

01/11/2016

American Federal Tax Reports

U.S. v. BUSSELL, Cite as 117 AFTR 2d 2016-446, Code Sec(s) 6011; 7403,
(DC CA), 01/11/2016

UNITED STATES, PLAINTIFF v. BUSSELL, DEFENDANT.

Case Information:

[pg. 2016-446]

Code Sec(s): 6011; 7403
Court Name: U.S. District Court, Central Dist. of California,
Docket No.: CASE NO.: CV 15-02034 SJO (VBKx),
Date Decided: 01/11/2016.
Prior History: Reconsideration of (2015, DC CA) 117 AFTR 2d 2015-439
denied.
Tax Year(s): Year 2006.
Disposition: Decision against Taxpayer.

HEADNOTE

1. Income tax reporting and information returns—report of foreign bank and financial accounts—penalties—assessments reduced to judgment—constitutional claims—treaties—summary judgment. Dermatologist/convicted tax evader was denied reconsideration of decision granting govt. summary judgment in part on its claim to reduce to judgment assessment for FBAR penalty for year for which she failed to properly disclose her interest in foreign account: taxpayer didn't show any grounds for relief and instead just sought to rehash already rejected arguments, including excessive fines argument, which was already partly accepted, and double jeopardy argument that funds in her account had already been subject of prior legal proceedings, even though record showed that funds which had been subject to prior proceedings couldn't have been transferred to/weren't same funds in instant account.

Reference(s): ¶ 60,115.01(5); ¶ 76,557.53(30) Code Sec. 6011; Code Sec. 7403

FBAR
OPINION

COUNSEL PRESENT FOR PLAINTIFF: Not Present

[pg. 2016-447]

COUNSEL PRESENT FOR DEFENDANTS: Not Present

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA,

PROCEEDINGS (in chambers): ORDER DENYING MOTION FOR RECONSIDERATION
[Docket No. 180]

Judge: PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT
JUDGE

Victor Paul Cruz Not Present

Courtroom Clerk Court Reporter

CIVIL MINUTES – GENERAL

This matter is before the Court on Defendant Letantia Bussell's ("Defendant") Motion for Reconsideration of the Order on Motion for Summary Judgment and Judgment on the Pleadings ("Motion"), filed December 15, 2015. On December 21, 2015, Plaintiff United States of America ("Plaintiff") filed an Opposition to Defendant's Motion. Defendant did not file a Reply. Having carefully considered the issues raised, the Court deems the matter appropriate for decision without oral argument and vacates the hearing set for January 25, 2015. See Fed. R. Civ. P. 78. For the reasons set forth below, the Court DENIES the Motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

Defendant was married to John Bussell ("Mr. Bussell") from 1972 until his death in 2002. (Index of Exs. and Decls. in Supp. of Pl.'s Mot. ("Index"), ECF No. 24-1, Ex. 11 ¶ 3.) Defendant is a licensed physician who specializes in dermatology. *Bussell v. Comm'r*, 130 T.C. 222, 224 (2008). Defendant has maintained a dermatology practice in Beverly Hills, California since 1979. *Id.* From 1981 through approximately 1995, when Defendant filed for bankruptcy, Defendant conducted her medical practice through various corporations, including Letantia Bussell M.D. Inc. *Id.*

Before Mr. Bussell and Defendant (collectively, the "Bussells") filed for bankruptcy in 1995, the Bussells restructured Defendant's medical practice to conceal her interest in the practice. (Index, Ex. 21 at IOE_000104-105.)¹ The Bussells funneled Defendant's profits between 1993 and 1995, which totaled \$1,149,048, into a non-interest bearing account with Sanwa Bank ("Sanwa Account"). The Bussells maintained control over the Sanwa Account, but the Sanwa Account was under the name of BBL Medical Management, Inc. ("BBL"). (Index, Ex. 21, at IOE_000105.) In January 1996, Defendant transferred the balance of the Sanwa Account to a personal bank account at Swiss Bank Corp. *Bussell v. Comm'r*, T.C. Memo. 2005-77 [2005 RIA TC Memo ¶2005-077], 2005 WL

775755 at *4 (April 7, 2005). Swiss Bank Corp. later became known as UBS AG. (Index, Ex. 11 ¶ 2.) The Defendant failed to disclose the funds from the Sanwa Account and her interest in the Swiss account in her 1996 tax return. Id.

B. The Subject Account and Defendant's Tax Filings

On January 29, 1997, the Bussells opened a second bank account with Swiss Bank Corp., account no. xxxx3235 (the "Subject Account"). (See Index, Ex. 4; Ex. 11 ¶ 2.) As part of the process of opening the Subject Account, the Bussells signed a Swiss Bank Corp. document naming themselves as the beneficial owners of the account. (See Index, Ex. 4. at IOE_000011.) The Bussells also signed a Swiss Bank Corp. document entitled "General power of attorney" granting Todd John Bussell, their son, signature authority over the Subject Account. (Index, Ex. 4 at IOE_000015.) Defendant also had signature authority over the Subject Account. (Index, Ex. 4 at IOE_000014.)

On October 15, 2007, Defendant filed her individual income tax return for the 2006 tax year. (See Index, Ex. 4.) In her 2006 tax return, Defendant did not report the interest income earned from the Subject Account. (Index, Ex. 11 ¶ 6.) Furthermore, Defendant did not file a Treasury Department Form 90-22.1, Report of Foreign Bank and Financial Accounts ("FBAR Form"), disclosing her financial interest in the Subject Account for the 2006 tax year. (Index, Ex. 11 ¶ 6.) During 2006, the Subject Account had a balance that exceeded \$10,000. (Index, Ex. 11 ¶ 4.) On December 31, 2006, the Subject Account had a balance of \$2,241,027. (Index, Ex. 11 ¶ 5.)

On October 23, 2007, Todd Bussell wrote to UBS AG and asked the bank to liquidate the Subject Account, as well as a second account, and requested that the balances be transferred to two accounts at Finter Bank Zurich. Todd Bussell requested that 50% of the balances be transferred to an account with Wakaduku Foundation as the beneficiary ("Wakaduku Account"), and the other 50% transferred to an [pg. 2016-448] account with Valmadera Foundation as the beneficiary ("Valmadera Account"). (Plaintiff's Proposed Statement of Uncontroverted Facts ("PSUF"), ECF No. 23-1, ¶ 16; See also Index, Ex. 5 at IOE 000018.)

Several transfers then occurred between the Subject Account and the other accounts. On November 1, 2007, the Subject Account had zero balance. (Index, Ex. 5 at IOE 000021.) On November 9, 2007, the Subject Account had a closing balance of \$2,918,299.28. (Index Ex. 5 at IOE 000021.) Pursuant to Todd Bussell's request, on November 13, 2007, UBS AG made three separate payments to the Wakaduku Account and the Valmadera Account. (Index Ex. 5 at IOE 000022.) By November, 14, 2007, the Subject Account had zero balance again. (Index Ex. 5 at IOE 000022.)

C. History of Legal Proceedings Against the Bussells

On May 3, 2000, an Indictment was filed against the Bussells in the Central District of California. (Index, Ex. 18 at IOE_000074.) On January 31, 2002, a Redacted First Superseding Indictment (the "Indictment") was filed against the Bussells in which the Government brought various counts related to bankruptcy fraud and attempted tax evasion. (PSUF ¶ 3.)

On February 6, 2002, a jury convicted Defendant of the following: (1) one count of violating 18 U.S.C. § 371 (conspiracy to commit an offense against or defraud the United States); (2) two counts of violating 18 U.S.C. § 152(1) (concealment of assets in bankruptcy); (3) two counts of violating 18 U.S.C. § 152(3) (false declaration and statement as to avoid material matters); and (4) one count of violating 26 U.S.C. § 7201 and 18 U.S.C. § 2 (evading payment of income tax). (PSUF ¶ 3.)

After the conviction, on or about April 29, 2002, the Internal Revenue Service ("IRS") issued a jeopardy levy with regard to the Bussells' income tax liabilities for 1983, 1984, 1986, and 1987. (Index, Ex. 21, at IOE_000107.) The IRS also approved a jeopardy assessment against the Bussells for the 1996 tax year ("1996 Assessment"). The total amount of the jeopardy levy/assessment was \$3.4 million, with \$1,283,522 attributable to the 1996 tax year and the remaining \$2,116,478 to the 1980s. (Index, Ex. 21, at IOE_000107.) The government explained that it levied a jeopardy assessment in part because:

[I]n 1996 [Defendant] received \$1,149,048 from financial accounts which were previously undisclosed and not reported on [Defendant's] Individual Income Tax Return Form 1040 for this period. These funds were concealed as part of the conspiracy to commit bankruptcy fraud. (Index, Ex. 21, at IOE_000115.)

On August 23, 2002, Defendant filed a complaint in federal district court seeking review of the 1996 Assessment pursuant to 26 U.S.C. § 7429(b). (PSUF ¶ 4.) On December 11, 2002, the Court issued an order granting the Government's motion for summary judgment and denying Defendant's motion for summary judgment. (PSUF ¶ 5.) The Court held that the IRS's jeopardy determination was reasonable because Defendant's criminal history demonstrated that she had failed to report income and engaged in a scheme to hide assets from the IRS in an attempt to defeat the collection of unpaid taxes. (PSUF ¶ 5.)

While the jeopardy case was pending, Defendant filed a petition with the United States Tax Court (the "Tax Court") seeking a redetermination of deficiency in the Bussells' 1996 taxes, as well as a redetermination of the civil tax fraud penalty imposed by the IRS pursuant to 26 U.S.C. § 6663(a). (PSUF ¶ 7.) The Tax Court concluded

that the Bussells maintained, and failed to report, two foreign bank accounts in their 1996 tax return, a Swiss account and a "Syntex" bank account. *Bussell v. Commissioner of Internal Revenue*, T.C. Memo. 2005-77 [2005 RIA TC Memo ¶2005-077], 2005 WL 775755 at *4 (April 7, 2005). The Tax Court held that Defendant was liable for the civil fraud penalty imposed pursuant to 26 U.S.C. § 6663(a), a decision that was affirmed by the Ninth Circuit Court of Appeals. (PSUF ¶ 8.)

D. Procedural History of the Instant Case

On June 5, 2013, the IRS assessed against the Defendant an FBAR penalty in the amount of \$1,221,806 ("Assessment") for her alleged willful failure to disclose and report her interest in the Subject Account for the 2006 tax year. (Index, Ex. 1.) On March 19, 2015, the Government initiated the instant action to recover from the Defendant the Assessment and to reduce the Assessment to a judgment against Defendant. (See generally Compl., ECF No. 1; Mot., ECF No. 23.) The Government seeks a judgment ordering Defendant to pay \$1,361,694.41, which includes the Assessment, the penalty for failure-to-pay the Assessment, and interest as of January 23, 2015, plus any accruing interest thereafter. (See generally Compl.; Index, Ex. 2.)

On December 8, 2015, this Court granted in part and denied in part the Government's Motion for Summary Judgment, and granted in [pg. 2016-449] part and denied in part Defendant's Motion for Judgment on the Pleadings. The Court ordered the Defendant to pay a penalty amount of \$1,120,513. (See generally Order on Mtn. for Summ. J. and J. on the Pleadings ("Summary Judgment Order"), ECF No. 35.) Defendant now brings the instant Motion for Reconsideration.

II. LEGAL STANDARDS

A. Motion for Reconsideration

Federal Rule of Civil Procedure 60(b) provides that a Court, upon a motion and just terms, "may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief."

Fed. R. Civ. P. 60(b). The Court of Appeals for the Ninth Circuit has instructed that a "motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law " 399 Orange St. Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999) (emphasis added) (citation omitted). Further, a motion for reconsideration "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003).

Moreover, the Court strictly adheres to Local Rule 7-18, which limits the viable bases for a motion for reconsideration. Local Rule 7-18 provides that a motion for reconsideration "may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision." Local Rule 7-18 (emphasis added).

III DISCUSSION

[1] Defendant's Motion does little more than rehash arguments already made in the Motion for Summary Judgment and the Motion for Judgment on the Pleadings. Defendant, thus, does not meet the requirements set out in Federal Rule of Civil Procedure 60(b) or the Court's Local Rules. Notably, Defendant restates its affirmative defenses based on the Fifth Amendment's Double Jeopardy Clause and the Eighth Amendment's Excessive Fines Clause. (Mtn. at 5.) The Court addressed these arguments in its Summary Judgment Order. (See Summ. J. Order 8-10.) The Court, in fact, reduced the Government's penalty assessment to comport with the Excessive Fines Clause of the Eighth Amendment. (Summ. J. Order 10-11.) The Court will not revisit this decision and reduce the penalty assessment further.

Defendant goes on to argue that the Court's Summary Judgment Order does not account for the source of the funds in the Subject Account. According to Defendant, the Government's penalty assessment violates the protection against double jeopardy because the funds that Defendant deposited in the Subject Account had been the subject of prior proceedings by the Government. (Mtn. at 5.) The Court addressed this argument in its prior Order. As the Court held, the Bussells had at least two accounts in Switzerland. The Bussells transferred the full balance of the Sanwa Account to "a Swiss account" at Swiss Bank Corp, and the last transfer to this Swiss account was on or about June 11, 1996. Bussell v. Commissioner, T.C. Memo. 2005-77 [2005 RIA TC Memo ¶2005-077], 2005 WL 775755 [2005 RIA TC Memo ¶2005-077] at *4-5

(April 7, 2005). The Bussells then opened the Subject Account, a second Swiss account, on January 29, 1997. (See Index, Ex. 4.) The funds from the Sanwa Account, which were the subject of prior penalties, could not have been transferred to the Subject Account because the Sanwa Account funds were transferred to the first account in 1996, six months before the Subject Account even existed. Defendant's arguments concerning the penalties assessed on funds from the Sanwa Account are not applicable to the penalties assessed in the instant case.

Defendant responds that "the source of the subject account are not fully accounted for in [pg. 2016-450] the Court's conclusion." (Mtn. at 5.) Defendant, however, has provided no evidence as to the source of the funds in the Subject Account. In order to establish an affirmative defense based on Double Jeopardy, Defendant bears the burden to show that the funds in the Subject Account came from funds that were the subject of prior proceedings. See C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc., 213 F.3d 474, 480 (9th Cir. 2000) ("When the party moving for summary judgment would bear the burden of proof at trial, it must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case." (citations omitted)). Defendant has not carried this burden.

IV. RULING

Based on the foregoing, it is hereby ordered that Defendant's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

1 Pursuant to Federal Rule of Evidence 201, the Court takes judicial notice of Exhibits 18 through 23 of the Index of Exhibits filed concurrently with the Government's Request for Judicial Notice. (See generally Index.) Each of these Exhibits represents a publicly available record or filing, and is therefore not reasonably subject to dispute. See Fed. R. Evid. 201(b)(2).