

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 WILLIAM A SYGITOWICZ, et al.

12 Defendants.

C15-405 TSZ

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

13 THIS MATTER came on for a bench trial on June 1, 2016. The plaintiff was
14 represented by Dylan Cerling and Yael Bortnick, attorneys for the U.S. Department of
15 Justice, Tax Division, and the defendants were present and represented by David E. Vis
16 of Britain & Vis, PLLC. At the conclusion of trial, the Court took the matter under
17 advisement. The Court now enters its Findings of Fact and Conclusions of Law.

18 **FINDINGS OF FACT**

19 1. Defendants Sygitowicz, as husband and wife, acquired the Subject Property
20 by statutory warranty deed dated June 26, 1970. Exhibit 1. The Subject Property is
21 commonly known as 1864 Academy Road, Bellingham, Washington 98226, and legally
22 described as follows:
23

1 THAT PORTION OF LOT 2, BLOCK 21, PLAT OF EAST
2 SILVER BEACH, WHATCOM COUNTY, WASHINGTON,
3 ACCORDING TO THE PLAT THEREOF, RECORDED IN
4 VOLUME 3 OF PLATS, PAGE 19, RECORDS OF
5 WHATCOM COUNTY, WASHINGTON, DESCRIBED AS
6 FOLLOWS:

7 BEGINNING AT THE SOUTHWEST CORNER OF SAID
8 LOT 2; RUNNING THENCE NORTH 200 FEET; THENCE
9 EAST 270 FEET; THENCE SOUTH 200 FEET; THENCE
10 WEST 270 FEET TO THE POINT OF BEGINNING.

11 SITUATE IN WHATCOM COUNTY, WASHINGTON.

12 2. Defendants Sygitowicz have lived on the Subject Property since they
13 purchased it in 1970.

14 3. Since 2004, William A. Sygitowicz has owned and operated Vineyard
15 Development Group, which is a real estate consultant group.

16 4. In April 2004, Defendants Sygitowicz transferred legal title to the Subject
17 Property to their son, Daniel Sygitowicz, and his wife, Kelly Sygitowicz, by Quit Claim
18 Deed. Exhibit 2.

19 5. This transfer was made after Defendants Sygitowicz were aware of their
20 federal tax liabilities for the years 1993-1995, 1997-2001, and 2003.

21 6. Daniel and Kelly Sygitowicz never paid Defendants Sygitowicz any money
22 for the Subject Property.

23 7. Defendants Sygitowicz continued to reside at and enjoy the use of the
Subject Property despite the purported transfer to Daniel and Kelly Sygitowicz, including
using it as security for a loan they received from Robert and Carolyn Julin.

1 8. On July 11, 2006, William A. Sygitowicz and Louise A. Sygitowicz,
2 together with Daniel and Kelly Sygitowicz, filed a complaint against the United States in
3 this court to quiet title to the Subject Property under Cause No. C06-962-TSZ.

4 9. On March 5, 2007, the United States filed a complaint, against William A.
5 Sygitowicz, Louise A. Sygitowicz, Daniel and Kelly Sygitowicz, and potential creditors,
6 in this court under Cause No. C07-340-TSZ, (1) to reduce to judgment federal tax
7 assessments against Defendant William Sygitowicz, (2) to declare Daniel and Kelly
8 Sygitowicz the alter-egos and/or nominees of Defendants William and Louise
9 Sygitowicz, and (3) to foreclose federal tax liens on the Subject Property.

10 10. The Court consolidated C06-962-TSZ and C07-340-TSZ on June 27, 2007,
11 under Cause No. C06-962-TSZ (herein referred to as "*Sygitowicz I*").

12 11. On August 30, 2007, in *Sygitowicz I*, the Court granted the United States'
13 Motion for Summary Judgment and dismissed with prejudice Defendants Sygitowicz's
14 complaint to quiet title to the Subject Property.

15 12. On December 13, 2007, the parties entered into a settlement agreement on
16 the remaining issues, which allowed Defendants Sygitowicz 180 days to sell the Subject
17 Property.

18 13. Defendants Sygitowicz were unable to sell the Subject Property within the
19 time allowed by the settlement agreement, but the parties stipulated to an additional 60
20 days to sell the Subject Property. After Defendants Sygitowicz were again unable to sell
21 the Subject Property, the parties agreed to a second modification to the original
22 settlement agreement, whereby Defendants Sygitowicz would either make a payment to
23

1 the United States within 60 days of the modification or stipulate to judgment and allow
2 the United States to foreclose on the Subject Property.

3 14. Defendants Sygitowicz failed to make a payment to the United States in
4 accordance with the settlement agreement.

5 15. On January 22, 2009, in *Sygitowicz I*, the United States District Court for
6 the Western District of Washington entered a consent judgment against William A.
7 Sygitowicz and Louise A. Sygitowicz and in favor of the United States in the amount of
8 \$591,274.02, as of November 12, 2008, for tax years 1993-1995, 1997-2001, and 2003,
9 plus statutory interest and other additions as provided by law. *Sygitowicz I*, docket
10 no. 60. Additionally, the Court ordered that the judgment shall attach via lien to the
11 Subject Property, and could be satisfied by foreclosure of said lien. A certified copy of
12 the abstract of judgment was filed with the Whatcom County Auditor on November 3,
13 2011. Exhibit 3.

14 16. After judgment was entered, the United States filed a motion for an order of
15 judicial sale, which was originally noted for hearing on September 18, 2009. Thereafter,
16 Defendants Sygitowicz professed to enter into a sale agreement with Gordon Iverson on
17 October 13, 2009, with a closing date of October 30, 2009, for a purchase price of
18 \$275,000 in cash at closing. Based on Defendants Sygitowicz's representations that they
19 had a buyer for the Subject Property but needed additional time for the buyer to complete
20 the sale, the United States re-noted its motion to sell the Subject Property on four separate
21 occasions, ultimately continuing the noting day to March 19, 2010.

1 17. Defendants Sygitowicz have been close friends with both Gordon Iverson
2 and Carol Iverson, husband and wife (“Iversons”), for more than thirty years.

3 18. Defendants Sygitowicz claim that the Iversons agreed to buy the Subject
4 Property and to lease the Subject Property back to the Defendants Sygitowicz.

5 Defendants Sygitowicz and Gordon Iverson executed a Residential Real Estate Purchase
6 and Sale Agreement dated October 13, 2009. Exhibit 4. The Agreement was accepted by
7 Defendants Sygitowicz contingent on the approval of the Internal Revenue Service. *See*
8 Addendum/Amendment to Purchase and Sale Agreement, Exhibit 5.

9 19. William A. Sygitowicz provided the initial \$1,000 earnest money deposit,
10 which was required to be paid under the terms of the October 13, 2009, Agreement.

11 20. On October 13, 2009, Defendants Sygitowicz and Gordon Iverson signed a
12 rental agreement, Exhibit 21, which provided as follows:

13 Bill and Louise Sygitowicz agree to rent 1864 Academy
14 Road, Bellingham, Washington from Gordon Iverson for
15 \$1000/monthly beginning 30 days after Gordon Iverson
16 completes purchase of this property.

17 Payments made to Gordon Iverson at address shown below.

18 Sygitowicz shall pay all utilities, taxes, insurance, and
19 maintenance. Property tax, insurance, and major maintenance
20 shall be credited toward rental payments.

21 Sygitowicz shall give Iverson at least 120 days notice prior to
22 terminating this rental agreement.

23 21. Defendants Sygitowicz never advertised the Subject Property for sale.

24 22. Defendants Sygitowicz never attempted to sell the Subject Property to
25 anyone other than the Defendants Iverson.

1 23. At all times material, Defendants Sygitowicz knew that the Iversons would
2 not provide the funds to buy the property.

3 24. Christopher M. Secrist, a close friend of Defendants Sygitowicz for many
4 years, agreed to assist William A. Sygitowicz in connection with the purported “sale” to
5 the Iversons.

6 25. William A. Sygitowicz took \$100,000 from his business, Vineyard
7 Development Group, and borrowed \$175,000 from Christopher M. Secrist, which
8 William A. Sygitowicz then deposited into escrow to complete the “sale” of the Subject
9 Property to the Iversons.

10 26. On March 11, 2010, a statutory warranty deed, Exhibit 23, was recorded in
11 Whatcom County, which transferred legal title to the Subject Property from Defendants
12 Sygitowicz to Defendants Gordon Iverson and Carol Iverson.

13 27. On March 12, 2010, the Internal Revenue Service received a check for
14 \$256,019.89 from escrow in connection with the “sale.” As a result, the United States
15 withdrew its motion for an order of judicial sale and thereafter, on March 19, 2010, the
16 Government filed a Certificate of Discharge of Property from Federal Tax Lien with the
17 Whatcom County Auditor’s Office, which acknowledged receipt of the payment and
18 discharged the federal tax liens against the Subject Property. *See* Exhibit 31. On
19 May 15, 2011, the United States issued a Revocation of Certificate of Release of Federal
20 Tax Lien, Exhibit 37, which was recorded in Whatcom County on May 23, 2011.

1 28. The March 12, 2010, payment of \$256,019.89 was applied toward
2 Defendants Sygitowicz's unpaid federal tax liabilities, and satisfied Defendants
3 Sygitowicz's 1993 and 1994 tax liabilities.

4 29. The parties have agreed that there remains due and owing from Defendants
5 Sygitowicz \$425,249.56, plus interest and statutory additions from March 16, 2015, for
6 tax years 1995, 1997 through 2001, and 2003. Pretrial Order, Admitted Fact 46.

7 30. After legal title to the Subject Property was transferred to the Iversons,
8 Defendants Sygitowicz's use of the Subject Property did not change in any way.
9 Defendants Sygitowicz alone have resided in the Subject Property since the Subject
10 Property was transferred to Defendants Iverson. At all times material, Defendants
11 Sygitowicz alone have paid, or provided funds to pay, all taxes, insurance premiums, and
12 utilities related to the Subject Property.

13 31. On May 23, 2014, William A. Sygitowicz requested a cashier's check in
14 the name of Gordon Iverson, which he then remitted to the Whatcom County Treasurer
15 so that it appeared that the property tax was being paid by Gordon Iverson.

16 32. Defendants Sygitowicz alone have paid for all maintenance and
17 improvements for the Subject Property since legal title was transferred to Defendants
18 Iverson.

19 33. At all times material, Defendants Sygitowicz have exercised complete
20 control over the Subject Property.

1 34. Defendants Sygitowicz purported to sell the Subject Property to Defendants
2 Iverson to evade payment of their federal income tax liabilities and to conceal their
3 interests in the Subject Property from the Internal Revenue Service.

4 35. Carol Iverson has filed a stipulation, docket no. 55, disclaiming any interest
5 in the Subject Property. Carol Iverson did not testify at trial. Carol Iverson has no
6 interest in the Subject Property.

7 36. Gordon Iverson testified at trial. He admitted that he never provided any
8 money to buy the Subject Property, he never received any payments or benefits from the
9 purchase of or lease of the Subject Property, and he claims no interest in the Subject
10 Property. Although the Subject Property remains in the name of the Iversons, Gordon
11 Iverson testified that if the Subject Property was sold, he would not be entitled to any of
12 the proceeds. Gordon Iverson has no interest in the Subject Property.

13 37. Although Gordon Iverson testified that he originally intended to “buy” the
14 Subject Property, he knew by at least January 2010 that he could not do so. The Court
15 finds Gordon Iverson’s testimony that he originally intended to buy the Subject Property
16 not credible, that Defendants Iverson never intended to buy the Subject Property, and that
17 the transaction was structured by Defendants Sygitowicz to evade payment of their
18 federal income tax liability. Since the purported sale in March 2011, Defendants Iverson
19 have held the Subject Property as nominee for Defendants Sygitowicz.

20 38. Defendant Secrist did not testify at trial. Secrist loaned \$175,000 to
21 Defendants Sygitowicz pursuant to a Loan Agreement dated March 10, 2010. Exhibit 20.
22 Secrist has never made a demand for repayment of this unsecured loan. These funds
23

1 were used by Defendants Sygitowicz to structure the purported sale to the Iversons.
2 Secrist has disclaimed any interest in the Subject Property, docket no. 30, and as a result
3 he was previously dismissed as a defendant. Secrist has no interest in the Subject
4 Property.

5 39. On March 23, 2012, a delegate of the Secretary of the Treasury filed a
6 Notice of Federal Tax Lien with the County Auditor for Whatcom County, Washington
7 identifying “Gordon Iverson and Carol Iverson, husband and wife, as nominees of
8 William A. Sygitowicz and Louise A. Sygitowicz, husband and wife” and referencing the
9 United States’ tax liens for the 1995, 1997 through 2001, and 2003 income tax years.

10 40. On April 13, 2012, a delegate of the Secretary of the Treasury filed a
11 Notice of Federal Tax Lien with the County Auditor for Whatcom County, Washington
12 against “Bill A & Louise A Sygitowicz” for the 2010 income tax year.

13 41. On November 21, 2013, a delegate of the Secretary of the Treasury filed a
14 Notice of Federal Tax Lien with the County Auditor for Whatcom County, Washington
15 identifying “Gordon Iverson and Carol Iverson, husband and wife, as nominees of
16 William A. Sygitowicz and Louise A. Sygitowicz, husband and wife” and referencing the
17 United States’ tax lien for the 2010 income tax year.

18 42. The United States initiated this action on March 17, 2015. The United
19 States filed its First Amended Complaint, docket no. 26, on November 3, 2015.

20 43. On April 11, 2016, the Court granted partial summary judgment against
21 Defendants Sygitowicz in this action in the amount of \$33,415.49 plus interest and other
22 statutory additions as provided by law, docket no. 43, for the tax year ending
23

1 December 31, 2010. The Court also concluded that there was no just reason to delay
2 entry of partial judgment under Rule 54(b). As a result, on April 28, 2016, judgment was
3 entered as to Count One of the First Amended Complaint, docket no. 43. No appeal has
4 been filed in connection with this partial judgment.

5 44. At trial, "Steve Baker," an IRS Revenue Officer, testified for the
6 government. This is not the true name of the witness and his true name is contained in a
7 declaration, filed under seal, docket no. 57. At trial this witness was unable to calculate
8 the amount of taxes, interest and penalties due as of trial. Since trial, "Baker" has filed a
9 declaration regarding the balance of outstanding tax liabilities, docket no. 58, due as of
10 trial. The Court makes no finding as to the total tax liability of Defendants Sygitowicz as
11 of trial. As of trial, Defendants Sygitowicz have not had an opportunity to challenge the
12 "Baker" declaration. The Court does, however, find that there remains due and owing at
13 least \$425,249.56, plus interest and statutory additions from March 16, 2015, for tax
14 years 1995, 1997 through 2001, and 2003, together with \$33,415.49 plus interest and
15 penalties as set forth in the partial judgment in this case, docket no. 43, for the tax year
16 2010.

17 45. Defendant Whatcom County Treasurer was dismissed from this case,
18 docket no. 19, pursuant to a stipulation dated October 19, 2015.

19 CONCLUSIONS OF LAW

20 1. The Court has jurisdiction over this action pursuant to 26 U.S.C. §§ 1340,
21 1345, and 7402.

1 2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1396
2 because defendants reside in this district and the Subject Property is located in this
3 district.

4 3. The United States has established that, on the various dates of assessment,
5 valid liens in favor of the United States arose against Defendants Sygitowicz and attached
6 to all of their property and rights to property, whether real or personal.

7 4. The tax lien continues in full force until the liability is paid in full or
8 becomes unenforceable due to the lapse of time. 26 U.S.C. § 6322.

9 5. 26 U.S.C. § 6325(f)(3) (“Certificates Void under Certain Conditions”)
10 provides: “Notwithstanding any other provision of this subtitle, any lien imposed by this
11 chapter shall attach to any property with respect to which a certificate of discharge has
12 been issued if the person liable for the tax reacquires such property after such certificate
13 has been issued.”

14 6. A property previously discharged from a federal tax lien under § 6325(b)(2)
15 automatically becomes subject to the lien again if the taxpayer reacquires it. 26 U.S.C.
16 § 6325(b)(3).

