

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 09-cv-01940-PAB-MJW

UNITED STATES OF AMERICA,

Plaintiff,

v.

JONI K. D'ANDREA,
HOWARD MITCHELL GILBERT, and
PUBLIC SERVICE CREDIT UNION,

Defendants.

ORDER

This matter is before the Court on the Renewed Motion to Dismiss United States' Remaining Claim for Foreclosure [Docket No. 83] filed by plaintiff United States and defendants Howard Mitchell Gilbert and Public Service Credit Union ("PSCU"). On September 27, 2010, the Court accepted [Docket No. 78] the Recommendation of United States Magistrate Judge [Docket No. 73] that "[j]udgment should enter in favor of the United States and against defendant D'Andrea pursuant to [Colo. Rev. Stat.] § 38-8-108 . . . and alternatively the federal tax liens encumbering the subject property should be ordered foreclosed, the subject property should be sold, and the proceeds should be used to satisfy the federal tax liens of Monty L. Cook." Docket No. 73 at 25. On September 29, 2010, judgment entered pursuant to the Court's September 27 order in favor of plaintiff and against defendants.

Plaintiff and defendants Howard Mitchell Gilbert and Public Service Credit Union

believe that a claim remained after the entry of judgment and filed a joint motion to dismiss that remaining claim with prejudice [Docket No. 81]. In a January 6, 2011 minute order, the Court pointed out that, to the extent a claim survived the judgment, it was dismissed with prejudice as of the filing of the joint motion to that effect signed by all the remaining parties. See Fed. R. Civ. P. 41(a)(1)(A)(ii). The United States, Gilbert, and PCSU renewed their motion and contend that a court order is necessary to effectuate their settlement of the United States' claim for foreclosure of its tax lien. In essence, the parties request that defendants Gilbert and PCSU be relieved from the September 29, 2010 judgment to the extent it permitted the United States to foreclose in the alternative. See Fed. R. Civ. P. 60(b)(5). In light of the agreement reached between the United States, Gilbert, and PCSU, and the failure of D'Andrea to contest the relief requested, it is

ORDERED that the Renewed Motion to Dismiss United States' Remaining Claim for Foreclosure [Docket No. 83], which the Court construes as a motion pursuant to Fed. R. Civ. P. 60(b)(5), is GRANTED. It is further

ORDERED that Gilbert and PCSU are relieved from the September 29, 2010 judgment. The United States may not foreclose on the subject property.

DATED May 9, 2011.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge