

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 12-cv-02111-REB-KLM

MARGUERITE E. BAIN,

Plaintiff/Counterclaim Defendant,

v.

UNITED STATES DEPARTMENT OF THE TREASURY - INTERNAL REVENUE
SERVICE, and
ALL UNKNOWN PERSONS WHO CLAIM ANY INTEREST IN THE SUBJECT MATTER
OF THIS ACTION,

Defendants/Counterclaimants/Third-Party Plaintiffs,

v.

KEYBANK NATIONAL ASSOCIATION,

Third-Party Defendant.

**ORDER ADOPTING RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

The matter before me is the **Recommendation of United States Magistrate Judge** [#48],¹ filed April 26, 2013. No objection having been filed, I review the recommendation for plain error only. **See *Morales-Fernandez v. Immigration & Naturalization Service***, 418 F.3d 1116, 1122 (10th Cir. 2005). Finding no such error in the magistrate judge's recommended disposition, I find and conclude that the

¹ “[#48]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court's electronic case filing and management system (CM/ECF). I use this convention throughout this order.

recommendation should be approved and adopted.

As more thoroughly set forth in the recommendation, this case was removed to this court, and I have jurisdiction over this over this matter under 28 U.S.C. § 2410 (action affecting title to property in which the United States claims a lien). Plaintiff duly served the third-party defendant, Keybank National Association (“Keybank”), in accordance with Fed. R. Civ. P. 4(h)(1)(B). (**See Affidavit of Service** [#23], filed September 11, 2013.) Personal jurisdiction and venue are proper in this district.

Keybank failed to answer or otherwise respond within the time permitted by law. The clerk of the court entered default against Keybank under Fed. R. Civ. P. 55(a) on October 23, 2012 [#27]. Plaintiff is now entitled to default judgment against these defendants under Fed. R. Civ. P. 55(b).

In failing to answer, respond, or otherwise appear, Keybank has admitted the factual allegations of the complaint other than those relating to damages. **See FED. R. CIV. P. 8(d); see also *Burlington Northern Railroad Co. v. Huddleston***, 94 F.3d 1413, 1415 (10th Cir. 1996); 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, **Federal Practice and Procedure** § 2688 at 58-59 (3rd ed. 1998). The relevant portion of the United States’ third-party claim implicating Keybank asserts that Keybank’s lien was extinguished when plaintiff obtained a treasurer’s deed to the subject property from Larimer County. (**United States’ Amended Answer and Counterclaim** ¶ 47 at 16 [#7], filed September 5, 2012.) That proposition is supported by Colorado law. **See *Moorehead v. John Deere Industrial Equipment Co.***, 572 P.2d 1207, 1209 (Colo. 1977) (“It is an established principle of real property law in Colorado that a treasurer's

deed issued pursuant to a valid tax sale extinguishes all prior liens, encumbrances, and other charges against the real property and conveys a new and paramount title to the grantee.”).

The United States seeks only declaratory relief against Keybank, and therefore no evidence of damages is required. I thus find and conclude that the motion for default judgment should be granted.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#48], filed April 26, 2013, is **APPROVED AND ADOPTED** as an order of this court;

2. That the **United States’ Motion for Default Judgment Against Counterclaim Defendant** [*sic*] **Keybank National Association** [#30], filed November 19, 2012, is **GRANTED**; and

3. That default judgment **SHALL ENTER** on behalf of third-party plaintiff, the United States Department of the Treasury – Internal Revenue Service, against third-party defendant, Keybank National Association, as to the United States’ claims for declaratory relief against Keybank.

Dated May 20, 2013, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge