

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS W. BACON, SR. et al.,

Defendants.

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Civil No. 3:22-cv-3744

AMENDED ORDER

The following matter is before the court on the United States of America's motion for summary judgment, ECF No. 27 and motion to modify order of sale, ECF No. 60. For the reasons below, the court grants that motion.

I.

This case concerns the enforceability of federal tax liens placed on a property located in Bamberg County, South Carolina. Defendant Thomas W. Bacon, Sr., acquired title to the property at issue in 1995. In 2015, he faced financial difficulties and failed to pay federal income taxes. *See* ECF Nos. 36, 41. Throughout most of that year and into 2016, Bacon also neglected to pay certain employment taxes related to his business. *Id.* In October of 2022, the United States filed suit against the named Defendants, seeking the following: (1) judgment that Bacon is indebted to the United States for federal income taxes; (2) judgment that Bacon is indebted to the United States for Trust Fund Recovery Penalties under 26 U.S.C. § 6672; (3) declaratory judgment that the United States has a valid federal tax lien on Bacon's property; and (4) an order that the federal tax liens be enforced against the Bamberg County property and that it be sold "free and clear of any right, title, lien, claim, or interest of any party hereto, their heirs, estates, or assigns, and that the

proceeds of such sale be distributed to the United States consistent with the priority of its claims or interest versus the claims of other defendants as determined by this Court.” [ECF No. 1.]

On December 14, 2023, the court granted a joint motion for entry of judgment in favor of the United States as to counts one and two of this action. [ECF No. 41.] Bacon was determined responsible for (1) unpaid tax liabilities in the amount of \$474,262.02, as of October 1, 2023, plus fees and statutory additions including interest as provided by law, and less any payments or credits, and (2) unpaid trust fund recovery penalties for the second quarter of 2015 through the fourth quarter of 2016 in the amount of \$75,876.30, as of October 1, 2023, plus fees and statutory additions including interest as provided by law, and less any payments or credits. *Id.*; *see also* ECF No. 36. The United States seeks summary judgment on the remaining counts. [ECF No. 27.]

II.

Under 26 U.S.C. §§ 6321 and 6322, statutory liens to Bacon’s property arose in favor of the United States on the assessment dates of the unpaid taxes. The United States gave notice to the public of its statutory liens against Bacon by filing two Notices of Federal Tax Liens (“NFTL”) in Bamberg County—first on October 9, 2017, and again on May 14, 2018. [ECF Nos. 27-12; 27-13.]

Under 26 U.S.C. § 7425(b), the United States was entitled to notice prior to any nonjudicial sale of the property made more than 30 days after the NFTLs were filed. However, on June 4, 2020, the Bamberg County Forfeited Land Commission—having obtained the property due to Bacon’s delinquency on 2016 county taxes—sold the property to Defendant Clarence E. Felder, LLC by quitclaim deed. *See* ECF Nos. 27-31 at 10–13; 27-33. The county did not notify the United States of the sale. [ECF Nos. 27-1 at 2; 28 at 2.] Thus, under the plain language of § 7425(b)(1),

the sale was “made subject to and without disturbing” the United States’ liens. The court therefore finds that enforceable liens remain on Felder’s property as a matter of law.

III.

Accordingly, the court orders the property be sold pursuant to 26 U.S.C. §§ 7402(a) and 7403 to satisfy Bacon’s unpaid liabilities. The following terms shall govern the sale:

1. The Internal Revenue Service Property Appraisal and Liquidation Specialists (“PALS”) is authorized to offer for public sale and to sell the property legally described in the following manner: All that certain lot of land, with improvements thereon, situate in the City of Denmark, Bamberg County School District #2, County of Bamberg, State of South Carolina, which is particularly shown as Lots 14, 15 and 16 on plat made by J.E. Knotts, Surveyor, dated January 26, 1951 and recorded in the Office of the Clerk of Court for Bamberg County on January 20, 1951, in plat Book 4, Page 116, said lots bounded now or formerly, as follows: the North by lands of Carl E. Brown; on the East by right-of-way Carolina Highway; on the West by empty railroad bed; and on the South by right-of-way Mayfield Street.
2. **Terms and Conditions:**
 - a. The sale shall be free and clear of all rights, titles, claims, liens and interests of all parties to this action, including the United States and Thomas W. Bacon, Sr., the South Carolina Department of Revenue, Clarence E. Felder, LLC, 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 and restrictions of record, if any;

Sale Location

- c. The sale of the Property shall be by public auction under mail-in bid, proxy bid, or in-person auction on the Property's premises, at the Courthouse of Bamberg County, South Carolina, at the PALS's post of duty, or at a government building within a 50-mile radius of the PALS's post of duty.

Notice of Sale

- d. PALS shall announce the date and time for the sale;
- 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 Bamberg County, South Carolina and by any other notice PALS deems appropriate. The notice shall contain an adequate description of the property, but it need not contain the full legal description and shall contain the terms and conditions of sale set forth in this order of sale. If the sale is conducted via mail-in bid, all bids are to be received by PALS no later than 11:00 a.m. on the day of the sale.

Minimum Bid

- f. PALS shall set, and may adjust, the minimum bid. If the minimum bid is not met or exceeded, PALS may, without further permission of the court, and under the terms and conditions of this order of sale, hold a new public sale, and may reduce the minimum bid;

Payment of Deposit and Balance

- g. At the time of the sale, the successful bidder(s) shall deposit with PALS, by money order or by certified or cashier's check payable to 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 PALS in the published notice of sale. If the sale is conducted via mail-in bid, the deposit is to be provided with the bid and will be returned if the bid is not accepted. Before being permitted to bid at an in-person auction, 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 who has not presented proof that, if they are the successful bidder, they can make the deposit required by this order of sale. Before being permitted to bid at the sale, potential bidders shall show 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 bidder(s), they can make the deposit required by this order of sale;

- h. Each mail-in bid will be deemed to make a first bid of the minimum bid specified by PALS. Each mail-in bid must also specify the maximum bid the bidder wishes to make. Failure to specify a maximum bid will result in the bid being invalid, and PALS shall return the bid and deposit to the bidder.
- i. If PALS receives at least two valid mail-in bids, the winning bidder shall be the one with the highest maximum bid, and the sales price will be the lesser of (1) of the second-highest maximum bid plus \$1,000, or (2) the highest maximum bid.
- j. If two or more different mail-in bidders specify the same maximum bid and that maximum bid is the highest maximum bid, PALS may, without further authorization from the Court, solicit further mail-in bids from all such bidders until a single bidder has the highest maximum bid.

- k. 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 certified or cashier's check payable to 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 deposit shall be forfeited and shall be applied to cover the expenses of the sale, with any amount remaining to be applied to the liabilities of Thomas W. Bacon, Sr. at issue herein. The property shall again be 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;
- l. The Clerk of the District Court is directed to accept the deposit and sale proceeds and deposit them into the court's registry for distribution pursuant to further order of the court;

Confirmation of Sale

- m. The sale of the property shall be subject to confirmation by the 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 the court confirms the sale, the Recording Official of Bamberg County, South Carolina, may cause the transfer of the property to be reflected upon that county's register of title.
- n. After the confirmation of the sale, the IRS shall execute and deliver a deed under the authority of the 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.

- o. 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 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).

Redemption

- p. The sale of the property is ordered pursuant to 26 U.S.C. § 7403 and is made without right of redemption.
3. **Preservation of the Property:** Until the property is sold, the Defendant Clarence E. Felder, LLC shall take all reasonable steps necessary to preserve the property, including all buildings, improvements, fixtures, and appurtenances on each property, in its current condition including, without limitation, maintaining a fire and casualty insurance policy on the property. They shall neither commit waste against the property, nor cause or permit anyone else to do so. They shall neither do anything that tends to reduce the value or marketability of the property nor cause or permit anyone else to do so. They shall not record any instrument, 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 contempt and shall be punishable as such.

4. **Vacating the Property:** All persons occupying the property shall vacate the property permanently within thirty (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. 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 United States, including PALS and the United States Marshals Service, is authorized 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, evict, or re-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.

5. **Abandoned Personal Property:** Any personal property remaining on the property thirty (30) days after the date of this order of sale, or as extended in writing by the United States, is deemed forfeited and abandoned, and PALS is authorized to dispose of it in any manner they see fit, including disposal or sale, in which case the proceeds of the sale are to be

applied first to the expenses of sale and the balance to the parties as directed by the court. Checks for the purchase of personal property shall be made out to the “Clerk of District Court for the District of South Carolina,” and the clerk is directed to accept these checks and deposit them into the court’s registry for distribution pursuant to further order of this court.

6. **PALS’ Access to the Property:** Pending the sale of the property, and until confirmation of sale, the IRS and PALS are authorized to have free and full access to the premises 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. **Forwarding Address:** No later than two (2) business days after vacating the property, pursuant to the deadline set forth in paragraph (4) above, Defendant Clarence E. Felder, LLC or an agent thereof shall notify counsel for the United States of a forwarding address where they can be reached. Notification shall be made by contacting counsel for the United States, Chase Burrell, at (202) 514-5915.
8. **Claims:** The United States has an interest of \$550,138.34, plus interest and other statutory additions from October 1, 2023.¹ Any other defendant wishing to claim an interest in the sale proceeds must submit to the court evidence of its claim, the amount, and the priority of its claim within forty-five (45) days from the entry of this order of sale.
9. **Distribution of Sale Proceeds:** After the court confirms the sale of the property, absent any showing to the contrary, the sale proceeds deposited with the clerk of this court shall be distributed in the following order of priority:

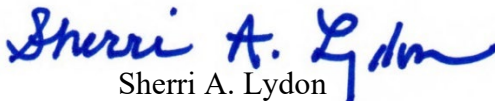
- a. First, to the United States Treasury, for the expenses of the sale, including any expenses incurred to secure or maintain the property pending sale and confirmation by the court;
- b. Second, to Bamberg County, South Carolina or other local taxing authority, for real property taxes and other local assessments due and owing, if any, which are entitled to priority under 26 U.S.C. § 6323(b)(6);
- c. Third, to the United States of America for satisfaction of the federal tax liabilities due and owing for Thomas W. Bacon's (1) federal income tax liabilities, totaling \$474,262.04 for the 2015 tax year, plus statutory additions including interest accruing from October 1, 2023, and (2) trust fund recovery penalties totaling \$75,876.30 for the second quarter of 2015 through the fourth quarter of 2016, plus statutory additions including interest accruing from October 1, 2023;
- d. Fourth, any further remaining sale proceeds shall be paid to Clarence E. Felder, LLC.

IV.

For the above reasons, the United States' motion for summary judgment, ECF No. 27, is granted.

IT IS SO ORDERED.

May 5, 2025
Columbia, South Carolina


Sherri A. Lydon
United States District Judge