

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIV.NO. 2:08cv113KS-MTP

**ANGELA P. REID, JOHN A. REID,
MISSISSIPPI STATE TAX COMMISSION,
and FIRST SOUTHERN BANK,**

Defendants.

**ORDER AND RULING ON
MOTION FOR SUMMARY JUDGMENT OF THE UNITED STATES**

Pending before the Court is the Motion for Summary Judgment of the United States (Doc. 22) filed on April 15, 2009, by which the United States seeks judgment in its favor from this Court: (1) to reduce to judgment certain federal tax liabilities of Angela P. Reid and John A. Reid (referred to collectively hereinafter as the “**Reids**”); (2) to have its liens for these liabilities recognized as attaching to and being claims upon the personal residence of the Reids at 1621 Clearview Circle, Columbia, Mississippi (referred to hereinafter as the “**Subject Property**”); (3) to permit the United States to foreclose such liens upon the Subject Property; and (4) to permit, upon further order of this Court following confirmation of the sale of the Subject Property, the distribution of the proceeds of sale to the United States, First Southern Bank, the Mississippi State Tax Commission, and the Reids in the order of priority of the claims of these entities and persons to and upon the Subject Property.

No opposition or other response to the Motion for Summary Judgment having been filed by the Reids or the other defendants, the Court having reviewed the Motion (including Exhibits 1 through 6 thereto) and the Memorandum submitted in support thereof by the United States, and being fully advised in the premises of the full record of this case, the Court hereby finds the following undisputed facts and applies the applicable principles of law with regard to the relief the United States seeks by its Motion as follows¹:

The Federal Tax Liabilities of the Reids

The Income Tax Liabilities

1. Duly authorized delegates of the Secretary of the Treasury made timely assessments of the joint income tax liabilities of the Reids on the dates set forth below. Despite notices and demands for payment, the Reids have failed to pay these liabilities. Interest and statutory additions according to law have continued to accrue since the assessment dates and will continue to accrue on each liability from April 15, 2009, until each joint federal income tax liability is satisfied or becomes unenforceable by operation of law. The assessment dates and unpaid balances are as follows:

¹This Court has jurisdiction over the parties in this cause and its subject matter under 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a) and 7403.

FORM 1040 LIABILITIES

<u>TAX YEAR</u>	<u>DATE OF ASSESSMENT</u>	<u>TOTAL BALANCE OUTSTANDING</u> (as of April 15, 2009)
1995	1/5/1998	\$52,500.48
2001	6/3/2002	\$18,650.02
2002	6/30/2003	\$1,210.03
2003	9/4/2006	\$31,340.16
2004	9/4/2006	\$32,727.33
2005	9/4/2006	<u>\$52,541.39</u>
	Total	\$188,969.41

2. The United States originally included the joint income tax of liability of the Reids for tax year 1996 in its Complaint. However, since May 20, 2008, this liability has been fully satisfied by the Reids and no longer is in suit.

The Employment Tax (Form 941 and Form 940) Liabilities

3. Duly authorized delegates of the Secretary of the Treasury made timely assessments against John A. Reid for unpaid quarterly Form 941 tax liabilities and annual Form 940 tax liabilities that John A. Reid incurred in operating a sole proprietorship that did business as Reid Abatement Company. Despite notices and demands for payment, John A. Reid has failed to pay these liabilities. Interest and statutory additions according to law have continued to accrue on each liability since the assessment dates and will continue to accrue from April 15, 2009, until each Form 941 and Form 940 liability is satisfied or becomes unenforceable by operation of law. The assessment dates and unpaid balances are as follows:

FORM 941 LIABILITIES

<u>TAX PERIOD</u>	<u>DATE OF ASSESSMENT</u>	<u>TOTAL BALANCE OUTSTANDING</u> (as of April 15, 2009)
3/31/2003	6/26/2006	\$1,281.33
6/30/2003	6/26/2006	\$7,300.81
9/30/2003	6/26/2006	\$9,972.41
12/31/2003	6/26/2006	\$9,564.32
3/31/2004	6/26/2006	\$2,526.36
6/30/2004	6/26/2006	\$6,813.53
9/30/2004	6/26/2006	\$8,454.07
12/31/2004	6/26/2006	\$2,173.93
3/31/2005	7/17/2006	\$1,546.18
6/30/2005	10/23/2006	\$1,802.81
9/30/2005	7/3/2006	\$856.59
12/31/2005	7/3/2006	\$1,150.05
3/31/2006	7/3/2006	\$85.92
6/30/2006	11/20/2006	\$9,032.17
9/30/2006	12/11/2006	\$633.07
12/31/2006	5/7/2007	\$419.99
3/31/2007	6/25/2007	<u>\$469.37</u>
	Total	\$64,082.91

