

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 20, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUAN RAYA-GUTIERREZ, also
known as Juan R. Gutierrez, also
known as Juan G. Raya; MARIA
ELENA RAYA AGUIRRE, also
known as Maria Elena Raya, also
known as Maria Aguirre, also known
as Maria Raya; STATE OF
WASHINGTON DEPARTMENT OF
SOCIAL AND HEALTH SERVICES;
CAPITAL ONE BANK (USA) NA;
CAVALRY SPV I, LLC;
ARMANDO RAYA; JUAN RAYA,
JR.; ELIZABETH RAYA; and JUAN
GEORGE RAYA,

Defendants.

NO: 1:16-CV-3198-RMP

ORDER OF SALE

****U.S. Marshal Action Required****

On November 21, 2018, following an order granting default judgment, this Court entered its judgment in favor of the United States against Defendants Juan Raya-Gutierrez and Maria Elena Raya-Aguirre. See ECF Nos. 27 and 28. On February 5, 2019, the United States moved for an Order of Foreclosure Sale and to

1 Vacate, ECF No. 29. Defendants did not respond to the motion by the response
2 deadline provided in Local Civil Rule 7(c) and have not participated in the above-
3 captioned matter.

4 Accordingly, **IT IS HEREBY ORDERED** that the United States’ Motion
5 for an Order of Foreclosure Sale and to Vacate, **ECF No. 29**, is **GRANTED**. The
6 United States Marshal for the Eastern District of Washington, or his representative
7 (collectively, “U.S. Marshal”), is directed, in accordance with the judgment
8 rendered in the above-entitled cause, to sell the property situated in Benton County,
9 Washington, more particularly described as follows:

10 Sec 31, T9, R24, Lots 2 and 3, Short Plat No. 2661, as recorded under
11 Auditor’s File No. 2002-031467, Records of Benton County,
Washington.

12 Situated in Benton County, State of Washington

13 Assessor’s Parcel Numbers: 131944012661002 & 131944012661003

14 (hereinafter collectively referred to as the “Property”).

15 You are commanded to provide notice of this Order to Defendants, and any
16 other resident of the Property by hand delivery or by leaving it in a prominent
17 location on the Property.

18 You are further commanded to make return hereon, with your doings
19 thereon indicated, within sixty (60) days after this date.

20 / / /

21 / / /

1 **(1) The terms of the Sale shall be as follows:**

- 2 a. The U.S. Marshal will be authorized and directed under 28 U.S.C. §§
3 2001 and 2002 to offer for public sale and to sell the Property.
- 4 b. The U.S. Marshal or his representative is authorized to have free
5 access to the Property and to take all actions necessary to preserve
6 the Property, including, but not limited to, retaining a locksmith or
7 other person to change or install locks or other security devices on
8 any part of the property, until the deed to the Property is delivered to
9 the ultimate purchaser.
- 10 c. The sale of the Property shall be free and clear of any right, title, or
11 interest in and to said property by Defendants Juan Raya-Gutierrez
12 and Maria Elena Raya-Aguirre, except to the extent that such
13 Defendants have rights of redemption under Revised Code of
14 Washington (“RCW”) chapter 6.23 or excess funds under RCW
15 chapter 6.21; however, Defendants Juan Raya-Gutierrez and Maria
16 Elena Raya-Aguirre have waived their right to redemption. ECF No.
17 19-1 at 3.
- 18 d. The sale shall be subject to building lines, if established, all laws,
19 ordinances, and governmental regulations (including building and
20 zoning ordinances) affecting the Property, and easements and
21 restrictions of record, if any.

- 1 e. The sale shall be held at the courthouse of the county in which the
2 Property is located, on the Property's premises, or at any other place
3 in accordance with the provisions of 28 U.S.C. §§ 2001 and 2002, and
4 shall be announced in the Notice of Sale.
- 5 f. The date and time for sale are to be announced by the U.S. Marshal in
6 the Notice of Sale.
- 7 g. The Notice of Sale shall be published once a week for at least four
8 consecutive weeks before the sale in at least one newspaper regularly
9 issued and of general circulation in Benton County, and, at the
10 discretion of the U.S. Marshal, by any other notice deemed
11 appropriate. The notice shall contain: a description of the Property;
12 the time, date, and location of the sale as determined by the U.S.
13 Marshal; the minimum bid as determined by the United States; and
14 the terms and conditions of sale listed in paragraphs i – o below.
- 15 h. The minimum bid will be set by the United States for the Property by
16 its credit bid at auction;
- 17 i. The successful bidder for the Property shall be required to deposit at
18 the time of the same with the U.S. Marshala minimum of ten percent
19 of the bid, with the deposit to be made by certified or cashier's check
20 or cash payable to the United States District Court for the Eastern
21 District of Washington. Before being permitted to bid at the sale,

1 bidders shall display to the U.S. Marshal proof that they are able to
2 comply with this requirement. No bids will be received from any
3 person(s) who have not presented proof that, if they are the successful
4 bidders(s), they can make the deposit required by this Order of Sale;

5 j. The balance of the purchase price for the Property is to be paid to the
6 U.S. Marshal within twenty days after the date the bid is
7 accepted, by a certified or cashier's check payable to the United States
8 District Court for the Eastern District of Washington. If the bidder
9 fails to fulfill this requirement, the deposit shall be forfeited and shall
10 be applied to cover the expenses of the sale, including commissions
11 due under 28 U.S.C. § 1921(c), with any amount remaining to be
12 applied to the Judgment of Defendants at issue herein. The Property
13 shall again be offered for sale under the terms and conditions of this
14 Order of Sale, or, in the alternative, sold to the second highest bidder;

15 k. The sale of the Property shall be subject to confirmation by the Court.
16 The U.S. Marshal shall file a report of sale with the Court, together
17 with a proposed order of confirmation of sale and proposed deed,
18 within thirty days from the date of receipt of the balance of the
19 purchase price;

20 1. On confirmation of the sale, the U.S. Marshal shall execute and
21 deliver a certificate of sale. Upon the expiration of the redemption

1 period, absent a redemption, the deed shall be executed and delivered
2 immediately to the successful bidder.

3 m. On confirmation of the sale, all interests in, liens against, or claims to,
4 the Property that are held or asserted by all parties to this action are
5 discharged and extinguished;

6 n. Any party to this suit may become a purchaser at such sale. The
7 United States may bid as a credit against its judgment without tender
8 of cash; and

9 o. The sale will be “as is” and without warranty of any kind.

10 **(2) Order to vacate Property.**

11 a. Until the Property is sold, Defendants shall take all
12 reasonable steps necessary to preserve the Property (including all
13 buildings, improvements, fixtures and appurtenances on the property)
14 in their current condition including, without limitation, maintaining a
15 fire and casualty insurance policy. Defendants shall neither commit
16 waste against the Property nor cause or permit anyone else to do so.
17 Defendants shall neither do anything that tends to reduce the value or
18 marketability of the Property nor cause or permit anyone else to do so.
19 Defendants shall not record any instruments, publish any notice, or
20 take any other action (such as running newspaper advertisements or
21 posting signs) that may directly or indirectly tend to adversely affect

1 the value of the Property or that may tend to deter or discourage
2 potential bidders from participating in the public auction, nor shall
3 they cause or permit anyone else to do so.

- 4 b. All persons occupying the Property shall leave and vacate the
5 Property permanently **within thirty days of the date of this Order**,
6 each taking with them his or her personal property and also leaving all
7 improvements, buildings, fixtures, and appurtenances to the Property.
8 If any person fails or refuses to leave and vacate the Property by the
9 time specified in this Order, the U.S. Marshal is authorized to take
10 whatever action it deems appropriate to remove such person from the
11 premises. Specifically, the U.S. Marshal is authorized and directed to
12 take all actions necessary to enter the Property at any time of the day
13 or night and evict and eject all unauthorized persons located there,
14 including Defendants, or any other occupants. To accomplish this and
15 to otherwise enforce this Order, the U.S. Marshal shall be authorized
16 to enter the Property and any and all
17 structures and vehicles located thereon, and to use force as necessary.
18 When the U.S. Marshal concludes that all unauthorized persons have
19 vacated, or have been evicted from the Property, he shall relinquish
20 possession and custody of the Property to the United States, or, more
21 specifically, to the the Farm Services Agency (or its designee). No

1 person shall be permitted to return to the Property and/or remain
2 thereon without the express written authorization by the U.S. Marshal
3 and/or the Farm Service Agency, and/or the United States Department
4 of Justice, or their respective representatives and/or designees.

5 Unauthorized persons who re-enter the Property during the time this
6 Order is in effect may be ejected by the U.S. Marshal without further
7 order of the Court.

8 c. If any person fails or refuses to remove his or her personal property
9 from the Property by the time specified herein, the personal property
10 remaining on the Property thereafter is deemed forfeited and
11 abandoned, and the U.S. Marshal is authorized to remove it and to
12 dispose of it in any manner it deems appropriate, including sale, in
13 which case the proceeds of the sale are to be applied first to the
14 expenses of sale and the balance to be paid into the Court for further
15 distribution.

16 d. Any failure to vacate the Property, or any attempt to reenter the
17 Property after the vacate date, could subject that person to being found
18 in contempt of court, and such contempt could be punishable by fine,
19 incarceration, or both.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

(3) Distribution of proceeds.

a. The proceeds arising from sales are to be paid to the Clerk of this Court and applied as far as they shall be sufficient to the following items, in the order specified:

i. To the United States for the costs of the sale, including: the costs and commissions of the U.S. Marshal and any professional auctioneer if retained; and the costs of advertising, selling, and conveying the property incurred by the Government.

ii. To the United States to be applied to the judgment of Defendants Juan Raya-Gutierrez and Maria Elena Raya-Aguirre at issue here plus all interest and costs due and owing thereon.

iii. Any balance remaining after the above payments shall be held by the Clerk until further order of the Court.

IT IS SO ORDERED. The District Court Clerk is directed to enter this Order and provide copies to counsel, the Finance Department of the Clerk’s Office, and the United States Marshal.

DATED this February 20, 2019

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
 United States District Judge