

09/15/2016

American Federal Tax Reports

U.S. v. BUSSELL, Cite as 120 AFTR 2d 2017-6376, Code Sec(s) 6011; 6321, (DC CA), 09/15/2016

UNITED STATES, PLAINTIFF v. Letantia BUSSELL, DEFENDANT.

Case Information:

[pg. 2017-6376]

Code Sec(s): 6011; 6321
Court Name: U.S. District Court, Central Dist. of California,
Docket No.: CASE NO.: CV 15-02034 SJO (VBKx),
Date Decided: 09/15/2016.
Prior History: Later proceedings at (2017, CA9) 120 AFTR 2d 2017-6379, affirming (2016, DC CA) 117 AFTR 2d 2016-446, denying reconsideration of (2015, DC CA) 117 AFTR 2d 2015-439.
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—civil vs. criminal liens—priority. Convicted tax evader, whose assessed FBAR penalties were previously reduced to judgment, was denied motion to compel govt. to accept her proffered payment of FBAR penalties while her criminal judgment for fines, fine interest and restitution to nonfederal victims remained outstanding: govt.'s position, that taxpayer was required to pay criminal judgment before any payments [pg. 2017-6377] were applied to civil judgment, was reasonable when considering that statutory scheme favored enforcement of criminal judgments and that criminal judgment was senior debt since it was entered years before civil judgment.

Reference(s): ¶ 60,115.01(5); ¶ 63,215.04(200) Code Sec. 6011; Code Sec. 6321

FBAR
OPINION

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA,

PROCEEDINGS (in chambers): ORDER DENYING DEFENDANT'S MOTION TO REQUIRE THE GOVERNMENT TO ACCEPT DEFENDANT'S TENDERED PAYMENT OF THE FBAR PENALTY [ECF No. 73]

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

JUDGE

CIVIL MINUTES – GENERAL

This matter is before the Court on Defendant Letantia Bussell's ("Bussell" or "Defendant") Motion to Require the Government to Accept Defendant's Tendered Payment of the FBAR Penalty ("Motion"), filed on August 3, 2016. The United States ("Government" or "Plaintiff") opposed the Motion ("Opposition") on August 22, 2016. (ECF No. 74.) Bussell filed a reply ("Reply") on August 30, 2016. 1 (ECF No. 75.) The Court found the matter suitable for disposition without oral argument, and vacated the hearing set for September 12, 2016. See Fed. R. Civ. P. 78(b). For the following reasons, the Court DENIES Defendant's Motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2002, a jury found Bussell guilty of (1) conspiracy in violation of 18 U.S.C. § 371; (2) false statements, false oaths and concealed assets in bankruptcy, and aiding and abetting and causing an act to be done, in violation of 18 U.S.C. § 152(1); and (3) attempt to evade or defeat tax, and aiding and abetting and causing an act to be done, in violation of 26 U.S.C. § 7201. United States v. Bussell, Case No. 8:01-cr-00056-AHS ("Criminal Action"), J. & Commitment ("Criminal Judgment" or "Restitution") 1, ECF No. 534.) Pursuant to 18 U.S.C. § 3663, the court imposed a \$2,393,527 Criminal Judgment for restitution owing to multiple businesses. (Criminal J. 2-3.) In 2003, the Government recorded notice of this lien in the Los Angeles County Recorder's Office. (Opp'n 2.) The Criminal Judgment was amended in 2005 and 2009, and ultimately Defendant was ordered to pay a special assessment of \$300, a fine of \$50,000.00, costs of prosecution of \$55,626.09, and restitution to non-federal victims totaling \$1,200,871.75. (No. 01-cr-56, Amended J. & Commitment, ECF No. 703; Final Order of Restitution Due and Payable by Def. Letantia Bussell, ECF No. 740.) Currently, Defendant makes monthly installment payments of \$7,000 towards her Criminal Judgment pursuant to a 2012 order in the Criminal Action. (No. 01-cr-56, Order Increasing Amount Monthly Restitution Payment and Withdrawing Mots., ECF No. 776.) Defendant has made every payment since then. (Decl. of Victor Sherman ("Sherman Decl."), ¶ 9, ECF No. 73.) The outstanding balance of the Criminal Judgment is \$411,882.16, of which \$294,235.08 is for restitution to non-federal victims and \$62,020.99 is for fines and fine interest. (Decl. of Indira J. Cameron-Banks ("Cameron-Banks Decl.") ¶ 1, ECF No. 74-1.)

In 2015, the Government initiated the instant case, seeking to reduce statutory penalties into a civil judgment. After partially granting summary judgment, the Court found that "Pursuant to 31 U.S.C. Section[s] 5321((a)(5)(c) [and 3717(e)(2)], [Bussell was] personally liable and indebted to the United States of America for the Report of

Foreign Bank and Financial Accounts ('FBAR') penalty assessment for the year 2006 in the amount of [...] \$1,120,513, plus statutory interest accruing from the date of assessment on June 5, 2013, as provided by law, until such obligation is paid in full." (J. Favor of Gov't Against Bussell ("Civil Judgment" or "FBAR Penalty") 1-2, ECF No. 45.) In reaching this conclusion, the Court held that the penalty did not violate Bussell's Due Process rights, yet reduced the fine to comport with the Excessive Fines Prohibition. See U.S. CONST. amends. V, VIII. On March 8, 2016, the Government recorded an abstract of this judgment with the Los Angeles County Recorder's Office. (Opp'n 3.) Currently, the balance on the Civil Judgment is over \$1.3 million. (Id..)

The real property located at 2285 Worthing Lane, Los Angeles, CA 90077 ("Bussell Home") is owned by an irrevocable trust ("Trust") which was settled by Bussell and her husband on December 15, 1992. (Mot. 2). Bussell is a tenant at that property. Karen Tomczyk ("Trustee") is the current trustee. (Mot. 2.) [pg. 2017-6378] Since the Trust has authority to pay the debts of its trustor, the Trust seeks to refinance the Bussell Home to pay the Civil Judgment in full. But the Trust is unwilling to pay off the Criminal Judgment. (Sherman Decl. ¶ 9.) The Bussell Home is currently encumbered by the Civil Judgment, preventing refinancing. (Opp'n Ex. C, 1-3 (releasing the Bussell Home from the Criminal Judgment).)

II. DISCUSSION

[1] In the instant Motion, Bussell seeks an Order from the Court compelling the Government to accept her proffered payment of the FBAR penalty adjudicated by the Court on January 11, 2016. (See generally Mot.) Bussell moves the Court to allow her to continue paying the Criminal Judgment at the court-ordered \$7,000 per month; and to compel the Government to accept tendered payments toward the Civil Judgment. (Mot. 6.) Otherwise, Bussell contends that the Criminal Judgment will dwindle by \$7,000 a month while the Civil Judgment grows by \$8,000 a month. (Mot. 1.) Bussell asks the Court to order the Government to calculate the total outstanding balance, and to accept full payment within sixty-days. (Proposed Order Compelling Gov't to Accept Def.'s Tendered Payment FBAR Penalty, ECF No. 73-6.)

The Government opposes Bussell's Motion and contends that Bussell must pay the Criminal Judgment in full before payments are applied to the Civil Judgment. (Opp'n 3.) As support for its position, the Government first contends that the statutory scheme favors enforcement of the Criminal Judgment. Second, that because the Criminal Judgment lien is "senior to, and broader than" the Civil Judgment lien, payments should apply to the Criminal Judgment first. (Id..) Finally, the Government argues that Bussell has presented insufficient authority for the Court to grant Bussell's requested relief. (Opp'n 5.)

The Court addresses these arguments in turn and ultimately DENIES Defendant's Motion.

A. Legal Standard

Title 18 United States Code Section 3612(c) mandates that “[t]he [Government] is responsible for collecting unpaid criminal fines and restitution on behalf of all victims.” 18 U.S.C. § 3612(c). Additionally, the Government may enforce an order of restitution “by all [] available and reasonable means.” 18 U.S.C. § 3664(m)(1)(A)(ii). After surveying the statutory scheme, and considering that over \$350,000 of the outstanding Criminal Judgment is for fines, fine interest and restitution to non-federal victims, the Court concludes that the Government's position is a reasonable means to ensure enforcement of the Criminal Judgment.

1. Statutory Scheme Favors Enforcement of Criminal Judgments

The Court first addresses Defendant's Motion by examining the statutory scheme regulating the enforcement of civil and criminal judgments. The Government argues that Congress enacted a statutory scheme granting the Government greater authority to collect criminal debts than civil debts. (See generally Opp'n 3, n. 1.) For instance, the Civil Judgment “create[s] a lien on all real property of [Defendant] on filing a certified copy of the abstract of the judgment in a manner in which a notice of tax lien would be filed” 28 U.S.C. § 3201(a) (emphasis added). Whereas, the Criminal Judgment establishes “a lien in favor of the United States on all property and rights to property of [Defendant] as if the liability of [Defendant] were a liability for a tax assessed under the Internal Revenue Code of 1986.” 18 U.S.C. § 3613(c) (emphasis added); see also *United States v. Kaczynski*, 551 F.3d 1120, 1125 (9th Cir. 2009) (explaining that a criminal judgment lien arises “automatically upon entry of judgment ... and may be enforced against all property and property rights, regardless of the nature of the property.”). 1

Accordingly, it follows that even if the Trust loaned Bussell money to pay off the Civil Judgment, a lien on those funds would automatically arise in favor of the Criminal Judgment. See 26 U.S.C. § 6321 (tax lien attaches to “all property and rights to property” of the liable person); see also *Drye v. United States*, 528 U.S. 49, 58–59 [84 AFTR 2d 99–7160] (1999) (tax liens attach to insurance proceeds which the taxpayer has a legal right to claim immediately). In light of this statutory scheme, the Court is satisfied by the reasonableness of the Government's position that any payment above the court-mandated \$7,000 monthly payment in the Criminal Judgment must be applied towards the Criminal Judgment before any payments may be applied to the Civil Judgment.

2. The Criminal Judgment Precedes the Civil Judgment

In addition to arguing that the statutory scheme favors the enforcement of criminal liens over civil liens, the Government also contends that Criminal Judgment is also the senior debt. (Opp'n 3.) In the absence of statutory authority to the contrary, the common-law governs the priority of liens under federal law by the rule that "first in time is the first in right." *United States v. Pioneer Am. Ins.*, 374 U.S. 84, 87 [11 [pg. 2017-6379] AFTR 2d 1610] (1963); *United States v. McDermott*, 507 U.S. 447, 449 [71 AFTR 2d 93-1154] (1993). Since the common-law rule was codified in 28 U.S.C. § 3201(b), the Civil Judgment "has priority over any other lien or encumbrance which is perfected later in time." 28 U.S.C. § 3201(b). Here, however, the Criminal Judgment was perfected in 2003, while the Civil Judgment was not perfected until 2016. Since the Criminal Judgment was entered years before the Civil Judgment, the seniority of the Criminal Judgment also supports a finding of reasonableness.

3. Bussell's Asserted Constitutional Rights Under the Fifth and Eighth Amendments

Without reference to any case law, Bussell also claims that her Fifth and Eighth Amendments compel the granting of her Motion. (Notice of Mot.) Having already concluded that the Government's position is reasonable and appropriate, the Court declines to address these arguments.

III. RULING

For the foregoing reasons, the Court DENIES Defendant's Motion.

IT IS SO ORDERED.

1 Under L.R. 7-10, "[a] moving party may, not later than fourteen (14) days before the date designated for the hearing of the motion, serve and file a reply memorandum, and declarations or other rebuttal evidence." The Court notes that Defendant filed the instant Reply thirteen days before the hearing date, and advises all parties to strictly adhere to any and all future filing deadlines. Despite its untimeliness, the Court considers the arguments contained therein.