

United States v. Cam

United States District Court for the Southern District of Florida

October 31, 2022, Decided; November 7, 2022, Entered on Docket

Case No. 1:22-cv-20885-KMM

Reporter

2022 U.S. Dist. LEXIS 202770 *

UNITED STATES OF AMERICA, Plaintiff, v. PETER CAM, et al., Defendants.

Counsel: 2022 U.S. Dist. LEXIS 202770 at 1Doron Kramer, also known as, Defendant, Pro se, West Bloomfield, MI.

Doron Kramer, as a potential heir and/or personal representative and/or distributee of the ESTATE OF RICHARD KRAMER, Defendant, Pro se, West Bloomfield, MI.

Doron Kramer, Don Kramer, Defendant, Pro se, West Bloomfield, MI.

For LA Perla Condominium Association Inc., Defendant: Lauren Juliette Luck, Lauren Luck PA, Miami, FL.

For Peter Cam, in his capacity as the TAX COLLECTOR OF MIAMI-DADE COUNTY FLORIDA, Defendant: Ileana Cruz, LEAD ATTORNEY, Miami-Dade County Attorney's Office, Miami, FL.

For TLGFY LLC, Defendant: Michael Aaron Kaufman, Michael A. Kaufman, West Palm Beach, FL.

For United States of America, Plaintiff: Lynne M. Murphy, United States Department of Justice, Washington, DC.

Judges: K. MICHAEL MOORE, UNITED STATES DISTRICT JUDGE.

Opinion by: K. MICHAEL MOORE

Opinion

ORDER

THIS CAUSE came before the Court upon Plaintiff United States of America's ("Plaintiff") Motion for Summary Judgment. ("Mot.") (ECF No. 26). Defendant Doron Kramer a/k/a Don Kramer ("Defendant") failed to file a response and the time to do so has passed. See

S.D. Fla. L.R. 7.1(c)(1). The Motion is now ripe for review.

I. BACKGROUND

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The undisputed facts are taken from Plaintiff's Statement of Material Facts, ("P's 56.1") (ECF No. 27), and a review of the corresponding record citations and exhibits. In failing to file a response, Defendant also failed to file a Statement of Material Facts to "challenge any purportedly material fact asserted by Plaintiff that Defendant contends is genuinely in dispute." See S.D. Fla. L.R. 56.1(a)(2). The Local Rules further provide that "[a]ll material facts in any party's Statement of Material Facts may be deemed admitted unless controverted by the other party's Statement of Material Facts, provided that: (i) the Court finds that the material fact at issue is supported by properly cited record evidence; and (ii) any exception under Fed. R. Civ. P. 56 does not apply." *Id.* r. 56.1(c).

On February 5, 2008, Richard Kramer ("Richard") and his then-wife 2022 U.S. Dist. LEXIS 202770 at 2 purchased a condominium unit located in La Perla Condominium at 16699 Collins Ave., Unit 3008, Sunny Isles Beach, Florida 33160 (the "Condo"). P's 56.1 ¶ 8. Almost one year later, Richard and his then-wife transferred all rights, title, claims, and interests in and to the Condo to Richard. *Id.* ¶ 9.

On February 18, 2017, Richard died intestate without any unrevoked wills or codicils. *Id.* ¶ 12. No probate proceedings have been commenced and no personal representatives have been appointed to act on behalf of Richard's estate. *Id.* ¶ 12. Upon his death, Richard was the sole owner of the Condo. *Id.* ¶¶ 9-10. After his death, the property tax records reflect that the Estate of Richard Kramer is the owner of the Condo. *Id.* ¶ 15.

Richard was survived by his two brothers, Defendant

and Harold Kramer ("Harold"). *Id.* ¶ 11. In 2019, Harold disclaimed all rights, title, and interests in and to the property of Richard and his estate, including, but not limited to, the Condo. *Id.* ¶ 13. This left Defendant as the sole potential heir to Richard's intestate estate under Florida law, *id.* ¶ 14 (citing Fla. Stat. §§ 732.101, 732.103), as well as the sole potential distribute of Richard's property, and a person who could potentially serve **2022 U.S. Dist. LEXIS 202770 at 3** as the personal representative of Richard's estate. *Id.* (citing Fla. Stat. §§ 733.301, *et seq.*).

Notwithstanding that probate has not yet been initiated, and title in the Condo has not legally passed to Defendant, Defendant paid the real property taxes assessed against the Condo for 2018. *Id.* ¶ 16. Further, Defendant redeemed a 2019 tax certificate that was issued for delinquent real property taxes assessed against the Condo for that year. *Id.* ¶ 17. In doing so, Defendant avoided a tax deed sale of the Condo. *Id.* Defendant also paid \$48,000 of delinquent condominium assessments, which secured cancellation of the May 4, 2022 judicial sale of the Condo as ordered by the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida. *Id.* ¶ 18. According to Internal Revenue Service ("IRS") records, the IRS is instructed to forward all communications regarding Richard to Defendant. *Id.* ¶ 19. The fair market value of the Condo as of April 2022 was anywhere between \$900,000 to \$980,000. *Id.* ¶ 20.

A. The Federal Tax Lien Assessed Against Richard for Unpaid Federal Income Taxes, Civil Fraud Penalties, and Statutory Additions

The IRS made timely assessments against Richard, individually, for unpaid federal **2022 U.S. Dist. LEXIS 202770 at 4** taxes for the year 2004 through 2008, plus civil fraud penalties, interest, and statutory additions ("Federal Tax Penalties"). *Id.* ¶¶ 21-23. As of February 18, 2022, the unpaid balance of Richard's debt totaled \$379,899 for the tax years 2004 through 2008. *Id.* ¶¶ 23-24. Thereafter, pursuant to Sections 6321 and 6322 of the Internal Revenue Code, liens arose which encumber all property and rights to property belonging to Richard and his estate ("Federal Tax Liens"). *Id.* ¶ 26.

B. The Judgment Lien Assessed Against Richard for Unpaid Civil FBAR Penalties Plus Accruals Thereon

In 2016, a delegate of the Secretary of the Treasury timely assessed civil penalties totaling \$843,264 against

Richard for willfully failing to timely file Forms TD F 90-22.1—Reports of Foreign Bank and Financial Accounts ("FBAR")—for the years 2006, 2007, and 2008 ("FBAR Penalties"). *Id.* ¶ 28. Although the government gave Richard notice of the assessments and a demand for payment, Richard, and his estate, have not paid the FBAR Penalties. *Id.* ¶ 31.

After Richard's death, the United States filed a complaint against Defendant, as potential heir and/or personal representative of Richard's estate, and/or as a distribute of Richard's property, **2022 U.S. Dist. LEXIS 202770 at 5** seeking to recover the unpaid FBAR Penalties. *Id.* ¶ 31; see *United States v. Doron Kramer a/k/a Don Kramer, et al.*, (FBAR Suit) No. 18-CV-24492 (S.D. Fla. Oct. 7, 2019). On October 7, 2019, this Court granted default judgment against Defendant in the FBAR Suit and, thereafter, entered a judgment against him in the sum of \$1,010,322.68. P's 56.1 ¶ 31.

Thereafter, the United States filed a certified abstract of judgment with the Clerk of Court for the Circuit Court of Miami-Dade County, Florida. *Id.* ¶ 34. The United States is holds a judgment lien against Richard's estate, and Defendant, in his capacity as a potential heir and/or personal representative of Richard's estate, and/or as a distributee of Richard's property for the unpaid FBAR Penalties, in the amount of \$1,010,322.68 ("FBAR Lien"). *Id.* ¶ 35.

On March 3, 2022, Plaintiff initiated the instant suit against Peter Cam, Tax Collector for Miami-Dade County, Florida; TLGFY, LLC; La Perla Condominium Association, Inc; and Defendant. Thereafter, on August 3, 2022, all parties except for Defendant entered a Joint Stipulation Regarding the Distribution of the Proceeds from the Foreclosure Sale of the Condominium Unit, (ECF No. 25), in **2022 U.S. Dist. LEXIS 202770 at 6** which the parties agreed on how the proceeds from the foreclosure sale of the Condo shall be distributed. Thereafter, Plaintiff moved for summary judgment, seeking an order of foreclosure on the Federal Tax Liens and the FBAR Lien, as well as an order of sale of the Condo.

II. LEGAL STANDARD

Summary judgment is appropriate where there is "no genuine issue as to any material fact [such] that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) (quoting Fed. R. Civ. P. 56). A genuine issue of material fact exists when "a

reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986) (citation omitted). "For factual issues to be considered genuine, they must have a real basis in the record." *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009) (citation omitted). Speculation cannot create a genuine issue of material fact sufficient to defeat a well-supported motion for summary judgment. See *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005).

The moving party has the initial burden of showing the absence of a genuine issue as to any material fact. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). In assessing whether the moving party has met this burden, a court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the non-moving party. *Denney v. City of Albany*, 247 F.3d 1172, 1181 (11th Cir. 2001). Once the moving party satisfies its initial burden,**2022 U.S. Dist. LEXIS 202770 at 7** the burden shifts to the non-moving party to present evidence showing a genuine issue of material fact that precludes summary judgment. *Bailey v. Allgas, Inc.*, 284 F.3d 1237, 1243 (11th Cir. 2002); Fed. R. Civ. P. 56(e). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." *Miranda v. B & B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1534 (11th Cir. 1992) (citation omitted). But if the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial, and summary judgment is proper. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986) (citation omitted).

