

FILED
CLERK

10:40 am, Feb 19, 2019

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JP MORGAN CHASE, N.A., ET AL.,

Defendant.

No. 2:09-CV-3133-ADS-ARL

Judge Arthur D. Spatt

Magistrate Judge Arlene R. Lindsay

MOTION TO VACATE ORDER APPROVING SALE

The United States of America hereby moves the Court to vacate its February 3, 2012 order approving the sale of real property located at 2907 Falcon Avenue, Medford, New York, **Doc. No. 29**. In support of this motion, the United States states as follows:

1. The United States filed a complaint in this action on July 22, 2009. *See* **Doc. No.**

1. The United States sought to enforce federal tax and judgment liens on a property located at 2907 Falcon Avenue, Medford, New York, and to have that property sold in order to collect the unpaid federal tax liabilities for tax year 1996 of Lorraine Angrella, the former property owner, who died intestate on March 26, 2000. *Id.*

2. The United States named as defendants Richard Dravland, the heir of Lorraine Angrella, who then possessed record title interest in the property, and, pursuant to **26 U.S.C. § 7403(b)**, the individuals and corporations that may have had liens upon or claim any interest in the real property. *See* **Doc. No. 24 at 1**.

3. Although they were properly served with a summons and copy of the complaint, *see* Doc. Nos. 2-8 & 11, none of the defendants appeared in this action. **Doc. No. 24 at 2**. Accordingly, the Clerk of Court entered **Fed. R. Civ. P. 55(a)** default against defendants JP

Morgan Chase Bank, N.A., American Express Travel Related Services, Concord Financial Services, Inc., Richard Dravland, Marco D'Alessandro, and Pier D'Alessandro. *See* Doc. Nos. 14, 18, & 21.

4. On July 6, 2010, Magistrate Judge Arlene R. Lindsay issued a Report and Recommendation recommending that: (1) the Court find that the United States has a valid federal tax lien upon Angrella's property including the real property at 2907 Falcon Avenue; (2) the Court find that the Plaintiff is entitled to seek the sale of the real property to recover the owed federal tax liability; (3) that judgment be entered in favor of the Plaintiff in the amount of \$25,048.76 plus accrued interest since July 20, 2009; and (4) that the case be closed. *See* Doc. No. 22.

5. The Court then adopted the Report and Recommendation in its entirety; entered default judgment against JP Morgan Chase Bank, N.A., American Express Travel Related Services, Concord Financial Services, Inc., Richard Dravland, Marco D'Alessandro, and Pier D'Alessandro pursuant to **Fed. R. Civ. P. 55(b)(2)**; and dismissed the case pursuant to **Fed. R. Civ. P. 41(b)** against the New York Defendants and the Angrella Estate Defendant. *See* Doc. No. 24 at 4-5 & **Doc. No. 25**. Accordingly, the Court entered judgment in favor of the United States in the amount of \$25,048.76 plus accrued interest since July 20, 2009, and ordered the case to be administratively closed. **Doc. No. 24 at 5**; **Doc. No. 25**. The amount due to the United States as of December 31, 2018 is \$37,911.63.

6. The Court subsequently granted the United States' motion for the appointment of a receiver to assist in the enforcement of the federal tax liens and judgment against the property located at 2907 Falcon Avenue, and appointed Tami Shine-Wright to act as Receiver. *See* Doc. No. 27.

7. After the Receiver took possession of the property, marketed it, and received written offers, the United States sought an order approving the sale of 2907 Falcon Avenue to a private individual for \$110,100.00, the highest and best offer submitted. *See* **Doc. No. 28**.

8. On February 3, 2012, the Court entered its Order Approving Sale, directing that the sale occur within 45 days and instructing that the proceeds of sale would be distributed pursuant to a future order. **Doc. No. 29**.

9. Despite diligent efforts over the course of a number of years, the Receiver was unable to assure clear title of 2907 Falcon Avenue in order to convey title under a quitclaim or receiver's deed, as required by the Court's order. *See* **Doc. No. 27 at ¶ 2**. Successive Department of Justice trial attorneys and paralegals attempted to work directly with the title company to facilitate a closing, but that title company became unreceptive to repeated emails and telephone calls, and the sale of 2907 Falcon Avenue fell through before the Bank of New York Mellon Trust Company, N.A., filed a satisfaction of mortgage on December 31, 2015.

10. Due to turnover of personnel at the Department of Justice and the passage of time, the sale of 2907 Falcon Avenue was not further pursued until an Advisor at the Internal Revenue Service contacted the Tax Division to inquire about the status of collection of the original tax debts of Lorraine Angrella in late October, 2018.

11. The undersigned Trial Attorney then contacted the Receiver, who agreed to continue serving pursuant to the Court's November 18, 2011 order. *See* **Doc. No. 27**.

12. Since early December, 2018, the Receiver has worked to obtain the services of a new title company and real estate attorney, assure clear title, and she intends to market the property for sale. The real estate attorney stated on February 5, 2019 that she finally had

completed the necessary steps to close the file and give clear title to a purchaser by way of quitclaim deed.

13. Due to the passage of time and complications in closing the sale contemplated by the Court's February 3, 2012 order, **Doc. No. 29**, is now moot.

14. Accordingly, the United States requests that the Court vacate its Order Approving Sale. Once the Receiver receives a written offer for the purchase of the property located at 2907 Falcon Avenue in an amount approved by the United States, the United States will again seek sale approval through further order of the Court. *See* **Doc. No. 27**. Subsequently, the United States will submit a motion for an order distributing the proceeds of the sale following the closing.

WHEREFORE, the United States requests that this Court vacate its February 3, 2012 Order Approving Sale.

Respectfully Submitted,

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/s/ Jordan A. Konig
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The Court hereby vacates its February 3, 2012 Order. SO ORDERED.

/s/ Arthur D. Spatt
Arthur D. Spatt, U.S.D.J.

February 19, 2019
Date