

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

UNITED STATES OF AMERICA,	§	
<i>Plaintiff,</i>	§	
VS.	§	CIVIL ACTION NO. 9:14-CV-138
	§	
JOHN PARKS TROWBRIDGE, JR.,	§	
BRIGHT FUTURE INVESTMENTS, INC.,	§	
and IDEAL ABILITIES,	§	
<i>Defendants.</i>	§	

**REPORT AND RECOMMENDATION ON  
MOTION FOR SUMMARY JUDGMENT  
AND MOTIONS TO DISMISS**

In accordance with 28 U.S.C. § 636(b) and the Local Rules for the United States District Court for the Eastern District of Texas, the District Court referred the above-captioned civil action to the undersigned United States Magistrate Judge for consideration of pretrial motions and proceedings and entry of findings of fact and recommended disposition on case-dispositive motions. *See Order* (doc. #40). Pending before the Court for purposes of this report is the plaintiff United States' *Motion for Summary Judgment* (doc. #42), the Defendant, John Parks Trowbridge, Jr.'s ("Trowbridge") *Response and Objection to the Motion for Summary Judgment* (doc. #43), Trowbridge's *Motion to Dismiss with Prejudice* (doc. #46), the United States' *Response in Opposition to the Motion to Dismiss* (doc. #48) and Trowbridge's *Demand for Dismissal* (doc. #59).

**I.  
Background**

The United States' tax enforcement action is before the Court on a claim for foreclosure under a nominee theory of ownership. The complaint alleges that Trowbridge owes the United States \$3,326,015.01 in unpaid federal income taxes, penalties and interest from 1993 through 1997 tax years plus statutory additions accruing after April 7, 2014. *See Complaint* (doc. #1),

at p. 2. The tax debt was reduced to judgment on May 23, 2014 in *United States v. Trowbridge, et al.*, case number H-14-27 in the United States District Court for the Southern District of Texas. *See Exhibit A to Complaint.* The appeal to the Fifth Circuit Court of Appeals was denied and the judgment was affirmed. *See United States v. Trowbridge*, 591 F. App'x 298, 299 (5th Cir.) *cert. denied*, 135 S. Ct. 2816, 192 L. Ed. 2d 850 (2015) *reh'g denied*, 136 S. Ct. 14, 192 L. Ed. 2d 984 (2015).

The United States claims an interest in the real property that was conveyed to Ideal Abilities on July 10, 2000 by Evelyn Anne Walker. The real property consists of two tracts of contiguous real property and a private road easement in Tyler County, Texas, (“the Tyler County property”). *See Complaint, at p. 2; Exhibits B-1 through B-3 to Complaint.* The United States alleges that Ideal Abilities holds title to the Tyler County Property merely as a nominee of Trowbridge because of the lack of adequate consideration, the timing of the sale, the close relationship between transferor and transferee, and the retention and continued enjoyment of the property by Trowbridge. *See Complaint at p. 3.*

On June 4, 2013, the United States filed a Notice of Federal Tax Lien against Ideal Abilities, as a nominee of Trowbridge, in Tyler County. *See id.; see also Exhibit C to the Complaint.* The United States alleges it has a valid and subsisting federal tax liens against Ideal Abilities, as nominee of Trowbridge, for all property and rights to property in which they have an interest; including the Tyler County Property. *See Complaint.*

The Clerk entered default against defendants Bright Future Investments, Inc., and Ideal Abilities on December 5, 2014 (doc. #34). The Report and Recommendation on Motion for Default Judgment sets forth that Ideal Abilities held the properties only as nominee for the true party in interest, Trowbridge. (doc. #52). The Memorandum Order Adopting Report and

Recommendation of Default Judgment and Entry of Partial Judgment signed September 10, 2015 adopted the Report and Recommendation on Motion for Default Judgment setting forth that Ideal Abilities held the property as nominee for Trowbridge and Ideal Abilities has no interest in the subject property. (doc. #57). The United States seeks to have the federal tax liens satisfied by foreclosing on the Tyler County Property selling the property free and clear of all rights, titles, claims, interests of the parties and with the proceeds of the sale distributed according to law.

## II. Legal Standard

Rule 56(c) of the Federal Rules of Civil Procedure provides that the Court may only grant a motion for summary judgment when there is no genuine issue of material fact and the moving party is entitled to summary judgment as a matter of law. The party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). The moving party, however, “need not negate the elements of the nonmovant’s case.” *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir.1994) (en banc). The movant’s burden is only to point out the absence of evidence supporting the nonmoving party’s case. *Stults v. Conoco, Inc.*, 76 F.3d 651, 655 (5th Cir.1996). Once, the moving party makes a properly supported motion for summary judgment, the nonmoving party must look beyond the pleadings and designate specific facts in the record showing that there is a genuine issue for trial. *Id.* Neither “conclusory allegations” nor unsubstantiated assertions” will satisfy the nonmovant’s burden. *Id.*

Summary judgment is inappropriate if the evidence before the court, viewed as a whole, could lead to different factual findings and conclusions. *Honore v. Douglas*, 833 F.2d 565 (5th Cir.1987). The district court must look to the full record, including the pleadings, affidavits, and depositions. *Williams v. Adams*, 836 F.2d 958, 961 (5th Cir.1988). Under this standard, fact questions are considered with deference to the nonmovant. *Reid v. State Farm Mutual Automobile Insurance Co.*, 784 F.2d 577, 578 (5th Cir.1986). The evidence of the nonmovant is to be believed and all inferences are to be drawn in his favor. *Anderson v. Liberty Lobby*, 477 U.S. 242, 255, 106 S.Ct. 2505, 2513, 91 L.Ed.2d 202 (1986). The Court resolves factual controversies for purposes of summary judgment in favor of the nonmoving party, but only when there is an actual controversy, that is, when both parties have submitted evidence of contradictory facts. *Little v. Liquid Air Corp.*, 37 F.3d at 1075. The Court does not, however, in the absence of any proof, assume that the nonmoving party could or would prove the necessary facts. *Wallace v. Texas Tech University*, 80 F.3d 1042, 1048 (5th Cir.1996) (citing *Little v. Liquid Air Corp.*, 37 F.3d at 1075). An issue is “genuine” if the evidence supporting its resolution in favor of the party opposing summary judgment, together with any inference in such party's favor that the evidence allows, would be sufficient to support a verdict in favor of the party. *St. Amant v. Benoit*, 806 F.2d 1294, 1297 (5th Cir.1987). A “material fact” is one that might affect the outcome of the suit under governing law. *Anderson v. Liberty Lobby*, 477 U.S. at 248, 106 S.Ct. at 2510.

### **III. Discussion and Analysis**

#### **A. Has the movant demonstrated the absence of a genuine issue of material fact**

In the motion for summary judgment, the United States offers the default judgment against Ideal Abilities as proof that its allegations of fact in its complaint are true that Ideal

Abilities holds title to the Tyler County property properly as nominee of Trowbridge. (doc. #1)(doc. #34)(doc. #57)(doc. #42). The Memorandum Order Adopting Report and Recommendation of Default Judgment and Entry of Partial Judgment signed September 10, 2015 specifically orders that Ideal Abilities has no interest in the subject property at issue. (doc. #57). As such, the United States has a judicial determination that Ideal Abilities, the purported owner of the Property, is the nominee of Trowbridge, who is the true owner of the property.

“A nominee theory involves the determination of the true beneficial ownership of property.” *Oxford Capital Corp. v. United States*, 211 F.3d 280, 284 (5th Cir.2000). Stated differently, “[a] ‘nominee’ holds legal title to property that really belongs to another who exercises control over and realizes the benefit of it.” *Battle v. United States*, No. 9:06–CV–109, 2007 WL 1424553 at \*5 (E.D.Tex. Feb. 7, 2007).

A federal tax lien reaches not only the “property and rights to property” of the taxpayer, but also any property held by a third party as the nominee or alter ego of the taxpayer. *See G.M. Leasing Corp. v. United States*, 429 U.S. 338, 350–51, 97 S.Ct. 619, 627–28, 50 L.Ed.2d 530 (1977); *United States v. Williams*, No. 6:06–CV–524, 2008 WL 5572655 at \*10 (E.D.Tex. Oct.31, 2008), *rec. adopted*, 2008 WL 5424090 (E.D.Tex. Dec.30, 2008); *United States v. Dolenz*, No. 3-09-CV-1311-O-BD, 2011 WL 4351558, at \*1 (N.D. Tex. June 16, 2011) *report and recommendation adopted*, No. 3:09-CV-1311-O, 2011 WL 4348295 (N.D. Tex. Sept. 15, 2011).

Pursuant to 26 U.S.C. § 6321, “[i]f any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or

personal, belonging to such person.” Under 26 U.S.C. §§ 6321 and 7403(a), the government may place liens on property held by an entity as the nominee of a taxpayer. *United States v. Harrison*, 366 B.R. 656, 668 (S.D. Tex. 2007) aff’d, 273 F. App’x 315 (5th Cir. 2008). A taxpayer may be the equitable owner of land even if the land is conveyed to another. *Id.* A “nominee” holds legal title to property that really belongs to another who exercises control over and realizes the benefit of it. *Oxford Capital Corp.*, 211 F.3d 280, 284 (5th Cir.2000).

Here, Trowbridge has refused to pay the \$3,326,015.01 in federal income taxes, penalties and interest from 1993 through 1997 tax years plus statutory additions accruing after April 7, 2014. *See Complaint* (doc. #1), at p. 2. The tax debt has been demanded, refused and reduced to judgment on May 23, 2014 in *United States v. Trowbridge, et al.*, case number H-14-27 in the United States District Court for the Southern District of Texas. *See Exhibit A to Complaint*. The appeal to the Fifth Circuit Court of Appeals was denied and the judgment was affirmed. *See Exhibit B to the Complaint*.

Under 26 U.S.C. § 6321, Trowbridge is a taxpayer who has neglected or refused to pay a tax “after demand,” and the amount he owes is a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to him. A lien under § 6321 “shall arise at the time the assessment is made.” 26 U.S.C. § 6322. The language in § 6321 “is broad and reveals on its face that Congress meant to reach every interest in property that a taxpayer might have.” *United States v. Nat’l Bank of Commerce*, 472 U.S. 713, 719–20 (1985). Significantly, liability under § 6321 can attach when property is held by the taxpayer’s nominee. Though not statutorily codified, the Fifth Circuit has unequivocally adopted the nominee theory with respect to § 6321. As stated in *Oxford Capital Corp. v. United States*, “A nominee theory involves the determination of the true beneficial ownership of the property.” 211 F.3d 280, 284

(5th Cir.2000). “Specific property in which a third person has legal title may be levied upon as a nominee of the taxpayer if the taxpayer in fact has beneficial ownership of the property.” *Id.*

Under the nominee theory, the government can seize property to which a third person has legal title if the taxpayer actually has “beneficial ownership of the property.” *Id at 284.*

The evidence in this case is clear and un-contradicted that Ideal Abilities holds title to the Tyler County Property as nominee of Trowbridge as set forth in the default order. (doc.# 57). Under 26 U.S.C. § 7403 the United States may bring suits in district court to enforce a lien of the United States against any property of the delinquent taxpayer. Once the United States establishes its interest in the taxpayer's property, section 7403 allows district courts to order a sale of that property. *United States v. Rodgers*, 461 U.S. 677, 701 (1982). The United States’ interest in the Tyler property was established by virtue of the default order establishing Trowbridge’s interest in the property (doc. #57) and section 7403 allows this court to order a sale of the Tyler Property.

**B. Has the non-movant demonstrated a genuine issue of material fact**

Trowbridge does not dispute that Ideal Abilities holds title to the Tyler County Property as nominee. Trowbridge does not dispute the taxes owed. Trowbridge does not address the foreclosure of the lien in the Response and Objection to the Motion for Summary Judgment (doc. #43), Trowbridge’s Motion to Dismiss with Prejudice (doc. #46) nor in Trowbridge’s Demand for Dismissal (doc. #59).

Rather, Trowbridge alleges that the Court lacks subject matter jurisdiction, alleges that the Court and counsel for the United States committed actual and constructive fraud against him and alleges that the two are engaged in a conspiracy to defraud him of his property. Trowbridge’s basis for lack of jurisdiction is that he is a citizen of Texas but not of the United

States. The United States has jurisdiction pursuant to 28 U.S.C. § 1345 which explicitly grants jurisdiction for civil suits commenced by the United States. In addition, the Fifth Circuit has addressed Trowbridge's jurisdictional argument when it affirmed the judgment of the District Court of the Southern District of Texas. The Fifth Circuit held that:

Trowbridge's argument that he is not a citizen of the United States is equally frivolous. He presents "shopworn arguments characteristic of tax-protestor rhetoric that has been universally rejected by this and other courts." *Stearman v. Commissioner*, 436 F.3d 533, 537 (5th Cir.2006). This court has already held that the "citizens of Texas are subject to the Federal Tax Code." *United States v. Price*, 798 F.2d 111, 113 (5th Cir.1986). We do not address his arguments further as there is "no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest these arguments have some colorable merit." *Crain v. Commissioner*, 737 F.2d 1417 (5th Cir.1984). They have no merit at all.

*United States*, 591 F. App'x at 299.