III. DISCUSSION

Plaintiff argues the Court should order foreclosure of the Federal Tax Liens and FBAR Lien (collectively the "Federal Liens"), as well as order the sale of the Condo. See generally Mot. Namely, Plaintiff asserts the Federal Liens are valid and have attached to the Condo. *Id.* at 1. And, as Richard and his estate have failed and refused to pay the Federal Tax Penalties and FBAR Penalties, the United States is entitled to an order (1) foreclosing the two liens, (2) ordering a judicial sale of the Condo, and (3) ordering the distribution of the sales proceed in the manner set forth in the parties' joint stipulation filed on August 3, 2022. *Id.* at 2.

Defendant failed to file a response to Plaintiff's**2022 U.S. Dist. LEXIS 202770 at 8** Motion for Summary

Judgment. Consequently, Plaintiff's Motion for Summary Judgment is unopposed, the arguments therein are un rebutted, and the record evidence in support thereof is undisputed. In deciding an unopposed motion for summary judgment, courts "must consider the merits of the motion." *United States v. One Piece of Real Prop. Located at 5800 SW 74th Ave., Miami, Fla.*, 363 F.3d 1099, 1101 (11th Cir. 2004). In so doing, courts need not "*sua sponte* review all of the evidentiary materials on file . . . but must ensure that the motion itself is supported by evidentiary materials." *Id.* At a minimum, courts "must review all of the evidentiary materials submitted in support of the motion for summary judgment." *Id.*

Defendant also failed to file an opposing statement of material facts identifying which portions of Plaintiff's Statement of Material Facts are "disputed" or "undisputed," with corresponding record citations. See S.D. Fla. L.R. 56.1. Defendant's failure to do so results in Plaintiff's Statement of Material Facts, which is supported by properly cited record evidence being deemed admitted. See S.D. Fla. L.R. 56.1(c); see also *Reese v. Herbert*, 527 F.3d 1253, 1268 (11th Cir. 2008) ("In upholding the exercise of courts' discretion to apply deeming orders, our sister circuits have repeatedly stressed the vital function of rules such as Local Rule 56.1, reinforcing stern admonitions with rather colorful**2022 U.S. Dist. LEXIS 202770 at 9** imagery. We hold the rule in similarly high esteem." (internal citations omitted)).

For the reasons discussed below, the Court finds that no genuine issue of material fact exists as to whether the Federal Liens are valid and have attached to the Condo. Further, the Court is authorized to foreclose the Federal Liens and order the Condo sold to satisfy the liens. The Court concludes Plaintiff is entitled to summary judgment as a matter of law.

A. The Federal Tax Penalty is Valid and Encumbers the Condo

To establish that a claimed tax liability was properly assessed, the United States offers into evidence Certificates of Assessments and Payments for the tax years at issue. *United States v. Chiles*, 871 F.2d 1015, 1017 (11th Cir. 1989). This will establish "presumptive proof of valid assessment." *Id.* Once the United States offers such evidence, the burden shifts to the taxpayer to prove that the Government's calculation of delinquent taxes is incorrect, arbitrary or without foundation. See e.g., *Olster v. Comm'r of IRS*, 751 F.2d 1168, 1174

(11th Cir. 1985). Here, the United States satisfied its burden by offering into evidence the Certificates of Assessments and Payments for the tax years 2004 through 2008. P's 56.1 ¶ 22. The burden therefore shifts to Richard and his estate to prove that the United States erred. **2022 U.S. Dist. LEXIS 202770 at 10** in its calculation of delinquent taxes.

As an initial matter, Richard failed to seek timely review of the proposed assessments by the United States Tax Court. *Id.* Additionally, by failing to object to Plaintiff's request for admissions served on Defendant, he has admitted that Richard is indebted to the United States for the Federal Tax Penalties. *Id.*; see also Fed R. Civ. P. 36(a)(3) ("A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or [his] attorney."). Accordingly, Defendant failed to demonstrate that the United States erred in its calculation of delinquent taxes for the years 2004 through 2008. The undisputed facts establish that Richard and his estate are indebted to the United States for the Federal Tax Penalties totaling \$379,899, plus statutory additions and interest.

Upon the Government's assessment of tax, a tax lien arises as a matter of law which attaches to all property in which the taxpayer holds an interest. See 26 U.S.C. §§ 6321, 6322. The total amount of the tax lien will be the amount of any unpaid tax, plus "any interest, additional amount, addition. **2022 U.S. Dist. LEXIS 202770 at 11** to tax, or assessable penalty, together with any costs that may accrue in addition thereto." 26 U.S.C. § 6321. Here, Richard was a delinquent taxpayer who failed to pay the valid tax assessment. The United States therefore has a valid tax lien against Richard, which has attached to all of his estate's property, including the Condo.

Once a tax lien arises, a district court may foreclose the tax lien and force the sale of the property for the Government's benefit. 26 U.S.C. § 7403(c); *United States v. Christiansen*, 414 Fed. App'x 218, 221 (11th Cir. 2011) (*per curiam*) (*unpublished*) ("The district court did not err by entering summary judgment in favor of the United States [where t]he undisputed record established that the [IRS] had assessed [Defendant] for taxes she owed for 1998 through 2001"). Because Plaintiff established that Richard and his estate owe the Federal Tax Penalty, a fact which Defendant does not oppose, the Court finds that Plaintiff is entitled to foreclose the Federal Tax Liens. See e.g., *United States v. Hounsom*, 2015 U.S. Dist. LEXIS 143028, 2015 WL 6152964, at *3

(M.D. Fla. Aug. 11, 2015) ("Therefore, because [Defendant] owes over \$1.1 million to the Government in unpaid taxes, the Court finds that the Government is entitled to foreclose its tax liens and will grant summary judgment on Count 2.").

B. The FBAR Lien is Valid and Encumbers the Condo

As discussed above, in 2016 **2022 U.S. Dist. LEXIS 202770 at 12** a delegate of the Secretary of the Treasury timely assessed civil penalties totaling \$843,264 against Richard for willfully failing to timely file FBAR forms for the years 2006 through 2008. P's 56.1 ¶ 28. Thereafter, in the FBAR Suit, this Court granted default judgment against Defendant and entered a judgment against him in the sum of \$1,010,322.68. *Id.* ¶ 31. The United States then files a certified abstract of judgment with the Clerk of Court for the Circuit Court of Miami-Dade County, Florida. *Id.* ¶ 34.

Upon the filing of a certified copy of the abstract of judgment in the manner in which a Notice of Federal Tax Lien is filed under 26 U.S.C. 6323(f)(1), (2), a judgment lien arises in favor of the judgment creditor on all real property of the judgment debtor. 28 U.S.C. § 3201(a). As such, the United States is a judgment lien creditor of Richard's estate, and Defendant, in his capacity as a potential heir and/or personal representative of Richard's estate, and/or as a distributee of Richard's property. P's 56.1 ¶ 35. The judgment lien encumbers all of the debtor's property, which includes the Condo.

The Fair Debt Collection Procedure Act, 28 U.S.C. § 3001, *et seq.* ("FDCPA"), provides that the United States may recover a judgment on a debt by, *inter alia*, judicial sale of the judgment. **2022 U.S. Dist. LEXIS 202770 at 13** debtor's real property. See 28 U.S.C. §§ 3001(a)(1); 3201 (f)(1); 3203(e). Here, the United States can recover judgment on the FBAR Penalty debt by judicial sale of the Condo.

C. Foreclosure of the Federal Liens and Sale of the Condo

As discussed above, the United States is entitled to foreclosure on the tax liens pursuant to the Internal Revenue Code, as well as foreclosure on the judgment lien based pursuant to the FDCPA. The United States is also entitled to an order granting the sale of the Condo to satisfy those liens. See e.g., *United States v.*

Unknown Executor or Executrix of the Estate of June Dixon Applying, No. 14-CV-21510, 2015 U.S. Dist. LEXIS 142971, 2015 WL 6174075, at *3 (S.D. Fla. Oct. 21, 2015) (granting summary judgment and ordering the sale of real property to satisfy valid lien). Before ordering the sale of the Condo, the Court must determine what procedure governs the sale of the Condo—that under the Internal Revenue Code or that under the FDCPA.

The Internal Revenue Code provides that "in all cases where a claim or interest of the United States therein is established, [a court] may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States." 26 U.S.C. § 7403(c). The FDCPA likewise includes procedures to collect a debt. See 28 U.S.C. § 3001, *et seq.* However, the **2022 U.S. Dist. LEXIS 202770 at 14** FDCPA is "not [to] be construed to curtail or limit the right of the United States . . . to collect taxes." 28 U.S.C. § 3003(b)(1). Where, as here, the government holds two liens—one based on tax collection and the other involving collection under the FDCPA—on one piece of real property, any judicial sale should be conducted under the procedures provided in the Internal Revenue Code. *Id.*; see also 26 U.S.C. §§ 7402(a), 7703(b). Here, the sale of the Condo is to be conducted under the procedures provided in the Internal Revenue Code.

IV. CONCLUSION

UPON CONSIDERATION of the Motions, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Plaintiff's Motion for Summary Judgment (ECF No. 26) is GRANTED. Pursuant to Rule 58 of the Federal Rules of Civil Procedure, final judgment shall be entered by separate order. The Clerk of Court is INSTRUCTED to CLOSE this case. All pending motions, if any, are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 31st day of October, 2022.

/s/ K. Michael Moore

K. MICHAEL MOORE

UNITED STATES DISTRICT JUDGE