

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. No. 3:08-CV-631-H

UNITED STATES OF AMERICA

PLAINTIFF

v.

MALCOLM C. WINSPER, et al.,

DEFENDANTS

MEMORANDUM AND ORDER

On July 15, 2014, this Court entered a Memorandum Opinion and Order which sustained the Government's motion for summary judgment, denied Defendants' motion for summary judgment and allowed the Government to move forward with foreclosure on the Winsper's residence in accordance with the *United States v. Rodgers*, 461 U.S. 677 (1983) and *United States v. Winsper*, 680 F.3d 482 (6th Cir. 2012). On August 12, 2014, Defendants moved this Court to alter or amend that Memorandum Opinion. They argued that the Court should reconsider and re-evaluate its analysis under the *Rodgers* factors and under the directives contained in the Sixth Circuit's decision remanding the case to this Court. In doing so, Defendants seem to be repeating many of their previous arguments recycled as objections to the Court's recent Memorandum Opinion.

In its Memorandum Opinion, the Court re-analyzed the four *Rodgers* factors individually and as a balancing test to determine whether foreclosure was appropriate in this case. The Court has reviewed its previous analysis and remains convinced that it accurately states the Court's analysis and supports the ultimate conclusion. Defendants argue that the Court should have considered the second *Rodgers* factor to be of greater consequence than the others. The Court does not believe that this is necessarily so in balancing all four factors. Nevertheless, the Court


did find two of the factors to clearly favor the Government and only the second factor to favor Defendants. This finding did not change from the Court's original Memorandum Opinion and Order and was not sufficient for the Sixth Circuit to agree that it would outweigh all of the factors.

The Court concludes that its July 15 Memorandum Opinion and Order accurately analyzes the *Rodgers* factors and complies with the remand from the Sixth Circuit Court of Appeals.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Defendants' motion to reconsider the Memorandum Opinion and Order dated July 15, 2014, is DENIED.

September 25, 2014


John G. Heyburn II
Senior Judge, U.S. District Court

cc: Counsel of Record