FORM 940 LIABILITIES

<u>TAX PERIOD</u>	<u>DATE OF ASSESSMENT</u>	<u>TOTAL BALANCE OUTSTANDING</u> (as of April 15, 2009)
2003	7/16/2007	\$133.75
2004	7/9/2007	\$216.10
2005	7/9/2007	<u>\$79.83</u>
	Total	\$429.68

The Federal Tax Liens for the Joint Income Tax and Employment Tax Liabilities

4. Under 26 U.S.C. 6321 and 6322, liens in favor of the United States for unpaid federal taxes for the unpaid balances of the federal tax liabilities of the Reids and

of John A. Reid (as set forth in paragraphs 1 and 3 above) arose upon the dates of assessment of each liability and attached to all property and rights

to property of the Reids (for the joint income tax liabilities) and of John A. Reid (for the employment tax liabilities), including but not limited to the residence of the Reids owned by the Reids in tenancy by the entirety since March 28, 1995, located at 1621 Clearview Circle, Columbia, Mississippi (referred to herein as the Subject Property) that is more particularly described as follows:

Lot No. 7 of Clearview Subdivision, an addition to the City of Columbia, Marion County, Mississippi, as per map or plat thereof on file in the office of the Chancery Clerk of Marion County, Mississippi; also

The following described portion of Lot No. 8 of said Clearview Subdivision as per map or plat thereof on file in the office of the Chancery Clerk of said county, to wit: Beginning at a point in the Westerly margin of said Lot No. 8; which is a distance of 15 feet North 0 degree 13 minutes West of the most Southerly corner of said Lot No. 8; thence run in a straight line, in a Northeasterly direction, along a course parallel with and 15 feet distant from the line between Lot No. 8 and Lot No. 7 to the public street identified as Clearview Circle; thence run in a Southerly direction along the Westerly margin of said Clearview Circle a distance of 15 feet to the most Easterly corner of said Lot No. 8; thence run in a Southwesterly direction along the line between Lot No. 8 and Lot No. 7 to the most Southerly corner of said Lot No. 8; thence run North 0 degrees 13 minutes West a distance of 15 feet back to the point of beginning.

TOGETHER WITH all improvements thereon situated and appurtenances thereunto belonging.

5. On the following dates, the Internal Revenue Service properly filed Notices of Federal Tax Lien with regard to its liens that arose upon the assessments of the joint federal income tax liabilities of the Reids with the Chancery Clerk of Marion County, Mississippi, as follows:

FORM 1040 LIABILITIES

<u>TAX YEAR</u>	<u>DATE OF ASSESSMENT</u>	<u>DATE OF LIEN FILING</u>
1995	1/5/1998	5/1/2001 (refiled 3/5/2008)
2001	6/3/2002	8/19/2005
2002	6/30/2003	5/4/2006
2003	9/4/2006	4/26/2007
2004	9/4/2006	4/26/2007
2005	9/4/2006	4/26/2007

6. On the following dates, the Internal Revenue Service properly filed Notices of Federal Tax Lien with regard to its liens that arose upon the assessments of the federal employment tax liabilities of John A. Reid with the Chancery Clerk of Marion County, Mississippi, as follows:

FORM 941 LIABILITIES

<u>TAX PERIOD</u>	<u>DATE OF ASSESSMENT</u>	<u>DATE OF LIEN FILING</u>
3/31/2003	6/26/2006	8/18/2006
6/30/2003	6/26/2006	8/18/2006
9/30/2003	6/26/2006	8/18/2006
12/31/2003	6/26/2006	8/18/2006
3/31/2004	6/26/2006	8/28/2006
6/30/2004	6/26/2006	8/28/2006
9/30/2004	6/26/2006	8/28/2006
12/31/2004	6/26/2006	8/28/2006
3/31/2005	7/17/2006	8/28/2006
6/30/2005	10/23/2006	4/26/2007
9/30/2005	7/3/2006	8/28/2006
12/31/2005	7/3/2006	10/02/2006
3/31/2006	7/3/2006	10/02/2006

6/30/2006	11/20/2006	4/26/2007
9/30/2006	12/11/2006	4/26/2007
12/31/2006	5/7/2007	11/13/2007
3/31/2007	6/25/2007	9/18/2007

FORM 940 LIABILITIES

<u>TAX PERIOD</u>	<u>DATE OF ASSESSMENT</u>	<u>DATE OF OF LIEN FILING</u>
2003	7/16/2007	10/05/2007
2004	7/9/2007	10/05/2007
2005	7/9/2007	10/05/2007

The Competing Lien Claimants

7. First Southern Bank is the owner and holder of a Note and Deed of Trust against the Subject Property, notice of which was properly recorded in Marion County, Mississippi, on December 15, 1997.

8. The Mississippi State Tax Commission has liens for unpaid joint Mississippi income tax liabilities of the Reids for tax years 1992, 1993, 1994, 1995, 1996, and 1997.

9. All the liens of the Mississippi State Tax Commission and the United States to and upon the Subject Property are subordinate to and inferior in rank to the lien

of First Southern Bank to and upon the Subject Property.² The liens of the United States vis-a-vis the liens of the Mississippi State Tax Commission to and upon the Subject Property rank as follows³:

- a. First, the IRS lien for the joint federal income tax liability of the Reids for tax year 1995 assessed on January 5, 1998, with an outstanding balance of \$52,500.48 as of April 15, 2009;
- b. Second, for the joint Mississippi income tax liabilities of the Reids for tax years 1993, 1994, 1995, and 1997, the following MSTC liens: Lien Nos. 0303760-I, 0303761-I, 0303762-I, and 0303764-I enrolled on February 3, 2000, and reenrolled on June 21, 2006, on the Marion County, Mississippi, Circuit Court Judgment Roll with outstanding balances of \$2,466.73, \$5,597.23, \$11,296.20, and \$893.20 respectively as of April 15, 2009;

²All parties in this action, including the Reids, have agreed to this ranking of the claim of First Southern Bank as is evidenced by the Agreement, Stipulation and Order As to Priority of First Southern Bank (Doc. 25).

³Interest, penalties, and statutory additions according to law under federal and Mississippi law will continue to accrue on and after April 15, 2009, on each tax liability the lien for which is identified in this ranking until such time as each such liability (or a judgment arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time, and such accruals shall be given the same priority as the underlying liens.

- c.. Third, the following IRS liens (in order of date of assessment of each federal tax liability with balances outstanding as of April 15, 2009):

FORM 1040 LIABILITIES

<u>TAX YEAR</u>	<u>DATE OF ASSESSMENT</u>	<u>TOTAL BALANCE OUTSTANDING</u>
2001	6/3/2002	\$18,650.02
2002	6/30/2003	\$1,210.03

- d. Fourth, for the Mississippi joint income tax liability of the Reids for tax year 1996, MSTC Lien No. 0303763-I enrolled on June 21, 2006, on the Marion County, Mississippi, Circuit Court Judgment Roll with an outstanding balance of \$5,511.48 as of April 15, 2009.

- e. Fifth, the following IRS liens (in order of date of assessment of each federal tax liability with balances outstanding as of April 15, 2009):

FORM 1040 LIABILITIES

<u>TAX YEAR</u>	<u>DATE OF ASSESSMENT</u>	<u>TOTAL BALANCE OUTSTANDING</u>
2003	9/4/2006	\$31,340.16
2004	9/4/2006	\$32,727.33
2005	9/4/2006	\$52,541.39

FORM 941 LIABILITIES

<u>TAX PERIOD</u>	<u>DATE OF ASSESSMENT</u>	<u>TOTAL BALANCE OUTSTANDING</u>
3/31/2003	6/26/2006	\$1,281.33
6/30/2003	6/26/2006	\$7,300.81
9/30/2003	6/26/2006	\$9,972.41
12/31/2003	6/26/2006	\$9,564.32
3/31/2004	6/26/2006	\$2,526.36
6/30/2004	6/26/2006	\$6,813.53
9/30/2004	6/26/2006	\$8,454.07
12/31/2004	6/26/2006	\$2,173.93
3/31/2005	7/17/2006	\$1,546.18
6/30/2005	10/23/2006	\$1,802.81
9/30/2005	7/3/2006	\$856.59
12/31/2005	7/3/2006	\$1,150.05
3/31/2006	7/3/2006	\$85.92
6/30/2006	11/20/2006	\$9,032.17
9/30/2006	12/11/2006	\$633.07
12/31/2006	5/7/2007	\$419.99
3/31/2007	6/25/2007	\$469.37

