

CAROLINE D. CIRAULO
Acting Assistant Attorney General

Yael BORTNICK
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Washington, D.C. 20044
202-514-6632 (v)
202-307-0054 (f)
Yael.Bortnick@usdoj.gov

Of Counsel:
S. AMANDA MARSHALL
United States Attorney

Attorneys for the United States of America

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 1:15-cv-197

**STIPULATION OF PRIORITY AND
TO DISMISSAL**

STEVEN D. KELTON; GLENDA L.
KELTON; STEVEN D. KELTON AS
TRUSTEE OF PACIFIC REGION 4 FAMILY
TRUST; JACKSON COUNTY, OREGON;
OREGON DEPARTMENT OF REVENUE; and
AMERICANWEST BANK,

Defendants.

IT IS HEREBY STIPULATED AND AGREED by the United States of America "United States" and AmericanWest Bank that:

Stipulation of Priority and to Dismissal
(Case No. 1:15-cv-197)

1. The United States filed this action to foreclose federal tax liens on the real property commonly known as 4645 Rising Glen Drive, Central Point, Oregon 97502 (the “Subject Property”) as identified in the United States’ Complaint. *See* Dkt. # 1 at ¶ 11.
2. The United States filed notices of federal tax lien in Jackson County pursuant to 26 U.S.C. § 6323(a) to make its tax liens against any and all real property owned by Steven D. Kelton and Glenda L. Kelton, including the Subject Property, effective against persons entitled to such notice. *See* Dkt. # 1 at ¶¶ 39-45.
3. AmericanWest Bank was named as a defendant solely to fulfill the requirements of 26 U.S.C. § 7403(c) that “[a]ll persons having liens upon or claiming any interest in the property involved in such action [to enforce a tax lien] shall be made parties thereto.” *See* Dkt. # 1 at ¶ 10.
4. On or about December 7, 1999, a deed of trust, document number 99-60104, was recorded in Jackson County, Oregon encumbering the Subject Property. The loan secured by the deed of trust was obtained by defendants Steven D. Kelton and Glenda L. Kelton from Bank of Southern Oregon in the principal amount of \$93,000.00. Defendant AmericanWest Bank currently holds the beneficial interest under the loan secured by the aforementioned deed of trust. On or about September 11, 2000, a deed of trust, document number 00-37095, was recorded in Jackson County, Oregon encumbering the Subject Property. The loan secured by the deed of trust was obtained by defendants Steven D. Kelton and Glenda L. Kelton from PremierWest Bank in the principal amount of \$25,000.00. Defendant AmericanWest Bank currently holds the beneficial interest under the loan secured by the aforementioned deed of trust.
5. Pursuant to 26 U.S.C. § 6323, The United States recognizes the superior interests of AmericanWest Bank secured by the deeds of trust listed in ¶ 4. The United States will include in any proposed order of sale a provision that the net proceeds of sale for each parcel, defined as the

proceeds resulting from the sale of the property less distribution to the United States for the costs of sale and payment of outstanding Jackson County taxes, will be applied to satisfy in full the amounts due and owing to AmericanWest Bank prior to application of the funds to fully or partially satisfy the United States' interest secured by federal tax liens. The United States will provide a draft of any proposed order of sale to AmericanWest Bank for comment prior to filing such proposed order with the Court. The United States shall not propose any sale unless the proceeds therefrom are adequate to satisfy AmericanWest Bank's interests in full.

6. AmericanWest Bank does not oppose the United States' request for an Order of the Court foreclosing the federal tax liens upon the Subject Property identified in the United States' Complaint.

7. If the United States does not prevail in this action, or if this action is resolved prior to the foreclosure and sale of the Subject Property, this Stipulation shall not affect AmericanWest Bank's claims, or release any claim or interest in may have in the Subject Property. Nothing herein shall in any manner preclude or impair AmericanWest Bank's ability to initiate appropriate suit, action, or proceeding to enforce their security interests in the real property. AmericanWest Bank will provide counsel for the United States notice of any such suit, action, or proceeding it initiates. Nothing herein shall in any manner preclude or impair the United States' right to object to any such separate suit, action, or proceeding brought by AmericanWest Bank to enforce their security interests in the real property. The United States maintains that this action is the appropriate action for seeking relief with respect to the real property described in paragraph 11 of the Complaint. Dkt. # 1.

8. In light of the foregoing, and the fact that there is no further reason for AmericanWest Bank to participate in this litigation with respect to the United States' claims in the Complaint,

American West Bank should be dismissed from this proceeding inasmuch as it is a named defendant in the United States' Complaint without prejudice.

Dated: April 15, 2015

CAROLINE D. CIRAULO
Acting Assistant Attorney General

/s/ Yael Bortnick

Yael BORTNICK
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Washington, D.C. 20044
202-514-6632 (v)
Yael.Bortnick@usdoj.gov

Of Counsel:
S. AMANDA MARSHALL
United States Attorney


Attorneys for the United States

Dated:

JOSEPH E. KELLERMAN
Hornecker Cowling LLP
717 Murphy Rd.
Medford, OR 97504
541-779-8900 (v)
jek@roguelaw.com

IT IS SO ORDERED.

Dated this 15 day of April, 2015.



HON. OWEN M. PANNER
United States District Judge.