

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. 1:14-cv-01756-TWP-MJD
)
DENNIS A. JOHNSON,)
DEBRA J. JOHNSON,)
a/k/a DEBBIE J. JOHNSON,)
ROBERT JAMES JOHNSON,)
RANDY JOSEPH JOHNSON,)
GARY MARVIN JOHNSON,)
PARRY LYNN JOHNSON,)
and)
PIA O'CONNOR, Treasurer)
of Bartholomew County, Indiana,)
)
Defendants.)

REPORT AND RECOMMENDATION

This matter has come before the Court upon the United States of America's *Motion for Order of Sale*. [Dkt. 61.] On May 19, 2016, District Judge Tanya Walton Pratt designated the undersigned Magistrate Judge to issue a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). [Dkt. 63.] The Magistrate Judge recommends the United States' Motion be **GRANTED** as set forth below:

1. The the real property located at 2311 N 500 West, Columbus, Indiana (the "Property") is ordered sold pursuant to 26 U.S.C. § 7403 and 28 U.S.C. §§ 2001 and 2002.
2. The Property consists of two adjoining parcels, and the legal description of the Property is as follows:

PARCEL ONE

A part of the southwest Quarter of Section 17, Township 9 North, Range 5 East, described as follows:

Commencing at a point on the West line of said Quarter at a point where said line is intersected by the South line of the Georgetown Road; thence East along the South line of said road Eight (8) rods; thence South parallel with the West line of said Quarter Ten (10) rods; thence West Eight (8) rods to the West line of said Quarter; thence North Ten (10) rods to the place of beginning, containing one-half (1/2) acre, and being a parcel of land out of the Northwest corner of a tract of 20 acres heretofore conveyed by David C. Loy and wife to Leona Johnson (DR101p287).

Subject to restrictions, covenants, and easements of record in Bartholomew County, Indiana, affecting the above-described real estate.

PARCEL TWO

The West Half of Fifty (50) Acres by parallel lines off the South end of the West Half of the Southwest Quarter of Section Seventeen (17), Township Nine (9) North, Range Five (5) East.

EXCEPT: Five (5) Acres by parallel lines off the South end thereof.

ALSO EXCEPT: Commencing at a point on the West line of said Quarter at a point where the same is intersected by the South line of the Georgetown Road; thence East along the South line of said road Eight (8) Rods; thence South parallel with the West line of said Quarter Ten (10) Rods; thence West Eight (8) Rods to the West Line of said Quarter; thence North Ten (10) Rods to the place of beginning, containing One-half (1/2) Acre.

ALSO EXCEPT: Commencing at a point on the West line of the Southwest Quarter of Section Seventeen (17), Township Nine (9) North, Range Five (5) East, 20 Rods North of the Southwest corner of said Quarter Section; said point being the Northwest corner of a tract of 3 ½ Acres owned by Kenneth Johnson and Wife; thence East along Johnson's North line 28 Rods; thence North parallel with the West line of said Quarter Section 20 Rods; thence West parallel with the South line of said Quarter Section 28 Rods to the West line of said Section; thence South along said West line 20 Rods to the place of beginning, containing 3 ½ Acres, more or less.

ALSO EXCEPT: A part of the Southwest Quarter of Section 17, Township 9 North Range 5 East, and more particularly described as follows: Commencing at a point on the West line of Southwest Quarter 40 Rods North of the Southwest corner of said Quarter; thence North along the West line of said Quarter 8 Rods; thence East and parallel to the South line of said Quarter 40 Rods; thence South and parallel to the West line of said Quarter 28 rods; thence West and parallel to the South line of said Quarter 12 rods; thence North and parallel to the West line of said Quarter 20 rods; thence West 28 rods to the place of beginning, containing 3.5 acres, more or less, situate in Harrison Township, Bartholomew County, Indiana.

ALSO EXCEPT: Part of the South End of the West half of the Southwest Quarter of Section 17, Township 9 North, Range 5 East lying in Harrison Township, Bartholomew County, Indiana and more particularly described as follows, to-wit: Commencing at a stone marking the Southwest corner of said Southwest Quarter; thence North zero degrees West (N 0° W) (assumed bearing) seven hundred ninety-two (792.00) feet along the West line of said Section to a spike marking the point of beginning; thence continuing North zero degrees West (N 0° W) five hundred twenty-eight (528.00) feet to a spike; thence North eighty-nine degrees forty-one minutes East (N 89° 41' E) six hundred thirty-five point sixty-six (635.66) feet to an iron pipe set in an existing fence; thence South four degrees zero nine minutes East (S 4° 09' E) along said existing fence five hundred twenty-nine point eighteen (529.18) feet to an iron pipe; thence South eighty-nine degrees forty-one minutes West (S 89° 41' W) six hundred seventy-three point ninety-eight (673.98) feet to the point of beginning, containing seven point ninety-four (7.94) acres.

ALSO EXCEPT: A part of the West Half of the Southwest Quarter of Section 17, Township 9 North, Range 5 East, and more particularly described as follows: Beginning 1320 feet North of the Southwest corner of said Southwest Quarter, thence North 89 degrees 41 Minutes East 635.66 feet to an iron pipe set in an existing fence, for the true point of beginning; thence North 20 rods; thence West 28 rods; thence South 20 rods; thence East 28 rods, to the place of beginning, containing three (3) acres, more or less, and situated in Harrison Township, Bartholomew County, State of Indiana, and subject to all legal rights of way.

Containing after said exceptions 1.56 acres, more or less.

3. The Internal Revenue Service Property Appraisal and Liquidation Specialists (“PALS”) is authorized to offer for public sale and to sell the Property either as two separate units or as one unit, as the PALS in its sole discretion determines.

4. **Terms and Conditions:** The terms and conditions of the sale are as follows:

a. The sale shall be free and clear of the interests of all parties to this action;

b. The sale shall be subject to building lines, if established, all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the Property, and easements and restrictions of record, if any;

Sale Location

c. The sale of the Property shall be held either on the Property’s premises or at the courthouse of Bartholomew County;

Notice of Sale

d. The PALS shall announce the date and time for the sale;

e. Notice of the sale shall be published once a week for at least four consecutive weeks before the sale in at least one newspaper regularly issued and of general circulation in Bartholomew County, and by any other notice PALS deems appropriate. The notice shall contain an adequate description of the Property, but need not contain the full legal description, and shall contain the terms and conditions of sale set forth in this Order of Sale;

Minimum Bid

f. The PALS shall set the minimum bid. If the minimum bid is not met or

exceeded, the PALS may, without further permission of this Court, and under the terms and conditions of this Order of Sale, hold a new public sale, and may reduce the minimum bid;

Payment of Deposit and Balance

g. At the time of the sale, the successful bidder(s) shall deposit with the PALS, by money order or by certified or cashier's check payable to the "United States District Court for the Southern District of Indiana," a deposit in an amount between five (5) and twenty (20) percent of the minimum bid, as specified by the PALS in the published notice of sale. Before being permitted to bid at the sale, potential bidders shall show the PALS proof that they are able to comply with this requirement. No bids will be accepted from any person(s) who have not presented proof that, if they are the successful bidder(s), they can make the deposit required by this Order of Sale;

h. The successful bidder(s) shall pay the balance of the purchase price for the Property within forty-five (45) days following the date of the sale. The certified or cashier's check payable to the United States District Court for the Southern District of Indiana shall be given to PALS who will deposit the funds with the Clerk of this Court. If the bidder fails to fulfill this requirement, the deposit shall be forfeited and shall be applied to cover the expenses of the sale, with any amount remaining to be applied first to the federal tax liabilities of Debra J. Johnson, and second to the federal tax liabilities Dennis A. Johnson that underlie the federal tax liens being enforced in this action. The Property shall be again offered for sale under the terms and conditions of this Order of Sale or, in the alternative, sold to the second highest bidder, at the sole discretion of the United States;

i. The Clerk of the District Court is directed to accept the deposit and balance

of the sale proceeds and deposit them into the Court's registry for distribution pursuant to further order of this Court;

Confirmation of Sale

j. The sale of the Property shall be subject to confirmation by this Court. On confirmation of the sale, the Internal Revenue Service shall execute and deliver its deed conveying the Property to the purchaser. On confirmation of the sale, all interests in, liens against, or claims to the Property that are held or asserted by all parties to this action are discharged and extinguished;

k. When this Court confirms the sale, the Recording Officials of Bartholomew County shall cause the transfer of the Property to be reflected upon the county's register of title. The successful bidder(s) at the sale shall pay, in addition to the amount of the bid, any documentary stamps and Clerk's registry fees as provided by law;

Redemption

l. The sale of the Property is ordered pursuant to 26 U.S.C. § 7403 and 28 U.S.C. §§ 2001, 2002, and is made without right of redemption.

5. **Preservation of the Property:** Until the Property is sold, Defendant Debra J. Johnson is ordered to take all reasonable steps necessary to preserve the Property (including all buildings, improvements, fixtures, and appurtenances on each property) in its current condition including, without limitation, maintaining a fire and casualty insurance policy on the Property. She shall neither commit waste against the Property, nor cause or permit anyone else to do so. She shall neither do anything that tends to reduce the value or marketability of the Property nor cause or permit anyone else to do so. She shall not record any instrument, publish any notice, or take any other action (such as running newspaper advertisements, posting signs, or making internet

postings) that may directly or indirectly tend to adversely affect the value of the Property or that may tend to deter or discourage potential bidders from participating in the public auction, nor shall they cause or permit anyone else to do so.

6. **Vacating the Property:** All persons occupying the Property are ordered to vacate the property within thirty (30) days of the date of this Order of Sale, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances to the property). The United States may, in writing and in its sole discretion, extend the time to vacate. If any person fails or refuses to vacate the Property by the date specified in this Order of Sale, or as extended by the United States, the PALS is authorized to coordinate with the United States Marshals Service to take all actions that are reasonably necessary to have those persons ejected. The United States Marshals Service is authorized and directed to take any and all necessary actions, including but not limited to the use of reasonable force, to enter and remain on the premises, which includes, but is not limited to, the land, buildings, vehicles, and any other structures located thereon, for the purpose of executing this Order of Sale. The United States Marshals Service is further authorized and directed to arrest or evict from the premises any persons who obstruct, attempt to obstruct, or interfere or attempt to interfere, in any way with this Order of Sale.

7. **Abandoned Personal Property:** Any personal property remaining on the Property thirty (30) days after the date of this Order of Sale (or as extended by the United States) is deemed forfeited and abandoned, and the PALS is authorized to dispose of it in any manner they see fit, including sale, in which case the proceeds of the sale are to be applied first to the expenses of sale and the balance to the parties as directed by the Court. Checks for the purchase of personal property shall be made out to the “Clerk of District Court for the Southern District of Indiana,” and

the Clerk is directed to accept these checks and deposit them into the Court's registry for distribution pursuant to further order of this Court.

8. **Forwarding Address:** No later than two (2) business days after vacating the Property, pursuant to the deadline set forth in paragraph (4) above, defendant Debra J. Johnson or her agent shall notify counsel for the United States of a forwarding address where she can be reached. Notification shall be made by contacting the attorney for the United States, Philip Doyle, at (202) 514-9673 or philip.a.doyle@usdoj.gov.

9. **Claims:** The United States has an interest in the Property in the amount of \$226,013.87. Of that amount, \$29,247.57 is for federal tax liens for Debra J. Johnson's federal tax liabilities, and \$196,766.30 is for federal tax liens for Dennis A. Johnson's federal tax liabilities. Any other party wishing to claim an interest in the sale proceeds must submit to the Court evidence establishing its claim, the amount of its claim, and the priority of its claim within fourteen days following entry of an order confirming the sale.

10. **PALS' Access to the Property:** Pending the sale of the Property, and until confirmation of sale, the PALS is authorized to have free access to the Property in order to take any and all actions necessary to preserve the Property, including, but not limited to, retaining a locksmith or other person to change or install locks or other security devices on any part of the Property.

11. **Distribution of Sale Proceeds:** After the Court confirms the sale of the Property, absent any showing to the contrary, the sale proceeds deposited with the Clerk of this Court shall be distributed in the following order of priority:

a. First, to the United States Treasury, for the expenses of the sale, including any expenses incurred to secure or maintain the Property pending sale and confirmation by the Court, as well as all other costs and expenses of sale, including title insurance;

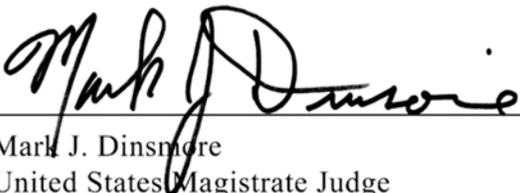
b. Second, to Treasurer of Bartholomew County for real property taxes and other local assessments due and owing, if any;

c. Third, to the United States for satisfaction of Debra J. Johnson's federal tax liabilities raised in this action; and

d. Fourth, to the United States of America for satisfaction of Dennis A. Johnson's federal tax liabilities raised in this action.

Any objections to the Magistrate Judge's Report and Recommendation shall be filed with the Clerk in accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), and failure to timely file objections within fourteen days after service shall constitute a waiver of subsequent review absent a showing of good cause for such failure.

Dated: 10 JUN 2016



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

Distribution:

Service will be made electronically
on all ECF-registered counsel of record
via email generated by the Court's ECF system.

Distribution via U.S. Mail to:

Debra J. Johnson
2311 N. 500 West
Columbus, Indiana 47201

Robert J. Johnson
12114 N. County Road 1200 E.
Seymour, Indiana 47274

Randy J. Johnson
202 E. College Street
North Vernon, Indiana 47265

Gary M. Johnson
12114 N. County Road 1200 E.
Seymour, Indiana 47274

Parry M. Johnson
18515 E. State Road 46
Hope, Indiana 47265