

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-01366-MSK-KLM

WAYNE ANDREWS,

Plaintiff,

v.

ROXY HUBER,

Defendant.

ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Motion for Rule 54(b) Certification** [Docket No. 60; Filed May 29, 2012] (the "Motion").

On July 25, 2011, the Federal Defendants, which included all Defendants except for Defendant Roxy Huber ("Huber"), who was belatedly served, filed a Motion to Dismiss [#9]. On January 30, 2012, the undersigned issued a Recommendation [#49] that the Federal Defendants' Motion to Dismiss [#9] be granted. On March 5, 2012, the District Judge adopted [#52] the Recommendation [#49] and granted the Motion to Dismiss [#9].

On November 2, 2011, Defendant Huber filed her own Motion to Dismiss [#34]. On April 2, 2012, the undersigned issued a Recommendation [#53] that Defendant Huber's Motion to Dismiss [#34] be granted. The District Judge has not yet ruled on the Objections [#54] raised by Plaintiff to this second Recommendation.

On April 26, 2012, Plaintiff filed an appeal [#55] with the Tenth Circuit Court of Appeals as to the first Recommendation [#49] and the Order adopting it. The Tenth Circuit

issued on Order on May 2, 2012 tolling briefing until the District Court issued an order either entering a final judgment or a Fed. R. Civ. P. 54(b) certification. See *Order* [#58] (citing to *Lewis v. B.F. Goodrich Co.*, 850 F.2d 641 (10th Cir. 1988)). In the present Motion, Plaintiff seeks a Rule 54(b) certification.

Pursuant to Rule 54(b), in a lawsuit presenting more than one claim for relief such as the instant action, the Court may “direct entry of a final judgment as to one or more, but fewer than all, claims . . . only if the court expressly determines that there is no just reason for delay.” Fed. R. Civ. P. 54(b). Whether to enter judgment pursuant to Rule 54(b) is within the trial court’s discretion. *Warren v. Liberty Mut. Fire Ins. Co.*, No. 05-cv-01891-PAB-MEH, 2011 WL 3331387, at *1 (D. Colo. Aug. 2, 2011) (citing *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980)). “In order to direct entry of judgment under Rule 54(b), [the Court] must find that three prerequisites are met: (1) multiple claims; (2) a final decision on at least one claim; and (3) a determination by the district court that there is no just reason for delay.” *Id.* (citing *Jordan v. Pugh*, 425 F.3d 820, 826 (10th Cir. 2005)). The Court must also consider the policy of preventing piecemeal appeals, the implications of delaying appeal, and “judicial administrative interests.” *Id.* (citations omitted).

Here, the first two prerequisites are clearly met, as this matter involved multiple claims, and a final decision was issued as to most of the claims, including all of the claims brought against the Federal Defendants. However, the Court concludes that the third prerequisite is not satisfied. Plaintiff has provided no reason why the Court should issue a Rule 54(b) certification except “so that the Appeals Court can move forward as quickly as possible.” *Motion* [#60] at 2. Plaintiff has provided no explanation to support his assertion that moving the case “forward as quickly as possible” outweighs the policy of

preventing piecemeal appeals. “Interrelated legal claims and alternative theories for recovery should be litigated together and appealed together.” *Jordan*, 425 F.3d at 829. Here, all of Plaintiff’s claims involve alleged violations of his constitutional rights by Defendants’ “creating or allowing fraudulent amounts to be used to create fraudulent liens and levies” by the Internal Revenue Service and by the Colorado Department of Revenue, and by Defendants’ subsequently ignoring his “requests for investigation of the fraudulent amounts.” *Compl.* [#1] at 1. Thus, just reason for delay exists, in that Plaintiff’s related claims against Defendant Huber should be resolved before entry of judgment as to Plaintiff’s dismissed claims against the Federal Defendants, in order to avoid piecemeal appeals. *See Okla. Turnpike Authority v. Bruner*, 259 F.3d 1236, 1242 (10th Cir. 2001) (stating that “Rule 54(b) entries are not to be made routinely” and that “trial courts should be reluctant to enter Rule 54(b) orders since the purpose of this rule is a limited one: to provide a recourse for litigants when dismissal of less than all their claims will create undue hardships”). Plaintiff has provided no evidence that delay of his appeal until the full and final resolution of this action will create undue hardship. Accordingly,

IT IS HEREBY **ORDERED** that Plaintiff’s Motion [#60] is **DENIED**.¹

Dated: June 5, 2012

BY THE COURT:



Kristen L. Mix
United States Magistrate Judge

¹ *See Mitchell v. Rocky Mountain Cancer Centers, LLP*, No. 07-cv-01479-BNB-MJW, 2008 WL 4649028 (D. Colo. Oct. 20, 2008) (resolving a Motion for Rule 54(b) Certification by Order).

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preventing piecemeal appeals. “Interrelated legal claims and alternative theories for recovery should be litigated together and appealed together.” *Jordan*, 425 F.3d at 829. Here, all of Plaintiff’s claims involve alleged violations of his constitutional rights by Defendants’ “creating or allowing fraudulent amounts to be used to create fraudulent liens and levies” by the Internal Revenue Service and by the Colorado Department of Revenue, and by Defendants’ subsequently ignoring his “requests for investigation of the fraudulent amounts.” *Compl.* [#1] at 1. Thus, just reason for delay exists, in that Plaintiff’s related claims against Defendant Huber should be resolved before entry of judgment as to Plaintiff’s dismissed claims against the Federal Defendants, in order to avoid piecemeal appeals. See *Okla. Turnpike Authority v. Bruner*, 259 F.3d 1236, 1242 (10th Cir. 2001) (stating that “Rule 54(b) entries are not to be made routinely” and that “trial courts should be reluctant to enter Rule 54(b) orders since the purpose of this rule is a limited one: to provide a recourse for litigants when dismissal of less than all their claims will create undue hardships”). Plaintiff has provided no evidence that delay of his appeal until the full and final resolution of this action will create undue hardship. Accordingly,

IT IS HEREBY **ORDERED** that Plaintiff’s Motion [#60] is **DENIED**.¹

Dated: June 5, 2012

BY THE COURT:



Kristen L. Mix
United States Magistrate Judge

¹ See *Mitchell v. Rocky Mountain Cancer Centers, LLP*, No. 07-cv-01479-BNB-MJW, 2008 WL 4649028 (D. Colo. Oct. 20, 2008) (resolving a Motion for Rule 54(b) Certification by Order).

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	No. 11-7316
)	
BAKER FUNERAL HOME, LTD. and)	
VINCE BAKER)	
)	
Defendants.)	

FILED
 JUN - 5 2012
 MICHAEL J. ... Clerk
 By: ... Clerk

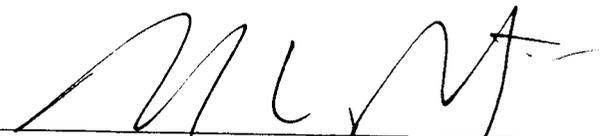
**ORDER GRANTING CONSENT MOTION
TO CORRECT PERMANENT INJUNCTION
BASED ON CLERICAL MISTAKES**

The Court, having reviewed the Consent Motion to Correct Permanent Injunction Based on Clerical Mistakes and any opposition to the motion, determines that the motion should be granted.

Accordingly, on this 5 day of June, 2012, it is

ORDERED that the Consent Motion to Correct Permanent Injunction Based on Clerical Mistakes is GRANTED; and it is

ORDERED that this Court shall enter Exhibit B to the motion (clean, corrected copy of Permanent Injunction), in place of Docket Number 10, as Permanent Injunction, without affecting the Permanent Injunction entry date of April 11, 2012.



 UNITED STATES DISTRICT JUDGE

MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 **Marquis Aurbach Coffing**
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8

9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 BANK OF AMERICA, N.A., a National
Association, as successor by merger to BAC
12 HOME LOAN SERVICING, LP f/k/a
Countrywide Home Loan Servicing, LP,

Case No: 2:12-cv-00032-KJD (GWF)

13 Plaintiff,

14 vs.

15 UNITED STATES OF AMERICA; DOES I
16 through X, inclusive; and ROE
CORPORATIONS I through X, inclusive,

17 Defendants.
18

19 **~~PROPOSED~~ DISCOVERY PLAN/SCHEDULING ORDER**
20 (SUBMITTED IN COMPLIANCE WITH LR 26-1(e))

21 Pursuant to Local Rule 26-1, the parties submit the following Discovery Plan and
22 Scheduling Order.

23 ///

24 ///

25 ///

26 ///

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 **I. INFORMATION PURSUANT TO FRCP 26(F).**

2 1. Plaintiff filed its Complaint on January 9, 2012.

3 2. Defendant filed its Answer on April 20, 2012.

4 3. The case conference was held on June 4, 2012.

5 4. The parties will exchange their initial disclosure statements on or before June 27,
6 2012.

7 5. Discovery may be conducted on all matters relevant to issues raised by
8 subsequent pleadings and all matters otherwise within the scope of Rule 26(b)(1) and not
9 protected from disclosure.

10 6. No changes in limitations set by either the Federal Rules of Civil Procedure or
11 Local Rules of Practice for the District of Nevada are requested at this time.

12 7. No orders are requested to be entered pursuant to FRCP 16(b), 16(c) or 26(c) at
13 this time.

14 **II. INFORMATION PURSUANT TO LOCAL RULE 26-1(E).**

15 1. Discovery Cutoff Date: In accordance with Local Rule 26-1(e)(1), the parties
16 shall have 180 days to conduct discovery and the last day of discovery shall be October 17, 2012

17 2. Amending the Pleadings and Adding Parties: In accordance with Local Rule 26-
18 1(e)(2), the last day to file a motion to amend the pleadings or to add parties shall be July 19,
19 2012.

20 3. Experts: In accordance with Local Rule 26-1(e)(3), the last day for disclosures as
21 required by FRCP 26(a)(2)(c) concerning experts shall be August 20, 2012. The last day for
22 disclosures concerning rebuttal experts shall be September 20, 2012.

23 4. Dispositive Motions: In accordance with Local Rule 26-1(e)(4), the last day for
24 filing dispositive motions including, but not limited to motions for summary judgment, shall be
25 November 16, 2012.

26 5. Pretrial Order: In accordance with Local Rule 26-1(e)(5), the last day to file a
27 Joint Pretrial Order, including any disclosures pursuant to FRCP 26(a)(3), shall be December 17,
28 2012. In the event dispositive motions are filed, the date for filing the Joint Pretrial Conference

1 shall be suspended until thirty (30) days after decision on the dispositive motion or upon further
2 Order by the Court extending the time period in which to file the Joint Pretrial Order.

3 **III. EXTENSION OF SCHEDULED DEADLINES.**

4 In accordance with Local Rule 26-4, a request for an extension of this discovery plan
5 shall be filed and served no later than twenty (20) days before the discovery cut off date.

6 IT IS SO STIPULATED this 4th day of June, 2012.

7 MARQUIS AURBACH COFFING

U.S. DEPARTMENT OF JUSTICE

8
9 By: /a/ Terry A. Moore
10 John M. Sacco, Esq.
11 Nevada Bar No. 1585
12 Terry A. Moore, Esq.
13 Nevada Bar No. 7831
14 10001 Park Run Drive
15 Las Vegas, Nevada 89145
16 *Attorney for Plaintiff*

By: /s/ Virginia Cronan Lowe
Virginia Cronan Lowe, Esq.
Trial Attorney, Tax Division
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044

Daniel Bogden, Esq.
United States Attorney

Kathryn Keneally, Esq.
Assistant Attorney General
Attorneys for Defendant

17 IT IS SO ORDERED this 5th day of June, 2012.

18 
19 _____
20 UNITED STATES MAGISTRATE JUDGE
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27
28

MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 3:08-cv-966-J-34MCR

JUDITH BARNES and NATHAN GENRICH,

Defendants.

ORDER

THIS CAUSE is before the Court on Plaintiff United States' Motion for Entry of Judgment and Order of Sale (Dkt. No. 51; Motion) filed on January 4, 2012. In the Motion, Plaintiff requests that the Court enter the proposed judgment and order of sale attached to the Motion. See Motion at 1.

On December 13, 2011, this Court entered an Order granting summary judgment in favor of the United States and against Barnes. See Order (Dkt. No. 49). In doing so, the Court determined that as of March 1, 2010, Barnes was indebted to the United States for unpaid federal income taxes, interest, and penalties for the tax year 1997, in the total amount of \$1,560,669.25, together with further interest and statutory additions as allowed by law accruing until satisfaction of the debt. See id. at 29. The Court further determined that the United States had valid tax liens on two parcels of property, one located at 10 Riviera Place, Palm Coast, Florida 32137, more fully described as:

Lot, 13, of the Subdivision plat of GRANDE MER, as recorded in Map Book 29, Page 99, being an amended plat of Section 85, North Raffles Surf Club as recorded in Map Book 23, Pages 41-57, Public Records of Flagler County, Florida,

(the Riviera Property) and the second located at 3 Anastasia Court, Palm Coast, Florida 32137, and more fully described as:

Lot 2, of Block 1, Map of Granada Estates, Section 1, according to the plat thereof as recorded in Map Book 28, Pages 26-27, being an amended plat of Section 85, at Palm Coast, North Raffles Surf Club, as recorded in Map Book 23, Pages 41-57, Public Records of Flagler County Florida,

(the Anastasia Property) Id. As such, the Court held that the United States was entitled to foreclose its tax liens on the two properties, sell the properties, and “apply the sale proceeds to the payment or partial payment of Defendant Barnes’ outstanding federal income tax liability.” Id. In light of its findings, the Court directed the United States to submit a proposed judgment “containing an up to date computation of amounts owed on the tax debt, supported by an affidavit explaining the computation; a proposed Order of Foreclosure, and a proposed Order of Sale setting forth the details of the sale.” Id. at 29-30. The United States complied with the Court’s Order by filing the instant Motion. Two months later on March 5, 2012, Barnes filed Defendant’s Motion for Temporary Stay of Proceeding (Dkt. No. 56; Motion for Temporary Stay) in which she sought a stay of these proceedings to allow her newly retained counsel to “examine the facts and circumstances giving rise to the lawsuit, the information gleaned from the discovery by both parties, the legal issues and pleadings presented before this Court, to determine the amount and the appropriateness of the amount as far as entering any judgment,” and to file any motions “as may be necessary.” Id. at 2. The United States

opposed the Motion for Temporary Stay, see Plaintiff United States' Memorandum of Law in Opposition to Defendant's Motion for Temporary Stay of Proceeding (Dkt. No. 57; Opposition to Temporary Stay). Upon review of the Motion for Temporary Stay, the Court denied Barnes' request but provided her with an opportunity to file objections to the form of the Proposed Judgment and Proposed Order of Sale. See Order (Dkt. No. 58). Accordingly, on April 4, 2012, Defendant filed Defendant Barnes' Response or Objection to Proposed Judgment and Order of Sale (Dkt. No. 59; Response).

In her Response, Barnes reminds the Court that because of the bankruptcy proceeding pending in the United States Bankruptcy Court, Middle District of Florida, Case No. 3:10-bk-04371-JAF, any judgment should be a judgment in rem only, not in personam. See id. at 1.¹ Additionally, she urges the Court to order the sale of the two properties to be accomplished sequentially, rather than contemporaneously. See id. at 2. Specifically, she asks that the Riviera Property be sold first as the proceeds from such sale may eliminate the need to sell the Anastasia Property. See id. Finally, Barnes requests that the Court determine a minimum acceptable bid for each property. See id.

¹ In May 2010, Barnes filed a bankruptcy petition in the United States Bankruptcy Court, Middle District of Florida, Case No. 3:10-bk-04371. See Suggestion of Bankruptcy (Dkt. No. 33). As a result, on June 23, 2010, pursuant to the automatic stay imposed by the Bankruptcy Code, the Court stayed this case and directed that it be administratively closed. See Order (Dkt. No. 36).

The United States subsequently filed a motion with the bankruptcy court requesting that the stay be lifted to allow the United States to proceed with the enforcement of its liens on the two properties. See Motion to Lift Stay (Dkt. No. 37) at 1-2. The bankruptcy court granted the request, expressly permitting this Court to determine the amount of Defendants' 1997 tax liability and to order foreclosure of the United States' tax liens on the two pieces of property owned by Defendant Barnes. See id. at Ex. 1. It did not, however, permit the Court to enter a personal judgment against Defendant Barnes for Defendants' unpaid 1997 taxes. See id. This Court then granted the United States' motion to re-open this case and proceed to a ruling on the merits. See Dkt. Nos. 37, 38.

Upon review of the Motion and the Response, the Court determines that the Motion should be granted, in part, and denied, in part. The Motion will be denied to the extent it seeks entry of the Order of Sale in the precise format proposed. However, the Motion will be granted to the extent that the Court will enter an Order of Sale with the terms and in the format requested except that the Court will direct that the Order of Sale require the sale of the Riviera Property first, with the sale of the Anastasia Property to occur no less than 45 days later.

In light of the foregoing, it is hereby

ORDERED:

1. Plaintiff United States' Motion for Entry of Judgment and Order of Sale (Dkt. No. 51) is **GRANTED, in part, and DENIED, in part.**
2. The Motion is **GRANTED** to the extent that:
 - a) As the Court finds there is no just reason for delay, the Clerk of the Court is directed to enter Judgment in favor of Plaintiff United States of America in the form attached to this Order;
 - b) The United States shall immediately provide the Court with a revised proposed Order of Sale which accomplishes the directives set forth in this Order. The Court will thereafter forthwith enter an Order of Sale.
3. Otherwise, the Motion is **DENIED.**

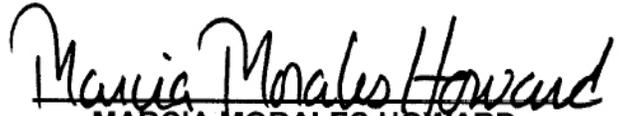
4. As the sole claim remaining in this action² is still subject to the automatic stay, this action is **STAYED**.

5. The Clerk of Court is directed to terminate all pending motions and deadlines and administratively close the file pending notification from the parties that the case is due to be reopened or dismissed.

6. The parties are directed to file a status report with this Court on **September 4, 2012**, and every **90 days thereafter**, advising the Court of the status of Judith Barnes' bankruptcy proceedings.

7. Plaintiff may seek to lift the stay upon proper motion at the conclusion of the bankruptcy proceedings if the parties do not resolve this claim. If the bankruptcy proceedings resolve the claim, Plaintiff shall promptly move to dismiss this action.

DONE AND ORDERED in Jacksonville, Florida, this 4th day of June, 2012.


MARCIA MORALES HOWARD
United States District Judge

Copies to:

Counsel of Record

² As noted supra, in Note 1, the bankruptcy stay prohibits Plaintiff from seeking any relief from Defendant Barnes individually.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

Case No.: 3:08-cv-966-J-34MCR

v.

JUDITH BARNES and NATHAN GENRICH,

Defendants.

JUDGMENT

This Court, having granted the United States' Motion for Summary Judgment (Dkt. No. 49), it is:

DECREED that the amount of Defendant Judith Barnes' assessed unpaid federal income tax liabilities for the tax year 1997 is \$1,671,212.76, through December 31, 2011, plus further statutory interest and statutory additions thereon as allowed by law;

ORDERED and ADJUDGED that the real property located in Flagler County, Florida at 10 Riviera Place, Palm Coast, FL 32137 ("the Riviera Property"), and which is more particularly described as

Lot, 13, of the Subdivision plat of GRANDE MER, as recorded in Map Book 29, Page 99, being an amended plat of Section 85, North Raffles Surf Club as recorded in Map Book 23, Pages 41-57, Public Records of Flagler County, Florida.

is subject to the United States' liens for Judith Barnes' unpaid federal income tax liabilities;

ORDERED and ADJUDGED that the real property located at 3 Anastasia Court, Palm Coast, Florida 32137 ("Anastasia Property"), and which is more particularly described as

Lot 2, of Block 1, Map of Granada Estates, Section 1, according to the plat thereof as recorded in Map Book 28, Pages 26-27, being an amended plat of Section 85, at Palm Coast, North Raffles Surf Club, as recorded in Map Book 23, Pages 41-57, Public Records of Flagler County Florida.

is also subject to the United States' liens for Judith Barnes' unpaid federal income tax liabilities; and

ORDERED and ADJUDGED that the tax liens of the United States are hereby foreclosed on Judith Barnes' interest in the Riviera Property and Anastasia Property, and those properties will be sold pursuant to a subsequent order of sale to be entered by the Court.

DONE AND ORDERED in Jacksonville, Florida, this 4th day of June, 2012.


MARCIA MORALES HOWARD
United States District Judge

Copies to:

Counsel of Record

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 3:08-cv-966-J-34MCR

JUDITH BARNES and NATHAN GENRICH,

Defendants.

ORDER

THIS CAUSE is before the Court on Defendant Barnes' Amended Motion for Reconsideration (Dkt. No. 63; Motion) filed on April 12, 2012. In the Motion, Defendant Barnes ("Barnes") seeks reconsideration of the Court's December 13, 2011 Order (Dkt. No. 49) in which the Court granted summary judgment in favor of the United States and against Barnes. See Motion at 1. In that Order, the Court determined that as of March 1, 2010, Barnes was indebted to the United States for unpaid federal income taxes, interest, and penalties for the tax year 1997, in the total amount of \$1,560,669.25, together with further interest and statutory additions as allowed by law accruing until satisfaction of the debt. See Order at 29. The Court further determined that the United States had valid tax liens on two parcels of property, one located at 10 Riviera Place, Palm Coast, Florida 32137, more fully described as:

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(the Anastasia Property) Id. As such, the Court held that the United States was entitled to foreclose its tax liens on the two properties, sell the properties, and “apply the sale proceeds to the payment or partial payment of Defendant Barnes’ outstanding federal income tax liability.” Id. In light of its findings, the Court directed the United States to submit a proposed judgment “containing an up to date computation of amounts owed on the tax debt, supported by an affidavit explaining the computation; a proposed Order of Foreclosure, and a proposed Order of Sale setting forth the details of the sale.” Id. at 29-30. The United States complied with the Court’s Order by filing Plaintiff United States’ Motion for Entry of Judgment and Order of Sale (Dkt. No. 51; Motion for Judgment) on January 4, 2012. Two months later on March 5, 2012, Barnes filed Defendant’s Motion for Temporary Stay of Proceeding (Dkt. No. 56; Motion for Temporary Stay) in which she sought a stay of these proceedings to allow her newly retained counsel to “examine the facts and circumstances giving rise to the lawsuit, the information gleaned from the discovery by both parties, the legal issues and pleadings presented before this Court, to determine the amount and the appropriateness of the amount as far as entering any judgment,” and to file any motions “as may be necessary.” Id. at 2. The United States opposed the Motion for Temporary Stay, see Plaintiff United States’

Memorandum of Law in Opposition to Defendant's Motion for Temporary Stay of Proceeding (Dkt. No. 57; Opposition to Temporary Stay). Upon review of the Motion for Temporary Stay, the Court denied Barnes' request, but provided her with an opportunity to file objections to the form of the Proposed Judgment and Proposed Order of Sale. See Order (Dkt. No. 58). Thereafter, Barnes filed the instant Motion seeking reconsideration of the Court's entry of summary judgment in favor of the United States.

In support of her request for reconsideration, Barnes contends that the Order should be set aside because: 1) any agency relationship between Barnes and her former husband, Genrich, terminated upon their divorce in May 1998 some five months before Genrich filed the purported joint tax return; 2) Barnes' former counsel of record should have argued that the tax lien should not be enforced against Barnes' primary residence; and 3) a genuine issue of material fact existed with respect to the beneficiaries of The Eleanor S. Barnes Revocable Trust, and as such summary judgment as to the Anastasia Property was improper. The United States opposes Barnes' Motion and filed Plaintiff United States' Memorandum of Law in Opposition to Defendant's Motion for Reconsideration (Dkt. No. 65; Response) setting forth its arguments.

In the Motion, Barnes references Rules 59(a) and 59(e) of the Federal Rules of Civil Procedure (Rule(s)). See Motion at 1. However, in her memorandum of law, Barnes only addresses the standard for reconsideration under Rule 59(e). See id. at 2. Rule 59(a) provides a federal court with authority to "grant a new trial on some or all the issues. . . ." See Rule 59(a). While Rule 59(e) allows a court to alter or amend a judgment upon the filing

of a timely motion.¹ See Rule 59(e). Although Rule 59(e) specifically refers to altering or amending a judgment, it is widely recognized as encompassing motions for reconsideration. See Controlled Semiconductor, Inc. v. Control Systemation, Inc., No. 6:07-cv-1742-Orl-31KRS, 2008 WL 4459085, at *1 (M.D. Fla. Oct. 1, 2008) (citing 11 Charles Alan Wright, Arthur R. Miller, & Mary K. Kane, *Federal Practice & Procedure* 2d § 2810.1 (2007)). As the Court resolved the parties' claims on summary judgment, and no trial was held, the Court determines that the Motion is best characterized as brought pursuant to Rule 59(e). Indeed, the Eleventh Circuit Court of Appeals has observed that "[a] motion requesting the setting aside of summary judgment and a trial on the merits of the case is best characterized as a Rule 59(e) motion." Rance v. D.R. Horton, Inc., 316 F. App'x 860, 863 (11th Cir. 2008)(citing Mays v. United States Postal Serv., 122 F.3d 43, 46 (11th Cir. 1997)).

Pursuant to Rule 59(e), a court is vested with discretion to reconsider an order which it has entered. See Mincey v. Head, 206 F.3d 1106, 1137 (11th Cir. 2000); O'Neal v. Kenamer, 958 F.2d 1044, 1047 (11th Cir. 1992). Such relief, however, is generally available only to address "newly-discovered evidence or manifest errors of law or fact." Arthur v. King, 500 F.3d 1335, 1343 (11th Cir. 2007) ("The only grounds for granting a Rule 59 motion are newly discovered evidence or manifest errors of law or fact.") (quotations and citations omitted). Those parameters include "(1) an intervening change in controlling law; (2) the

¹ A motion to alter or amend a judgment pursuant to Rule 59(e) is required to be filed within 28 days of the entry of judgment. See Rule 59(e). Here, the Motion was filed some four months after entry of the Court's Order, but before entry of judgment. Although the Court granted summary judgment on December 13, 2011, it withheld entry of judgment pending resolution of the United States' claims against Barnes' co-defendant Nathan Genrich. As no judgment had been entered, when Barnes filed the Motion, the Order remained a non-appealable, interlocutory order. A court may reconsider an interlocutory order at any time before judgment is entered. See Harper v. Lawrence County, Ala., 592 F.3d 1227, 1233 (11th Cir. 2010). As such, the Court considers Barnes' Motion to be properly before it.

availability of new evidence; and (3) the need to correct clear error or manifest injustice.” Lamar Advertising of Mobile, Inc. v. City of Lakeland, Fla., 189 F.R.D. 480, 489 (M.D. Fla. 1999). For example, reconsideration may be appropriate where “the Court has patently misunderstood a party.” O’Neill v. The Home Depot U.S.A., Inc., 243 F.R.D. 469, 483 (S.D. Fla. 2006).

However, Rule 59(e) cannot be used “to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.” Michael Linet, Inc. v. Village of Wellington, Fla., 408 F.3d 757, 763 (11th Cir. 2005). As such, motions to alter or amend “should not be used to raise arguments which could, and should, have been made before the judgment was issued.” O’Neal, 958 F.2d at 1047 (quotations and citations omitted). Indeed, permitting a party to raise new arguments on a motion for reconsideration “essentially affords a litigant ‘two bites of the apple.’” American Home Assurance Co. v. Glenn Estess & Assocs., Inc., 763 F.2d 1237, 1239 (11th Cir. 1985); see also Mincey, 206 F.3d at 1137 n.69 (citation omitted); Mays, 122 F.3d at 46 (“a motion to reconsider should not be used by the parties to set forth new theories of law”). For this reason, the Eleventh Circuit Court of Appeals has held that the “[d]enial of a motion for reconsideration is especially sound when the party has failed to articulate any reason for the failure to raise the issue at an earlier stage of the litigation.” Sanderlin v. Seminole Tribe of Fla., 243 F.3d 1282, 1292 (11th Cir. 2001)(internal quotations and citation omitted).

Generally, in order to obtain reconsideration, the movant must show “why the court should reconsider its decision and ‘set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision.’” United States v. Battle, 272 F. Supp. 2d 1354,

1357 (N.D. Ga. 2003) (quoting Cover v. Wal-Mart Stores, Inc., 148 F.R.D. 294, 294 (M.D. Fla. 1993)). While, in a motion for reconsideration, a party may seek to correct clear errors in a court order or judgment, “[a]n error is not ‘clear and obvious’ if the legal issues are ‘at least arguable.’” Id. at 1357-58 (quoting American Home Assurance Co., 763 F.2d at 1239). Moreover, while the trial court is vested with substantial discretion in granting such relief, reconsideration is an extraordinary remedy. See id. at 1358; Williams v. Cruise Ships Catering and Service Int., N.V., 320 F. Supp. 2d 1347, 1358 (S.D. Fla. 2004); Sussman v. Salem, Saxon & Nielsen, P.A., 153 F.R.D. 689, 694 (M.D. Fla. 1994). Indeed, “[w]hen evaluating a motion to reconsider, a court should proceed cautiously, realizing that ‘in the interests of finality and conservation of scarce judicial resources, reconsideration of a previous order is an extraordinary remedy to be employed sparingly.’” United States v. Bailey, 288 F. Supp. 2d 1261, 1267 (M.D. Fla. 2003)(citation omitted).

Review of the Motion discloses that Barnes has failed to present any recognized basis for reconsideration. She identifies no intervening change in the law, and points to no new evidence relevant to the dispute. Moreover, Barnes fails to identify any manifest error of law or fact in the Court’s Order or present a need to correct manifest injustice. Instead, in the Motion, Barnes’ new counsel simply raises three arguments that Barnes did not present in her summary judgment briefing. Despite recognizing the absence of the arguments in Barnes’ response to the United States’ motion for summary judgment, see Motion at 5, n1, 14 at 2, Barnes fails to suggest any reason why the new arguments could not have been

presented previously.² Given this record, the Court declines to reconsider its resolution of the summary judgment motion on the bases urged in the Motion. See Lussier v. Dugger, 904 F.2d 661, 667 (11th Cir. 1990) (motions for reconsideration are not to be used “to raise arguments which could, and should, have been made before”); Mays, 122 F.3d at 46 (instructing that motions for reconsideration should not be used to set forth “new theories of law”). Having carefully considered the issues addressed in the Order, the Court finds no basis for reconsideration. Accordingly, the Motion is due to be denied.

In light of the foregoing, it is hereby

ORDERED:

Defendant Barnes’ Amended Motion for Reconsideration (Dkt. No. 63) is **DENIED**.

DONE AND ORDERED in Jacksonville, Florida, this 4th day of June, 2012.


MARCIA MORALES HOWARD
United States District Judge

Copies to:

Counsel of Record

² While Barnes argued that genuine issues of material fact precluded entry of summary judgment in favor of Plaintiff, she did not present any of the legal arguments or theories presented in the Motion.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 3:08-cv-966-J-34MCR

JUDITH BARNES and NATHAN GENRICH,

Defendants.

ORDER

THIS CAUSE is before the Court on Magistrate Judge Monte C. Richardson's Report and Recommendation (Dkt. No. 52; Report), entered on January 24, 2012. In the Report, Magistrate Judge Richardson recommends that Plaintiff United States' Motion for Default Judgment (Dkt. No. 50) be granted, and that the Clerk of the Court be directed to enter final judgment in favor of Plaintiff and against Defendant Nathan Genrich in the total amount of \$1,671,212.76 as of December 31, 2011, with interest accruing at the usual and lawful rate for federal court judgments thereafter. See Report at 5. No objections to the Report have been filed, and the time for doing so has now passed. However, on January 27, 2012, Plaintiff filed a response to the Report clarifying the applicable rate for the accrual of interest on the judgment. See Plaintiff United States' Response to Report and Recommendation on Motion for Default Judgment (Dkt. No. 53; Response).

The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b). If no specific

objections to findings of facts are filed, the district court is not required to conduct a de novo review of those findings. See Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993); see also 28 U.S.C. § 636(b)(1). However, the district court must review legal conclusions de novo. See Cooper-Houston v. Southern Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994); United States v. Rice, No. 2:07-mc-8-FtM-29SPC, 2007 WL 1428615, at * 1 (M.D. Fla. May 14, 2007).

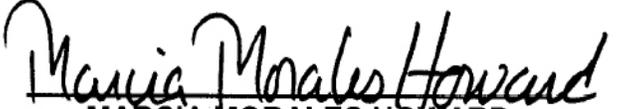
Upon independent review of the file and for the reasons stated in the Magistrate Judge's Report, the Court will accept and adopt the legal and factual conclusions recommended by the Magistrate Judge, with the clarification noted in Plaintiff's Response. Accordingly, it is hereby

ORDERED:

1. The Report and Recommendation (Dkt. No. 52) of Magistrate Judge Richardson is **ADOPTED**, as clarified, by the Court.
2. Plaintiff United States' Motion for Default Judgment (Dkt. No. 50) is **GRANTED**.
3. As the Court finds there is no just reason for delay, the Clerk of Court is **DIRECTED** to enter judgment in favor of Plaintiff, United States of America, and against Defendant, Nathan Genrich, for assessed unpaid federal income tax liabilities for the tax year

1997 in the amount of \$1,671,212.76 as of December 31, 2011, with statutory additions allowed by law, and interest accruing at the applicable statutory rate pursuant to 26 U.S.C. § 6621.

DONE AND ORDERED in Jacksonville, Florida, this 4th day of June, 2012.


MARCIA MORALES HOWARD
United States District Judge

ja

Copies to:

The Honorable Monte C. Richardson
United States Magistrate Judge

Counsel of Record

Nathan Genrich
1102 West Wedgewood Drive
Waukesha, WI 53186

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 3:08-cv-966-J-34MCR

JUDITH BARNES and NATHAN GENRICH,

Defendants.

ORDER

THIS CAUSE is before the Court on Defendant Barnes' Motion for Stay of Sale of Properties (Dkt. No. 61; Motion) filed on April 4, 2012.

On December 13, 2011, the Court entered summary judgment in favor of Plaintiff, the United States of America, and against Defendant, Judith Barnes ("Barnes"), for unpaid federal income taxes. See Order (Dkt. No. 49). In doing so, the Court determined that as of March 1, 2010, Barnes was indebted to the United States for unpaid federal income taxes, interest, and penalties for the tax year 1997, in the total amount of \$1,560,669.25, together with further interest and statutory additions as allowed by law accruing until satisfaction of the debt. See id. at 29. The Court further determined that the United States had valid tax liens on two parcels of property, one located at 10 Riviera Place, Palm Coast, Florida 32137, more fully described as:

Lot, 13, of the Subdivision plat of GRANDE MER, as recorded in Map Book 29, Page 99, being an amended plat of Section 85, North Raffles Surf Club as recorded in Map Book 23, Pages 41-57, Public Records of Flagler County, Florida,

(the Riviera Property) and the second located at 3 Anastasia Court, Palm Coast, Florida 32137, and more fully described as:

Lot 2, of Block 1, Map of Granada Estates, Section 1, according to the plat thereof as recorded in Map Book 28, Pages 26-27, being an amended plat of Section 85, at Palm Coast, North Raffles Surf Club, as recorded in Map Book 23, Pages 41-57, Public Records of Flagler County Florida,

(the Anastasia Property) Id. As such, the Court held that the United States was entitled to foreclose its tax liens on the two properties, sell the properties, and “apply the sale proceeds to the payment or partial payment of Defendant Barnes’ outstanding federal income tax liability.” Id. In light of its findings, the Court directed the United States to submit a proposed judgment “containing an up to date computation of amounts owed on the tax debt, supported by an affidavit explaining the computation; a proposed Order of Foreclosure, and a proposed Order of Sale setting forth the details of the sale.” Id. at 29-30. The United States complied with the Court’s Order by filing Plaintiff United States’ Motion for Entry of Judgment and Order of Sale (Dkt. No. 51; Motion for Judgment) on January 4, 2012. Two months later on March 5, 2012, Barnes filed Defendant’s Motion for Temporary Stay of Proceeding (Dkt. No. 56; Motion for Temporary Stay) in which she sought a stay of these proceedings to allow her newly retained counsel to “examine the facts and circumstances giving rise to the lawsuit, the information gleaned from the discovery by both parties, the legal issues and pleadings presented before this Court, to determine the amount and the appropriateness of the amount as far as entering any judgment,” and to file any motions “as may be necessary.” Id. at 2. The United States opposed the Motion for Temporary Stay, see Plaintiff United States’ Memorandum of Law in Opposition to Defendant’s Motion for Temporary Stay of Proceeding

(Dkt. No. 57; Opposition to Temporary Stay). Upon review of the Motion for Temporary Stay, the Court denied Barnes' request but provided her with an opportunity to file objections to the form of the Proposed Judgment and Proposed Order of Sale. See Order (Dkt. No. 58). Thereafter, Barnes filed the instant Motion.¹

In the Motion, Defendant Barnes seeks a stay of the sale of the properties pursuant to Rule 62, Federal Rules of Civil Procedure (Rule(s)), as well as the Court's inherent authority. See Motion at 1. As grounds for her request, Barnes argues that given the current economic climate and real estate market, a sale at this time is not in the interest of either party. See id. Additionally, she notes that the Anastasia Property is her residence and also her office and the value of the Riviera Property, if sold at the appropriate time may be sufficient to satisfy the United States' judgment. See id. at 2. As such, she contends that the sale should be delayed for three (3) to five (5) years to allow for the private marketing of the Riviera Property requiring the acceptance of any offer exceeding a sum certain. See id. Alternatively, Barnes asks the Court to allow her "to execute a deed retaining a life estate for herself with a contingent remainder interest to the Plaintiff" to allow her to maintain her home and business. Id.

The United States opposes Barnes' request as reflected in Plaintiff United States' Memorandum of Law in Opposition to Defendant's Motion for Stay of Sale of Properties and to Amended Objection to Judgment and Order of Sale (Dkt. No. 64; Response). Accordingly, the Motion is ripe for the Court's review.

¹ Additionally, Barnes filed Defendant Barnes' Motion for Reconsideration (Dkt. No. 60) and Defendant Barnes' Amended Motion for Reconsideration (Dkt. No. 63). The Court resolved the Amended Motion for Reconsideration by separate Order.

Although Barnes references Rule 62 in her Motion, she has failed to suggest the existence of any basis for relief under Rule 62. Upon review of the Motion, the Court identifies no facts or circumstances warranting relief under Rule 62 and further identifies no other legal basis warranting entry of a stay. In doing so, the Court declines to find the current economic and real estate markets to be sufficient to warrant the exercise of any discretionary authority the Court might have to delay the entry of a judgment to which the Court has determined the Plaintiff is entitled.² Accordingly, the Motion is due to be denied.

In light of the foregoing, it is hereby

ORDERED:

Defendant Barnes' Motion for Stay of Sale of Properties (Dkt. No. 61) is **DENIED**.

DONE AND ORDERED in Jacksonville, Florida, this 4th day of June, 2012.


MARCIA MORALES HOWARD
United States District Judge

Copies to:

Counsel of Record

² The Court declines to consider Barnes' alternative request that she be permitted to retain a life estate in the Riviera Property. Such a request is not properly before the Court in the instant Motion which purports to seek only a stay of the Court ordered sale of the properties. Moreover, the Court is aware of, and Defendant identifies, no legal authority supporting the relief she proposes.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,
Petitioner,

v.

Gary S. Christensen,
Respondent.

MC 12-8002-PCT-FJM
ORDER

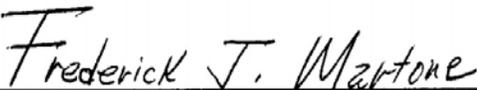
Pending before the Court is the stipulation of all parties to continue the hearing on the Order to Show Cause Why the Summons Should Not Be Enforced. Good cause appearing,

IT IS ORDERED granting the Stipulation (doc. 8). The hearing currently scheduled for June 22, 2012 is continued to July 27, 2012 at 1:30 p.m.

IT IS FURTHER ORDERED that the briefing deadlines previously set by the this Court shall be continued as follows: The respondent must provide their defense or opposition in writing and filed with the Clerk and copies served on counsel for the United States at least fourteen (14) days prior to the date set for the show cause hearing. The United States may file a reply memorandum to any opposition at least five (5) day court days prior to the date set for the show cause hearing.

IT IS FURTHER ORDERED that all other aspects of the Court's Order of April 5, 2012, (Dkt. 5), remain in full force and effect.

Dated this 5th day of June, 2012.



Frederick J. Martone
United States District Judge

Lucinda B. Rauback, Acting Clerk
United States Bankruptcy Court
Brunswick, Georgia
By arowe at 10:19 am, Jun 05, 2012

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

DBT HOLDING COMPANY,)
)
)
 Debtor.) Bk. No. 11-60177-JSD
)
) Chapter 7

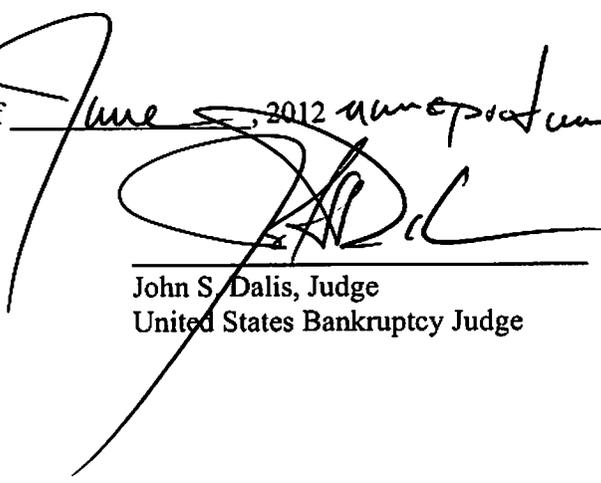
**ORDER GRANTING THE UNITED STATES OF AMERICA'S MOTION TO EXTEND
TIME TO RESPOND TO TRUSTEE'S
APPLICATION TO COMPROMISE BY EIGHTEEN (18) DAYS**

This matter having been submitted to the Court on the United States of America's unopposed motion to extend time to respond to the Trustee's Application to Compromise by eighteen (18) days, and the Court having considered the matter and for good cause shown,

It is hereby ORDERED as follows:

The United States of America's time to respond to the Trustee's Application to Compromise will be extended by eighteen (18) days. As a result, the United States' response deadline will be extended from June 4, 2012 until June 22, 2012.

SO ORDERED this 5 day of June, 2012 amended to June 6/4/12



John S. Dalis, Judge
United States Bankruptcy Judge

Prepared by:

Kathryn Keneally
Assistant Attorney General
Tax Division

/s/ Benjamin L. Tompkins
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EDWARD J. TARVER
United States Attorney

/s/ Ruth H. Young
Ruth H. Young
Assistant United States Attorney
Bar No. 198489
Post Office Box 8970
Savannah, Georgia 31412
(912) 652-44223
Ruth.Young@usdoj.gov

Honorable Linda B. Riegle
United States Bankruptcy Judge



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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re: DESERT CAPITAL REIT, INC.)	BK-S-11-16624-lbr
	)	Chapter 11
)	
	)	Pretrial
	)	Date: September 10, 2012
	)	Time: 1:30 p.m.
)	
	)	Trial
	)	Date: September 25, 2012
	)	Time: 9:30 a.m.
Debtor(s).)	

ORDER RE: PRE-TRIAL MATTERS AND TRIAL

Hearings having been held on April 11, 2012 regarding the objection to claim 1393 (Docket #561) and the objection to claim 1394 (Docket #563) and for good cause appearing,

IT IS HEREBY ORDERED that the provisions checked below are hereby adopted by this court as its order.

The request for waiver is granted and no formal discovery plan is required to be filed.

The discovery plan filed by the parties shall govern the matters set forth therein.

Discovery shall be completed within 60 days from entry of this order.

1 ___ The scheduling conference set with the issuance of the summons (or the
2 continued scheduling conference) is hereby vacated.

3 ___ The parties shall participate with their clients in a settlement conference in
4 accordance with the Settlement Conference Order (a copy of which will be sent by the court).

5 A pretrial conference will be held on **September 10, 2012 at 1:30 p.m.**

6 **TRIAL STATEMENTS**

7 ___ No trial statement is required.

8 X Each party shall file a trial statement (or counsel may meet and file a joint trial
9 statement)

10 ___ The parties shall file a joint trial statement.

11 Trial statements shall contain the information as shown on, and in the form of, Part "A"
12 attached hereto. Pre-trial statements shall be filed on or before seven (7) days before the pre-trial
13 conference.

14 Any objections made pursuant to Fed. R. Civ. P. 26(a)(3) shall be made no later than
15 seven (7) days after the opposing party files its trial statement.

16 **PRETRIAL MOTIONS**

17 Motions in Limine must be filed seven (7) days prior to the pre-trial conference.

18 Responses are due no later twenty-four hours (24) prior to the pre-trial conference.

19 **EXHIBITS/WITNESS LISTS**

20 Each party shall lodge and meet with the Courtroom Deputy Clerk not later than the day
21 before the trial the following:

22 (1) The original and one (1) copy of all exhibits, bound and tabbed. All exhibits
23 shall be marked with stickers on the lower right corner of the exhibit whenever possible.

24 Log forms may be obtained from the Court's web site at www.nvb.uscourts.gov or from the
25 Courtroom Deputy Clerk.

26 All exhibits to which there is no objection shall be admitted by stipulation.

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1 Counsel may stipulate to an exhibit on one ground (e.g., foundation) while preserving an
2 objection on another ground (e.g., relevance).

3 (2) List of witnesses with correct spelling of the witnesses' full name.

4 **Counsel must make an appointment with the respective Courtroom Deputy to meet**
5 **with them to lodge the exhibits.**

6 Trial of this matter is set for **September 25, 2012 at 9:30 a.m.** at 300 Las Vegas Blvd.
7 South, Las Vegas, Nevada, before Judge William T. Thurman in Courtroom #5, located on the
8 Second Floor.

9 **IT IS SO ORDERED.**

10
11 Copies noticed through ECF to:
12 DOUGLAS S DRAPER ddraper@hellerdraper.com, kfritscher@hellerdraper.com
13 CANDACE C. CLARK bankruptcynotices@gordonsilver.com

14 Copies noticed through mail to:

15 ALPINE ENVIRONMENTAL TECHNOLOGIES CORPORATION
16 PHASE ONE TECHNOLOGIES, L.L.C.
17 C/O THE KIM LAW FIRM
18 4309 YOAKUM BLVD SUITE 2000
19 HOUSTON, TX 77006

20 ALVERSON TAYLOR MORTENSEN & SANDERS
21 KURT R BONDS AND ERIC W HINCKLEY
22 7401 W CHARLESTON BOULEVARD
23 LAS VEGAS, NV 89117

24 NICHAMOFF & KING PC
25 SETH A NICHAMOFF AND JAMIE KING
26 2444 TIMES BOULEVARD STE 270
27 HOUSTON, TX 77005

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PART "A"
(Trial Statements)

The trial statement(s) shall contain the following items:

1. The disclosures required by Fed. R. Civ. P. 26(a)(3), as adopted by Fed. R. Bank. P. 7026 and LR 7026.
2. A concise statement of the nature of the action and contentions of the parties.
3. A statement as to the core or non-core jurisdiction of the Court, with legal citations.
4. Stipulated facts.
5. Contested issues of law with a concise memorandum of authority.
6. Logs of exhibits which may be offered in evidence, including any exhibits for impeachment or to refresh the memory of a witness.
7. Any special trial issue which requires the Court's attention.
8. The list of witnesses, with their addresses, expected to be called.

Honorable Linda B. Riegler
United States Bankruptcy Judge



Entered on Docket
June 05, 2012

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re: DESERT CAPITAL REIT, INC.)	BK-S-11-16624-lbr
)	Chapter 11
)	
)	
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)	Date: September 10, 2012
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___ The discovery plan filed by the parties shall govern the matters set forth therein.

X Discovery shall be completed within 60 days from entry of this order.

1 ___ The scheduling conference set with the issuance of the summons (or the
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3 ___ The parties shall participate with their clients in a settlement conference in
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5 A pretrial conference will be held on **September 10, 2012 at 1:30 p.m.**

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10 ___ The parties shall file a joint trial statement.

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13 conference.

14 Any objections made pursuant to Fed. R. Civ. P. 26(a)(3) shall be made no later than
15 seven (7) days after the opposing party files its trial statement.

16 **PRETRIAL MOTIONS**

17 Motions in Limine must be filed seven (7) days prior to the pre-trial conference.

18 Responses are due no later twenty-four hours (24) prior to the pre-trial conference.

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9 **IT IS SO ORDERED.**

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PART "A"
(Trial Statements)

The trial statement(s) shall contain the following items:

1. The disclosures required by Fed. R. Civ. P. 26(a)(3), as adopted by Fed. R. Bank. P. 7026 and LR 7026.
2. A concise statement of the nature of the action and contentions of the parties.
3. A statement as to the core or non-core jurisdiction of the Court, with legal citations.
4. Stipulated facts.
5. Contested issues of law with a concise memorandum of authority.
6. Logs of exhibits which may be offered in evidence, including any exhibits for impeachment or to refresh the memory of a witness.
7. Any special trial issue which requires the Court's attention.
8. The list of witnesses, with their addresses, expected to be called.



Honorable Linda B. Riegler
United States Bankruptcy Judge

Entered on Docket
June 05, 2012

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*Attorneys for James George, Thomas Gustafson,
and Charles Wolcott*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
DESERT CAPITAL, REIT, INC.,
Debtor.

Case No. 11-16624-lbr
Chapter 11
Judge Linda B. Riegler

**ORDER GRANTING MOTION FOR RELIEF
FROM THE AUTOMATIC STAY TO
ALLOW PAYMENT OF DEFENSE COSTS
UNDER DIRECTORS AND OFFICERS
LIABILITY INSURANCE POLICY
[DOCKET NO. 718]**

**Hearing Date: May 30, 2012
Hearing Time: 1:30 p.m.**

**Place of Hearing: 300 Las Vegas Boulevard South,
Las Vegas, Nevada, Courtroom 1**

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On April 26, 2012, James George, Thomas Gustafson, and Charles Wolcott (“Insured Persons”) filed a motion for relief from the automatic stay, to the extent applicable, to allow the payment of defense costs under a directors and officers liability insurance policy [Dkt. No. 718].

The Court has considered the motion, related briefing, the applicable legal authorities, and finds that the motion should be GRANTED.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT, that the automatic stay, to the extent applicable, is hereby modified to, and without further order of this Court, allow payment of covered defense costs from the Directors, Officers, and Corporate Liability/General Partners and Limited Partnership Liability Insurance Policy from Chartis Specialty Insurance Company (Policy Number 01-122-75-95) to the Insured Persons pursuant to the terms of the Policy. This Order is limited to James George, Thomas Gustafson and Charles Wolcott.

IT IS SO ORDERED.

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In accordance with LR 9021, counsel submitting this **ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO ALLOW PAYMENT OF DEFENSE COSTS UNDER DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY [DOCKET NO. 718]** certifies that the order accurately reflects the Court’s ruling and that (check one):

___ The Court has waived the requirement set forth in LR 9021(b)(1).

___ No party appeared at the hearing or filed an objection to the motion.

X I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

APPROVED / ~~DISAPPROVED~~

/s/ Stephen C. Greenberg
Stephen C. Greenberg, Esq.
TAYLOR ENGLISH DUMA LLP
1600 Parkwood Circle Suite 400
Atlanta, GA 30339
Email: sgreenberg@taylorenghish.com

and

SIDHU LAW FIRM
AMBRISH S. SIDHU, ESQ.
Nevada Bar No. 7156
810 S. Casino Center Blvd., Suite 104
Las Vegas, NV 89101
asidhu@sidhulawfirm.com

Attorneys for Desert Capital REIT, Inc.

APPROVED / ~~DISAPPROVED~~

/s/ Mark Rouse
PARKER SHEER LAGOMARSINO, ESQ.
Nevada Bar No. 6711
MARK A. ROUSE, ESQ.
Nevada Bar No. 12273
9555 S. Eastern Avenue, Suite 210
Las Vegas, Nevada 89123

Attorneys for Todd Parriott

___ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

SUBMITTED BY:

MCDONALD CARANO WILSON LLP

By: /s/ Ryan J. Works

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ANDREWS KURTH LLP

By: /s/ Dennis N. Ryan

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Western.Taxcivil@usdoj.gov

9
10 IN THE UNITED STATES DISTRICT COURT FOR THE
11 DISTRICT OF NEVADA

12 ESTATE OF BERNARD SHAPIRO,
13 CLYDE E. PITCHFORD and STEVEN R.
SCOW, CO-EXECUTORS,

14 Plaintiff,

15 v.

16 UNITED STATES OF AMERICA,

17 Defendant.
18

Case No. 2:06cv1149 MMD-CWH
ORDER GRANTING
STIPULATION FOR DISMISSAL
Fed.R.Civ.P. 41(a)

19 IT IS HEREBY STIPULATED AND AGREED between plaintiff, Estate of Bernard Shapiro,
20 Clyde E. Pitchford and Steven R. Scow, co-executors, and defendant, United States of America, by and
21 through undersigned counsel, in accordance with Rule 41(a) of the Federal Rules of Civil Procedure, that
22 the First Amended Complaint in the above-entitled action shall be dismissed with prejudice, the parties to
23

24 ///

25 ///

26 ///

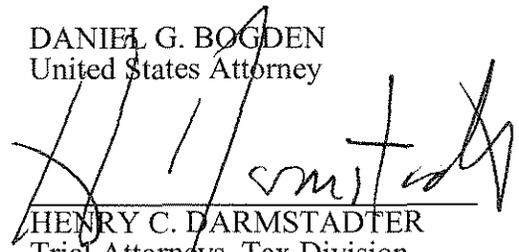
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1 bear their respective costs, including any possible attorneys' fees or other expenses of litigation.

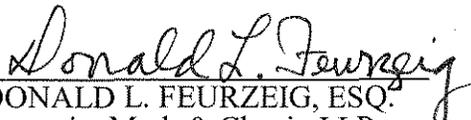
2
3 DATED: 3/15/12

4 DANIEL G. BOGDEN
5 United States Attorney



6
7 HENRY C. DARMSTADTER
8 Trial Attorneys, Tax Division
9 U.S. Department of Justice
10 P.O. Box 683
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16 DATED: 3/19/2012

17 
18 DONALD L. FEURZEIG, ESQ.
19 Feurzeig, Mark & Chavin LLP
20 201 Mission Street, Suite 2270
21 San Francisco, CA 94105
22 Direct Line: (415) 974-5006
23 Fax: (415) 974-5007
24 Main Line: (415) 974-5000
25 E-Mail: dfeurzeig@fmcslaw.com
26 Attorney for Plaintiff

27 GOOD CAUSE APPEARING, IT IS SO ORDERED:

28 Dated: June 5, 2012


UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES,

Plaintiff,

v.

No. 12-cv-0113 SMV/LAM

**SAMUEL E. FIELDS,
JOHNETTE FIELDS, and
N.M. DEP'T OF TAXATION & REVENUE,**

Defendants.

**ORDER GRANTING MOTION FOR EXTENSION OF TIME
TO SERVE JOHNETTE FIELDS**

THIS MATTER is before the Court on the United States' Motion for Extension of Time to Serve Johnette Fields [Doc. 7] ("Motion"), filed on June 4, 2012. Pursuant to Fed. R. Civ. P. 4(m), the Court FINDS that good cause exists for the government's failure to timely serve Defendant Johnette Fields. The Court, being otherwise fully advised in the premises, FINDS that the Motion is well-taken and should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States' Motion for Extension of Time to Serve Johnette Fields [Doc. 7] is **GRANTED**. The United States is allowed an additional 20 days from the date of this order to serve Defendant Johnette Fields.

IT IS SO ORDERED.



**STEPHAN M. VIDMAR
United States Magistrate Judge**

John Thomas, OSB # 024691
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Routh Crabtree Olsen, P.C.
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Portland, OR 97205-3623
Phone: 503-517-7180, Fax: 503-977-7963
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION**

FIRST AMERICAN TITLE INSURANCE
COMPANY, and CONSUMER SOLUTIONS
REO, LLC; their successors in interest and/or
assigns,

Plaintiffs,

v.

KRISTIN R. CUTLER; EDWARD W.
CUTLER; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. SOLELY
AS NOMINEE FOR GE MONEY BANK;
CHRIS HUTTER; SHERRY HUTTER; STATE
OF OREGON EMPLOYMENT
DEPARTMENT; OREGON DEPARTMENT
OF REVENUE; DEPARTMENT OF THE
TREASURY-INTERNAL REVENUE
SERVICE; and CAPITAL ONE BANK USA
NA,

Defendants.

Case No. 1:11-CV-3085-CL

ORDER OF DEFAULT AND PERMISSION
TO ENTER JUDGMENT AGAINST
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. SOLELY
AS NOMINEE FOR GE MONEY BANK,
CHRIS HUTTER, SHERRY HUTTER,
STATE OF OREGON EMPLOYMENT
DEPARTMENT, AND OREGON
DEPARTMENT OF REVENUE

Federal Rule Of Civil Procedure 55(b)(1)

1.

This matter came before the Court on the Motion of Plaintiffs for an order of default and permission to enter judgment against Mortgage Electronic Registration Systems, Inc. solely as nominee for GE Money Bank, Chris Hutter, Sherry Hutter, State of Oregon Employment Department, and Oregon Department of Revenue, in the Complaint for Rescission of Trustee's Deed and Reinstatement of Deed of Trust and Interests Junior.

ORDER OF DEFAULT AND PERMISSION TO
ENTER JUDGMENT – 1

2.

It appears to the Court from an examination of the records and files that the above-named defendants were duly and readily served with a Summons and Complaint in the manner prescribed by law.

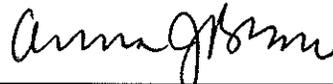
3.

The above-named defendants, although required to file an appearance within 30 days following service of the Summons and Complaint have failed to file an appearance and Answer to Plaintiffs' Complaint. Based upon the records and files herein, the Court finding generally in favor of Plaintiffs and against the above-named defendants, and the Court being fully advised in the premises; it is hereby

4.

ORDERED AND ADJUDGED that pursuant to Federal Rule of Civil Procedure 55(b)(1), defendants Mortgage Electronic Registration Systems, Inc. solely as nominee for GE Money Bank, Chris Hutter, Sherry Hutter, State of Oregon Employment Department, and Oregon Department of Revenue, are hereby defaulted, and said Order of Default shall be and is hereby entered against said defendants. Plaintiffs are hereby granted permission to enter judgment against said defendants.

DATED this 5th day of June, 2012.



US DISTRICT COURT JUDGE

Presented by:

ROUTH CRABTREE OLSEN, P.C.
John Thomas, OSB # 024691
Attorneys for Plaintiffs

ORDER OF DEFAULT AND PERMISSION TO
ENTER JUDGMENT - 2

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	Case No. 10-93985-MGD
	)	Chapter 7
CANDACE B. HOLLADAY,)	
)	
Debtor,)	
<hr/>		
CANDACE B. HOLLADAY,)	
)	
Plaintiff,	)	Adv. Proc. No. 11-5061
)	
v.)	
)	
UNITED STATES OF AMERICA)	
)	
Defendant.)	
<hr/>		

CONSENT ORDER

This matter came before the Court on Defendant's Unopposed Motion to Extend Time for Filing Dispositive Motions (Doc. no. 28). The Court having reviewed the motion finds that there is good cause to grant the relief requested. Accordingly, it is hereby

ORDERED that the time for filing dispositive motions is extended through June 12, 2012.

DONE AND ORDERED in Chambers at the United States Courthouse, Atlanta, Georgia
on June 4, 2012.

Mary Grace Diehl
Mary Grace Diehl
United States Bankruptcy Judge

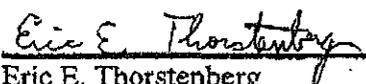
Submitted by:



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Of Counsel: SALLY QUILLIAN YATES
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Consented:



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UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE:)	
	)	Case No. 8:10-bk-01878-CPM
WILLIAM G. HOLSINGER	)	Chapter 11
Debtor.)	
_____)	
)	
WILLIAM G. HOLSINGER)	
Plaintiff,)	
	)	Adv. No. 8:12-ap-00064-CPM
v.)	
)	
UNITED STATES OF AMERICA,)	
Defendant.)	

**ORDER GRANTING THE UNITED STATES' MOTION TO EXTEND
TIME TO RESPOND TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

THIS PROCEEDING came on for consideration without a hearing on the United States' Motion to Extend Time to Respond to Plaintiff's Motion for Summary Judgment. Upon review of the motion, the Court finds that good cause exists for the relief requested. Accordingly, it is hereby

ORDERED that the motion is **GRANTED**. The United States shall have until August 21, 2012, to file a response to plaintiff/debtor William G. Holsinger's motion for summary judgment.

DONE and **ORDERED** in chambers at Tampa, Florida, on June 5, 2012.



Catherine Peek McEwen
United States Bankruptcy Judge

Copies:
Melody Genson, 2750 Ringling Blvd, Suite 3, Sarasota, FL 34237
Thomas K. Vanaskie, P.O. Box 14198, Washington, D.C. 20044

In the United States Court of Federal Claims

No. 08-622T
(Filed: June 5, 2012)

<hr/>	
ABEN E. JOHNSON and)
JOAN G. JOHNSON,)
)
Plaintiffs,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)
<hr/>	

ORDER

The court is in receipt of the parties' joint status report, filed June 4, 2012, in which the parties indicate that plaintiffs' settlement offer is currently under review by an authorized representative of the Attorney General with authorization to take final action on plaintiff's settlement offer. The parties' request for additional time to finalize the settlement agreement is **GRANTED**. The parties shall file a joint status report by **August 3, 2012**, updating the court on their progress towards finalizing the settlement agreement.

IT IS SO ORDERED.

s/Nancy B. Firestone
NANCY B. FIRESTONE
Judge

ORDERED in the Southern District of Florida on JUN 5 2012





Erik P. Kimball, Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

In re:

CASE NO.:09-15556-EPK

KANE & KANE, A PARTNERSHIP,

Chapter 7

Debtor.

**MICHL R. BAKST, TRUSTEE
Plaintiff,**

ADV. PROC. NO.: 10-1022-EPK

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER RESETTING PRETRIAL CONFERENCE START TIME

THIS MATTER came before the Court *sua sponte* to continue the Pretrial Conference which is now set for June 14, 2012 at 9:30 a.m. The Show Cause hearing in the above styled

case is set for June 14, 2012 at 1:30 p.m. Therefore:

It is ORDERED that the Pretrial Conference in the above-captioned adversary proceeding will be reset to 1:30 p.m. on June 14, 2012 at the United States Bankruptcy Court, The Flagler Waterview Building, 1515 North Flagler Drive, 8th Floor, Courtroom B. West Palm Beach, Florida 33401

###

Copies Furnished To:

All counsel of record by the Clerk

Below is an Order of the Court.



TRISH M. BROWN
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

STEPHEN M. MUNSON,

Debtor.

Case No. 10-39795-tmb11

THIRD AMENDED SCHEDULING
ORDER

Debtor Stephen Munson requested a continuance of the evidentiary hearing set for June 7, 2012 in the contested matter regarding the Debtor's and the Committee's objections to the Internal Revenue Service's proof of claim. Pursuant to the motion, it is **HEREBY ORDERED** that the Court's November 14, 2011 Scheduling Order (ECF No. 394), the Court's Amended Scheduling Order (ECF No. 438), and the Court's Second Amended Scheduling Order (ECF No. 521) are amended as follows:

1. The evidentiary hearing currently set for June 7, 2012, at 9:00 a.m. is hereby continued to July 11-12, 2012, at 9:00 a.m., in Bankruptcy Courtroom # 4, 9th Floor, 1001 SW 5th Ave., Portland, Oregon.

2. The pretrial witness lists, exhibits, and memoranda shall be filed, delivered, and exchanged (as set out in the November 14 Scheduling Order) by June 27, 2012.

3. A "Meet-Me" style telephone status hearing will be held on July 9, 2012 at 10:00 a.m. to discuss witness scheduling. NO LATER THAN THE HEARING TIME SHOWN ABOVE, ALL participants are REQUIRED TO CALL IN AND CONNECT to the "MEET-ME" telephone hearing line at (503) 326-6337. When connected, ENTER the 3-digit ID No. "444" followed by the "#" key.

4. All other provisions in the Court's November 14 Scheduling Order remain in effect.

###

Respectfully presented this 31st day of May, 2012, by:

KATHRYN KENEALLY
Assistant Attorney General
U.S. Department of Justice, Tax Division

/s/ Lindsay L. Clayton
ADAM D. STRAIT (Mass. BBO No. 670484)
LINDSAY L. CLAYTON (CA Bar No. 252802)
Trial Attorneys, Tax Division
U.S. Department of Justice

Attorneys for the United States

The following persons and entities require paper service.

RK Short & Associates Inc
975 Oak Street, Suite 700
Eugene, OR 97401

Jesse B Schneider on behalf of Creditor Davis & Gilbert LLP
1740 Broadway
New York, NY 10019

Nancy Young
Moss Adams, LLP
805 SW Broadway, St 1200
Portland, OR 97205

Vulcan Shareholder Rights Protection Committee, LLC
c/o Joe B. Richards
777 High Street #300
Eugene, OR 97401

The following ECF participants will be served through the Court's CM/ECF system upon entry of the Order.

