

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA SAVANNAH DIVISION

UNITED STATES OF AMERICA, Plaintiff,

v.

CASE NO. CV416-171

OTHNIEL T. SMITH, III; STEPHEN S. PUTNAL; GEORGIA DEPARTMENT OF REVENUE; COASTAL PHARMACY LABS, LLC, d/b/a Coastal Compounding Pharmacy, tenant in possession; and BLAIR H. GERMAN, d/b/a German Systems, tenant in possession;

Defendants.

GEORGIA DEPARTMENT OF REVENUE,

Cross-claimant,

v.

OTHNIEL T. SMITH, III,

Cross-defendant.

Handwritten signature and stamp: 2017 AUG -3 AM 10:22 U.S. District Court SAVANNAH, GA.

ORDER

Before the Court is the Government's Motion for Default and Summary Judgment. (Doc. 21.) In that motion, the Government requests the entry of default judgment against Defendants Othniel T. Smith, III; Coastal Pharmacy Labs, LLC; and Blair H. German. (Id. at 3-6.) In addition,

the Government seeks summary judgment against Defendants Stephen S. Putnal and the Georgia Department of Revenue ("GDOR"). (Id. at 8-11.)

This case involves federal and state income tax liabilities of Defendant Smith. (Doc. 21 at 2.) As of February 1, 2017, Defendant Smith owed approximately \$314,153.60 in unpaid federal income taxes. (Id.) The Government now seeks to reduce those liabilities to judgment and foreclose on a parcel of commercial property jointly owned by Defendants Smith and Putnal. (Id. at 2-3.) Defendants Coastal Pharmacy and German are currently leasing portions of the property, located at 6709 Forest Park Drive, Savannah, Georgia 31406. (Id. at 3.) Defendant GDOR possesses liens on the property for unpaid state taxes.

In its response, Defendant GDOR has no objection to the entry of judgment, so long as any judgment recognizes the priority of its tax lien. (Doc. 30 at 3.) According to Defendant GDOR, the Government agrees that Defendant GDOR's lien for tax year 2006 holds priority over the federal tax liens. (Id.) This also forms the basis for Defendant GDOR's cross-claim against Defendant Smith. (Doc. 6.)

Defendant Putnal filed a response in opposition to the Government's motion. (Doc. 27.) In his response, Defendant

Putnal only contests the manner in which the Government may foreclose on the property. (Id. at 2.) Fearing a forced liquidation sale at below market value, Defendant Putnal asks this Court to use its equitable powers to require the property to "be marketed and sold by a qualified commercial real estate broker with a market exposure time of 12 months." (Id.)

After careful consideration, the Government's motion is **GRANTED IN PART**. The Government's request for a default judgment against Defendants Smith, Coastal Pharmacy, and German is **GRANTED**. As a result, Defendant Smith is indebted to the United States for unpaid federal income tax liabilities for the tax years 2006, 2009, and 2010 in the total amount of \$314,153.60 as of February 1, 2017, plus accrued statutory interest from that date to the date of payment in full pursuant to 28 U.S.C. § 1961(c)(1) and 26 U.S.C. §§ 6601, 6621, and 6622. In addition, the Court concludes that federal tax liens arose against Defendant Smith based on unpaid federal income tax liabilities for the years 2006, 2009, and 2010, notice of which was duly filed in the Superior Court of Chatham County, Georgia, and attach to all property and rights to property of Defendant Smith, including his rights, title, and interest in the property located at 6709 Forest Park Drive, Savannah,

Georgia 31406. Finally, the Court recognizes the priority of Defendant GDOR's lien against Defendant Smith, as stipulated to by the Government and Defendant GDOR.

After conferring with the Government and Defendant Putnal, the Court will reserve ruling on the Government's request for summary judgment with respect to foreclosure and sale of the property. Therefore, the Clerk of Court is **DIRECTED** to administratively terminate the remainder of the Government's motion for a period of ninety days from the date of this order, subject to the Government's right to reopen its request for summary judgment. Should the Government fail to request the motion be reopened, the Clerk of Court is **DIRECTED** to dismiss the motion in its entirety after the expiration of ninety days from the date of this order. A final judgment will not be entered in this case until after the Court has determined the manner in which the tax liens will be foreclosed on the property.

SO ORDERED this 3<sup>rd</sup> day of August 2017.

  
WILLIAM T. MOORE, JR.  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA