

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PETER JOSHUA LABRECK,

Plaintiff,

v.

Case Number 11-10155

Honorable David M. Lawson

Magistrate Judge Michael J. Hluchaniuk

U.S. DEPARTMENT OF TREASURY, BONNIE
MULLINS, STEPHEN DANISH, THOMAS W.
MITCHELL, INTERNAL REVENUE SERVICE,
OFFICE OF COMPTROLLER OF CURRENCY,
JOYCE TODD, and KURT RACHAR,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
GRANTING PLAINTIFF'S MOTION TO DISMISS, DENYING DEFENDANTS'
MOTIONS TO DISMISS AS MOOT, AND DISMISSING THE COMPLAINT WITH
RESPECT TO DEFENDANTS BONNIE MULLINS, STEPHEN DANISH, THOMAS W.
MITCHELL, AND THE OFFICE OF THE COMPTROLLER OF CURRENCY ONLY**

Presently before the Court is the report issued on January 5, 2012 by Magistrate Judge Michael J. Hluchaniuk pursuant to 28 U.S.C. § 636(b), recommending that this Court grant the plaintiff's motion to dismiss, deny the defendants' motions to dismiss, and dismiss defendants Bonnie Mullins, Stephen Danish, Thomas W. Mitchell, and the Office of the Comptroller of the Currency from this case. Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, no objections have been filed thus far. The parties' failure to file objections to the Report and Recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the Magistrate Judge's report releases the Court from its duty to independently review the matter. *Thomas v. Arn*,

474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the Magistrate Judge.

Accordingly, it is **ORDERED** that the Magistrate Judge's Report and Recommendation [dkt. #66] is **ADOPTED**.

It is further **ORDERED** that the plaintiff's motion to dismiss [dkt. # 65] is **GRANTED**, defendant Office of the Comptroller of the Currency's motion to dismiss [dkt. #40] is **DENIED AS MOOT**, and defendants Thomas W. Mitchell, Stephen Danish, and Bonnie Mullins's motion to dismiss [dkt. #42] is **DENIED AS MOOT**.

It is further **ORDERED** that the plaintiff's complaint is **DISMISSED** with respect to defendants Bonnie Mullins, Stephen Danish, Thomas W. Mitchell, and the Office of the Comptroller of the Currency **ONLY**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: January 25, 2012

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on January 25, 2012.

s/Deborah R. Tofil
DEBORAH R. TOFIL

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

CHARLES D. SPENCER,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-11-128-FHS
)	
SECRETARY OF TREASURY,)	
)	
Defendant.)	

SETTLEMENT CONFERENCE ORDER

PLEASE READ THIS ORDER CAREFULLY!

U.S. District Judge Frank H. Seay has referred this case for a settlement conference and directed the Clerk to enter this Order. MAGISTRATE JUDGE STEVEN P. SHREDER will act as a settlement judge who will not be involved in the actual trial of the case and who will assist in an objective appraisal and evaluation of the lawsuit. The following are mandatory guidelines for the parties in preparing for the settlement conference.

The court submits the following reminders to settlement conference participants for the purpose of attempting to create a more consistent, disciplined settlement conference:

1. Pay particular attention to the area highlighted in portions of paragraphs 2, 7, 9, 11 and 13.
2. Counsel who will try the case (lead counsel) should be present for the settlement conference.
3. It is requested that non-party drivers in auto and/or truck accident cases be present for the settlement conference.

1. PURPOSE OF CONFERENCE

The purpose of the settlement conference is to permit an informal discussion between the attorneys, parties, non-party indemnitors or insurers, and the settlement judge of every aspect of the lawsuit. This education process provides the advantage of permitting the settlement judge to privately express his or her views concerning the parties' claims. The settlement judge may, in his or her discretion, converse with the lawyers, the parties, the insurance representatives or any one of them outside the hearing of the others. Ordinarily, the settlement conference provides the parties with an enhanced opportunity to settle the case, due to the assistance rendered by the settlement judge. The court prohibits communications to the media and dissemination of any information to the public that does not facilitate the terms of the settlement as contemplated by the parties.

2. FULL SETTLEMENT AUTHORITY REQUIRED

In addition to counsel who will try the case being present, a person with full settlement authority must likewise be present for the conference. This **requires** the presence of your client or, if a corporate entity, an authorized **non-lawyer** representative of your client. If the issue in dispute involves insurance coverage, a claims

representative must also be present. An insurance company representative is not permitted to attend in lieu of an individual or corporate defendant (*Note: para. 7 infra requires the defendant, at least 21 days prior to the settlement conference, to advise the plaintiff of the name, title, position and curriculum vitae of the defendant's settlement authority representative*).

For a defendant, such representative must have final settlement authority to commit the company to pay, in the representative's discretion, a settlement amount recommended by the settlement judge up to the plaintiff's prayer (excluding punitive damage prayers in excess of \$100,000.00) or up to the plaintiff's last demand, whichever is lower.

For a plaintiff, such representative must have final authority, in the representative's discretion, to authorize dismissal of the case with prejudice, or to accept a settlement amount recommended by the settlement judge down to the defendant's last offer.

The purpose of this requirement is to have representatives present who can settle the case during the course of the conference without consulting a superior. A governmental entity may be granted permission to proceed with a representative with limited authority upon proper application.

3. EXCEPTION WHERE BOARD APPROVAL REQUIRED

If Board approval is required to authorize settlement, attendance of the entire Board is requested. In the alternative, a Board may designate one sitting member of the Board (preferably the Chairman) to represent the Board, if the Board gives, by binding resolution, the said representative full settlement authority as described in paragraph 2.

4. APPEARANCE WITHOUT CLIENT PROHIBITED

Counsel appearing without their clients (whether or not you have been given settlement authority) will cause the conference to be canceled and rescheduled. Counsel for a government entity may be excused from this requirement upon proper application.

5. AUTHORIZED INSURANCE REPRESENTATIVE(S) REQUIRED

Any insurance company that (1) is a party, (2) can assert that it is contractually entitled to indemnity or subrogation out of settlement proceeds, or (3) has received notice or a demand pursuant to an alleged contractual requirement that it defend or pay damages, if any, assessed within its policy limits in this case must have a fully authorized settlement representative present at the conference. Such representative must have final settlement authority to commit the company to pay, in the representative's discretion, an amount recommended by the settlement judge within the policy limits.

The purpose of this requirement is to have an insurance representative present who can settle the outstanding claim or claims during the course of the conference without consulting a superior. An insurance representative authorized to pay, in his or her discretion, up to the plaintiff's last demand will also satisfy this requirement.

6. ADVICE TO NON-PARTY INSURANCE COMPANIES REQUIRED

Counsel of record will be responsible for timely advising any involved non-party insurance company of the requirements of this order.

7. PRE-CONFERENCE DISCUSSIONS REQUIRED

Prior to the settlement conference, the attorneys are directed to discuss settlement with their respective clients and insurance representatives, and opposing parties are directed to discuss settlement so the parameters of settlement have been explored well in advance of the settlement conference. **This requires the following:**

Twenty-eight days prior to the settlement conference, plaintiff must tender a written settlement offer to the defendant and the assigned settlement judge.

Twenty-one days prior to the settlement conference, each defendant must make and deliver a written response to plaintiff and the assigned settlement judge. That response may either take the form of a written substantive offer, or a written communication that a defendant declines to make any offer. Each defendant's response will also include the name, title, position, as well as curriculum vitae, of defendant's final settlement authority representative. In the event plaintiff has any question about the settlement authority of defendant's representative that cannot be resolved by informal communication with defendant's counsel, then plaintiff should notify the settlement judge by written objection ten days prior to the settlement conference date; defendant's counsel should be provided a copy of said objection.

The parties are advised that the settlement offers called for in this Settlement Conference Order are not filed in the court file and, therefore, may be submitted directly to the settlement judge in any one of the following ways:

- (1) Electronically: StlmtConf_OKED@oked.uscourts.gov
- (2) Fax: (918) 684-7961
- (3) Mail: U.S. Magistrate Judge Steven P. Shreder
P. O. Box 7002
Muskogee, OK 74402-7002

Silence or failure to communicate as required is not itself a form of communication which satisfies these requirements.

8. SETTLEMENT CONFERENCE STATEMENT REQUIRED

One copy of each party's settlement conference statement must be submitted directly to the settlement judge. The parties are advised that the settlement statements called for in this Settlement Conference Order are not filed in the court file and, therefore, may be submitted directly to the settlement judge in any one of the ways listed above.

Settlement Conference Statements must be submitted no later than June 25, 2012.

Your statement should set forth the relevant positions of the parties concerning factual issues, issues of law, damages, and the settlement negotiation history of the case, including a recitation of any specific demands and offers that may have been conveyed. Copies of your settlement conference statement are to be promptly transmitted to all counsel of record.

The settlement conference statement may not exceed five (5) pages in length and will not be made a part of the case file. Lengthy appendices should not be submitted. The parties are encouraged to make use of demonstrative exhibits, photographs, videos, and video depositions. The court has adequate VCR and television

equipment available for use by the parties.

9. INSURANCE COVERAGE AFFIDAVITS

The parties are to provide the court, not later than 14 days prior to the settlement conference, affidavits identifying **all** insurance coverage, if any, and stating the amount of coverage. These should be sent to the settlement judge in any one of the ways listed in paragraph 7, and not filed of record in this case.

10. CONFIDENTIALITY STRICTLY ENFORCED

Neither the settlement conference statements nor communications of any kind occurring during the settlement conference can be used by any party with regard to any aspect of the litigation or trial of the case. Strict confidentiality shall be maintained with regard to such communications by both the settlement judge and the parties.

11. CONTINUANCES

Requests for continuance of the settlement conference will not be entertained unless a **Motion for Continuance** is filed with the Court Clerk **at least seven (7) days prior to the scheduled conference**. Any such motion must contain both a statement setting forth good cause for a continuance and a recitation of whether or not the continuance is opposed by any other party. A courtesy copy of the motion should be provided to the settlement judge.

12. SETTING

The settlement conference is set on **July 9, 2012 at 10:00 a.m.**, U.S. Courthouse, Fifth and Okmulgee Streets, Muskogee, Oklahoma. PARTIES and COUNSEL are to check in at Judge Shreder's Chambers, Room 425 of the U.S. Courthouse, and will be directed to the proper room for the settlement conference at that time.

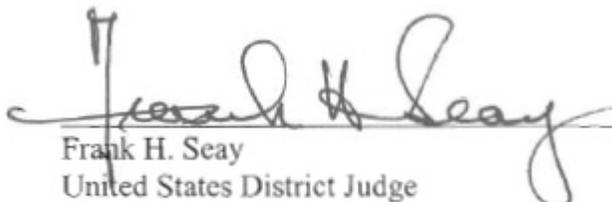
13. NOTIFICATION OF PRIOR SETTLEMENT REQUIRED

In the event a settlement between the parties is reached before the settlement conference date, the parties are to notify the settlement judge immediately.

14. CONSEQUENCES OF NON-COMPLIANCE

Upon certification by the settlement judge of circumstances showing non-compliance with this Order, the assigned trial judge may take any corrective action permitted by law. Such action may include contempt proceedings and/or assessment of costs, expenses and attorney fees, together with any additional measures deemed by the court to be appropriate under the circumstances.

DATED this 25th day of January, 2012.


Frank H. Seay
United States District Judge
Eastern District of Oklahoma

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

ALL STATE ASSET)	
MANAGEMENT, LLC,)	
)	
Plaintiff,)	Civil No. 3:11-cv-01009-ARC
)	
v.)	(Formerly Civil Action-Law
)	No. 2010-3164 in the
UNITED STATES OF AMERICA,)	Court of Common Pleas of
<u>et al.</u> ,)	Monroe County, Pennsylvania)
)	
Defendants.)	
.....)	(Judge Caputo)
)	
UNITED STATES OF AMERICA,)	
)	
Counterclaim-Plaintiff,)	
)	
v.)	
)	
ALL STATE ASSET)	
MANAGEMENT, LLC, <u>et al.</u> ,)	
)	
Counterclaim-Defendants.))	

ORDER

Upon consideration of the United States' Motion for Default Judgment on its counterclaim, any response(s) thereto, the applicable law, and the entire record of this case, including the Stipulation among the United States, Pocono Advantage Real Estate, LLC, Robert Razzan, and Virginia Razzan (Docs. 12, 13); and finding that the United States will be

prejudiced if the Court denies default judgment; that the All State Asset Management, LLC, and Mary Ellen Drury appear to have no litigable defense, that their default is due to their own culpable conduct, and that alternative sanctions would not be effective; it is

ORDERED that the motion is GRANTED;

ORDERED that The Clerk shall enter the attached Judgment as a separate entry on the docket of this case;

ORDERED that the Real Property shall be sold in accordance with a separate Order of Sale, and that the proceeds from the sale be deposited into the Court's Registry and maintained in an interest-bearing account until the Court orders the proceeds to be distributed as follows: first, to reimbursement of the costs of the sale; second, to the United States on account of its costs incurred litigating this case; third, to the United States to be applied toward Mary Ellen Drury's tax liabilities; and, thereafter, in accordance with the Court's determination of the relative priority among those parties that claim and prove an interest in the proceeds, including Pocono Advantage Real Estate, LLC; Robert Razzan; and Virginia Razzan.

DATED:

January 24, 2012



A. RICHARD CAPUTO
United States District Judge

Copies to:

Christopher D. Belen
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 227
Washington, D.C. 20044

Edward Kaushas
294 Main Street
Dupont, PA 18641-1960

Todd Weitzmann
Scanlon, Lewis & Williamson
624 Sarah Street
Stroudsburg, PA 18360

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

JEFFREY ROSE and CARRIE ROSE,	:	Bankruptcy No. 11-22664-JAD
	:	
	:	
Debtors.	:	Chapter 13
	X	
<hr/> JEFFREY ROSE and CARRIE ROSE,	:	
	:	
	:	
Plaintiffs,	:	
v.	:	Adversary No. 11-2358-JAD
	:	
DOLLAR BANK FEDERAL SAVINGS BANK; UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE; COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF REVENUE; and HART PRINTING AND LITHOGRAPHY CO.,	:	
	:	
Defendants.	:	
	X	

ORDER

AND NOW, this 25th day of January, 2012, upon consideration of the Order Dated 1/19/2012, Granting Plaintiffs' Motion To Continue Trial the above-captioned matter;

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the **Evidentiary Hearing/Trial on Debtors' Complaint To Determine Secured Status Under § 506 IS CONTINUED TO Tuesday, April 24, 2012 at 1:30 PM in Courtroom D, 54th Floor, U.S. Steel Tower, 600 Grant Street, Pittsburgh, PA 15219.**



JEFFREY A. DELLER
U.S. Bankruptcy Judge

THE CASE ADMINISTRATOR SHALL MAIL TO:

Jeffrey and Carrie Rose
Richard R. Tarantine, Esq.
Nicholas J. Lamberti, Esq.
Art D. Kunofsky, Esq.
Ronda J. Winnecour, Esq.
Office of United States Trustee

FILED

JAN 25 2012

CLERK, U.S. BANKRUPTCY COURT
WEST. DIST. OF PENNSYLVANIA

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

<hr/>	
JOSEPH IANTOSCA, BELRIDGE)
CORPORATION, GAIL A. CAHALY,)
JEFFREY M. JOHNSTON, BELLMORE)
ASSOCIATES, LLC, MASSACHUSETTS) Civil Action No. 08-CV-11785NMG
LUMBER COMPANY, INC., UNITED)
STATES OF AMERICA)
Plaintiffs,)
)
v.)
)
BENISTAR ADMINISTRATIVE SERVICES,)
INC., DANIEL CARPENTER, MOLLY)
CARPENTER, BENISTAR PROPERTY)
EXCHANGE TRUST COMPANY, INC.,)
BENISTAR LTD., BENISTAR EMPLOYER)
SERVICES TRUST CORPORATION,)
CARPENTER FINANCIAL GROUP, LLC,)
STEP PLAN SERVICES, INC., BENISTAR)
419 PLAN SERVICES, INC., TRAVELERS)
INDEMNITY COMPANY, CERTAIN)
UNDERWRITERS AT LLOYDS, LONDON,)
TRAVELERS PROPERTY CASUALTY)
COMPANY OF AMERICA, WAYNE H.)
BURSEY)
Defendants.)
<hr/>	

**PLAINTIFFS' (OTHER THAN THE UNITED STATES)
MOTION TO CONTINUE THE TRIAL DATE BY ONE WEEK**

As a result of a conflict for plaintiffs' counsel during the week of March 26th, plaintiffs respectfully request that the Court continue the March 26, 2012 trial date by one week to April 2, 2012.

When the trial date in this matter was first continued to March 26, 2012, plaintiffs' lead counsel, Anthony Zelle, did not realize that the date conflicted with his previously scheduled obligation to chair a conference presented by the Defense Research Institute, a large professional

Motion denied.
JM Gordon, USDJ 1/25/12

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF PUERTO RICO

IN RE:

GRETCAR INC

XXX-

Debtor(s)

CASE NO. 11-07649 MCF

Chapter 11

FILED & ENTERED ON 01/25/2012

ORDER APPROVING SETTLEMENT/STIPULATION

This case is before the Court upon the settlement agreement/stipulation filed by the debtor and the United States of America on behalf of the Internal Revenue Service, docket entry #44.

Due notice having been given, no opposition having been filed, and good cause appearing thereof, it is now ordered that the settlement agreement/stipulation be and is hereby approved.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 25 day of January, 2012.

Mildred Caban

Mildred Caban Flores
U. S. Bankruptcy Judge

C: DEBTOR(S)
FRANCISCO R. MOYA HUFF
INTERNAL REVENUE SERVICE

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)

v.)

C/A NO. 8:11-cv-02122-GRA

LARRY EDWARD WILSON,)
BANK OF NEW YORK as TRUSTEE FOR)
THE CERTIFICATEHOLDERS CWABS, INC.)
ASSET-BACKED CERTIFICATES, SERIES)
2004-6,)
COUNTRYWIDE HOME LOANS, INC.,)
SOUTH CAROLINA DEPARTMENT OF)
EMPLOYMENT AND WORKFORCE,)
SOUTH CAROLINA WORKERS')
COMPENSATION UNINSURED)
EMPLOYERS' FUND,)
RISK CONTROL SERVICES, INC.,)
BOB SHIREY,)
WALTER E. RUFF, JR., and)
ORIGINAL BUDDYS, LLC,)
)
Defendants.)

ORDER OF SALE

This Court entered a final judgment in this action on January 19, 2012 (ECF No. 33), in favor of the plaintiff United States of America and against the defendants. The judgment ordered that the federal tax liens associated with certain federal tax liabilities of Defendant Larry Edward Wilson be enforced with a judicial sale of the land, along with all improvements, buildings, and appurtenances thereon, now known as and numbered 1552 Garys Lane, Newberry, South Carolina (the "Property"), and more fully described as follows:

All that piece, parcel or tract of land situate, lying and being in the county of Newberry, State of South Carolina being designated as tract A, containing .388 acres as shown on a plat prepared for Eugene Wilson, Jr. by Longshore Surveying, dated December 29, 1999, and recorded in the office of the Clerk of Court for Newberry County in Plat Book B158 at page 8; said property having such metes and bounds as shown on said plat, reference being craved thereto.

Parcel no. 136-23.

Being the property conveyed to Larry Edward Wilson by deed of Eugene Wilson, Jr., dated January 14, 2000, and recorded in the public records of Newberry County, South Carolina at Book 527, Page 280.

The Court now ORDERS that the Property shall be sold under 26 U.S.C. § 7403(b) in order to collect the unpaid federal tax liabilities, as follows:

1. The Internal Revenue Service (“IRS”) Property Appraisal and Liquidation Specialists (“PALS”) is authorized to offer for public sale and to sell the Property.

2. The terms and conditions of the sale are as follows:

a. The sale of the Property shall be by public auction to the highest bidder, free and clear of all rights, titles, claims, liens, and interests of all parties to this action, including the plaintiff United States and the defendants Larry Edward Wilson (“Wilson”), Bank of New York as Trustee for the Certificateholders CWABS, Inc. Asset-Backed Certificates, Series 2004-6 (“BoNY”), Countrywide Home Loans, Inc. (“Countrywide”), South Carolina Department of Employment and Workforce (“DEW”), South Carolina Workers’ Compensation Uninsured Employers’ Fund (“UEF”), Risk Control Services, Inc. (“RCS”), Bob Shirey (“Shirey”), Walter E. Ruff, Jr. (“Ruff”), and Original Buddys, LLC. (“Buddys”), and any successors in interest or transferees of those parties.

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, restrictions, and reservations of record, if any.

c. The sale shall be held either at the courthouse of the county or city in which the Property is located or on the Property's premises.

d. The PALS shall announce the date and time for sale. The IRS, PALS, and their representatives shall be permitted to enter the Property with prospective buyers in order to allow prospective buyers to inspect the interior and exterior of the Property at such times as the IRS or PALS shall determine are reasonable and convenient.

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 Newberry County, and, at the discretion of the PALS, by any other notice or advertisement that the PALS deems appropriate. The notice of the sale shall contain a description of the Property and shall contain the material terms and conditions of sale set forth in this order of sale.

f. The Property shall be offered for sale "as is," with all faults and without any warranties either express or implied, and the sale shall be made without any right of redemption.

g. The PALS shall set, and may adjust, 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 in this order of sale, hold a new public sale, if necessary, and adjust the minimum bid.

h. At the time of the sale, the successful bidder(s) shall deposit with the PALS, by cash or by money order, certified check, or cashier's check drawn payable to the Clerk of the United States District Court for the District of South Carolina, 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 display to 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 bidders(s), they can make the deposit required by this order of sale. The United States may bid as a creditor against its judgment without any tender of cash or check.

i. The successful bidder(s) shall pay the balance of the purchase price for the Property within sixty (60) days following the date of the sale. The cash or money order, certified check, or cashier's check drawn payable to the Clerk of the United States District Court for the District of South Carolina 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 sale shall be treated as null and void, and the deposit shall be forfeited as damages and applied to cover the expenses of the sale, with any amount remaining to be applied to the judgment for the federal tax liabilities entered in this case. The Clerk shall distribute the deposit as directed by the PALS by check drawn payable to the "United States Treasury." 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. The successful bidder(s)

at the new sale or second highest bidder, as the case may be, shall receive the Property free and clear of all rights, titles, claims, liens, and interests of the defaulting bidder(s).

j. The Clerk of the Court is directed to accept the deposits and proceeds of the sale and deposit them into the Court's registry for distribution as provided for herein or pursuant to further order of this Court.

k. The sale of the Property shall be subject to confirmation by this Court. On confirmation of the sale, ownership and possession of the Property shall transfer to the successful bidder(s), and all interests in, liens against, and titles and claims to, the Property that are held or asserted by the parties to this action are discharged and extinguished. When this Court confirms the sale, the Recording Official of Newberry County South Carolina shall cause the transfer of the Property to be reflected upon that county's register of title.

l. After the confirmation of the sale, the IRS shall execute and deliver a deed under the authority of this Court conveying the Property, effective as of the date of the confirmation of the sale, to the successful bidder(s). The successful bidder(s) shall pay, in addition to the amount of the bid, any documentary stamps and registry fees as provided by law.

m. All rights to rents of or from the Property arising after the final judgment in this action and before the confirmation of the sale of the Property shall constitute proceeds of the Property and such rents shall be turned over to, and paid to, the PALS for deposit and distribution in the same manner as the proceeds of the sale of the Property. On confirmation of the sale of the Property, all rights to product, offspring, rents, and profits

of or from the Property arising thereafter shall transfer to the successful bidder(s) and all risks of losses associated with the Property shall transfer to the successful bidder(s).

3. Up until the date that this Court confirms the sale of the Property, Wilson shall take all reasonable steps necessary to preserve the Property (including all buildings, improvements, fixtures and appurtenances on the Property) in its current condition including, without limitation, maintaining a fire and casualty insurance policy on the Property and Wilson, and all occupants of the Property shall neither commit waste against the Property nor cause or permit anyone else to do so. All of the defendants in this case shall neither do anything that tends to reduce the value or marketability of the Property nor cause or permit anyone else to do so. Such defendants shall not record any instruments, 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. Violation of this paragraph shall be deemed a contempt of court and punishable as such.

4. All persons occupying the Property shall vacate the Property permanently within 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). If any person fails or refuses to vacate the Property by the date specified in this order of sale, the PALS are authorized to coordinate with the United States Marshal to take all actions that are reasonably necessary to have those persons ejected. Any personal property remaining on the Property 30 days after the date of this order of sale is deemed forfeited and abandoned, and the PALS are

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 costs and expenses of sale and the balance shall be paid into the Court for further distribution. Money orders and checks for the purchase of the personal property shall be drawn payable to the Clerk of the United States District Court for the District of South Carolina and the Clerk of the Court is directed to accept cash and checks and deposit such items into the Court's registry for distribution pursuant to further order of this Court.

5. No later than two business days after vacating the Property pursuant to the deadline set forth in paragraph 4, above, Wilson shall notify counsel for the United States of a forwarding address where he/she/they can be reached. Notification shall be made by contacting the U.S. Department of Justice Tax Division's paralegal at (202) 514-6674.

6. Up until the date that this Court confirms the sale of the Property, the IRS, PALS, and their representatives are authorized to have free and full 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.

7. After the Court confirms the sale of the Property, the sale proceeds deposited with the Clerk of this Court should be applied to the following items, in the order specified below:

a. First, to the United States Treasury for the costs and expenses of the sale, including any costs and expenses incurred to secure or maintain the property pending sale and confirmation by the Court;

b. Second to Newberry County, or other local taxing authority, for real property taxes and other local assessments due and owing;

c. Third, the remaining proceeds shall be distributed to the plaintiff United States of America for application to the liability then outstanding in connection with the unpaid federal tax liabilities of the defendant Larry Edward Wilson, including all accrued statutory penalties, additions, and interest, until fully paid;

d. Any further remaining sale proceeds shall be held in the Court's registry pending further order of the Court.

IT IS SO ORDERED:

Signed this 25th day of January, 2012.

A handwritten signature in black ink, reading "G. Ross Anderson, Jr." in a cursive style.

G. ROSS ANDERSON, JR.
SENIOR UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

12 JAN 25 AM 9:59

RECEIVED U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA**

GREGORY M. GARRISON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Case No. 11-CV-1537 BEN NLS

**ORDER GRANTING JOINT
MOTION TO ALLOW
PLAINTIFF TO FILE FIRST
AMENDED CLAIM FOR RELIEF**

[Doc. No. 15]

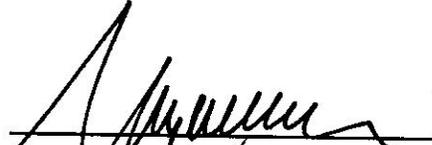
AND RELATED COUNTER-CLAIM

Based upon the parties' joint motion and GOOD CAUSE appearing therefore, it is hereby **ORDERED:**

1. Plaintiff Gregory M. Garrison is permitted to file a First Amended Complaint, attached as Exhibit A to the parties' joint motion, [Doc. No. 15-1], superseding the prior "First Claim for Relief."
2. Defendant shall have 20 days from the date this order is signed to file a responsive pleading to the First Amended Complaint.

IT IS SO ORDERED.

Dated: 1/24/2012


Honorable Roger T. Benitez
United States District Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re

EVANGELINE APACIBLE-
RIVERA,

Debtor.

Case No. 11-01438
Chapter 13

EVANGELINE APACIBLE-
RIVERA,

Plaintiff,

vs.

DEPARTMENT OF TREASURY,
INTERNAL REVENUE SERVICE,

Defendant.

Adv. Pro. No. 11-90052

Re: Docket No. 25

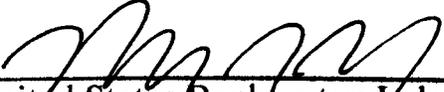
ORDER DENYING DEFENDANT'S MOTION TO DISMISS

The debtor, Evangeline Apacible-Rivera, filed for chapter 13 relief under the Bankruptcy Code on May 20, 2011. The debtor then commenced this adversary proceeding against defendant, the Department of the Treasury, Internal Revenue Service, over a tax dispute. The defendant filed a motion to dismiss the adversary proceeding on July 20, 2011. A continued hearing on the motion was

held on January 20, 2012.

For the reasons stated in open court,

IT IS HEREBY ORDERED that the defendant's motion to dismiss is
DENIED.


JAN 25 2012
United States Bankruptcy Judge

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

UNITED STATES OF AMERICA

Plaintiff,

v.

EUGENE JOSEPH KOZIOL

Defendant.

Civil No. CIV-S-04-2391 WBS

ORDER

The United States filed a motion to amend an Order (Doc. No. 49) expunging particular false UCC liens filed by the defendant, and including additional false liens filed later by the same defendant. Government counsel reports that the defendant died while incarcerated for tax crimes. For good cause shown,

IT IS ORDERED THAT

1. The United States' motion to amend order (Doc. No. 50) is granted.
2. The following UCC Financing Statements:

<u>Filing Number</u>	<u>Type</u>	<u>Filed Against</u>	<u>Date Filed</u>
0220761161	UCC-1	Daniel J. Mulhall	07/25/2002
0220761151	UCC-1	Robert N. May	07/25/2002
0220761155	UCC-1	Donald H. Sutherland	07/25/2002
0220761144	UCC-1	Kathleen M. Pippig	07/25/2002
05-7024110121	UCC-1	Guy Patrick Jennings	04/22/2005
05-7028633367	UCC-1	Mark Everson	05/30/2005

are null, void, of no legal effect, and shall be expunged by the California Secretary of State so that the personal identity and information on the filings cannot be retrieved

1 electronically.

2 3. Defendant Eugene J. Koziol, his agents, employees, and any other affiliated persons,
3 are permanently enjoined from filing or attempting to file any document or instrument
4 which purports to create any non-consensual lien or encumbrance against the person or
5 property of any officer or employee of the United States, unless this Court permits the
6 filing.

7 **IT IS SO ORDERED.**

8
9 Date: January 24, 2012

10 

11 WILLIAM B. SHUBB
12 UNITED STATES DISTRICT JUDGE

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16 Submitted by:

17 /s/ G. Patrick Jennings
18 G. PATRICK JENNINGS
19 Trial Attorney, Tax Division
20 U.S. Department of Justice
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-02278-WJM-KLM

USA,

Plaintiff,

v.

ASHCROFT HOMES CORP.,
ASHCROFT HOMES OF COLORADO, INC.,
ABSOLUTE CONSTRUCTION SERVICES, LLC,
FIRST TENNESSEE BANK NATIONAL ASSOCIATION,
ANITA L. RUSSELL,
TIMOTHY J. RUSSELL,
USAA FEDERAL SAVINGS BANK, and
TIMBER CREEK HOLDINGS, L.P.,

Defendants.

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on the **Motion of Rothgerber Johnson & Lyons LLP to Withdraw as Counsel for First Horizon Home Loan Corporation** [Docket No. 55; Filed January 24, 2012] (the "Motion") filed by Attorneys Kristin M. Bronson and Trevor G. Bartel on behalf of Defendant First Tennessee Bank National Association ("First Tennessee"). Attorney Bronson and Attorney Bartel state that Defendant First Tennessee has retained new counsel, Attorney Seymour Joseph and Attorney Alan E. Karsh, who have already entered their appearances in this matter on its behalf. Thus, Attorney Bronson and Attorney Bartel move to withdraw as counsel of record for Defendant First Tennessee.

IT IS HEREBY **ORDERED** that the Motion is **GRANTED**. Attorney Bronson and Attorney Bartel are relieved of any further representation of Defendant First Tennessee in this case. The Clerk of the Court is instructed to terminate them as counsel of record, and to remove their names from the electronic certificate of mailing.

Dated: January 25, 2012

The below described is SIGNED.



Dated: January 24, 2012 *R. Kimball Mosier*
R. KIMBALL MOSIER
U.S. Bankruptcy Judge
IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

In re:

STEVEN L. DISTAD,) Bankruptcy No. 97-27993
Debtor,) Chapter 7
_____)

STEVEN L. DISTAD,)
Plaintiff,) Adv. No. 07-2047

v.)

UNITED STATES INTERNAL)
REVENUE SERVICE,)
Defendant.) ORDER

Before the Court is the United States' motion to dismiss the plaintiff's claim for monetary damages for violation of the discharge injunction for tax years 1986, 1987, 1988 and 1989. A hearing on this matter was held on November 15, 2011. Virginia Cronan Lowe appeared on behalf of the defendant, the United States of America, and Joel Zenger appeared on behalf of the plaintiff, Steven L. Distad. Based on the pleadings filed, the arguments of the parties, and the findings made by the Court on the record at the hearing, the Court finds that pursuant to 26 U.S.C. § 7433(d) exhaustion of administrative remedies is mandatory and the plaintiff has failed to exhaust his administrative remedies with regard to his claim for damages for the tax years 1986, 1987, 1988 and 1989. The Court also finds that the United States did not

waive its exhaustion of administrative remedies defense. Therefore, IT IS HEREBY ORDERED:

That the plaintiff's claim for damages for violation of the discharge injunction for tax years 1986, 1987, 1988, and 1989 is dismissed with prejudice; and

That the adversary proceeding is dismissed.

Dated: _____

R. KIMBALL MOSIER
U.S. Bankruptcy Judge

ORDER SIGNED

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing PROPOSED ORDER has been made this 13th day of January, 2012, by electronic mail addressed to:

Joel T. Zenger, Esq. at zenger@millerguymon.com

/s/ Virginia Cronan Lowe
VIRGINIA CRONAN LOWE
Trial Attorney, Tax Division
U.S. Department of Justice

ORDER SIGNED

Honorable Linda B. Riegler
United States Bankruptcy Judge



Entered on Docket
January 25, 2012

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Telephone: (202) 307-6484

Attorneys for the United States of America

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

THE RHODES COMPANIES, LLC, aka
"Rhodes Homes," et al.,

Reorganized Debtors.

Chapter 11

Case No. BK-S-09-14814-LBR
(Jointly Administered)

Trial Date: 3/5/2012
Trial Time: 9:30 a.m. (PST)
Courtroom 1

Affects all Debtors
 Affects the following Debtors

**ORDER APPROVING STIPULATION TO EXTEND BRIEFING SCHEDULE IN
CONNECTION WITH THE REORGANIZED DEBTORS' OBJECTION TO CLAIM NO. 7
FILED BY THE INTERNAL REVENUE SERVICE AGAINST DEBTOR BRAVO, INC.,
ETC.**

1 The Court, having considered the Stipulation to Extend Briefing Schedule in Connection With
2 the Reorganized Debtors' Objection to Claim No. 7 Filed By the Internal Revenue Service Against
3 Debtor Bravo, Inc., Etc. (the "Stipulation")_filed by the Reorganized Debtors; and for good cause
4 appearing:

5 IT IS HERBEY ORDERD that the Stipulation is APPROVED.

6 IT IS FURTHER ORDERED that the deadline for the Parties to submit their opening briefs is
7 hereby extended to Monday, February 13, 2012 at 2:00 p.m.; and

8 IT IS FURTHER ORDERED that the deadline for the Parties to submit their reply briefs is
9 hereby extended to Monday, February 27, 2012 at 2:00 p.m.

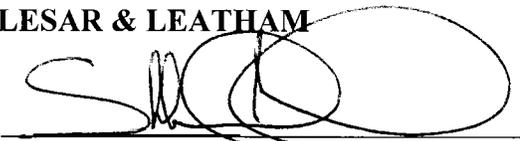
10 **SUBMITTED BY:**

APPROVED BY:

11 **KOLESAR & LEATHAM**

DANIEL BOGDEN

United States Attorney

12 By: 

By: /s/ Virginia Lowe

13 NILE LEATHAM, ESQ.
14 Nevada Bar No. 002838
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17 400 South Rampart Boulevard, Suite 400
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17 and

18 **AKIN GUMP STRAUSS HAUER & FELD LLP**

Attorneys for the United States of America

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New York, NY 10036

22 and

23 **PACHULSKI STANG ZIEHL & JONES LLP**

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25 SHIRLEY S. CHO, Esq. (CA Bar No. 192616)
26 WERNER DISSE, Esq. (CA Bar No. 143458)
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Los Angeles, CA 90067-4100

27 *Counsel for the Reorganized Debtors*

28

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:)
JAMES STEWART RITCHIE,)
)
Debtor.) Bk. No. 11-bk-3319
)
) Chapter 7
_____)
)
JAMES STEWART RITCHIE,)
)
Plaintiff,)
)
v.) Adversary No. 11-ap-405-TOM
)
UNITED STATES OF AMERICA,)
)
Defendant.)

**PROPOSED ORDER GRANTING JOINT MOTION FOR ENTRY OF FINAL
JUDGMENT**

This adversary proceeding came on without a hearing on the parties' Joint Motion for Entry of Judgment. It appears the Motion is well taken. The parties agree that James Stewart Ritchie is not personally liable for the outstanding federal employment taxes of J&L Mechanical, LLC. Accordingly, it is hereby

ORDERED that:

1. The parties Joint Motion for Entry of Judgment is **GRANTED**;
2. Ritchie is not personally liable for the outstanding federal employment taxes of J&L Mechanical, LLC for the taxable periods ending 9/30/2007, 12/31/2007, 3/31/2008, 6/30/2008, and 9/30/2008; and

3. A separate judgment will be entered consistent with this Order.

SO ORDERED this 25th day of January, 2012.

/s/ Tamara O. Mitchell
TAMARA O. MITCHELL
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:)
JAMES STEWART RITCHIE,)
)
Debtor.) Bk. No. 11-bk-3319
)
) Chapter 7
_____)
)
JAMES STEWART RITCHIE,)
)
Plaintiff,)
)
v.) Adversary No. 11-ap-405-TOM
)
UNITED STATES OF AMERICA,)
)
Defendant.)

FINAL JUDGMENT

The Court entered an Order on the parties' Joint Motion for Entry of Judgment.

Accordingly, it is

ADJUDGED that plaintiff James Stewart Ritchie is not liable for the outstanding federal employment tax liabilities of J&L Mechanical, LLC, for the taxable periods ending 9/30/2007, 12/31/2007, 3/31/2008, 6/30/2008, and 9/30/2008.

SO ORDERED this 25th day of January, 2012.

/s/ Tamara O. Mitchell
TAMARA O. MITCHELL
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

In re:

CHARISSE ANN STRAWBERRY,

CASE NO.: 10-40400-LMK
CHAPTER: 7

Debtor.

MARY W. COLON, CHAPTER 7 TRUSTEE

Plaintiff,

v.

ADV. PRO. NO.: 11-04003-LMK

DARRYL STRAWBERRY,
INTERNAL REVENUE SERVICE, &
STERLING METS, L. P.

Defendants.

STERLING METS, L. P.,

Counter-Plaintiff,

v.

MARY W. COLON,

Counter-Defendant.

STERLING METS, L. P.,

Cross-Plaintiff,

v.

DARRYL STRAWBERRY, &
INTERNAL REVENUE SERVICE,

Cross-Defendants.

STERLING METS, L. P.,

Third-Party Plaintiff,

v.

CHARISSE ANN STRAWBERRY, &
THE STATE OF MISSOURI,

Third-Party Defendants.

**ORDER ON INTERNAL REVENUE SERVICE'S
MOTION TO DISMISS THE INTERPLEADER**

THIS MATTER came before the Court on Defendant Internal Revenue Service's Motion to Dismiss the interpleader brought by the Sterling Mets, L.P. (the "Mets"). The Mets have named the Internal Revenue Service as a party in the interpleader, asserting that its sovereign immunity is waived pursuant to 28 U.S.C. § 2410(a)(5). After the hearing on December 13, 2011, additional briefs were requested from the parties on questions pertaining to sovereign immunity and subject matter jurisdiction. Having considered the arguments of the parties and the record in this case, I conclude that the Court has jurisdiction over the interpleader and the Internal Revenue Service's Motion to Dismiss is denied.

BACKGROUND

This matter arises from an adversary proceeding initiated by the Chapter 7 Trustee ("Trustee") in the bankruptcy case of Charisse Ann Strawberry. The Trustee's amended complaint named Darryl Strawberry, the Mets, and the Internal Revenue Service (the "IRS") as defendants. The Trustee brought the complaint asserting Charisse Strawberry is entitled to a portion of the monthly deferred compensation payments Darryl Strawberry receives from the Mets pursuant to a Uniform Player's Contract ("UPC"). The UPC was entered into by and between the Mets and

Darryl Strawberry on March 12, 1985. Under the UPC, Darryl Strawberry receives \$8,891.82 as monthly deferred compensation payments for a total of thirty years. The Trustee asserts Charisse Strawberry is entitled to \$800,000 from the deferred compensation funds pursuant to a Stipulated Qualified Domestic Relations Order (“QDRO”) that was entered on November 3, 2006 in the Circuit Court of the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida. However, the IRS had already issued a Notice of Levy to the Mets on the deferred compensation funds back in 2000. The IRS holds a lien against the compensation funds in the amount of \$542,572.64 for Darryl Strawberry’s federal income tax liabilities. Faced with the competing claims on the deferred compensation funds from the Trustee, the IRS and Darryl Strawberry, the Mets filed this crossclaim for interpleader. The Mets seek for the Court to determine the priority of the various claims to ensure their proper distribution and to discharge the Mets from any further liability to the parties with respect to deferred compensation funds.

The Court was prepared to dismiss this interpleader based on an agreement by the Trustee and the Mets on the merits, conceding the IRS holds a superior levy on the disputed compensation funds. Nevertheless, the IRS pursued the Motion to Dismiss based on jurisdiction, arguing this Court lacks subject matter jurisdiction to enter such an order because the IRS has not waived its sovereign immunity.

DISCUSSION

Federal Rule of Bankruptcy Procedure 7022 governs interpleader actions in adversary proceedings. The Rule provides, in part, “[p]ersons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead.” Fed. R. Bankr. P. 7022(a)(1). The Mets have initiated the interpleader in order to ensure that the disputed deferred compensation funds are given to those that are properly entitled to it and to ensure that they are protected from further liability. The federal interpleader statute provides for this relief.

28 U.S.C. § 2361 (allowing a district court to enter an order restraining all claimants in an interpleader action from “instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action until further order of the court...Such district court shall hear and determine the case, and may discharge the plaintiff from further liability...”). Although the federal interpleader statute and the federal rules of bankruptcy procedure allow a party to interplead, a federal court cannot reach the merits of any dispute until it confirms its own subject matter jurisdiction. *See Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94, 118 S.Ct. 1003, 140 L.Ed. 2d 210 (1998). The gravamen of the IRS’ Motion is that the United States has not waived sovereign immunity for this type of action, and therefore, this Court lacks subject matter jurisdiction.

It is well settled that one cannot sue the United States unless Congress has expressly provided its statutory consent. *United States v. Dalm*, 494 U.S. 596, 608, 110 S.Ct. 1361, 108 L.Ed.2d 548 (1990). Unless it waives its sovereign immunity, the United States may not be required to interplead. *Kentucky ex rel United Pac. Ins. Co. v. Laurel County*, 805 F.2d 628, 636 (6th Cir. 1986) (quoting 7 C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 1721, at 654 (2d ed. 1986)); *AmSouth Bank v. Miss. Chem. Corp.*, 465 F.Supp.2d 1206, 1209 (D. N.M. 2006) (noting “the general statute permitting interpleader, 28 U.S.C. § 1335, is not itself a waiver of sovereign immunity”). Title 28 U.S.C. § 2410(a)(5) provides for a waiver of sovereign immunity in an interpleader action to property or funds on which the United States has a mortgage or other lien. The IRS argues that Section 2410(a)(5) does not apply to this action for three reasons: 1) the IRS contends Section 2410 only allows interpleader actions against the United States in state court or in federal district court, not bankruptcy court; 2) the plaintiff in an interpleader action must face a legitimate threat of multiple liability, which the IRS asserts does not exist in this action because 26 U.S.C. § 6332(e) shields a recipient of an internal revenue levy from lia-

bility if the recipient complies; and 3) this action is time-barred under 28 U.S.C. 2401(a) which requires any complaint against the United States to be filed within six years after the right of action first accrues.

The Mets' counterclaim for interpleader was prudent under the circumstances and this Court has jurisdiction over the matter as it is "related to" the bankruptcy proceeding. The Trustee named the Mets as defendants in the initial complaint. The Mets contend they have no interest in the disputed funds, and because they are presented with competing claims, an action for interpleader is appropriate. The jurisdiction of this Court is determined and limited by statute. Title 28 U.S.C. § 1334(b) provides that "district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). District courts can refer to bankruptcy judges "any or all proceedings arising under title 11 or arising in or related to a case under title 11" as has been done in all bankruptcy courts. 28 U.S.C. § 157(a). Bankruptcy courts have jurisdiction in all matters "related to" bankruptcy. *Walker v. The Cadle Co. (In re Walker)*, 51 F.3d 562, 569 (5th Cir. 1995). A matter is "related to" bankruptcy when the outcome of the matter could conceivably have any effect on the estate being administered in bankruptcy. *In re J.F. Naylor and Co., Inc.*, 67 B.R. 184, 189-90 (Bankr. M.D. La. 1986). If it were determined that the Trustee is entitled to any of the deferred compensation funds and has priority in the distribution of the funds, the money would become property of the estate for distribution to creditors. Thus, this interpleader action is clearly related to the bankruptcy case and this Court has jurisdiction.

The IRS' contention that the interpleader must be dismissed because the Mets do not risk exposure to multiple liability is also unavailing. The IRS asserts that 26 U.S.C. § 6332(e) forecloses the possibility of double or multiple liability for the Mets. Specifically, double or multiple liability is barred, in the IRS' view, because Section 6332(e) shields from liability to the delin-

quent taxpayer, any person in possession of property subject to a levy if said person surrenders such property. However, courts have repeatedly ruled Section 6332(e) is not relevant to the issue of whether an interpleader action may be brought. *Kurland v. United States*, 919 F.Supp. 419, 422 (M.D. Fla. 1996) addressed the issue head-on:

Title 26 U.S.C. § 6332(e) may provide a shield against liability to those honoring federal tax liens; however, that is insufficient to override the purpose behind the interpleader rule and statute. *First Interstate Bank of Oregon v. United States*, 891 F. Supp. 543 (D.Or. 1995). Interpleader gives the disinterested party the ability to bow out, leaving the actual parties with real interests at stake to litigate their claims. *See id.*; *New York Life Ins. Co. v. Connecticut Dev. Auth.*, 700 F. 2d 91, 96 (2nd Cir. 1983).

In a recent unpublished decision, a district court ruled that the interpleader plaintiff was entitled to attorney's fees and costs despite claims that the interpleader action was unnecessary because the plaintiff could have been protected from liability by turning over the money to the government. *Pro-Steel Bldgs., Inc. v. United States*, No. 4:09CV512(RH), 2011 WL 4073716 (N.D. Fla. May 16, 2011). The court held that the test is whether an interpleader action was filed in good faith and that the protection afforded by 26 U.S.C. § 6332(e) is not absolute. *Id.* This echoes the court in *First Interstate Bank of Oregon*, which held:

[T]he right to interpleader is not incumbent upon a stakeholder showing that it is in jeopardy of multiple liability, as well as multiple litigation. Instead, '[a] stakeholder acting in good faith, may maintain a suit in interpleader to avoid the vexation and expense of resisting adverse claims, even though he believes only one of them is meritorious.'

First Interstate Bank of Oregon, N.A. v. United States, 891 F. Supp. 543 (D. Or. 1995). If the protection under 26 U.S.C. § 6332(e) is not absolute and the right to interplead is a good faith inquiry, the IRS' reliance on Section 6332(e) to argue for dismissal of this interpleader is flawed. The Mets, as the stakeholder, filed this interpleader in good faith to ensure proper distribution of the disputed funds. Without the interpleader, the Mets not only face a threat of multiple liability to the Defendants but also the threat of having to litigate this matter in more than one proceeding. "It is a fundamental principle of interpleader that its office is not so much to protect a party

against double liability as against double vexation in respect of one liability.” *Nat’l Fire Ins. Co. v. Sanders*, 38 F.2d 212, 214 (5th Cir. 1930).

The IRS’ argument that this interpleader is time barred by 28 U.S.C. § 2401(a), which requires that actions against the United States be filed within six years after the cause of action first accrues, ignores the purpose of this litigation. The Mets are not disputing the validity of the internal revenue’s levy; rather, they simply seek for this Court to determine the priority of the competing claims. The Mets were first served with the IRS levy in 2000. If the Mets were disputing the levy itself, under 28 U.S.C. § 2401(a), the time to bring the action would have already expired. However, the parties in this interpleader action agree that the IRS holds a first priority levy on the funds. *See* Stipulated Order, ECF No. 156 (The stipulated agreement between the Mets and the Trustee provides, “[t]he IRS’ Levy is superior to any person’s claim to the Disputed Funds”). Thus, because the Mets are not disputing the validity of the IRS’ claims, the date the Mets were first served with the internal revenue levy is not relevant and the time limit imposed by 28 U.S.C. § 2401(a) does not apply.

Similarly, in its Motion to Dismiss, the IRS also argues the Anti-Injunction Act, 26 U.S.C. § 7421, defeats this interpleader as it prohibits suits that restrain the assessment or collection of any tax. The same reasoning that prevents 28 U.S.C. § 2410 from applying to this action also thwarts the application of the Anti-Injunction Act. The Mets are not seeking to restrain the assessment or collection of any tax and they are not attempting to litigate the underlying merits of the IRS’ claim. As the court ruled in *First Interstate*, “this interpleader action is not a suit designed to obstruct the United States in its ability to assess or call taxes; nor will this action hinder the United States in its efforts to assess or collect taxes.” *First Interstate*, 891 F. Supp. at 548. The court further ruled that to the extent the government holds a valid claim to the funds, the court’s resolution of the claims “will facilitate the ability of the United States to collect any taxes

which might be owing.” *Id.* In the instant case, this Court has already ordered the Mets to pay the IRS until Darryl Strawberry’s federal income tax liabilities are satisfied in full. *See* Order, ECF No. 166. This interpleader action does not restrain the United States’ ability to assess or collect taxes and therefore, the IRS’ use of the Anti-Injunction Act is misplaced.

The last argument put forth by the IRS is that a person who receives an internal revenue levy may not delay tax collection by filing an interpleader. The IRS cites an Eleventh Circuit case that held that once a third party receives notice of a levy, it is obligated to surrender the property to the IRS. *United States v. Metro. Life Ins.*, 874 F.2d 1497, 1499 (11th Cir. 1989). The two defenses to this requirement are: 1) the third party can show it is not in possession of the taxpayer’s property; or 2) the third party can show that at the time it received the notice of levy, the property was already subject to attachment or execution under judicial process. *Id.* The IRS asserts that the Mets, having already been served notice of the internal revenue levy, are required to surrender the deferred compensation funds to the IRS. The IRS contends that this interpleader is an attempt to avoid this requirement. The district court in *Kurland* disagreed with this line of reasoning:

If Plaintiff legitimately and in good faith feared exposure to competing claims to the disputed funds...Plaintiff should not be subject to suit for failure to turn over the disputed funds to the government, opening himself up to litigation from the other claimants. This is exactly the type of multiple liability interpleader was designed to prevent.

Kurland, 919 F. Supp. at 422. The IRS relies on the Supreme Court decision, *United States v. Nat’l Bank of Commerce*, 472 U.S. 713, 721, 105 S.Ct. 2919, 86 L.Ed.2d 565 (1985), to argue that *Kurland* was wrongly decided. In the case, the Supreme Court described the need of the government to promptly secure its revenues. The assertion that *Kurland* was wrongly decided based on this Supreme Court case is unpersuasive. While this Court appreciates the principles justifying a tax levy, it also recognizes the policy behind the interpleader statute that allows a disinterested stakeholder to bow out and avoid “the vexation and expense of possible multiple

litigation.” 7 Wright, Miller & Kane, Federal Practice & Procedure: Civil 3d § 1704 (3d ed. 2011). Furthermore, as the Supreme Court has noted, interpleader is a remedial device that is to be applied liberally. *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 533, 87 S.Ct. 1199, 1204, 18 L.Ed.2d 270 (1967).

CONCLUSION

After addressing all the arguments put forward by the IRS in its Motion to Dismiss, I find there is no reason this Court lacks jurisdiction and why 28 U.S.C. § 2410 does not waive the United States’ sovereign immunity in this action.¹ Prior to 1966, courts questioned the ability to name the United States as a defendant in an interpleader under Section 2410. In 1966, all doubt on the point was resolved when the statute was amended to extend it to interpleader proceedings. “This legislative change represents a potentially significant limitation on the United States’ ability to invoke sovereign immunity in the interpleader context.” 7 Wright, Miller & Kane, Federal Practice & Procedure: Civil 3d § 1721 (3d ed. 2011). Throughout the interpleader, the parties have made it clear that the IRS holds a first priority levy; there is no prejudice to the United States in allowing this interpleader to be dismissed on the merits. Furthermore, the Mets brought this interpleader in a good faith attempt to resolve the competing claims to the funds it held as a disinterested stakeholder and to enjoin the defendants from bringing any further action against the Mets with regard to these funds. This is exactly the function of federal interpleader and this Court has subject matter jurisdiction to resolve the matter. Accordingly, it is hereby

¹ Although some courts (*see Kentucky ex rel United Pac. Ins. Co. v. Laurel County*, 805 F.2d 628, 636 (6th Cir. 1986)) ruled that 28 U.S.C. § 2410(a)(5) did not apply when an internal revenue levy was at issue because the statute only waives sovereign immunity if the United States holds a “mortgage or other *lien*,” this Court agrees with the ruling in *Commerce Bancshares, Inc. v. Lenard*, 826 F. Supp. 396, 398 (D. Kan. 1993) (holding that “at the time that the government obtains the right to collect tax by levy it acquires a lien on any property owned by the delinquent tax payer.”). Thus, the existence of a levy implies the existence of a lien.

ORDERED AND ADJUDGED that Defendant Internal Revenue Service's Motion to Dismiss the Amended Crossclaim for Interpleader of the Sterling Mets, L.P. (Doc. 148) is DENIED.

DONE and ORDERED in Tallahassee, Florida this the 25th day of January, 2012.



LEWIS M. KILLIAN, JR.
United States Bankruptcy Judge

cc: all parties in interest

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In Re:

KELLY J. PIERCY
LINDA PIERCY

Debtor(s)

Case No. 11-10332-7

KELLY J. PIERCY and
LINDA PIERCY

Plaintiff(s)

Adv. No. 11-5074

-vs-

UNITED STATES OF AMERICA

Defendant(s)

NOTICE OF ENTRY OF JUDGMENT

On January 25, 2012, the following order was entered of the Honorable Dale L. Somers, United States Bankruptcy Judge for the District of Kansas, **AGREED JUDGMENT** filed herein on January 25, 2012, wherein:

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff's 2007 federal income taxes are not dischargeable. All but \$50,000 of plaintiff's 2005 and 2006 federal income tax liabilities are dischargeable. The United States will treat the balance of the \$50,000 as dischargeable upon plaintiffs' completion of the terms of a settlement agreement entered into by the parties. This stipulation is agreed to as part of a settlement agreement entered into by the parties. The stipulation shall be a final order and each party will bear its own litigation expenses including costs and attorney's fees..

DATED: January 25, 2012

FRED JAMISON, CLERK
UNITED STATES BANKRUPTCY COURT

s/ Annette M. Albright
Annette M. Albright, Deputy Clerk