FORM 940 LIABILITIES

<u>TAX PERIOD</u>	<u>DATE OF ASSESSMENT</u>	<u>TOTAL BALANCE OUTSTANDING</u>
2003	7/16/2007	\$133.75
2004	7/9/2007	\$216.10
2005	7/9/2007	\$79.83

Conclusions Regarding Relief Sought By the United States

10. The United States is entitled to entry of a final judgment against John A. Reid and Angela P. Reid, jointly and severally, for \$188,969.41 (as set forth in paragraph 1 above) for the unpaid balances of their joint federal income tax liabilities for tax years 1995, 2001, 2002, 2003, 2004, and 2005 through April 15, 2009, minus any payments or

credits that have been applied to these liabilities since April 15, 2009, plus interest thereon thereafter according to law under 26 U.S.C. §§ 6601, 6621, and 6622.

11. The United States is entitled to judgment against John A. Reid for \$64,082.91 and \$429.68 (as set forth in paragraph 3 above) for the unpaid balances of Form 941 (federal employment tax) liabilities and Form 940 (federal unemployment insurance tax) liabilities respectively through April 15, 2009, that John A. Reid incurred in operating Reid Abatement Company as a sole proprietorship, minus any payments or credits that have been applied to these liabilities since April 15, 2009, plus interest thereon thereafter according to law under 26 U.S.C. §§ 6601, 6621, and 6622.

12. The United States of America is further entitled as a matter of law to entry of a final judgment authorizing foreclosure of its liens recognized in paragraph 3 against the Subject Property. As set forth in paragraphs 7, 8, and 9 above, the liens of the United States of America, First Southern Bank, and the Mississippi State Tax Commission are prior, paramount and superior to all rights, claims, liens, trusts, encumbrances and equities of the Reids and all persons, firms or corporations claiming by, through, or under the Reids in or to the Subject Property, and the Subject Property shall be sold free and clear of any claims of such parties or any other third party claiming through the Reids.

13. The Court retains jurisdiction over this cause for purpose of entering all further orders as may be appropriate, including without limitation, deficiency judgments, and orders regarding the sale of the Subject Property, the disbursement of funds held in

the registry of this Court following the sale of the Subject Property according to the priorities of the claims of First Southern Bank, the United States of America, and the Mississippi State Tax Commission set forth in paragraphs 7, 8, and 9 above.

The Motion for Summary Judgment of the United States is hereby GRANTED. A separate Judgment consistent with the factual findings and legal conclusions of the Court set forth in this Order and Ruling will be entered and will provide the following:

- A. Judgment in favor of the United States against Angela P. Reid and John A. Reid for the unpaid balances of their joint federal income tax liabilities for tax years 1995, 2001, 2002, 2003, 2004, and 2005 in the amount of \$188,969.41 through April 15, 2009, minus any payments or credits that have been applied to these liabilities since April 15, 2009, plus interest thereon thereafter according to law under 26 U.S.C. §§ 6601, 6621, and 6622;
- B. Judgment in favor of the United States against John A. Reid for the unpaid balances of the Form 941 (federal employment tax) liabilities and Form 940 (federal unemployment insurance tax) liabilities he incurred in operating a sole proprietorship doing business as Reid Abatement Company in the amounts of \$64,082.91 and \$429.68, respectively, through April 15, 2009, minus any payments or credits that have been applied to these liabilities since April 15, 2009, plus interest thereon thereafter according to law under 26 U.S.C. §§ 6601, 6621, and 6622;

- C. Dismissal with prejudice of the claim of the United States to reduce to judgment the joint federal income tax liability of the Reids for tax year 1996, such claim having been satisfied during the pendency of this cause; and
- D. Authorization for the foreclosure of the federal tax liens of the United States for the federal tax liabilities for which judgment is granted under Section A. and Section B. above to and upon the Subject Property at 1621 Clearview Circle, Columbia, Mississippi, and the sale of such property.

It is also ORDERED that the United States submit a further proposed Decree of Foreclosure and Order of Sale for the Court's consideration in establishing the procedures that will govern the foreclosure sale authorized under Section C. above.

Hattiesburg, Mississippi, this 20th day of July 20, 2009.

s/Keith Starrett
UNITED STATES DISTRICT JUDGE