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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 WILLIAM P. SCHMIDT, *et al.*,

12 Defendants.

Case No. C16-0985RSL

ORDER REGARDING CROSS-
MOTIONS FOR SUMMARY
JUDGMENT

13 This matter comes before the Court on the “United States of America’s Motion for
14 Summary Judgment Against William P. Schmidt, Sufian Hamad, and Riverton Holding, LLC”
15 (Dkt. # 48) and “Defendant Sufian Hamad and Riverton Holding, LLC’s 2nd Motion for
16 Summary Judgment” (Dkt. # 50). On June 27, 2016, the United States filed this lawsuit seeking
17 to foreclose on federal tax liens on a parcel of real property located at 4010 S. 130th Street,
18 Tukwila, WA 98168 (the “4010 Property”).¹ Defendant Schmidt, who owned the property until
19 2011, has not paid federal taxes since 2001. In October 2010, the United States made its first
20 assessment against him for the unpaid taxes, penalties, and interest. After the assessments began
21 but before federal tax liens were recorded, Mr. Schmidt conveyed his interest in the 4010
22 Property to defendant Sufian Hamad, who subsequently transferred it to his wholly-owned
23 company, Riverton Holding, LLC. The United States argues that its assessments give it a priority
24 interest in the 4010 Property because the putative purchasers did not pay adequate and full
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26 ¹ The property is also known as 12924 E. Marginal Way S., Tukwila, WA 98168.

1 consideration for the property and/or that the transfer is invalid under the Uniform Fraudulent
2 Transfer Act, RCW 19.40.041. Both the United States and the Hamad defendants seek summary
3 judgment in their favor.

4 Mr. Schmidt has not responded to the United States' motion for summary judgment
5 against him. Although Mr. Hamad summarily disputes the procedures used to assess the tax
6 liabilities against Mr. Schmidt and the amounts claimed, he offers no evidence to dispute the
7 records showing that notice was sent or to rebut the presumption of correctness that attaches to
8 the assessments. See Huff v. U.S., 10 F.3d 1440, 1445 (9th Cir. 1993). In addition, Mr. Hamad
9 and Riverton Holding lack standing to challenge an assessment made against a third-party. Al-
10 Kim, Inc. v. U.S., 650 F.2d 944, 947 (9th Cir. 1979) ("Neither the Internal Revenue Code nor the
11 decisions of this court support any right of third parties to contest the merits of a tax
12 assessment."). The Court therefore finds that defendant William P. Schmidt is indebted to the
13 United States in the amount of \$660,428.38 as of June 20, 2016, less any subsequent payments
14 or credits, plus interest and other statutory additions as provided by law. The remaining question
15 is whether the 4010 Property can be seized to pay the outstanding liability. The answer to that
16 question depends on (a) whether Mr. Hamad and/or Riverton Holding purchased the property
17 from Mr. Schmidt for adequate and full consideration in money or money's worth² and
18 (b) whether Mr. Hamad and/or Riverton Holding purchased the property in good faith and for
19 reasonably equivalent value.³

21 ² Pursuant to 26 U.S.C. § 6321 and § 6322, the United States obtains a lien on all property
22 belonging to the delinquent taxpayer at the time the assessment of tax liability is made. The lien is not
23 valid against a purchaser, however, unless and until the lien is recorded. 26 U.S.C. § 6323(a). A
24 "purchaser" is defined as one "who, for adequate and full consideration in money or money's worth,
acquires an interest . . . in property which is valid under local law against subsequent purchasers without
actual notice." 26 U.S.C. § 6323(h)(6).

25 ³ The Washington Uniform Fraudulent Transfer Act ("UFTA") makes voidable any transfer of
26 property from a debtor with actual intent to hinder, delay, or defraud his creditor. RCW 19.40.041(1)(a).
The party seeking to avoid a transfer under UFTA has the burden of proving actual intent to defraud by

1 Summary judgment is appropriate when, viewing the facts in the light most favorable to
2 the nonmoving party, there is no genuine issue of material fact that would preclude the entry of
3 judgment as a matter of law. The party seeking summary dismissal of the case “bears the initial
4 responsibility of informing the district court of the basis for its motion” (Celotex Corp. v.
5 Catrett, 477 U.S. 317, 323 (1986)) and “citing to particular parts of materials in the record” that
6 show the absence of a genuine issue of material fact (Fed. R. Civ. P. 56(c)). Once the moving
7 party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails to
8 designate “specific facts showing that there is a genuine issue for trial.” Celotex Corp., 477 U.S.
9 at 324. The Court will “view the evidence in the light most favorable to the nonmoving party . . .
10 and draw all reasonable inferences in that party’s favor.” Krechman v. County of Riverside, 723
11 F.3d 1104, 1109 (9th Cir. 2013). Summary judgment should be granted where the nonmoving
12 party fails to offer evidence from which a reasonable jury could return a verdict in its favor.
13 FreecycleSunnyvale v. Freecycle Network, 626 F.3d 509, 514 (9th Cir. 2010).

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19 clear and satisfactory evidence. Mika v. JBC Entm’t Holdings, Inc., 195 Wn. App. 1052, *4 (2016). A
20 transfer that otherwise satisfies the requirements of RCW 19.40.041(1) is not voidable, however, if the
21 transferee shows that he “took in good faith and for a reasonably equivalent value.” RCW 19.40.081(1).
22 See 27 Wash. Prac. § 5.146(b); In re Consolidated Meridian Funds, 497 B.R. 263, 268 (W.D. Wash.
23 2013).

24 The United States cites Thompson v. Hanson, 168 Wn.2d 738, 749 (2009), for the proposition
25 that Mr. Hamad’s good faith is irrelevant. The Thompson court was asked to determine whether a
26 creditor must show that the transferee, as opposed to the transferor, acted with an intent to hinder, delay,
or defraud the transferor’s creditors. It answered in the negative, which is consistent with the language
of the statute. Thus, the creditor need prove only that the debtor had fraudulent intent. But the statute
clearly provides a defense for innocent purchasers in RCW 19.40.081(1). As pointed out in the
Thompson concurrence, the issue of whether the transferee acted in good faith - on which the transferee
would have the burden of proof - was not at issue and had not been resolved by the trial court.

1 Having reviewed the memoranda, declarations, and exhibits submitted by the parties,⁴ the
2 Court finds that there are issues of credibility, knowledge, and intent that preclude the entry of
3 judgment as a matter of law regarding enforcement of the lien on the 4010 Property and that the
4 parties' sweeping arguments regarding limitations periods and laches are wholly unpersuasive.

5 Mr. Schmidt and Mr. Hamad have known each other for over twenty years. They met
6 when Mr. Hamad was an employee of U.S. Bank where Mr. Schmidt sought a loan to purchase
7 property. In 2001, Mr. Hamad started developing real estate, buying land, designing and
8 constructing buildings, and renting them out. Mr. Schmidt, who is an iron worker, taught Mr.
9 Hamad to weld. The two men worked together on a number of projects through the years.

10 In 1995, Mr. Schmidt purchased the 4010 Property and another piece of property located
11 at 13001 41st Avenue South, Tukwila, WA 98168 (the "13001 Property"). He used the 4010
12 Property as his residence and workshop and rented units in the building to various commercial
13 tenants. The 13001 Property was purchased as an investment: Mr. Schmidt worked to remodel
14 the property between his ironworker jobs.

15 Mr. Schmidt stopped filing federal income tax returns in or around 2001. Ten or twelve
16 years ago, he became interested in certain fringe alternative theories regarding, among other
17 things, the 14th Amendment, the demise of the gold standard, and the jurisdiction of various
18 taxing authorities. Mr. Schmidt began attending seminars and apparently became convinced that
19 he should take steps to divest himself of ownership of assets while at the same time retaining
20 control over their beneficial use. In June 2006, Mr. Schmidt signed a contract and declaration of
21 trust purporting to place certain unidentified property into a trust created for his own benefit.

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23 ⁴ Plaintiff's request to strike the Declaration of Gerald Robison (Dkt. # 54-2) is GRANTED:
24 defendants' failure to identify him as a witness regarding the intent of the parties in drafting the
25 purchase and sale agreement is not justified or harmless. The Court has considered defendants'
26 overlength motion in its entirety. Plaintiff's request to strike Dkt. # 50-17 and Dkt. # 50-32 because they
were not disclosed in discovery is DENIED. The Court reserves ruling on whether the summary charts
can be admitted at trial.

1 Dkt. # 48-3 at 5-14 (the schedules identifying the property placed in the trust were not
2 submitted).

3 The 13001 Property contained a single family residence and a dilapidated four-car garage.
4 In July 2006, the City of Tukwila issued a final demolition order regarding the garage structure,
5 but Mr. Schmidt did not have the funds to comply and was facing daily penalties. Mr. Schmidt
6 approached Mr. Hamad about becoming a co-owner of the property. He offered Mr. Hamad the
7 portion on which the garage stood, while Mr. Schmidt would retain ownership of the remaining
8 two-thirds. Mr. Schmidt calculated the sale price of \$30,000 by dividing the assessed value of
9 the land (\$90,000) by three. Mr. Hamad agreed to pay \$30,000, but negotiated a reduction based
10 on whatever fees and penalties the City of Tukwila would assess (which the parties estimated to
11 be \$15,000). The plan was that Mr. Hamad would fund the demolition of the existing garage and
12 construct a new garage with a workshop on top. For his part, Mr. Schmidt hoped to avoid further
13 penalties from the City and thought he could use the \$15,000 he received in the deal to pay off
14 his federal tax liability.

15 Mr. Hamad was aware that Mr. Schmidt “was into the whole trust thing” and believed
16 that the 13001 Property was held by a personal trust. Dkt. # 48-2 at 120. At Mr. Schmidt’s
17 request, the transfer of an interest in the 13001 Property would involve the creation of a new
18 trust, the 13001 Land Trust, through which Mr. Schmidt’s Iron Man Trust would retain a 2/3
19 interest and Mr. Hamad’s Baumeister, LLC, would hold a 1/3 interest. Mr. Hamad paid the
20 \$15,000 purchase price in three installments, the last of which was dated October 3, 2006. Later
21 that month, the parties entered into a Co-Venture Agreement. The agreement promised the
22 formation of a land trust, set forth the basic covenants of the parties, and included a diagram
23 showing the intended division of the property. Dkt. # 48-4 at 2-3. In January 2007, the parties
24 entered into a purchase and sale agreement, and Mr. Hamad hired an escrow agent to close the
25 sale. Dkt. # 48-4 at 23-36. A statutory warranty deed was recorded on February 12, 2007. Dkt.
26 # 16-2 at 5. The deed specifies a sales price of \$15,000. When Mr. Hamad submitted his

1 demolition and building plans to the City of Tukwila, it waived the fees and penalties that had
2 accrued. Mr. Hamad paid the \$15,000 that had been withheld to Mr. Schmidt.

3 The United States points out that there are a number of problems with the documents
4 related to the sale of 1/3 of the 13001 Property to Mr. Hamad. For instance, the Co-Venture
5 Agreement was between Iron Man Trust and Baumeister, LLC, but there is no indication that
6 Iron Man Trust ever had a recorded interest in the 13001 Property. The essential terms of the
7 purchase and sale agreement are spread over various documents, and it is not clear whether the
8 13001 Land Trust ever came into existence. In addition, Mr. Hamad failed to obtain a title report
9 to determine whether there were any existing encumbrances on the property and waited until
10 February 2007 to record his own interest in the property. The delay in recording proved
11 disastrous for Mr. Hamad. At the same time he was investing \$150,000-\$170,000 in the
12 development of the new garage/workshop structure on the 13001 Property, Mr. Schmidt was
13 encumbering the property with a \$240,000 mortgage and Deed of Trust, dated October 27,
14 2006.⁵

15 Mr. Hamad learned about the mortgage in 2007. When confronted, Mr. Schmidt assured
16 Mr. Hamad that he would pay off the mortgage and that it would not affect Mr. Hamad's interest
17 in the property. At some point Mr. Schmidt stopped making payments on the mortgage,
18 however, and the trustee under the Deed of Trust posted and recorded a Notice of Trustee's Sale
19 in July 2009. Mr. Hamad again confronted Mr. Schmidt, who promised to make Mr. Hamad
20 whole. Mr. Schmidt and a friend he made at one of the tax seminars he attended attempted to
21 stall or prevent the foreclosure by recording a mishmash of documents, including liens and quit
22 claim deeds, some of which Mr. Hamad signed in one capacity or another. Dkt. # 48-4 at 47;
23 Dkt. # 16-2 at 12-14. Mr. Schmidt hoped that the investment he made with the \$240,000 he
24 obtained using the 13001 Property as collateral would double and he would be able to pay back
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26 ⁵ In doing so, Mr. Schmidt breached an express provision of the Co-Venture Agreement.

1 the loan. By 2011, however, he had to acknowledge that he had lost it all.⁶ Mr. Schmidt offered
2 to sell Mr. Hamad the 4010 Property in exchange for a release from all liability related to the
3 13001 Property. A purchase and sale agreement, dated April 13, 2011, identifies the seller as Mr.
4 Schmidt and the buyer as Riverton Holding. The agreement specifies that both Riverton Holding
5 and Mr. Hamad “waive or release all claims it and he might otherwise have against William Paul
6 Schmidt arising from or related to the prior foreclosure of property located at 13001 - 41st Ave.
7 S., Tukwila, Washington.” Dkt. # 50-1 at 10. The recorded deed shows that Mr. Hamad is the
8 grantee. Riverton Holding was not formed until April 2012. Mr. Hamad transferred the 4010
9 Property to Riverton Holding by quit claim deed on June 18, 2012.

10 When Mr. Hamad took over the 4010 Property, it was in such bad shape that he did not
11 feel right collecting rent from the commercial tenants or Mr. Schmidt, who lived in one of the
12 units. He has since made extensive repairs and upgrades: he started collecting rent again in
13 August 2012.

14 In 2013, Mr. Hamad was reviewing a website of foreclosure sales and saw that the 13001
15 Property was listed. He made a minimum bid of \$150,000, which was ultimately accepted. He
16 closed on the 13001 Property in 2014.

17 Based on this version of events, the trier of fact could reasonably conclude that Mr.
18 Hamad purchased the condemned garage structure on the 13001 Property for value, invested up
19 to \$170,000 plus labor in that property, and lost his investment through foreclosure as a direct
20 result of Mr. Schmidt’s breach of contract and breach of the duty of good faith and fair dealing.
21 Mr. Hamad accepted the 4010 Property as settlement of his claims related to the 13001 Property,
22 which arguably makes him a purchaser under 26 U.S.C. § 6323(h)(6) and a person who acted in
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24 ⁶ At about the same time, the United States began making assessments against Mr. Schmidt for
25 unpaid taxes, penalties, and interest. The first assessment was made on October 25, 2010. It is not clear
26 whether or when Mr. Hamad knew of the assessments. He was, however, aware that Mr. Schmidt
thought taxes were illegal, and he discovered the lien on the 4010 Property when he transferred
ownership of the property to Riverton Holding in 2012.

1 good faith and paid reasonably equivalent value under the UFTA.

2 The fact finder would not be compelled to find in favor of Mr. Hamad and/or Riverton
3 Holding, however. The United States identifies all sorts of irregularities in the dealings between
4 Mr. Schmidt and Mr. Hamad, as well as various problems in the documentation they used to
5 represent their agreements. For example, the release of claims that Mr. Schmidt's attorney
6 drafted to memorialize the value given in exchange for the 4010 Property incorrectly assumes
7 that the mortgage on the 13001 Property had already been foreclosed and that Mr. Hamad
8 personally, rather than his Baumeister, LLC, held title to the 13001 Property. The United States
9 argues that the errors in the purchase agreement for the 4010 Property mean that Mr. Hamad
10 technically gave nothing in exchange for the property.⁷ The United States also points to the facts
11 that Mr. Hamad used a single-asset LLC to take ownership of the 4010 Property and that he may
12 have allowed Mr. Schmidt to collect rents after the sale to support a version of events in which
13 defendants acted in bad faith. Indeed, Mr. Schmidt says that the parties planned to return the
14 property to him eventually and that the use of Riverton Holding to take ownership would
15 facilitate that plan. While this theory is supportable, Mr. Schmidt's credibility is at issue and
16 there are also facts that support a finding of good faith. Issues of credibility, knowledge, and
17 intent must be resolved at trial. If the fact finder believes Mr. Schmidt regarding the nature of the
18 transfer, one could reasonably conclude that the drafting errors and the choice of holding
19 company were intended to assist Mr. Schmidt in avoiding taxes and that Mr. Hamad was not
20 acting in good faith. If, on the other hand, Mr. Hamad is credible, the facts would support a
21 finding that the purchase was for valuable consideration. Neither side is entitled to judgment as a
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23 ⁷ The United States makes no effort to apply Washington's rules of contract interpretation to the
24 purchase and sale agreement. Mr. Hamad has testified regarding the mutual intent of the parties,
25 testimony which is largely supported by the context out of which the agreement arose, the subsequent
26 conduct of the parties, and the reasonableness of his interpretation. See Berg v. Hudesman, 115 Wn.2d
657, 668-69 (1990). The Court will not undertake an analysis that the United States chose not to
perform.

1 matter of law regarding the avoidance of the transfer of the 4010 Property.
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3 For all of the foregoing reasons, the United States' motions for summary judgment (Dkt.
4 # 48) is GRANTED in part. William P. Schmidt is indebted to the United States in the amount of
5 \$660,428.38 as of June 20, 2016, less any subsequent payments or credits, plus interest and other
6 statutory additions as provided by law. In all other respects, the cross-motions for summary
7 judgment (Dkt. # 48 and Dkt. # 50) are DENIED. The issue of whether the transfer of the 4010
8 Property is voidable such that the United States may foreclose its lien on the property will be
9 resolved at trial.
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11 Dated this 19th day of December, 2017.

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14 Robert S. Lasnik

15 United States District Judge
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