17 7. The Certificate of Discharge of Property did not affect the federal tax liens
18 that this Court held attached to the Subject Property in *Sygitowicz I*.

19 8. Under 28 U.S.C. § 3201(a), “[a] judgment in a civil action shall create a
20 lien on all real property of a judgment debtor on filing a certified copy of the abstract of
21 the judgment in the manner in which a notice of tax lien would be filed under paragraphs
22 (1) and (2) of section 6323(f) of the Internal Revenue Code of 1986. A lien created under
23

1 this paragraph is for the amount necessary to satisfy the judgment, including costs and
2 interest.”

3 9. A judgment lien under 28 U.S.C. § 3201(a) has priority over any other lien
4 or encumbrance that is perfected later in time. 28 U.S.C. § 3201(b).

5 10. The judgment lien is effective, unless satisfied, for 20 years. 28 U.S.C.
6 § 3201(c)(1). The United States can assert state law claims in furtherance of tax
7 collection efforts without being bound by state statutes of limitation. *United States v.*
8 *Summerlin*, 310 U.S. 414, 416 (1940).

9 11. The United States filed a certified copy of the abstract of judgment in
10 *Sygitowicz I* with the Whatcom County Auditor on November 3, 2011, which satisfied
11 the requirements of 28 U.S.C. § 3201(a) and 26 U.S.C. §§ 6323(f)(1) and (2), and created
12 a judgment lien on all real property of Defendants Sygitowicz. RCW 65.08.060(3);
13 RCW 65.08.070.

14 12. The United States’ judgment lien attached to the Subject Property, which
15 was owned by Defendants Sygitowicz when the lien arose. The United States’ judgment
16 lien is effective and remains outstanding because the United States’ judgment against
17 Defendants Sygitowicz has not yet been satisfied. 28 U.S.C. §§ 3201(a) & (c).

18 13. When the Defendants Sygitowicz paid the United States \$256,019.29 in
19 connection with the purported sale to the Iversons, the tax obligation of the taxpayers was
20 reduced by that amount and satisfied their 1993 and 1994 tax liabilities. At all times
21 material, however, the Iversons held legal title to the Subject Property as a nominee or
22 alter ego of the taxpayers, and the Court may regard Iversons’ property as the property of
23

1 Defendants Sygitowicz subject to all existing tax liens. *G.M. Leasing Corp. v. United*
2 *States*, 429 U.S. 338, 350-51 (1977).

3 14. In addition, the purported sale by Defendants Sygitowicz to the Iversons
4 was a fraudulent conveyance under Washington law. RCW 19.40.041(a)(1). The
5 transfer of legal title to the Iversons was made by Defendants Sygitowicz with the actual
6 intent to hinder, delay, or defraud the United States. The transfer was also made without
7 adequate consideration paid by the Iversons. Under Washington law, the transfer of the
8 legal title of the Subject Property to the Iversons was fraudulent and is subject to being
9 set aside. *United States v. Smith*, 2012 WL 1977964 at *6 (W.D. Wash. June 1, 2012).

10 15. The United States is entitled to judgment declaring that its tax liens are
11 enforceable against the Subject Property and Defendants Sygitowicz are not entitled to
12 any portion of the proceeds of the sale of the Subject Property until and unless the United
13 States' tax liens are satisfied.

14 16. The United States is entitled to judgment against the Iversons. They have
15 no interest in the Subject Property, and have no right to any proceeds from the sale of the
16 Subject Property. The United States is also entitled to judgment declaring that no other
17 remaining defendant has any interest in the Subject Property and is not entitled to receive
18 any proceeds from the sale of the Subject Property.

19 17. Pursuant to 26 U.S.C. § 6323(b)(6) and the Stipulation filed in this case,
20 docket no. 19, the United States recognizes the superior interest of the Whatcom County
21 Treasurer in the Subject Property by virtue of assessed and owing ad valorem property
22 taxes, penalty, and interest secured by the Whatcom County Treasurer's liens. The
23

1 United States shall include in any proposed order of sale a provision that the net proceeds
2 of sale for each parcel, defined as the proceeds resulting from the sale of the property less
3 distribution to the United States for the costs of sale, shall be applied to satisfy the
4 property tax, penalty, and interest assessed and owing to the Whatcom County Treasurer
5 for the Subject Property prior to application of the funds to fully or partially satisfy the
6 United States' interest secured by federal tax liens.

7 18. Defendants Sygitowicz's contention that the proceeds from the sale should
8 be refunded to the "contributing entities" (the \$100,000 from Vineyard Development
9 Group and \$175,000 from Christopher Secrist) has no legal basis. If the "contributing
10 entities" had purchased a different piece of real property for the benefit of Defendants
11 Sygitowicz, the remaining tax liens would have applied to acquired property. Neither
12 Christopher Secrist nor Vineyard Development Group has requested or is entitled to any
13 equitable relief.

14 19. Defendants Sygitowicz's request that the Court exercise its equitable
15 authority to make "adjustments as the equities may require," *see* Supplemental Trial
16 Brief, docket no. 56, is without merit. The Court may not invoke equity to alter or reduce
17 statutorily deferred interest rates. *See Johnson v. United States*, 602 F.2d 734, 739 (6th
18 Cir. 1979). 26 U.S.C. § 6601 is a binding statutory directive. *Purcell v. United States*,
19 1 F.3d 932, 943 (9th Cir. 1993). In addition, Defendants Sygitowicz have admitted the
20 amount of liability in this case. *See* Pretrial Order, docket no. 50, and Trial Brief, docket
21 no. 49 ("2010 tax liability . . . is not disputed.").

1 20. Under the doctrine of *res judicata*, or claim preclusion, “a final judgment
2 on the merits bars further claims by parties or their privies based on the same cause of
3 action.” *Montana v. United States*, 440 U.S. 147, 153 (1979). Here, the final judgment
4 in *Sygitowicz I* determined on the merits that the United States is entitled to judgment.
5 Defendants Sygitowicz cannot now claim that the amount of the judgment and the
6 statutory interest rate, which was set by Congress and to which Defendants Sygitowicz
7 agreed, is somehow unfair or inequitable.

8 21. Defendants Sygitowicz’s assertion that the Government acted inequitably in
9 a 36-year-old dispute between Defendants Sygitowicz and the Forest Service is not
10 relevant, and even if true, does not negate a finding that Defendants Sygitowicz are the
11 true owners of the Subject Property and that it is subject to the tax liens levied against
12 Defendants Sygitowicz.

13 22. Defendants Sygitowicz also ask this Court to grant them equitable relief
14 under all the circumstances. Any person asking for equitable relief must come into court
15 with clean hands. In this case, Defendants Sygitowicz fraudulently transferred legal title
16 to the Subject Property to the Iversons for the purpose of avoiding taxes. These
17 defendants are not entitled to any equitable relief under all the circumstances.

18 23. The United States has properly filed Notices of Federal Tax Liens in the
19 County Recorder’s Office in and for Whatcom County, pursuant to 26 U.S.C. § 6323(a),
20 and such liens attach to all property and rights to property of William and Louise
21 Sygitowicz, including the Subject Property at issue in this case. The United States has
22 established that it has valid federal tax and judgment liens against the Subject Property,
23

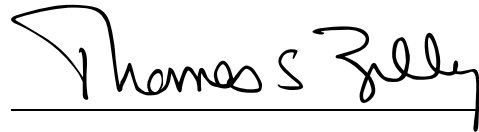
1 and therefore, the United States is entitled to judgment and to foreclose those liens, sell
2 the Subject Property, and apply the proceeds toward its tax liens. *See* 26 U.S.C. § 7403.

3 24. The United States is entitled to costs and fees herein.

4 Based on the foregoing Findings of Fact and Conclusions of Law, the United
5 States of America is directed to file a proposed final judgment and proposed order for
6 judicial sale. Defendants Sygitowicz shall have seven (7) days after such filings to file
7 any objections to the proposed judgment and order of sale.

8 IT IS SO ORDERED.

9 Dated this 23rd day of June, 2016.

10
11 

12 Thomas S. Zilly
13 United States District Judge
14
15
16
17
18
19
20
21
22
23