

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
vs.	)	Case No. CIV-11-0892-HE
)	
CHARLES R. DUKE,)	
)	
Defendant.)	

ORDER

Plaintiff, the United States of America, brought this action against defendant to reduce several tax assessments to judgment and foreclose on tax liens allegedly attached to certain of defendant’s real property. Defendant’s answer asserts a counterclaim for an accounting. The United States has moved to dismiss defendant’s counterclaim under Fed. R. Civ. P. 12(b)(1) on the basis that the court lacks subject matter jurisdiction because the government has not waived sovereign immunity. The court concludes the motion should be granted and the counterclaim dismissed.

The court does not have subject matter jurisdiction over claims against the United States unless sovereign immunity has been waived. Iowa Tribe of Kan. & Neb. v. Salazar, 607 F.3d 1225, 1232 (10th Cir. 2010). Waivers of sovereign immunity are to be construed narrowly. *Id.* at 1236 (citing Lane v. Pena, 518 U.S. 187, 192 (1996)). The burden of establishing that sovereign immunity has been waived rests on the party invoking the court’s jurisdiction. *See id.* at 1232.

Mr. Duke contends 28 U.S.C. § 2410(a) waives sovereign immunity for his accounting claim. That section allows the United States to be named as a party in suits

affecting the ownership rights of “real or personal property on which the United States has or claims a mortgage or other lien.” *See* 28 U.S.C. § 2410(a). Section 2410 waives sovereign immunity for, among other things, quiet title actions involving the procedural regularity of tax assessment, levy, and seizure. *See Guthrie v. Sawyer*, 970 F.2d 733, 735 (10th Cir. 1992).¹ Mr. Duke’s counterclaim is for an accounting of the funds allegedly seized by the government from his financial institutions and the amount of those funds applied to the assessments. Answer at 4 [Doc. #6]. The counterclaim does not seek affirmative relief that the government’s tax lien is invalid based upon a procedural irregularity. Therefore, § 2410 does not waive sovereign immunity for defendant’s accounting counterclaim and the court does not have jurisdiction over it. Plaintiff’s motion to dismiss [Doc. #7] is **GRANTED** and defendant’s counterclaim for accounting is **DISMISSED**.

IT IS SO ORDERED.

Dated this 27th day of January, 2012.



JOE HEATON
UNITED STATES DISTRICT JUDGE

¹*Quiet title actions attacking the merits of a tax assessment are not authorized by § 2410. See id.*

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA,	)	CIV. 11-5027-JLV
)	
Plaintiff,)	
	)	ORDER OF REFERRAL
vs.)	
)	
DENNIS R. WICKS,)	
FRANK C. OZAK, and)	
M. DEAN JORGENSEN, as trustees)	
of FRED A JOHNSON TRUST,)	
)	
Defendants.)	

IT IS HEREBY ORDERED that Defendant Wicks' motion for protective order (Docket 16) is referred to Magistrate Judge Veronica L. Duffy for resolution pursuant to 28 U.S.C. § 636.

Dated January 27, 2012.

BY THE COURT:

/s/ Jeffrey L. Viken

JEFFREY L. VIKEN
UNITED STATES DISTRICT JUDGE

In the United States Court of Federal Claims

No. 03-2875 T

**ROBERT H. DONALDSON AND JOAN C.
DONALDSON,**

JUDGMENT

v.

THE UNITED STATES

Pursuant to the court's Order, filed January 24, 2012,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that judgment is in favor of defendant.

Hazel C. Keahey
Clerk of Court

January 27, 2012

By: s/Lisa L. Reyes

Deputy Clerk

NOTE: As to appeal, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is \$455.00.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DAVID OGLE,)	
)	
Plaintiff,)	
)	
vs.	)	Case No. 10-00650-CV-W-GAF
)	
UNITED STATES OF AMERICA,)	
et al.,)	
)	
Defendants.)	

ORDER

Presently before the Court is Third-Party Defendants David H. Haima, Preston C. Lawley, and John M. Merritt’s (collectively “Third-Party Defendants”) Motion for Summary Judgment. (Doc. # 56). The Motion requests the Court find in Third-Party Defendants’ favor on the claims asserted against them in the Third-Party Complaint (the “Barrett Complaint”) filed by Third-Party Plaintiff Richard Barrett (“Barrett”). (Doc. # 56). Barrett does not oppose. (Doc. # 64).

Third-Party Plaintiff the United States of America (the “United States”) brought a Third-Party Complaint against Barrett, alleging Barrett was personally liable for failing to collect, account for, and remit to the United States certain income and payroll taxes. (Doc. # 56). Barrett then filed the Barrett Complaint against Third-Party Defendants seeking to recover from them any amounts recovered by the United States from Barrett. (*Id.*). The Barrett Complaint alleged Third-Party Defendants were liable to Barrett because Third-Party Defendant Autotribe, LLC (“Autotribe”) agreed to provide accounting, human resources, and other services to Barrett, and Third-Party Defendants exercised “complete domination” over Autotribe. (*Id.*).

In this Motion, Third-Party Defendants argue they are not liable to Barrett because they did not exercise any domination over Autotribe. (*Id.*). In his Response, Barrett states he reviewed the facts and law regarding Third-Party Defendants' Motion and is not contesting it. (Doc. # 64).

Accordingly, it is

ORDERED Third-Party Defendants' Motion is GRANTED.

s/ Gary A. Fenner
Gary A. Fenner, Judge
United States District Court

DATED: January 27, 2012

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

	:	
MURRAY BEER, et al.	:	
	:	Civil Action No. 11-4218 (FSH)
Plaintiffs,	:	
	:	
v.	:	ORDER TO SUBMIT
	:	JOINT STATUS REPORT
UNITED STATES OF AMERICA.	:	
	:	
Defendants.	:	
	:	

IT IS on this 27th day of January, 2012,

ORDERED that all parties shall jointly provide the Court with the following information, set forth in a single report not to exceed eight pages in length, by February 10, 2012;

1. Indicating whether this is a jury or non-jury case;
2. Briefly describing the nature of the case, the relief requested by the parties, the substantive issues in the case, and the parties' positions on each issue;
3. Stating the date discovery closes in this matter;
4. Stating whether (and when, if possible) a party intends to file any, or additional, dispositive motions, including a brief description of the grounds for such motion; and
5. Stating whether a party or parties feel a settlement conference with the Court would be beneficial, and whether the parties are currently engaged in settlement negotiations.

PARTIES ARE ADVISED THAT THIS ORDER DOES NOT AFFECT ANY DISCOVERY OR OTHER DEADLINE SET BY THE MAGISTRATE JUDGE.

s/ Faith S. Hochberg
United States District Judge

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF ARKANSAS (LITTLE ROCK DIVISION)

In re:)
)
SUPERMARKET DEVELOPERS, INC.) Case No. 4:09-bk-13185
)
Debtor.) Chapter 7

**ORDER GRANTING THE UNITED STATES’
AGREED MOTION TO EXTEND TIME**

This matter, having come before the Court on the United States’ motion to extend time to respond to Debtor’s objection, it is hereby

ORDERED that the Agreed Motion to Extend Time to Respond to the Trustee’s Objection to Claim of the Internal Revenue Service (Doc. 137) is GRANTED. The United States shall have until March 2, 2012, to respond to the Trustee’s objection.

Dated: January 27, 2012



RICHARD D. TAYLOR
United States Bankruptcy Judge

In re: Supermarket Developers, Inc.
Case No. 4:09-bk-13185 (Bankr. E.D. Ark.)
Page 2 of 2

Agreed and submitted by:

/s/Harris J. Phillips
HARRIS J. PHILLIPS
Massachusetts BBO #: 675603
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 7238, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 616-1906
Fax: (202) 514-6770
Harris.J.Phillips@usdoj.gov

Attorney for the United States

/s/M. Randy Rice
M. RANDY RICE
523 S. Louisiana, Ste. 300
Little Rock, AR 72201-5771
Telephone: (501) 374-1019

Chapter 7 Trustee

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

INITIAL PRETRIAL CONFERENCE - CHAMBERS 9W - Minneapolis

Valley Mining, LLC

Plaintiff,

v.

United States of America, et al.,

Defendants.

COURT MINUTES

Case Number: CV 06-3667 JRT/FLN

Date: January 27, 2012

Court Reporter: n/a

Time Commenced: 10:00 a.m.

Time Concluded: 10:45 a.m.

Time in Court: 45 Minutes

Pretrial Conference before Franklin L. Noel, United States Magistrate Judge, at Minneapolis, Minnesota.

APPEARANCES:

For Plaintiff: John Neveaux

For Defendant: USA- Hilarie Snyder; ARC- Bruce Crawford; Bkcy trustee- Robert Russell

A. DESCRIPTION OF THE CASE

1. Nature of the case: Interpleader; Plaintiff seeks order deciding which of competing claimants are entitled to several hundred thousand dollars that it has deposited into court's registry.

2. Legal and factual issues:

a) Liability: _____

b) Damages: _____

B. THE PLEADINGS

1. All filed? yes

a. Anticipated amendments? no

b. Additional parties? no

2. Jury demand:

a. yes no

b. Any issue with respect to jury demand? _____

3. Amend Pleadings:

a. Add parties/claims/defenses _____

b. Punitive damages motion _____

C. DISCOVERY

1. Limitations on Discovery:

a) Interrogatories _____

b) Depositions _____

c) Requests for Admission _____

d) Document Requests _____

e) Rule 35 Medical Exam _____

f) Other Case was stayed in May 2008 when Christensons filed for bankruptcy court protection. Stay was

lifted when bankruptcy court entered order that Christensons were not entitled to discharge- see
Docket Entry #150, Exhibit 1.

2. Pre-Discovery Disclosures _____

3. Discovery cut-off 5/1/12

4. Other deadlines _____

5. Experts: YES NO

a. Identity _____
Plaintiff _____ Defendant _____

b. Substance of Testimony _____
Plaintiff _____ Defendant _____

c. Depositions; Number _____; Date _____

D. MOTIONS

1. Non-dispositive 5/1/12
2. Dispositive 6/1/12

E. TRIAL READINESS

- a. Estimated Trial Time: _____
- b. Trial Ready Date: 9/1/12

The parties are hopeful that all outstanding issues can be resolved through summary judgment; but trial may be necessary.

s/Franklin L. Noel
U. S. Magistrate Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

VALLEY MINING, LLC,)
a Minnesota Limited Liability Company,)

Plaintiff,)

v.)

UNITED STATES OF AMERICA; ARC)
OF MINNESOTA, a Limited Partnership;)
GERALD O. CHRISTENSON, individually;)
and ANITA R. CHRISTENSON,)
individually, and DAVID VELDE, AS)
BANKRUPTCY TRUSTEE)

Defendants,)

Civil No. 06-CV-03667 JRT/FLN

and)

ARC OF MINNESOTA, Limited)
Partnership,)

Cross Claimant,)

v.)

UNITED STATES OF AMERICA,)

Cross Defendant.)

ORDER

This matter came on for hearing before the undersigned Magistrate Judge on Motion of David Velde, Bankruptcy Trustee, to intervene as a defendant in this matter. Appearances were noted on the record. Based on the pleadings on file and arguments of counsel, IT IS HEREBY ORDERED:

That David Velde, Bankruptcy Trustee, is allowed to intervene in this matter as a defendant and shall serve his Answer on all parties to this proceeding within ten days of the date of this Order. [#149]

IT IS FURTHER HEREBY ORDERED that the caption of this matter shall be amended to list David Velde, Bankruptcy Trustee, as a defendant.

Dated: January 27, 2012

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

CASE NO. 5:05-cr-00215 EJD

Plaintiff(s),

**ORDER SCHEDULING STATUS
CONFERENCE**

v.

ERIC AARON LIGHTER,

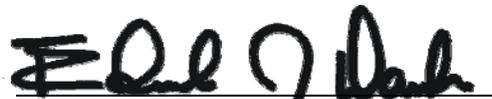
Defendant(s).

The court schedules the above-entitled action for a Status Conference on **Monday, February 27, 2012, at 3:00 p.m.**

All counsel and Defendant are advised that the Status Conference will be an ex parte sealed proceeding to discuss issues relating to Defendant's representation. Personal appearances by Defendant and his counsel, Jerry Y. Fong, are required. Counsel for the United States of America need not attend.

IT IS SO ORDERED.

Dated: January 26, 2012


EDWARD J. DAVILA
United States District Judge

United States District Court
District of Massachusetts

JOSEPH IANTOSCA, Individually)	
and as Trustee of the Faxon)	
Heights Apartments Realty Trust)	
and Fern Realty Trust, BELRIDGE	)	Civil Action No.
CORPORATION, GAIL A. CAHALY,	)	08-11785-NMG
JEFFREY M. JOHNSTON, BELLEMORE)	
ASSOCIATES, LLC, and)	
MASSACHUSETTS LUMBER COMPANY,)	
INC.,)	
Plaintiffs,)	
v.)	
)	
BENISTAR ADMIN 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 SERVICE INC., BENISTAR)	
INSURANCE GROUP, INC., and)	
BENISTAR 419 PLAN SERVICES INC.,)	
Defendants,)	
)	
TRAVELERS INSURANCE COMPANY and)	
CERTAIN UNDERWRITERS AT LLOYD'S,)	
LONDON,)	
Reach and Apply)	
Defendants.)	
)	
)	
CERTAIN UNDERWRITERS AT LLOYD'S,)	
LONDON and All Participating)	
Insurers and Syndicates,)	
Third-Party Plaintiff,)	
)	
v.)	
)	
WAYNE H. BURSEY,)	
Third-Party Defendant.)	

ORDER

GORTON, J.

Plaintiffs filed their complaint in this case in the Massachusetts Superior Court on October 23, 2008 pursuant to the Massachusetts reach and apply statute, M.G.L. c. 214, § 3(6). Defendants filed a notice of removal the same day invoking this Court's diversity jurisdiction. Now, more than three years later, the defendants move to dismiss for lack of subject matter jurisdiction, alleging that supposedly new jurisdictional facts have come to their attention which give rise to a "possible lack of diversity of citizenship."

In a separate argument, expounded upon in their reply to plaintiffs' objection to the motion to dismiss, the defendants raise new objections based upon an alleged lack of standing: defendants contend that Joseph Iantosca, Sr., the lead plaintiff in this action, lacked standing to sue in either an individual or representative capacity because, at the time the suit was filed, he was under the guardianship of his two sons due to his mental illness.¹

The Court is satisfied, based upon plaintiffs' response,

¹ According to the order of the Massachusetts Probate Court, which was attached as an exhibit to the defendants' motion to dismiss, Mr. Iantosca suffers from Vascular Dementia, a neuropsychiatric disorder that causes "difficulty with memory, problem-solving, planning and judgment among other emotional, cognitive and behavioral difficulties."

that defendants' speculations regarding diversity are without merit. The Court notes that the defendants themselves, in their notice of removal more than three years ago (and before the parties and the Court had become fully immersed in this case) represented that plaintiffs were all citizens of Massachusetts and New Hampshire at the time this matter was filed and thus diverse from the defendants. Therefore, the defendants' Motion for Order to Show Cause or to Dismiss or Remand to State Court for Lack of Subject Matter Jurisdiction (Docket No. 298) is **DENIED.**

With respect to the separate guardianship matter, however, the Court directs plaintiffs to respond to the defendants' allegations regarding Mr. Iantosca's standing to sue either in his individual capacity or through his guardians. The response shall not exceed five pages and shall be filed on or before Wednesday, February 1, 2012.

So ordered.

/s/ Nathaniel M. Gorton
Nathaniel M. Gorton
United States District Judge

Dated January 27, 2012

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

BRIAN R. GARBER

PLAINTIFF

V.

NO. 11-5245

INTERNAL REVENUE SERVICE

DEFENDANT

INITIAL SCHEDULING ORDER

Effective August 15, 2005, all documents filed with the United States District Court for the Western District of Arkansas must be filed electronically. To obtain registration forms, review the CM/ECF administrative procedures, and to learn more about electronic filing, please visit our web site at www.arwd.uscourts.gov. *Pro se* litigants are only permitted to file documents with the Clerk of the Court by mail or in person. All litigants, including *pro se* litigants, are required to provide contact information, including address and phone number, to the Clerk of the Court and to update such information as necessary.

1. It appears to the court that the issues are joined in this matter, and the court has tentatively scheduled it for **JURY** trial in **FAYETTEVILLE**, Arkansas, at the call of the court during the week of **JANUARY 14, 2013**.

2. The parties are directed to conduct their **F.R.C.P. 26(f)** conference no later than **FEBRUARY 29, 2012**, and to file a Joint Report of such conference within fourteen days after it is conducted. Counsel and unrepresented parties should consult **F.R.C.P. 26(f)** for guidance in conducting the conference and preparing the Joint Report.

3. Any unresolved disputes concerning the Joint Report or the trial date should be noted on the last page of the Joint Report, and if not so noted, will be deemed waived.

4. The court will issue a Final Scheduling Order on MARCH 29, 2012 which will govern this case.

IT IS SO ORDERED this 27th day of January, 2012.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ST. TAMMANY PARISH	§	CIVIL ACTION NO. 11-1472 “G”(1)
	§	
V.	§	JUDGE NANNETTE JOLIVETTE
	§	BROWN
OMNI PINNACLE, L.L.C., ET AL,	§	
	§	MAGISTRATE SALLY SHUSHAN
	§	

ORDER

IT IS HEREBY ORDERED that the pretrial conference set for February 2, 2012 at 9:00 a.m. is CONTINUED to February 2, 2012 at 3:30 p.m..

New Orleans, Louisiana, this 27th day of January, 2012.


NANNETTE JOLIVETTE BROWN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DEUTSCHE BANK NATIONAL TRUST)
COMPANY AS TRUSTEE FOR MORGAN)
STANLEY ABS CAPITAL 1 INC.,)
TRUST 2007-HE1, MORTGAGE)
PASS-THROUGH CERTIFICATES,)
SERIES 2007-HE1,)

Civil No. 11-cv-11451

Plaintiff,)

v.)

Hon. Thomas Ludington

TIM NIVISON and UNITED STATES OF)
AMERICA)

Defendants.)

UNITED STATES OF AMERICA,)

Counterclaim Plaintiff,)

v.)

TIMOTHY NIVISON, SAGINAW COUNTY)
TREASURER, DEUTSCHE BANK NATL.)
TRUST COMPANY AS TRUSTEE FOR)
MORGAN STANLEY ABS CAPITAL 1 INC.,)
TRUST 2007-HE1, MORTGAGE)
PASS-THROUGH CERTIFICATES,)
SERIES 2007-HE1, and NFS LOANS, INC.,)

Counterclaim Defendants.)

**STIPULATION AND ORDER OF DISMISSAL OF COUNTERCLAIM
AND REMANDING CASE TO SAGINAW COUNTY CIRCUIT COURT**

The parties appearing in this action do hereby stipulate as follows:

1. By check received December 23, 2011, the outstanding federal tax liabilities of Timothy Nivison for the tax periods ending December 31, 1999, and December 31, 2000, have

been paid in full.

2. In light of this payment, the United States no longer seeks the enforcement of the federal tax liens against Timothy Nivison for the tax periods indicated on the Notice of Federal Tax Lien, which was recorded with the Saginaw County Register of Deeds on March 6, 2002.
3. Since the United States no longer seeks either a money judgment against Timothy Nivison or the judicial sale of the property located at 525 Lincoln Street, Freeland, Michigan, the counterclaim of the United States may be dismissed.
4. The United States withdraws any objections to the relief sought by the plaintiff Deutsche Bank in the primary action.
5. The parties agree that this action may be remanded to the Saginaw County Circuit Court for further proceedings on the claims of Deutsche Bank.

The parties therefore stipulate that the Counterclaim of the United States of America in the instant action may be dismissed with prejudice, the defendant United States of America dismissed from the primary action without prejudice, and the primary action remanded to the Saginaw County Circuit Court, with the parties to bear their own costs.

IT IS SO ORDERED.

s/Thomas L. Ludington

THOMAS L. LUDINGTON
United States District Judge

Dated: January 27, 2012

For Deutsche Bank:

/s/ Anna Witkowska

ANNA WITKOWSKA

Trott & Trott, P.C.

31440 Northwestern Highway, Ste. 200

Farmington Hills, Michigan 48334

Tel: (248) 723-5973

Email: awitkowska@trottlaw.com

For the Saginaw County Treasurer:

/s/ Lawrence W. Smith, Jr.

LAWRENCE W. SMITH, JR.

Gilbert, Smith, and Borrello, P.C.

721 South Michigan Avenue

Saginaw, Michigan 48602

Tel: (989) 790-2500

lwsmith@gsb-law.com

For the United States:

JOHN A. DiCICCO

Principal Deputy Assistant Attorney General

Tax Division

/s/ Julie C. Avetta

JULIE C. AVETTA

Trial Attorney, Tax Division

United States Department of Justice

Ben Franklin Station

Washington, D.C. 20044

Tel: (202) 616-2743

Email: Julie.C.Avetta@usdoj.gov

For Timothy Nivison:

/s/ John P. Lozano

JOHN P. LOZANO

Law Office of John P. Lozano, PLLC

727 N. Michigan Avenue

Saginaw, Michigan 48602

Tel: (989) 755-3984

Email: lozanolaw@charter.net

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 27, 2012.

s/Tracy A. Jacobs

TRACY A. JACOBS

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

WILLIE WASHINGTON WALKER,
Plaintiff,
vs.
UNITED STATES ATTORNEY
GENERAL, et al.,
Defendants.

2:11-CV-01640-PMP-GWF

ORDER

Before the Court for consideration is Defendant’s Motion to Dismiss (Doc. #6). Notwithstanding the order of the court extending the deadline by which Plaintiff was required to respond to Defendant’s Motion, Plaintiff has failed to do so. As a result, Plaintiff consents to the granting of Defendants’ Motion. Moreover, a review of Defendants’ Motion shows Defendant is entitled to the relief requested on the merits.

IT IS THEREFORE ORDERED that Defendants’ Motion to Dismiss (Doc. #6) is **GRANTED**.

DATED: January 27, 2012.



PHILIP M. PRO
United States District Judge

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UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT TACOMA

IN RE:	)	No. 10-49799
)	
STEVEN R. SMYTHE and MELANIE M.)	
SMYTHE,)	
)	
Debtors.)	
<hr/>		
STEVEN R. SMYTHE and MELANIE M.	)	Adv. Proc. No. 11-04077
SMYTHE,)	
	)	ORDER ON MOTION TO
Plaintiffs,	)	SHORTEN TIME
)	
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
<hr/>		

This matter came before the Court on the motion of Steven and Melanie Smythe, by and through their attorney Kenneth C. Weil, for an order shortening time to hear their motion for summary judgment. This Court considered the Smythes' Motion to Shorten Time to Hear Motion for Summary Judgment, Declaration of Kenneth C. Weil, Notice of Motion to Shorten Time, the underlying Motion for

1 Summary Judgment, and all papers filed by the United States. It is
2 hereby

3 ORDERED AS FOLLOWS:

4 1. The motion shortening time is granted.

5 2. The only memorandum the Smythes may file in support of
6 their motion for summary judgment is their Memorandum in Response
7 to the United States's Motion for Summary Judgment.

8 3. The response of the United States to the Smythes' Motion
9 for Summary Judgment is to be included in its Reply Memorandum (in
10 support of its Motion for Summary Judgment). The Reply Memorandum
11 may exceed 12 pages to the extent the United States needs the
12 additional pages to address additional factual matters it
13 identifies in the Responsive Memorandum, but, the Reply Memorandum
14 shall not exceed 24 pages.

15
16 ///END OF ORDER///

17 Presented by:

18 /s/ Kenneth C. Weil
19 Kenneth C. Weil
20 WSBA No. 14203
21 Attorney for Steven and Melanie Smythe

22
23
24
25
26

KENNETH C. WEIL
1001 FOURTH AVENUE # 3801
SEATTLE, WA 98154
206-292-0060

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

4170363.1

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

District/off: 1088-2

User: kas
Form ID: pdfor1

Page 2 of 2
Total Noticed: 6

Date Rcvd: Jan 25, 2012

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on January 25, 2012 at the address(es) listed below:
NONE.

TOTAL: 0

1 METINER G. KIMEL - State Bar No. 21280
KIMEL LAW OFFICES

2 **Mailing Address:**

3 1115 West Lincoln Avenue
Yakima, WA 98902

4 Telephone: (509) 452-1115
5 Facsimile: (509) 452-1116

6
7 UNITED STATES BANKRUPTCY COURT
8 EASTERN DISTRICT OF WASHINGTON
9

10 In re:

11 Eric and Dorothy Johnson,
12 Debtor(s).

Case No. 11-03098

13
14 **ORDER GRANTING EXPARTE
MOTION TO CONVERT CASE**

15 The matter of the Debtors Motion to Convert Case came before the court on ex parte
16 basis. Based upon the Motion, all pleadings and papers and documents on file in this case, the
17 Court now ORDERS:

- 18 1. That the above-entitled case is hereby converted to a case under Chapter 7.

19 Presented by:
20 /s/ Metiner G. Kimel
Attorney for Debtors

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25 Frank L. Kurtz
26 Bankruptcy Judge

27 01/27/2012 13:41:45
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1 METINER G. KIMEL - State Bar No. 21280
KIMEL LAW OFFICES

2 **Mailing Address:**

3 1115 West Lincoln Avenue
Yakima, WA 98902

4 Telephone: (509) 452-1115
5 Facsimile: (509) 452-1116

6
7 UNITED STATES BANKRUPTCY COURT
8 EASTERN DISTRICT OF WASHINGTON
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10 In re:

11 Eric and Dorothy Johnson,
12 Debtor(s).

Case No. 11-03098

13
14 **ORDER GRANTING EXPARTE
MOTION TO CONVERT CASE**

15 The matter of the Debtors Motion to Convert Case came before the court on ex parte
16 basis. Based upon the Motion, all pleadings and papers and documents on file in this case, the
17 Court now ORDERS:

- 18 1. That the above-entitled case is hereby converted to a case under Chapter 7.

19 Presented by:
20 /s/ Metiner G. Kimel
Attorney for Debtors

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26 Frank L. Kurtz
Bankruptcy Judge

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JOSEPH J. ZAJAC, III,

Petitioner.

vs.

Case No. 2:11-cv-469-FtM-29SPC

UNITED STATES OF AMERICA,

Respondent.

ORDER

This matter comes before the Court on review of the government's Response to the Court's Order to Show Cause and Unopposed Motion to Continue Show Cause Hearing (Doc. #30) filed on January 27, 2012. The government seeks to vacate the Order to Show Cause (Doc. #29) for the reasons stated in the Response, or in the alternative, to continue the hearing to the next day. The request to vacate will be denied. The request for the continuance is not opposed by petitioner, and will be granted.

Accordingly, it is now

ORDERED:

The government's Unopposed Motion to Continue Show Cause Hearing (Doc. #30) is **GRANTED** in part and **DENIED** in part. The request to vacate the Order to Show Cause is denied. The request

for a continuance is granted. The hearing will be reset to February 10, 2012, under separate notice.

DONE AND ORDERED at Fort Myers, Florida, this 27th day of January, 2012.



JOHN E. STEELE
United States District Judge

Copies:
Petitioner
Counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

CASE NO. 11-60273-CR-DIMITROULEAS

Plaintiff,

vs.

DALE PETERS,

Defendants.

ORDER

_____ THIS CAUSE is before the Court upon Defendant Dale Peters pro se Conditional Acceptance, filed January 26, 2012. The Court has carefully considered the document and finds it to be non-sensical¹. It is stricken; it is null and void with no legal effect.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 27th day of January, 2012.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

Counsel of Record

¹See, U.S. v. Muncy, 2008 WL 2783285 (E.D. Ark. 2008).

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**5:06-CV-570
(FJS/GHL)**

**ROBERT V. CASE, JUBILEE ENTERPRISES,
FREEDOM RIDGE COMPANY, SOVEREIGN
WOODS COMPANY, and FOREST RESERVE
COMPANY,**

Defendants.

APPEARANCES

OF COUNSEL

**UNITED STATES DEPARTMENT
OF JUSTICE**

BARTHOLOMEW CIRENZA, ESQ.

555 Fourth Street, N.W.
Room 7814
Washington, D.C. 20001
Attorneys for Plaintiff

ROBERT V. CASE

Groton, New York 13073
Defendant *pro se*

SCULLIN, Senior Judge

ORDER

In a Memorandum-Decision and Order dated August 23, 2011, this Court, among other things, granted Plaintiff's motion for default judgment as to liability in the amount of \$361,351.35 plus statutory additions accruing since October 12, 2010, and denied Defendant Case's cross-motion for a stay as moot. *See* Dkt. No. 83 at 14. On August 29, 2011, the Court entered a judgment as to liability in accordance with the terms of that Memorandum-Decision

and Order. *See* Dkt. No. 84.

On September 22, 2011, Defendant Case filed a motion "to Vacate and Set Aside this Court's **MEMORANDUM-DECISION AND ORDER dated August 23, 2011**, as well as the Clerk of Court's Default Judgment dated and entered August 29, 2011" *See* Dkt. No. 85. He also asked the Court to grant his cross-motion, which he claimed the Court had "not yet acknowledged nor ruled on" on the grounds set forth in that cross-motion and, "more significantly, . . . [o]n the grounds of an Error of Law due to Plaintiff's default in failing to timely answer Defendant's . . . Cross-Motion, and Plaintiff's further failure to serve and file the necessary motion required by said default" *See id.* at 1-2. Plaintiff filed papers in opposition to Defendant Case's motion on October 7, 2011. *See* Dkt. No. 86.

In effect, Defendant Case appears to be moving for reconsideration. To warrant reconsideration, the movant "must show an intervening change in controlling law, the availability of previously unavailable evidence, or the need to correct a clear error of law or prevent manifest injustice." *Long v. United States Dep't of Justice*, 778 F. Supp. 2d 222, 228-29 (N.D.N.Y. 2011) (citing *Doe v. New York City Dep't of Soc. Servs.*, 709 F.2d 782, 789 (2d Cir. 1983)).

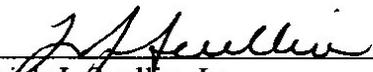
In this case, Defendant Case argues that the Court should reconsider its August 23, 2011 Memorandum-Decision and Order because it contains clear error. Defendant Case's assertion is without merit. First, the Court notes that, despite Defendant Case's claim to the contrary, the Court did acknowledge his cross-motion and, in fact, denied that cross-motion as moot. Furthermore, Plaintiff did respond to Defendant's cross-motion and, even if Plaintiff had not done so, in light of the Court's resolution of Plaintiff's motion for a default judgment, Defendant Case's cross-motion was moot, and the absence of any response would not have changed that

result. For these reasons, the Court finds that Defendant Case has failed to demonstrate any basis for the Court to vacate and set aside its August 23, 2011 Memorandum-Decision and Order and the judgment entered in accordance with the terms of that Order. Accordingly, the Court hereby

ORDERS that Defendant Case's motion to vacate and set aside this Court's August 23, 2011 Memorandum-Decision and Order and the judgment as to liability entered in accordance therewith is **DENIED**.

IT IS SO ORDERED.

Dated: January 27, 2012
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge

In the United States Court of Federal Claims

No. 07-739 T

(E-Filed: January 27, 2012)

INTERSPORT FASHIONS WEST, INC.,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER

Before the court is plaintiff's Notice of Appearance (Notice), Docket Number (Dkt. No.) 59, filed January 27, 2012. The Notice requests the court to "enter the appearance of Butler Rubin Saltarelli & Boyd, by Cheryl Tama Oblander, designated as of counsel for the Plaintiff, Intersport Fashions West, Inc." Notice 1.

There are no provisions in the Rules of the Court of Federal Claims (RCFC) for the filing of a notice of appearance for an attorney appearing in a capacity other than as the attorney of record. Rather, the Rules contemplate only one attorney of record. RCFC 83.1(c)(1) ("A party may have only one attorney of record in a case at any one time, with the exception of a pro se litigant appearing under 83.1(a)(3)"); see also RCFC 11 ("Every pleading, written motion, and other paper must be signed by or for the attorney of record in the attorney's name or by a party personally if the party is unrepresented."). The court entertains the participation in argument and other proceedings of colleagues of the attorney of record at the request of the attorney of record, which the court will, absent an indication to the contrary, assume to have been made in this case.¹

IT IS SO ORDERED.

¹ Rule 83.1(c)(4) of the Rules of the Court of Federal Claims (RCFC) provides for the substitution of the attorney of record. It states in part, "Any party other than the United States may seek leave of the court to substitute its attorney of record at any time by filing a motion signed by the party or by the newly designated attorney along with an affidavit of appointment by such attorney." RCFC 83.1(c)(4).

s/ Emily C. Hewitt
EMILY C. HEWITT
Chief Judge



Dated: January 26, 2012
The following is SO ORDERED:

A handwritten signature in cursive script that reads "Jennie D. Latta".

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

IN THE MATTER OF:

PERFORMA ENTERTAINMENT REAL
ESTATE, INC.

NO.: 10-26100-JDL

Debtor.

CHAPTER 11

SCHEDULING ORDER ON
MOTION TO ASSUME EXECUTORY CONTRACTS AND LEASES OF
PERFORMA ENTERTAINMENT REAL ESTATE, INC.; OBJECTION TO
CLAIM OF BEALE STREET DEVELOPMENT CORPORATION BY
PERFORMA ENTERTAINMENT REAL ESTATE, INC. AND OBJECTION BY
BEALE STREET DEVELOPMENT CORPORATION TO SETTLEMENT
MOTION OF DEBTOR AND CITY OF MEMPHIS

THIS CAUSE came on for hearing on November 9, 2011, upon the Motion to Assume Executory Contracts and Leases of Performa Entertainment Real Estate, Inc. ("Debtor") (DOC 124) heretofore filed in this bankruptcy case on January 3, 2011; upon Beale Street Development Corporation's ("BSDC") objections thereto (DOC 156) filed on April 12, 2011; Objection of

Debtor to Claim No. 18 of BSDC (DOC 202) and Objection of BSDC to Motion to Approve Compromise and Settlement between City of Memphis, Debtor, Beale Street Merchants Assoc. and Various parties (DOC308) and upon the averments of counsel for Debtor and BSDC;

FROM ALL OF WHICH it appears to the Court that the above matters should be scheduled for trial.

IT IS THEREFORE HEREBY ORDERED ADJUDGED AND DECREED:

1. That Debtor's Motion to Assume Executory Contracts and Leases; Objection by Debtor to Claim No. 18 of BSDC; and Objection of BSDC to Motion of Debtor to Approve Compromise and Settlement between City of Memphis, Debtor, Beale Street Merchants Assoc. and various parties is scheduled for trial beginning on April 18, 2012 at 10:00 a.m. at Room 645, 200 Jefferson Avenue, Memphis, TN;
2. That discovery shall be completed on or before March 30, 2012;
3. That pretrial motions should be filed no later than March 19, 2012.

APPROVED AS TO FORM ONLY:

/s/ Toni Campbell Parker
Toni Campbell Parker
Attorney for Debtor
615 Oakleaf Office Lane #201
Memphis, TN 38117
(901) 683-0099
Tparker002@att.net

/s/ Robert Wayne McPherson
Robert Wayne McPherson
Attorney for BSDC
McPherson Law Office
1621 Carr Ave.
Memphis, TN 38104

/s/ Michael P. Coury
Attorney for City of Memphis
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
6075 Poplar Ave., Ste. 500
Memphis, TN 38119

cc: Debtor
Debtor's Attorney
U.S. Trustee
All Creditors on Matrix