representative, or an IRS Specialist is authorized to have free access to the Property and to take 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, until the deed to the Property is delivered to the ultimate purchaser.

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

a. the sale of the Property shall be free and clear of the interests of Dennis Wagner, Carol Wagner, First Community Bank, Key Bank, Colorado Department of Revenue, Home Federal Savings and Loan Association of the Rockies, and the United States’ federal tax liens and judgment lien against Dennis Wagner.

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 and restrictions of record, if any;

c. the sale shall be held at the courthouse of the county or city in which the Property is located, on the Property's premises, or at any other place in accordance with the provisions of 28 U.S.C. §§ 2001 and 2002;

d. the date and time for sale are to be announced by the United States Marshal, his/her representative, or an IRS Specialist;

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 Jefferson County, and, at the discretion of the Marshal, his/her representative, or an IRS Specialist, by any other notice deemed appropriate. The notice shall contain a description of the property and shall contain the terms and conditions of sale in this order of sale;

f. The minimum bid will be set by the Internal Revenue Service. If the minimum bid is not met or exceeded, the Marshal, his or her representative, or an IRS Specialist 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 or sell to the second highest bidder;

g. the successful bidder(s) shall be required to deposit at the time of the same with the Marshal, his/her representative, or an IRS Specialist a minimum of ten percent of the bid, with the deposit to be made by certified or cashier's check or cash payable to the United States District Court for the District of Colorado. Before being permitted to bid at the sale, bidders shall display to the Marshal, his/her representative, or an IRS Specialist proof that they are able to comply with this requirement. No bids will be received 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 balance of the purchase price for the Property is to be paid to the United States Marshall or an IRS Specialist (whichever person is conducting the sale) within 20 days after the date the bid is accepted, by a certified or cashier's check payable to the United States District Court for the District of Colorado. If the bidder fails to fulfill this requirement, the deposit shall be forfeited and shall be applied to cover the expenses of the sale, including commissions due under 28 U.S.C. § 1921(c), with any amount remaining to be applied to the income tax liabilities of Dennis Wagner at issue herein. The realty shall be again offered for sale under the terms and conditions of this order of sale. The United States may bid as a credit against its judgment without tender of cash;

i. the sale of the property shall be subject to confirmation by this Court. The Marshal or an IRS Specialist shall file a report of sale with the Court, together with a proposed order of confirmation of sale and proposed deed, within 20 days from the date of receipt of the balance of the purchase price;

j. on confirmation of the sale, the Marshal or IRS Specialist shall execute and deliver a deed of judicial sale conveying the property to the purchaser;

k. on confirmation of the sale, all interests in, liens against, or claims to, the property that are held or asserted by all parties to this action are discharged and extinguished;

l. on confirmation of the sale, the recorder of deeds in Jefferson County, Colorado shall cause transfer of the property to be reflected upon that county's register of title; and

m. the sale is ordered pursuant to 28 U.S.C. § 2001, and is made without right of

redemption.

5. Until the property is sold, Dennis Wagner and Carol Wagner 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. They shall neither commit waste against the 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 property nor cause or permit anyone else to do so. The defendants shall not record any instruments, publish any notice, or take any other action (such as running newspaper advertisements or posting signs) 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.

6. All persons occupying the property shall leave and vacate the property permanently within 30 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 property). If any person fails or refuses to leave and vacate the property by the time specified in this Order, the United States Marshal's Office, alone, is authorized to take whatever action it deems appropriate to remove such person from the premises, whether or not the sale of such property is being conducted by an IRS Specialist. If any person fails or refuses to remove his or her personal property from the property by the time specified herein, the personal property remaining on the property thereafter is deemed forfeited and abandoned, and the United States Marshal's Office is authorized to remove it and to dispose of it in any manner it deems appropriate, 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.

The proceeds arising from sale are to be paid to the Clerk of this Court and applied as far as they shall be sufficient to the following items, in the order specified:

- a. To the United States Marshal or the IRS Specialist (whichever person conducted the sale as arranged by the United States) for the costs of the sale;
- b. To all taxes unpaid and matured that are owed to (county, borough or school district) for real property taxes on the property; and
- c. Any remaining funds to be split equally between the two following parties: (1) United States to partially satisfy the outstanding federal income taxes of Dennis Wagner for the tax years 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002, plus all interest and penalties due and owing thereon, and (2) Carol Wagner in full satisfaction of her interest in the Crest Property.

DATED this 24<sup>th</sup> day of May, 2010.

**BY THE COURT:**



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Marcia S. Krieger  
United States District Judge