

JONATHAN KOGEN, Plaintiff, against UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, et al., Defendants.

No. CV-80-2023

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

1981 U.S. Dist. LEXIS 16274

December 15, 1981

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff property owner filed suit against defendants, United States of America Internal Revenue Service (IRS) and his predecessors in interest in the real estate, to quiet title to his property. The IRS filed a motion for summary judgment, and the owner filed a cross motion for summary judgment. Both motions were before the court.

OVERVIEW: The IRS had filed federal tax liens against the owner's predecessors in interest for three tax years. In order for the for liens to be valid, notice of the liens had to have been recorded in the public index at the IRS district office for the district in which the property was located on or before July 1, 1977, the date mandated by *I.R.C. § 6323(f)(4)* for "pre-enactment liens" or those liens in existence before the enactment date of § 6323(f)(4), October 4, 1976. The owner claimed that the liens were not valid because they had not been indexed before July 1, 1977. He claimed that he had no notice of the liens when he purchased the property. He claimed he acquired the property free and clear of any lien held by the IRS against his predecessors in interest. The IRS submitted supplemental affidavits to prove that the liens had been entered in the index as of March 3, 1977 and made available to the public as of March 9, 1977. The pre-enactment liens all had a uniform date to indicate the liens had been properly indexed. The coded lien numbers for the three liens contained the actual dates that they were indexed. The court found that the liens were valid encumbrances on the property.

OUTCOME: The court granted the IRS's motion for summary judgment, and it denied the property owner's cross motion for summary judgment.

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AGNES P. FERELLO, 225 Bellerose Avenue East Northport, New York, for plaintiff.

OPINION BY: WEINSTEIN

OPINION

MEMORANDUM AND ORDER

WEINSTEIN, CH. J.:

Plaintiff brings this action to quiet title to real property known as 3 Manor Road North, Greenlawn, New York. This motion for summary judgment is brought by [*2] defendant, United States of America Internal Revenue Service. It raises the issue of the validity of certain federal tax liens for the years 1971, 1972 and 1973 filed in January 1976 against defendants, Anthony S. Ferello and Agnes P. Ferello, plaintiff's predecessors in interest. In order to be valid, notice of those liens must have been recorded in the public index at the district office of the district office of the Internal Revenue Service for the district in which the property subject to the liens is situated on or before July 1, 1977. *I.R.C. § 6323(f)(4)*, enacted October 4, 1976. On the basis of the Government's supplemental memorandum in support of this motion, the court finds that the liens were properly and timely indexed. Accordingly, the Government's motion for summary judgment is granted and the plaintiff's cross motion for summary judgment is denied.

Facts

Plaintiff acquired his interest in this property on May 7, 1976, by deed from defendants, Anthony S. Ferello and Agnes P. Ferello. He alleges that the liens against the property are invalid because the Government failed to enter and record the Notices of Tax Lien in the public index at the district office [*3] of the Internal Revenue Service for the district in which the property is located on or before July 1, 1977. Plaintiff also alleges that he had no knowledge or information of these tax liens at the time he purchased the property and that the Government's failure to index the notices precluded him from being able to obtain that information. By reason of defendant's failure to properly file, record and perfect its lien, he claims to have acquired title to the property free and clear of any lien the defendant may have had against the plaintiff's predecessors in interest.

Attached and incorporated to its Supplemental Memorandum, the Government submitted affidavits prepared by John Mobyed, the Chief of Special Procedures Staff, Internal Revenue Service of the Brooklyn District of New York, during the relevant time, and Melvin M. Blaustein, a program analyst with the Collection Division, National Office, Internal Revenue Service, Washington, D.C., during the relevant time. These affidavits attest to the fact that the Internal Revenue Service established two effective dates to implement the indexing requirement of *section 6323(f)(4)*. First, the effective date for all Notices of Federal [*4] Tax Lien filed prior to October 4, 1976 (the date of enactment of *section 6323(f)(4)*), known as pre-enactment liens, the indexing requirement became effective on July 1, 1977. Second, for all Notices of Federal Tax Lien filed on or after October 4, 1976, known as post-enactment liens, the indexing requirement became effective February 1, 1977. Blaustein Affidavit, p. 3. It is undisputed that the Ferello liens were filed prior to October 4, 1976. Thus, they may be considered pre-enactment liens and must have been indexed on or before July 1, 1977. The date originally indicated as the date of indexing of the Ferello Notices of Federal Tax Lien was July 3, 1977. However, the Notices were actually entered into the public index of the Internal Revenue Service on March 3, 1977 and made available to the public, in compliance with *section 6323(f)(4) of the Internal Revenue Code*, on or about March 9, 1977. Mobyed Affidavit, P7.

The Internal Revenue Service's method for implementing the indexing requirement involved a series of communications between the District Directors' offices and the various Internal Revenue Service Centers. Copies of the Notices of Federal Tax Lien were sent [*5] from the District Directors' offices to the appropriate Service Center. The Service Center then entered the liens in a computer and forwarded weekly and monthly

printouts back to the District Director's office. It was the practice of the District Directors' offices to make the printouts available to the public upon receipt. The Service Centers returned the copies of the original Notices of Federal Tax Lien to the District Directors' offices with notation of the assigned lien numbers. This step indicated that the computer indexing was accomplished and that the printouts were sent. Blaustein Affidavit, P4. At the time a lien was indexed in the computer, its was assigned a coded lien number which indicated the precise date the particular lien was indexed.

For administrative convenience, a uniform date was used to indicate that all pre-enactment liens had been properly indexed in compliance with *section 6323(f)(4)*. Blaustein Affidavit, P13. An erroneous Internal Revenue Service directive had instructed the local offices to use July 3, 1977 as the indexing date for all pre-enactment liens. That directive was later corrected and the date to be used was changed to June 30, 1977. [*6] Neither July 3, 1977 nor June 30, 1977 was intended to reflect the true date the pre-enactment liens were indexed.

The coded lien number provides the true date a particular lien was indexed. The third and fourth digits of the lien number indicate the year, here "77", and the fifth, sixth and seventh digits indicate the julian date, here "062," that the lien was indexed in the computer. See Internal Revenue Service Manual § 5462.2 and Internal Revenue Manual Supplement, December 27, 1976, attached as exhibits B and C of the Blaustein Affidavit. Thus, the lien number of the Ferello liens, 11770625709, indicates March 3, 1977 as the date of indexing. This date is prior to the July 1, 1977 deadline and, therefore, the Government complied with *section 6323(f)(4)*.

Additional support for validity of the Ferello liens is found in a transmittal dated April 27, 1977 from the Holtsville Internal Revenue Service Center to the Brooklyn District Director's office. Mobyed Affidavit, Exhibit C. The Ferello liens were listed on that transmittal as among the documents being returned to the district office. In accordance with the stated practice of the Internal Revenue Service, this indicated [*7] that the liens had, at that point, been entered in the public index system.

It is apparent that the Government's explanation of what transpired with regard to the pre-enactment liens in general and the Ferello liens in particular is accurate. July 3, 1977 was a Sunday, making it clear that that day was not the true day the liens were indexed.

Conclusion

The Federal Tax Liens in question were properly indexed prior to the July 1, 1977 deadline. The Government complied with the indexing requirement of *section 6323(f)(4) of the Internal Revenue Code*, as enacted Oc-

tober 4, 1976. Thus, the liens are valid encumbrances on the real property known as 3 Manor Road North, Greenlawn, New York. Judgment is granted dismissing the action against defendant United States of America.

The plaintiff's cross motion is denied. No costs or disbursements.

So ordered.