

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF)	
)	
v.)	CIVIL No. 2:14-cv-521-DBH
)	
JOHN H. KIMBALL, JR., AND)	
KIMBALL FAMILY REALTY TRUST,)	
)	
DEFENDANTS)	

REPORT OF PRE-FILING CONFERENCE UNDER LOCAL RULE 56(h)

A Local Rule 56 pre-filing conference was held on February 11, 2016.

The plaintiff's amended complaint involves two claims pursuant to 26 U.S.C. §§ 7402, and 7403.

The first claim seeks to reduce to judgment unpaid federal taxes, penalties and interest owed by the defendant John H. Kimball, Jr.

The second claim seeks to enforce federal tax liens against interests held by Mr. Kimball and the Kimball Family Realty Trust in Maine. Pursuant to 26 U.S.C. §§ 6321 and 6322, the plaintiff asserts that federal tax liens arose in its favor upon all property and rights to property in Maine belonging to the defendant Kimball beginning in 2010. The plaintiff asserts that the defendant Kimball holds an interest in property located in Greenwood, Maine, held in the name of the Kimball Family Realty Trust and that the United States is entitled to enforce its liens against this property.

At the pre-filing conference, three major issues were discussed. There do not appear to be any factual matters in dispute.

First, in response to concerns raised by the defendant, the plaintiff United States confirmed that it is not seeking in this lawsuit to alter or affirm any levy currently being made against the defendant John H. Kimball Jr.'s Social Security payments and that the only role of Social Security in this lawsuit is that any amounts the United States has collected by levying on the defendant Kimball's Social Security payments will be offset against any of the defendant Kimball's tax liability.

Second, the plaintiff United States will argue, based on the facts relating to the defendant Kimball's actions and the documentation, that the United States is entitled to enforce its tax liens against the defendant Kimball Family Realty Trust and its property in Maine. Although the question of trust rights and obligations is usually a matter of state (in this case Maine) law, the plaintiff United States has indicated it may argue that under Clearfield Trust Co. v. United States, 318 U.S. 363 (1943), and its progeny, federal common law determines the outcome. Although the parties disagree on the law, there do not appear to be any facts in dispute about the formation of the Trust and its subsequent history or about payments relating to it.

Third, the plaintiff United States seeks a declaration of the tax liability of the defendant John H. Kimball, Jr., but the only enforcement that it seeks in this lawsuit is against Maine property. Any enforcement of the tax liability against any other property would need to be brought in a separate lawsuit.

The Court endorses the following schedule proposed by the parties:

By March 28, 2016, the plaintiff United States shall file its motion for summary judgment with supporting materials in accordance with Local Rule 56.

By April 11, 2016, the defendants shall file their response in accordance with Local Rule 56.

By April 25, 2016, the plaintiff shall file any reply.

SO ORDERED.

DATED THIS 11TH DAY OF FEBRUARY, 2016

/s/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE