

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	Case No. 1:21-cv-10842-LTS
Plaintiff,)	
)	
v.)	
)	
SCOTT M. MCCLAIN and)	
CITY OF BROCKTON,)	
)	
Defendants.)	
_____)	

ORDER OF SALE

This Court’s Order of July 28, 2022 ([ECF No. 32](#)) granted the plaintiff United States of America’s motion for summary judgment and held in part that the federal tax liens arising from the unpaid income tax liabilities of Defendant Scott M. McClain attach to Mr. McClain’s interest in the real property located at 41 Wendell Avenue, Brockton, Massachusetts 02302 (“the Property”) and that those federal tax liens shall be enforced through judicial sale of the Property. This order sets forth the procedures for the sale and the order of priorities in the proceeds.

The legal description of the Property is as follows:

The land with the buildings thereon situated in Brockton, Plymouth County, Massachusetts, bounded and described, as follows:

- NORTHERLY by land now or formerly of Eda R. Baker and Chester H. Baker, 189.55 feet,
- EASTERLY by land now or formerly of Alfred Dunbar and by land now or formerly of the heirs of Eulan Pakcard, 54.00 feet, more or less;
- SOUTHERLY by land now or formerly of said Eda R. Baker and Chester H. Baker, 189.8 feet; and
- WESTERLY by Wendell Avenue, 54.00 feet, more or less

Said property is now numbered and known as 41 Wendell Avenue in said Brockton and is shown as Plot 9 on the City of Brockton Assessors' Plan 46.

Subject to and together with the benefits of rights, rights of way, takings, easements, restrictions, reservations and all matters of record insofar as in force and applicable.

Meaning and intending and hereby convey the same premises conveyed to [Laurel Bromley] by the deed of Patrick K. Emery.

For title reference see deed recorded with Plymouth Registry of Deeds in Book 37457, Page 144.

See Quitclaim Deed dated June 4, 2014, and recorded at the Plymouth County Registry of Deeds on June 4, 2014, at Book 44386, Page 36, and as [Doc. No. 00036665 \(ECF No. 31-37\)](#).

The Court now ORDERS that the Property shall be sold under [26 U.S.C. §§ 7402\(a\) and 7403\(c\)](#) in order to collect the unpaid federal tax liabilities of Scott M. McClain, 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 Scott M. McClain and City of Brockton, 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 Plymouth County, Massachusetts, 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, but need not contain the full legal description, 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 rights 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 Massachusetts, a deposit in an amount between five (5) and twenty (20) percent of the minimum bid as specified by the PALS in the published notice of sale. Before being permitted to bid at the sale, potential bidders shall show the PALS proof that they are able to comply with this requirement. No bids will be accepted from any person(s) who have not presented proof that, if they are the successful 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 to the extent that it holds a first lien on the Property after the payment of any claims of local taxing authorities for real property taxes and other local assessments due and owing which are entitled to priority under 26 U.S.C. § 6323(b)(6).

i. The successful bidder(s) shall pay the balance of the purchase price for the Property within forty-five (45) days following the date of the sale. The 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 Massachusetts 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 costs and 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, at the sole discretion of the United States. 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 Plymouth County, Massachusetts, may cause the transfer of the Property to be reflected upon that county's register of title.

1. 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) or as designated in writing by 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 Court's Order of July 28, 2022, 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, the defendant Scott M. McClain 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. Mr. McClain, as well as any other 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 or social media 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 60 days of the date of this order of sale, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances to the Property). The United States may, in writing and in its sole discretion, extend the time to vacate. If any person fails or refuses to vacate the Property by the date specified in this order of sale, or as extended by the United States, the PALS is authorized to coordinate with the United States Marshal to take all actions that are reasonably necessary to have those persons ejected or excluded. The United States Marshals Service is authorized and directed to take any and all necessary actions, including but not limited to the use of reasonable force, to enter and remain on the premises, which includes, but is not limited to, the land, buildings, vehicles, and any other structures located thereon, for the purpose of executing this order of sale. The United States Marshals Service is further authorized and directed to arrest or evict from the premises any persons who obstruct, attempt to obstruct, or interfere or attempt to interfere, in any way with this order of sale. This order of sale shall also serve as a Writ of Assistance or Writ of Possession, as appropriate, and no further order from the Court shall be required for these purposes.

5. Any personal property remaining on the Property 60 days after the date of this order of sale, or as extended in writing by the United States, is deemed forfeited and abandoned,

and the PALS is authorized to dispose of it in any manner they see fit, including sale, in which case the proceeds of the sale are to be applied first to the costs and expenses of sale and the balance to the parties as directed by the Court. Any money orders, certified checks, or cashier's 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 Massachusetts 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.

6. No later than two business days after vacating the Property pursuant to the deadline set forth in paragraph 4, above, the defendant Scott M. McClain shall notify counsel for the United States of a forwarding address where he can be reached.

7. 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.

8. After the Court confirms the sale of the Property, the sale proceeds deposited with the Clerk of this Court shall 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 the defendant City of Brockton, or other local taxing authority, for real property taxes and other local assessments due and owing on the date of the sale, if any, which are entitled to priority under 26 U.S.C. § 6323(b)(6);

c. Third, to the plaintiff United States of America in the amount of \$173,585.45, plus interest from March 4, 2022, for application toward Scott M. McClain's federal income tax liability for the 2008 year and the civil penalty assessments that the IRS made against him pursuant to 26 U.S.C. § 6702(a) for the 2008 and 2016 tax years, these being the liabilities that are included in the Judgment of July 28, 2022.

d. Fourth, to defendant Scott M. McClain in the amount of any remaining proceeds after full satisfaction of the foregoing items.

IT IS SO ORDERED.

Signed this 23 day of August, 2022.

/s/ Leo T. Sorokin

Leo T. Sorokin
United States District Judge