Jason M. Ayres (Debtor)
Kim T. Buckley (Creditor Esler, Stephens & Buckley, LLP)
Jeanne M. Chamberlain (Cred. Comm. Chair Polsinelli Shughart PC)
Tracy M. Clements (Creditor Krieg, Keller, Sloan, Reilley & Roman LLP)
Timothy J. Conway (Cred. Comm. Chair Polsinelli Shughart PC)
Christopher N. Coyle (Cred. Comm. Chair Polsinelli Shughart PC)
Garrett W. Crawshaw (Creditor Wells Fargo Bank, NA)
Charles R. Ekberg (Creditor Wells Fargo Bank, NA)
Lawrence W. Erwin (Creditor Deere & Co.)
David B. Gray (Creditor Deere & Co.)
Keith D. Karnes (Debtor)
Lann D. Leslie (Debtor)
Howard M. Levine (Creditor Vulcan Power Company)
Margot D. Lutzenhiser (Debtor)
R. Gibson Masters (Creditor Valley Energy Investment Fund US LP)
P. Scott McCleery (OlsenDaines P.C.)
Peter McKittrick (Debtor)
Wilson C. Muhlheim (Debtor)
Lee C. Nusich (Creditor Wells Fargo Bank, NA)
Eric W. Olsen (Debtor)
Stanley G. Roman (Creditor Krieg, Keller, Sloan, Reilley & Roman LLP)
Tara Schleicher (Debtor)
Ava Schoed (Cred. Comm. Chair Polsinelli Shughart PC)

Leon Simson (Cred. Comm. Chair Polsinelli Shughart PC)
Timothy A. Solomon (Creditor Vulcan Power Company)
U.S. Trustee's Office, Portland
Robert J. Vanden Bos (Cred. Comm. Chair Polsinelli Shughart PC)
Carolyn G. Wade (Creditor State of Oregon Department of Revenue)
Jennifer Aspaas (Creditor Wells Fargo Bank, NA)

In the United States Court of Federal Claims

No. 12-20T
(Filed: June 5, 2012)

JOSEPH P. NACCHIO, et al.

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

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SCHEDULING ORDER

In accordance with the agreement of the parties, the Court will conduct a telephonic status conference on **June 14, 2012, at 3:00 p.m.** The Court will initiate the call.

s/Mary Ellen Coster Williams
MARY ELLEN COSTER WILLIAMS
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA :
 :
v. : Civil Action No. DKC 10-2962
 :
CHRISTOPHER T. NAZARIAN, et al. :
 :

MEMORANDUM OPINION

Presently pending and ready for review are two motions for default judgment filed by Plaintiff, the United States of America. (ECF Nos. 45, 47). The relevant issues are briefed, and the court now rules pursuant to Local Rule 105.6, no hearing being deemed necessary. For the reasons that follow, the Government's motions will be granted in part and denied in part.

I. Background

The Government filed its complaint on October 20, 2010, against Defendants Christopher T. Nazarian as Personal Representative of the Estate of Sarkis K. Nazarian, Hermine H. Nazarian, Citibank F.S.B., and Joan C. Doll. (ECF No. 1).¹ The complaint sought to do the following: (1) convert tax

¹ The complaint also initially listed S. Freedmand & Sons, Inc. as a Defendant, but the Government voluntarily dismissed the complaint as to this Defendant on February 7, 2011. (ECF Nos. 10, 11).

liabilities previously assessed against the now deceased Sarkis Nazarian ("Decedent") and against Doll, to judgment;² (2) set aside the alleged fraudulent conveyance of a Potomac, Maryland, residence from Decedent to his wife, Defendant Hermine Nazarian; and (3) foreclose federal tax liens against real property owned by Decedent. (*Id.*).

According to the Government, these claims arise from Decedent's and Doll's violations of 26 U.S.C. § 6672(a). (*Id.* ¶¶ 13, 35).³ Decedent and Doll previously held unspecified positions at Catonsville Eldercare, Inc. ("Eldercare"), a business located in Baltimore, Maryland. (*Id.* ¶¶ 13, 34). The Government asserts that, while in those positions, Decedent and

² Decedent passed away on January 5, 2009. (*Id.* ¶ 6).

³ The complaint cites Title 28, rather than Title 26 of the United States Code, an obvious typographical error.

Section 6672(a) provides as follows:

Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

Doll were required to collect, account for, and pay to the Internal Revenue Service ("IRS") federal withholding and FICA taxes for Eldercare's employees. (*Id.* ¶¶ 13, 35). The Government further alleges that they failed to do so for the quarterly tax periods ending September 30, 1998, through June 30, 2000. (*Id.* ¶¶ 14, 36). In March 2002, pursuant to 26 U.S.C. § 6672, a delegate of the Secretary of the United States assessed trust fund recovery penalties against both Decedent and Doll. (*Id.* ¶¶ 15, 37).

When Decedent - and then his estate - as well as Doll had failed to pay these penalties as of October 2010, the Government brought the present action against Defendants. Hermine Nazarian and Citibank thereafter answered the complaint. (ECF Nos. 8, 14).⁴ Christopher Nazarian filed an answer on behalf of the Decedent's estate on January 18, 2011, (ECF No. 7), but the Government moved to strike the answer on February 16, 2011, contending that Christopher Nazarian was not an attorney authorized to practice in the United States District Court for the District of Maryland (ECF No. 13). Hermine Nazarian then

⁴ Christopher Nazarian, as personal representative of Decedent's estate, and Hermine Nazarian were served personally on December 27, 2010, and Citibank waived service of process. (ECF Nos. 3, 4, 9). Process servers were unable to locate Doll, who is allegedly a resident of Myrtle Beach, South Carolina. She was subsequently served by publication.

filed a motion to stay consideration of the motion to strike and requested that the court delay ruling on that motion until the conclusion of state court proceedings to remove Christopher Nazarian as personal representative of Decedent's estate. (ECF No. 17).⁵ On April 25, 2011, the court granted the Government's motion to strike, denied Hermine Nazarian's motion to stay, and ordered Decedent's estate to retain counsel and file a proper answer within twenty-one days. (ECF Nos. 21, 22). Christopher Nazarian thereafter filed an "emergency motion" to have counsel appointed to represent Decedent's estate (ECF No. 25), but this motion was denied on May 16, 2011 (ECF No. 26).

The Government moved for entry of default against Doll on May 18, 2011, and against Decedent's estate on May 24, 2011. (ECF Nos. 27, 31). The clerk entered default against Doll and Decedent's estate "for want of answer or other defense" on May 19, and June 14, 2011, respectively. (ECF Nos. 29, 33). On July 12, 2011, the Government moved for judgment by default against Doll and Decedent's estate as to the counts that seek to reduce the tax assessments against them to judgment. (ECF Nos. 36, 37). The court denied these motions without prejudice to

⁵ As a result of these proceedings, the state court "reduced the [personal representative] to a special Administrator" of Decedent's estate. (ECF No. 25, at 2).

renewal on October 27, 2011. (ECF Nos. 43, 44). The Government subsequently renewed both motions. (ECF Nos. 45, 47).

Hermine Nazarian, Citibank, and the Government filed stipulations of dismissal with the court shortly thereafter, stating that they had agreed to dismiss counts two and three of the complaint with prejudice. (ECF Nos. 48, 49). On March 8, 2012, the court approved the stipulations and dismissed these counts from the complaint. (ECF No. 50). Thus, the only remaining counts are those against Decedent's estate and Doll to reduce the trust fund recovery penalties to judgment.

II. Motions for Default Judgment

Pursuant to Rule 55(b)(2), where a default has been previously entered and the complaint does not specify a certain amount of damages, the court may enter a default judgment upon the plaintiff's application and, if the defaulting party has appeared, notice to that party. A defendant's default, however, does not automatically entitle the plaintiff to entry of a default judgment; rather, that decision is left to the discretion of the court. See *Dow v. Jones*, 232 F.Supp.2d 491, 494 (D.Md. 2002). The United States Court of Appeals for the Fourth Circuit has a "strong policy" that "cases be decided on their merits," *id.* (citing *United States v. Shaffer Equip. Co.*, 11 F.3d 450, 453 (4th Cir. 1993)), but default judgment may be

appropriate where a party is essentially unresponsive, *SEC v. Lawbaugh*, 359 F.Supp.2d 418, 421 (D.Md. 2005) (citing *Jackson v. Beech*, 636 F.2d 831, 836 (D.C.Cir. 1980)).

Here, eighteen months have passed since Decedent's estate was served with the complaint, with more than a year elapsing since the court ordered the estate to retain counsel and file a proper answer - which it never did. Similarly, more than a year has passed since the Government served Doll by publication, and Doll has neither pled nor asserted a defense in response. As the "adversary process has been halted because of [these] essentially unresponsive part[ies]," *id.*, default judgment will be warranted against Decedent's estate and Doll if the Government can establish liability and resulting damages.

The Fourth Circuit has previously held that the Government makes a *prima facie* case of tax liability when it submits certified copies of the certificates of tax assessment to the court. *United States v. Pomponio*, 635 F.2d 293, 296 (4th Cir. 1980). The Government has submitted certified copies of these assessments against Decedent and Doll for each of the tax periods at issue. (ECF Nos. 45-2, 47-2). "Such certificates are presumed correct unless the defendant[s] provide[] proof to the contrary." *United States v. Register*, 717 F.Supp.2d 517, 522 (E.D.Va. 2010). Having failed to respond to the complaint,

Decedent's estate and Doll have offered no such proof.⁶ Accordingly, the Government has established their liability for the trust fund recovery penalties for the quarters ending September 30, 1998, through June 30, 2000.

With the liability of Decedent's estate and Doll established, the analysis now turns to the issue of relief. The Government has requested damages as follows: (1) judgments of \$462,397.56 and \$463,986.45 for Decedent's and Doll's outstanding tax liabilities as of November 28, 2011, and January 9, 2012, respectively; (2) interest accruing on the tax liabilities since those dates; and (3) costs. On default judgment, unlike with allegations regarding liability, allegations regarding damages are not taken as true, *Lawbaugh*, 359 F.Supp.2d at 421, and the Government bears the burden of establishing entitlement to recovery, *Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp.*, 973 F.2d 155, 158 (2^d Cir. 1992). Additionally, the court "may only award damages without a

⁶ Under Maryland law, Decedent's estate is liable for his debts, including unpaid federal taxes at the time of his death. See *Tobiason v. Machen*, 217 Md. 207, 211 (1958) (explaining that "the natural and primary fund for the payment of [a decedent's] debts] is from his personal estate"); see also Md. Code Ann., Est. & Trusts § 8-105(a) (stating that "[t]axes due by the decedent" are one of the claims entitled to priority when paying the debts of a decedent's estate); generally *United States v. Bielaski*, 360 Md. 67 (2000) (concluding that the Government's § 6672 claim against a decedent's estate had priority for purposes of payment from the estate).

hearing if the record supports the damages requested." *Vardoulakis*, 2010 WL 5137653, at *5. The Government may support its request for damages with "detailed affidavits or [other] documentary evidence." *Adkins v. Teseo*, 180 F.Supp.2d 15, 17 (D.D.C. 2001) (citing *United Artists Corp. v. Freeman*, 605 F.2d 854, 857 (5th Cir. 1979)).

In support of the requests for default judgment as to the outstanding tax liabilities, the Government has submitted declarations from Suzanne Fawley, an Internal Revenue Service advisor, along with the tax transcripts for Decedent and Doll as of November 28, 2011, and January 9, 2012, respectively. In her declarations, Ms. Fawley states that the unpaid balances of Decedent's and Doll's tax liabilities were \$462,397.56 and \$463,986.45, respectively, as of those dates. (ECF Nos. 45-1, 47-1).⁷ These amounts match the total balances on Decedent's and Doll's tax transcripts. (See ECF Nos. 45-3, 47-3). Therefore, the Government is entitled to default judgments against Decedent and Doll for these unpaid tax liabilities. Additionally, pursuant to 26 U.S.C. § 6601(a), the Government is entitled to

⁷ The "account balance" listed on each tax transcript, which does not include accrued interest, is the same as the "balance" listed on the tax assessments for each tax period at issue. Both of these balances further match the amount of the tax assessments as stated in the Government's complaint and renewed motions for default judgment.

recover interest that has accrued on Decedent's and Doll's outstanding tax liabilities since November 28, 2011, and January 9, 2012, respectively. See *United States v. Sarubin*, 507 F.3d 811, 814 (4th Cir. 2007) (explaining that § 6601(a) "plainly require[s] a dilatory taxpayer to pay interest accruing from the date the tax is due and compounding until the date the total obligation is paid").

The Government's separate request for costs, however, must be denied. In its motions, the Government asks that the default judgments against Decedent's estate and Doll include an award for "costs that have accrued and will continue to accrue." (ECF No. 45-6, at 1; ECF No. 47, at 1). It neither specifies the amount of costs it seeks nor proffers any explanation or support for these requests. In the absence of "documentary evidence," *Adkins*, 180 F.Supp.2d at 17 (citing *United Artists Corp.*, 605 F.2d at 857), the record does not support the Government's requests and, accordingly, they cannot be granted.⁸

⁸ Local Rule 109 sets forth the guidelines for a party to follow when filing a bill of costs. Pursuant to that rule, the Government may submit its bill of costs to the court clerk within fourteen days of the entry of judgment.

III. Conclusion

For the foregoing reasons, the Government's motions for default judgment will be granted in part and denied in part. A separate Order will follow.

/s/

DEBORAH K. CHASANOW
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

PAYSOURCE LLC, PROVIDENT
MANAGEMENT GROUP, INC.,
PROVIDENT BUSINESS PARTNERS,
INC., SCOTT M. BOLEY, DOUGLAS C.
MORBY, ROBERT A. LANGFORD,
ZEPHYR TRUST, SCOTT M. BOLEY, as
Trustee of the ZEPHYR TRUST, OMEGA
RESOURCES GROUP TRUST, DOUGLAS
C. MORBY, as Trustee of OMEGA
RESOURCES GROUP TRUST, TIMPVIEW
MARKETING TRUST, DOUGLAS C.
MORBY, as Trustee of TIMPVIEW
MARKETING TRUST, ALBION TECH
TRUST, ROBERT A. LANGFORD, as
Trustee of the ALBION TECH TRUST,
MARITIME GROUP TRUST, SCOTT M.
BOLEY, as Trustee of MARITIME GROUP
TRUST, LANGFORD TRUST, ROBERT A.
LANGFORD, as Trustee of the LANGFORD
TRUST,

Defendants.

ORDER

Case No. 2:03-cv-00306-TC

Receiver Steven. W. Call has filed a Motion for Authority to Make Third Distribution of \$200,000 to Claimants with Allowed Federal Tax Claims (Dkt. No. 352). The court has fully reviewed the matter and for the facts and reasons set forth in the Receiver's supporting memorandum (Dkt. No. 353), the court GRANTS Receiver's Motion. It is further

ORDERED that Receiver is authorized to make distribution in the amount reflected in the third column of Exhibit A (Dkt. No. 353-2) to those claimants holding allowed federal tax claims.

ORDERED that the foregoing distribution will be made to the claimants on a pro rata basis and with equal priority.

ORDERED that if the claimant receiving distribution is indebted to the IRS, the payment will be made by the Receiver to the IRS on the claimant's behalf, and the claimant will be given notice of that payment from the Receiver.

SO ORDERED this 5th day of June, 2012.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

CASE NO. 11-60273-CR-DIMITROULEAS

Plaintiff,

vs.

DALE PETERS,

Defendant.

_____ /

ORDER

_____ THIS CAUSE was heard by the Court based upon a May 17, 2012 Request for an Order to Show Cause [JDE-243], which was stricken, and a May 3, 2012 habeas petition filed in case number 12-21674-CV. Based on those entries, the Court set a hearing to determine the status of counsel. At the June 4, 2012 hearing, Peters indicated that he was happy with Mr. Smith's representation.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 4th day of June, 2012.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

Counsel of Record

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Whitney H. Waugh, Sr.,)	
)	
Plaintiff(s),)	
)	
v.	)	CV 12-980-PHX-SPL
)	
United States of America, et al.,)	
)	
Defendant(s).	)	ORDER TO SHOW CAUSE

This action has been assigned to a United States Magistrate Judge pursuant to Local Rule 3.8(a) of the United States District Court for the District of Arizona. Each party is required to execute and file within twenty days of its appearance either a written consent to the exercise of authority by the magistrate judge under 28 U.S.C. § 636(c), or a written election to have the action reassigned to a district judge. **Defendant United States of America** appeared more than fourteen days ago, but has not yet filed the required election form.

IT IS ORDERED that if **Defendant United States of America** fails to file the appropriate election form by **5:00 p.m. on Wednesday, June 20, 2012**, **Defendant United States of America** shall appear¹ before Chief Judge **Roslyn O. Silver** of the Phoenix Division of this Court in Courtroom No. **604, 6th Floor**, at **4:00 p.m. on Friday, July 13, 2012** and show good cause for the failure to comply with Local Rule 3.8(a). The hearing before the Chief Judge will be automatically vacated and the party need not appear if the party files a completed election form by the 5:00 p.m. deadline set forth above. An additional copy of the election form is included with this Order.

IT IS FURTHER ORDERED that the assignment of this action to the Magistrate Judge remains in effect for all purposes pending completion of the election process. Involvement of the Chief Judge in this matter is limited to this show cause hearing, unless the magistrate judge assignment is ordered withdrawn pursuant to 28 U. S. C. § 636(b)(1)(A), at which time the case would be randomly reassigned to a district

¹Incarcerated parties shall appear telephonically and shall make arrangements for such appearance in advance of the hearing.

1 judge.

2 DATED this 5th day of June, 2012.

3 BRIAN D. KARTH

4 District Court Executive/Clerk of Court

5 By: s/M. Pruneau
6 Deputy Clerk

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8 (1/25/05)

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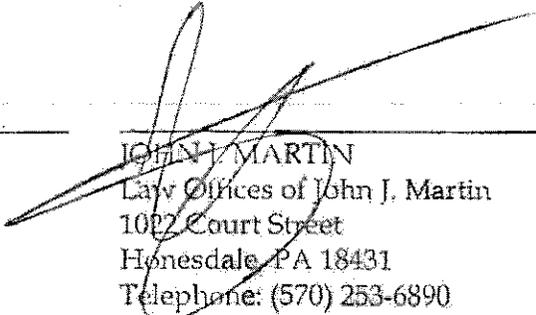
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4. This stipulation constitutes a final order in this adversary action between the plaintiffs and the United States of America, each party to bear its own litigation expenses, including costs and attorneys' fees.

Dated: _____

6/5/12

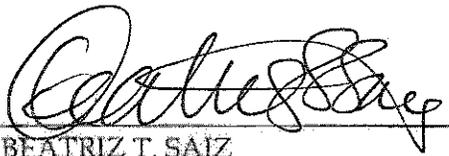

JOHN J. MARTIN
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Honesdale, PA 18431
Telephone: (570) 253-6890
Email: jmartin@martin-law.net

COUNSEL FOR PLAINTIFFS

PETER J. SMITH
United States Attorney

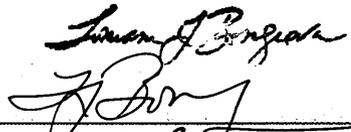
Dated: _____

6/5/12


BEATRIZ T. SAIZ
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 227
Washington, D.C. 20044
Telephone: (202) 307-6585
Email: beatriz.t.saiz@usdoj.gov

COUNSEL FOR DEFENDANT

ORDERED that a copy of this order be served on all parties within 7 days of counsel's receipt of the within Order.


Taronne J. Bongiovanni, J.S.C.
USMS

Checklist of papers considered by Judge:

- 1. Notice of Motion
- 2. Movant's Affidavit
- 3. Movant's Brief
- 4. Answering Affidavits
- 5. Answering Brief
- 6. Cross Motion
- 7. Movant's Reply
- 8. Other

It is further ORDERED that Michael Woodbury has until July 6, 2012 to retain new counsel. If counsel for Mr. Woodbury has not made an appearance by that date, Mr. Woodbury shall be deemed pro se. Plaintiff's motion for summary judgment shall be reset once this date has passed.

The Clerk of the Court is directed to mail a copy of this order as well as a copy of the "Procedural Guide for Pro Se Litigants" to Mr. Woodbury at the following address by regular mail; the Clerk of the Court is further directed to send a copy of this order only to Mr. Woodbury by certified Mail, Return, Receipt Requested:

Mr. Michael Woodbury
234 Lawrence Avenue
Oakhurst, NJ 07755

It is further ORDERED that the Clerk of the Court terminate this motion [Rocket Entry No. 30] accordingly.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

FRANCISCO G.
ZARATE/COMMUNITY ACTION
COUNSEL OF SOUTH TEXAS

§

vs.

§

CIVIL ACTION No. 7:11-210

UNITED STATES OF
AMERICA/FRANCISCO ZARATE, ET
AL

§

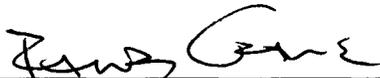
ORDER STRIKING DOCUMENT

The Clerk has noted the filing of your PLAINTIFF CACST'S DESIGNATION OF EXPERT (D.E. #51); however, it is deficient as checked. (L.R. refers to the Local Rule of this District).

1. Document is not signed (L.R. 11.3).
2. Document does not comply with L.R.11.3.A.
3. Caption of the document is incomplete (L.R.10.1).
4. No certificate of service or explanation why service is not required (L.R. 5.3).
5. Motion does not comply with L.R.7
 - a. No statement of opposition or non-opposition (L.R. 7.1.D(2)).
 - b. No statement of conference between counsel (L.R. 7.1.D(1)).
 - c. No separate proposed order attached (L.R. 7.1.C).
6. Motion to consolidate does not comply with L.R.7.6.
7. X Other: Discovery not filed. (LR 5.4)

The document is stricken from the record.

Signed on this 5th day of June, 2012 at McAllen, Texas.



HONORABLE RANDY CRANE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

FRANCISCO G.
ZARATE/COMMUNITY ACTION
COUNSEL OF SOUTH TEXAS

§

vs.

§ CIVIL ACTION No. 7:11-210

UNITED STATES OF
AMERICA/FRANCISCO ZARATE, ET
AL

§

ORDER STRIKING DOCUMENT

The Clerk has noted the filing of your FRANCISCO ZARATE'S DESIGNATION OF EXPERT WITNESSES (D.E. #52); however, it is deficient as checked. (L.R. refers to the Local Rule of this District).

1. Document is not signed (L.R. 11.3).
2. Document does not comply with L.R.11.3.A.
3. Caption of the document is incomplete (L.R.10.1).
4. No certificate of service or explanation why service is not required (L.R. 5.3).
5. Motion does not comply with L.R.7
 - a. No statement of opposition or non-opposition (L.R. 7.1.D(2)).
 - b. No statement of conference between counsel (L.R. 7.1.D(1)).
 - c. No separate proposed order attached (L.R. 7.1.C).
6. Motion to consolidate does not comply with L.R.7.6.
7. X Other: Discovery not filed. (LR 5.4)

The document is stricken from the record.

Signed on this 5th day of June, 2012 at McAllen, Texas.



HONORABLE RANDY CRANE
UNITED STATES DISTRICT JUDGE