Trowbridge's fraud and conspiracy claims revolve around two hearings. The first revolves around an alleged exchange at a hearing on or about April 14, 2014 in the Southern District. At the hearing Trowbridge alleges that the Court asks for a copy of Trowbridge's tax return and the United States subsequently provides a copy of his 1040 U.S. Individual Income Tax Return for 1997 to the Court. The second revolves around a hearing on May 21, 2014 where Trowbridge contends that the Court called him "obstreperous" and "dishonest" when exercising his legal rights. He claims that at both hearings the Court and counsel for the United States conspired to fraudulently confer jurisdiction over him as a citizen of the United States.

With respect to Trowbridge's fraud allegations, under Texas law, the elements of a fraud claim are (1) the defendant made a material representation that was false; (2) she knew the representation was false or made it recklessly as a positive assertion without any knowledge of its truth; (3) she intended to induce Plaintiffs to act upon the representation; and (4) Plaintiffs actually and justifiably relied upon the representation and thereby suffered injury. *Ernst &*



*Young, L.L.P. v. Pac. Mut. Life Ins. Co.*, 51 S.W.3d 573, 577 (Tex. 2001). Additionally, Federal Rule of Civil Procedure 9(b) requires fraud allegations “state with particularity the circumstances constituting fraud.” Fed. R. Civ. P. 9(b). As such Rule 9(b) requires that the claimant “specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent.” *Herrmann Holdings Ltd. v. Lucent Techs. Inc.*, 302 F.3d 552, 564–65 (5th Cir. 2002). Trowbridge has not met this threshold nor established a fact issue in either of the factual scenarios he sets out in his Demand for Dismissal, (doc. #59) or in the Motion to Dismiss (doc. #46). Trowbridge refers to specific times and specific statements that the Court and counsel made; however there is no link between the statements and the elements of fraud.

Trowbridge’s conspiracy to commit fraud also lacks merit. To state a claim for civil conspiracy under Texas law, Trowbridge must show the following: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as a proximate result. *Tri v. J.T.T.*, 162 S.W.3d 552, 556 (Tex. 2005). Conspiracy is a derivative claim, meaning that a party’s “liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.” *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996). The Court has determined that the fraud allegations have not been sufficiently alleged and accordingly cannot support the existence of a conspiracy. The factual scenarios alleged by Trowbridge from the two court hearing are inadequate to allege the meeting of the minds necessary to sustain a civil conspiracy claim. The civil conspiracy claims fail as a matter of law. Trowbridge has failed to raise any genuine issue of material fact regarding the foreclosure of the Tyler property.

**IV.  
Conclusion and Recommendation**

For the reasons stated above, the undersigned finds that there are no genuine issues of material fact and the United States is entitled to judgment as a matter of law. The United States' Motion for Summary Judgment should be **granted** and Trowbridge's Motions to Dismiss **denied**. The Memorandum Order Adopting Report and Recommendation on Default Judgment and Entry of Partial Judgment sets forth that Ideal Abilities is holding the Tyler County properties merely as a nominee in favor of Trowbridge and Ideal Abilities has no interest in the subject property. Accordingly, the Court should find that the United States' federal tax liens have attached to the Tyler County property, the Tyler County property belongs to Trowbridge and the United States may enforce its federal tax liens against such property and sell the property.

It is hereby recommended that the United States' Motion for Summary Judgment (doc. # 42) be granted and Trowbridge's Motions to Dismiss (doc. #46 and doc. #59) be denied.

For the reasons stated herein, the undersigned United States Magistrate Judge recommends that the District Court **grant** the United States' request for entry of summary judgment (doc. #42). The undersigned further recommends that the Court enter judgment in favor of the plaintiff United States and assess judgment against the defendant Trowbridge by enforcing its tax liens and foreclosing upon and selling the Tyler County Property and using the sale proceeds to help satisfy the tax liabilities.

**V.  
Objections**

Pursuant to 28 U.S.C. § 636(b)(1)(c), all parties are entitled to serve and file written objections to the report and recommendation of the magistrate judge within fourteen (14) days of

service. Failure to file specific, written objections to the proposed findings of facts, conclusions of law, and recommendations contained within this report shall bar an aggrieved party from *de novo* review by the District Judge of the proposed findings, conclusions, and recommendations, and from appellate review of factual findings and legal conclusions accepted by the District Court except on grounds of plain error.

**SIGNED this the 22nd day of January, 2016.**

A handwritten signature in black ink, appearing to read "Keith F. Giblin", written over a horizontal line.

KEITH F. GIBLIN  
UNITED STATES MAGISTRATE JUDGE

John Parks Trowbridge, Jr.  
9816 Memorial Boulevard  
No. 205  
Humble, TX 77338

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