

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 3:18-cv-00063-MMD-WGC

Plaintiff,

ORDER

v.

SPENCER J. STEELE; JAY SORDEAN
as the successor trustee of THE DESERT
LAKE TRUST CREATED ON OCTOBER
1, 2005; and STEWART TITLE
COMPANY as the successor in interest to
STEWART TITLE OF DOUGLAS
COUNTY,

Defendants.

I. SUMMARY

Plaintiff United States of America ("Government") brought this action seeking federal tax assessment judgment against Defendant Spencer J. Steele ("Steele") and to foreclose federal tax liens against real property located at 1883 Genoa St., Gardnerville, NV 89410, Assessors Parcel No. 1022-29-201-012 ("Property"). The Court entered judgment in favor of the Government on June 7, 2019 ("Judgment"). (ECF Nos. 60, 61.) Before the Court is the Government's motion for entry of order of sale with an accompanying proposed order of sale. (ECF Nos. 67, 67-1.) Steele filed a response, which the Court deems a motion to stay the sale pending Steele's appeal of the Judgment. (ECF No. 69.)¹ The Government has not replied. The Court will deny Steele's motion to stay and grant the Government's motion for entry of order of sale. However, the Court defers

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¹The Court acknowledges Steele's statement that: "Defendant does not have hundreds of thousands of dollars to put up as a bond, so Defendant has been unable to file a stay pending appeal." (ECF No. 69 at 2.) Nonetheless, Steele effectively seeks a stay by asking the Court to "deny [the Government's] Motion until the appeal process is completed." (*Id.* at 3.)

1 signing the proposed order until the Court is assured that the order reflects the correct
2 property address.²

3 **II. MOTION TO STAY (ECF NO. 69)**

4 A district court has discretionary power to stay proceedings in its own court. *Landis*
5 *v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936); *see also Lockyer v. Mirant Corp.*, 398 F.3d
6 1098, 1109 (9th Cir. 2005). In the context of a stay pending appeal, the Court considers
7 “four factors: ‘(1) whether the stay applicant has made a strong showing that he is likely to
8 succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay;
9 (3) whether issuance of the stay will substantially injure the other parties interested in the
10 proceeding; and (4) where the public interest lies.’” *Nken v. Holder*, 556 U.S. 418, 434
11 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). “The first two factors of the
12 traditional standard are the most critical.” *Id.*

13 The Ninth Circuit employs a sliding scale in applying these factors whereby “the
14 elements of the . . . test are balanced, so that a stronger showing of one element may
15 offset a weaker showing of another.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
16 1127, 1131 (9th Cir. 2011); *see also Leiva-Perez v. Holder*, 640 F.3d 962, 964–66 (9th
17 Cir. 2011) (noting that the sliding scale of preliminary injunctions is “essentially the same”
18 as the test used in the stay context and holding the approach remains applicable following
19 *Nken*). Under this sliding scale approach, “the required degree of irreparable harm
20 increases as the probability of success decreases.” *Nat. Res. Def. Council, Inc. v. Winter*,
21 502 F.3d 859, 862 (9th Cir. 2007).

22 Here, in the motion to stay Steele makes no contention concerning likelihood of
23 success on the merits, aside from supposing that the Ninth Circuit Court of Appeals could
24 rule differently than this Court. (See *generally* ECF No. 69.) Nor does Steele address the
25 public interest prong, although he contends that delaying the sale “would be in the best

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27 ²*Compare* (ECF No. 67-1 at 1 (identifying the Property as “located at 1883 Genoa
28 Ln., Gardnerville, NV 89410, Assessor’s Parcel No. 1022-29-201-012”)) *with* ECF No. 60
at 1 n.1 (citing ECF No. 28-12 (indicating the address is a “St.” and not “Ln”); *see also*
ECF No. 28-12 at 64).)

1 interests of all parties.” (See *id.* at 3.) Steele only makes argument regarding harm/injury
2 as to himself, the government, certificate holders of the Desert Lake Trust (“DLT”), and
3 purchaser(s) of the Property. (*Id.*) Steele’s arguments regarding potential harm absent a
4 stay of the sale are therefore insufficient to meet the applicable standard to warrant a stay
5 of the sale.

6 **III. MOTION FOR ENTRY OF SALE (ECF NO. 67)**

7 The Court grants the motion for entry of sale (ECF No. 67) in light of its Judgment
8 in favor of the Government which is grounded on the Court’s determination that the
9 Government is entitled to collect on Steele’s tax liabilities by enforcing its tax liens against
10 the Property. (ECF No. 60 at 20.)

11 The Government’s motion specifically seeks to have this Court order sale of the
12 Property under 26 U.S.C. §§ 7402 and 7403(a). Section 7402 provides that a court may
13 issue “writs and orders of injunction, and of *ne exeat republica*, orders appointing
14 receivers, and such other orders and processes, and to render such judgments and
15 decrees as may be necessary or appropriate for the enforcement of the internal revenue
16 laws.” 26 U.S.C § 7402(a). Section 7403 “affords district courts limited equitable discretion
17 in determining whether to order the sale of property to satisfy delinquent tax liabilities.”
18 *United States v. Gibson*, 817 F.2d 1406, 1407 (9th Cir. 1987) (citing *United States v.*
19 *Rodgers*, 461 U.S. 677, 680 (1983)). In exercising such limited discretion, the Court
20 considers “both the government’s interest in prompt and certain collection of delinquent
21 taxes and the possibility that innocent third parties will be unduly harmed by that effort.”
22 *Id.*

23 [Discretion is almost always limited to the consideration of four factors when
24 the independent interests of third parties are involved . . . The four factors
25 which a court may consider are: (1) the extent to which the government’s
26 taxpayer’s partial interest, (2) whether the third party with a nonliable
27 separate interest in the property has a legally recognized expectation that
28 his or her separate property will not be subject to a forced sale by the
taxpayer’s creditors, (3) the likely prejudice to the third party, both in personal
dislocation costs and practical undercompensation, and (4) the relative
character and value of the interests held in the property.

1 *Id.* at 1407–08.

2 As indicated, Steele relevantly only argues that undue harm will result to innocent
3 third parties —those noted above—from a sale of the Property before decision on Steele’s
4 appeal. (ECF No. 69 at 3.) The Court disagrees.

5 As an initial matter, the Government assumes any likely harm to itself from moving
6 forward with the sale, by its very election to do so. Moreover, the Government is not a third
7 party. Steele next argues that he is an innocent “third party” that would be harmed in his
8 capacity as the leaseholder on the Property because the leasehold would be terminated
9 if the Property was sold. (*Id.*) Like the Government, Steele is not a third party. Further,
10 while the Court acknowledges that Steele will likely be harmed, by for example being
11 displaced from the Property, intrinsic to the Court’s Judgment was the conclusion that
12 Steele is not innocent in the considerations of this matter. In addition, certificate holders
13 of the DLT, which the Court has concluded is a sham trust (ECF No. 60 at 17–19), would
14 presumably be compensated should the appellate court find to the contrary and the
15 Property was already sold to a third party. Finally, a potential buyer has no current interest
16 in the Property of which the Court may be concerned in deciding whether to grant the
17 Government’s motion. To the extent that potential buyers could be harmed by purchasing
18 the Property pending Steele’s appeal, the Court notes that that is not a risk unique to this
19 case, suggesting that the harm is not unduly burdensome by the virtue of the sale itself.
20 Supposing the Government places a potential buyer on notice of the pending appeal, the
21 purchaser may then be regarded to assume the risk that this Court may be reversed on
22 appeal.

23 Upon considering the relevant factors, the Court exercises its discretion in equity
24 and orders the sale of the Property to satisfy Steele’s delinquent tax liabilities. *See, e.g.,*
25 *Rodgers*, 461 U.S. at 709 (“[W]e can think of virtually no circumstances . . . in which it
26 would be permissible to refuse to authorize a sale simply to protect the interests of the
27 delinquent taxpayer himself or herself.”); *Bull v. United States*, 295 U.S. 247, 259 (1935)

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1 ("Taxes are the lifeblood of government, and their prompt and certain availability an
2 imperious need.").

3 It is therefore ordered that Steele's response, which the Court deems a motion to
4 stay (ECF No. 69), is denied.

5 It is further ordered that the Government's motion for entry of order of sale (ECF
6 No. 67) is granted. The Court will defer signing the Government's proposed order of sale
7 (ECF No. 67-1) for the reason noted herein.

8 DATED THIS 17th day of September 2019.

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MIRANDA M. DU
12 CHIEF UNITED STATES DISTRICT JUDGE
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