

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

Plaintiff,

VS.

BERNARD DOLENZ, ET AL.

Defendants.

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NO. 3-09-CV-1311-O

MEMORANDUM ORDER

Plaintiff United States of America has filed a motion to strike a jury demand made by Defendant Anis Rahman as part of his answer in this case. As grounds for its motion, plaintiff contends that Rahman is not entitled to a jury trial in a civil action brought by the government to clear title to and foreclose a lien on real property. The parties have briefed their respective positions in a joint status report filed on September 28, 2009, and the motion is ripe for determination.

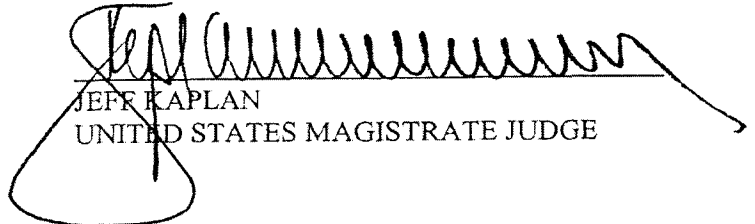
It is well settled that "there is a right to jury trial only for claims and issues of a legal nature, and not for those of an equitable nature." *Austin v. Shalala*, 994 F.2d 1170, 1175 (5th Cir. 1993), *citing* 9 C. Wright & A. Miller, *Federal Practice and Procedure* § 2314 at 70-71 (1971). "The posture of the parties and the issues raised by the case are [] important considerations in resolving this issue." *Id.* The instant case is a civil action brought by the government to clear title to and foreclose a lien on certain real property owned by Bernard Dolenz, who was ordered to pay more than \$1.6 million in criminal restitution under the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3663A-3664. The property at issue is a house located at 6102 Swiss Avenue in Dallas, Texas ("the Swiss Avenue House"). To clear title, plaintiff seeks to set aside several trusts and transfers, as well as strip a number of liens against the property. Rahman claims to hold a \$324,830.00 lien against

the Swiss Avenue House. In light of the issues presented and the posture of the parties, the court has little difficulty in characterizing this action as equitable, rather than legal, in nature. There is no right to a jury trial under these circumstances. *See, e.g. United States v. McMahan*, 569 F.2d 889, 891 (5th Cir. 1978) (no right to jury trial in suit to set aside fraudulent transfer and foreclose tax lien); *United States v. Stewart*, No. A-02-CA-673-H, 2003 WL 932362 at *1-2 (W.D. Tex. Jan. 31, 2003) (same); *Tapp v. United States*, No. A-00-CA-668-SS, 2001 WL 587217 at *2-3 (W.D. Tex. Apr. 27, 2001) (same).

For these reasons, plaintiff's motion to strike jury demand [Doc. #47] is granted. The demand for a jury trial made by Defendant Anis Rahman is hereby stricken from the record.

SO ORDERED.

DATED: September 30, 2009.


JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE