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THE DISTRICT COURT OF GUAM

GOVERNMENT OF GUAM,

Plaintiff,

vs.

DANNY LEON GUERRERO, *et al.*,

Defendants.

CIVIL CASE NO. 16-00002

**JUDGMENT FOLLOWING BENCH
TRIAL**

From July 16-18, this court held a bench trial in the above-captioned case. Based on the testimony presented and this court's analysis of the relevant legal authorities, this court hereby enters a judgment in favor of Plaintiff Government of Guam **in part**. For the reasons described below, this court finds that the Government of Guam has valid Guam Territorial Income Tax Liens on property belonging to Defendant Danny Leon Guerrero ("Leon Guerrero"), due to Leon Guerrero's unpaid taxes for the tax years 1999-2002. Those tax liens attach to Leon Guerrero's 50% interest in the six parcels of land in dispute in this case.

I. PROCEDURAL HISTORY AND UNDISPUTED FACTS

In March and April of 2003, Leon Guerrero filed Guam Territorial income tax returns for the years 1999-2002. Joint Exhibit (J. E.) 1-4. Sometime thereafter—it is disputed when—the Department of Revenue and Taxation ("DRT") assessed Leon Guerrero's tax liability on those returns and concluded that Leon Guerrero owed significantly more than he stated in his returns. Leon Guerrero made several payments on those tax liabilities over the years, and he does not

1 contest the amount of taxes owed. At trial, Leon Guerrero's counsel repeatedly conceded that
2 Leon Guerrero owes the amount claimed by DRT: \$3,711,836.05, as of July 9, 2019. J.E. 40A.

3 Between November 2000 and May 2002, Leon Guerrero purchased six parcels of land
4 located in Mongmong-Toto-Maite, described as Lot Nos. 151-2-1New-4, 151-2-1NEW-1, 151-2-
5 1NEW-5, 151-2-1NEW-R5, 151-2-1NEW-2, and 151-2-1NEW-3. J.E. 13-15. On May 8, 2002,
6 Leon Guerrero executed a Deed of Gift, purportedly transferring the six parcels to himself and
7 his ex-wife, Betty Jane,¹ creating a joint tenancy with rights of survivorship. J.E. 16. On April
8 30, 2003, Leon Guerrero recorded a Grant Deed transferring the six parcels to Marie Salas, his
9 sister. J.E. 18.

10 On March 10, 2006, the DRT prepared a Final Notice of its intent to levy a tax lien on
11 Leon Guerrero's property. J.E. 9. On August 15, 2006, the DRT filed that tax lien with the
12 Department of Land Management. J.E. 20. Two days later, on August 17, 2006, Leon Guerrero
13 purportedly transferred his interest in the six parcels to Betty Jane. J.E. 21. On August 8, 2007,
14 Marie Salas recorded a Deed of Gift that purportedly transferred her interest in the six parcels
15 back to Leon Guerrero. J.E. 25. In October 2013, Betty Jane recorded Deeds of Gift creating
16 joint tenancies with reservation of life on the six parcels with her four children. J.E. 26-29, 48-
17 49.

18 **II. LEGAL STANDARDS**

19 "In an action to collect tax, the government bears the initial burden of proof," which the
20 government may satisfy "by introducing into evidence its assessment of taxes due." *Oliver v.*
21 *United States*, 921 F.2d 916, 919 (9th Cir. 1990). After the government satisfies its initial
22 burden, the burden shifts to the taxpayer to show that he is not liable for the assessment. *Id.*

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24 ¹ Betty Jane has remarried and taken the last name "Blas." To avoid confusion, this court will simply refer to Betty Jane as "Betty Jane."

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1 Lawrence Terlaje, a DRT employee since 1993.

2 Despite being unable to locate physical copies of Leon Guerrero's certificates of
3 assessment, the three DRT witnesses presented convincing evidence that the DRT completed
4 assessment of Leon Guerrero's 1999-2002 taxes in January of 2006. The witnesses explained
5 that, approximately ten days after the DRT assesses a taxpayer's tax returns, the DRT creates an
6 electronic register, called a TY53,³ which contains numerous taxpayers' balances. That register
7 is printed and attached to a Guam Tax Assessment Certificate the same day that the TY53 is
8 created. The Tax Assessment Certificate is signed and certified by an assessment officer that
9 same day. *See* Terlaje Decl. at 3, ECF No. 40-1. In short, the witnesses testified that, pursuant to
10 the DRT's longstanding procedures, the date that the DRT's assessment appears on a TY53 is the
11 date that a DRT employee signs the relevant Certificate of Assessment. Therefore, while the
12 DRT in fact assesses a taxpayer's returns prior to the TY53, because the assessment is not signed
13 until the TY53 date, that TY53 date is legally the assessment date, pursuant to 26 C.F.R. §
14 301.6203-1. The witnesses further testified that the DRT's electronic database cannot be
15 manipulated to alter the date that a TY53 was input into the DRT's database.

16 The DRT provided a printout from DRT's electronic database of a TY53 register dated
17 January 19, 2006. J.E. 42A. That TY53 indicated that the DRT assessed Leon Guerrero's tax
18 liability for the tax years 1999, 2001, and 2002 on January 12, 2006. *Id.* The DRT provided
19 another printout of a TY53, dated January 27, 2006, which indicated the DRT also assessed Leon
20 Guerrero's tax liability for the tax year 2000 on January 12, 2006. J.E. 43A.

21 This court finds the DRT witnesses' testimony credible and consistent with the
22 procedures described in their declarations. *See* Terlaje Decl., ECF No. 40-1, Celino Decl., ECF
23 No. 40-2, & Duenas Decl., ECF No. 40-3. Leon Guerrero's cross examination failed to expose

³ No DRT witness had any idea as to what "TY" stands for.

1 any credibility issues or inconsistencies in those witnesses' testimony.

2 As this court noted in its Order denying summary judgment, ECF No. 79 at 6, the DRT is
3 entitled to a "presumption of regularity" with regard to its actions in the absence of contrary
4 evidence. *Palmer v. U.S. Internal Rev. Serv.*, 116 F.3d 1309, 1311 (9th Cir. 1998). This court
5 finds that the DRT has shown, by a preponderance of evidence, that (1) the DRT assessed Leon
6 Guerrero's tax liability for the tax years 1999-2002 on January 12, 2006, (2) the DRT recorded
7 Leon Guerrero's tax liability for tax years 1999, 2001, and 2002 in a TY53 register dated January
8 19, 2006, (3) the DRT recorded Leon Guerrero's tax liability for tax year 2000 in a TY53
9 register dated January 27, 2006, and (4) pursuant to the DRT's longstanding procedures, the date
10 a taxpayer's liability appears on a TY53 register is the date that a DRT employee signs a
11 certificate of assessment for that taxpayer's liability for that year. Given that Leon Guerrero's tax
12 liability for the 1999-2002 tax years appears on TY53s created in January of 2006, this court
13 concludes that DRT properly assessed Leon Guerrero's liability within three years of the dates he
14 filed his tax returns for those years, in March and April of 2003. J.E. 3-4. Thus, DRT has
15 complied with the three-year statute of limitations provided in 26 U.S.C. § 6501(a).

16 **B. The DRT Timely Levied a Tax Lien on Leon Guerrero's Property**

17 The second issue is whether the DRT timely levied a tax lien on Leon Guerrero's
18 properties. 26 U.S.C. § 6502(a)(1) requires a levy or court proceeding to begin "within 10 years
19 after the assessment of the tax." As noted above, "the date of the assessment is the date the
20 summary record is signed by an assessment officer." 26 C.F.R. § 301.6203-1.⁴

21 As noted above, the evidence shows that the DRT assessed Leon Guerrero's taxes for all
22 four years on January 12, 2006, and that the DRT signed certificates of assessment on Leon
23 Guerrero's tax liability for tax years 1999, 2001, and 2002 on January 19, 2006, and a certificate

24 ⁴ Both parties have assumed that the Code of Federal Regulations applies to the Guam DRT, so this court will likewise assume—without deciding—that it applies.

1 of assessment for Leon Guerrero's tax liability for the year 2000 on January 27, 2006. Thus, the
2 DRT had until January 19, 2016 to levy its tax lien for Leon Guerrero's 1999, 2001, and 2002
3 tax liability, and until January 27, 2016 to levy its tax lien for Leon Guerrero's 2000 tax liability.

4 The DRT filed a notice of tax lien on Leon Guerrero's property on January 11, 2016. J.E.
5 38. Thus, this court finds that DRT has complied with the ten-year statute of limitations. 26
6 U.S.C. § 6502(a)(1).

7 **C. The DRT Failed to Prove that Leon Guerrero's 2002 Transfer Was Fraudulent**

8 The third issue is whether Leon Guerrero fraudulently transferred 50% of his interest in
9 the six parcels to Betty Jane in 2002. Under Guam law, a creditor may avoid a fraudulent transfer
10 under two scenarios: "an intentional fraudulent transfer and a constructive fraudulent transfer."
11 *Ukau v. Wang*, 2016 Guam 26 ¶ 38 (2016). To establish a constructive fraudulent transfer, the
12 creditor must prove two elements: (a) the transfer was "made or given voluntarily, or without a
13 valuable consideration," (b) while the transferrer was "insolvent or in contemplation of
14 insolvency." 20 GCA § 6103.

15 In this case, there was scant evidence of Leon Guerrero's intent to fraudulently transfer
16 the six properties. The Government therefore strove to meet the two elements of a constructive
17 fraudulent transfer. It succeeded in meeting the first element: Leon Guerrero received no
18 "valuable consideration" in exchange for the 2002 transfer. The 2002 Deed of Gift states that the
19 transfer was made "for and in consideration of [Leon Guerrero's] love and affection" and to
20 provide "maintenance, support, protection and livelihood." J.E. 16. Leon Guerrero's counsel's
21 arguments notwithstanding, "love and affection" does not constitute "valuable consideration"
22 within the context of fraudulent transfers. *See, e.g., In re Gonzalez*, 342 B.R. 165, 169 (Bankr.
23 S.D.N.Y. 2006) ("Purely emotional benefits, such as love and affection, are generally not
24 considered value for purposes of [constructive fraudulent transfers]"); *In re Robinson*, 2008 WL

1 1756357, at *3 (Bankr. S.D. Ala., Apr. 14, 2008) (“The law regarding fraudulent transfers is
2 clear that a transfer given in return for ‘love and affection’ is ‘good’ consideration, but not
3 ‘valuable’ consideration.”); *Allee v. Shay*, 268 P. 962, 966 (Cal. Ct. App. 1928) (“[I]t is
4 universally held that, while [a conveyance for love and affection] may be good as between the
5 parties, it does not constitute in law a valuable consideration so as to take it out of the statute of
6 frauds.”).

7 At trial, Leon Guerrero and Betty Jane testified that Betty Jane had paid Leon Guerrero’s
8 debts while he was in prison in the late 1980s, so, in addition to love and affection, Leon
9 Guerrero transferred the properties to repay her. However, the testimony indicated that Leon
10 Guerrero did not legally or contractually owe Betty Jane for her payment of his debts. Perhaps
11 Leon Guerrero felt a moral obligation to repay her—as he testified—but moral obligations are
12 not contractual obligations, and, again, the “emotional benefits” he might receive for meeting his
13 moral obligation do not constitute valuable consideration within this context. *In re Gonzalez*, 342
14 B.R. at 169. In short, whatever emotional or moral benefit Leon Guerrero received for
15 transferring half of his interest in the parcels to Betty Jane does not constitute “valuable
16 consideration” within the context of 20 GCA § 6103.

17 The second element the government must show to prove a constructive fraudulent
18 transfer is that Leon Guerrero was insolvent on May 8, 2002, the date of the transfer. An
19 individual is insolvent if his “debts are greater than [his] assets.” *In re Koubourlis*, 869 F.2d
20 1319, 1321 (9th Cir. 1989); *Mejia v. Reed*, 74 P.3d 166, 174 (Cal. 2003); *see generally* 37 Am.
21 Jur. 2d Fraudulent Conveyances and Transfers § 19 (2019).

22 The government succeeded in showing that Leon Guerrero had numerous debts in May
23 2002. At that time, he was behind in alimony payments. Betty Jane testified that, while she and
24 Leon Guerrero had a “bad relationship” for a brief time prior to their divorce in 1999, their

1 relationship recovered after the divorce, to the point where she considered their relationship “like
2 brother and sister” by 2002. Guerrero corroborated Betty Jane’s testimony as to the good
3 relationship they shared after the 1999 divorce. This testimony suggests that the reason Leon
4 Guerrero was behind in his alimony payments was that he was insolvent. On the other hand, the
5 testimony also showed that, while Leon Guerrero was not paying alimony owed to Betty Jane, he
6 was paying college expenses for her kids.

7 The government additionally showed that Leon Guerrero knew he owed taxes in May of
8 2002. He filed his 1999-2002 tax returns in March and April of 2003, and admitted he was aware
9 that he paid no taxes during those years. J. E. 1-4. According to his self-assessments, he owed the
10 DRT hundreds of thousands of dollars in 2002. He testified that he was not “philosophically
11 opposed” to paying taxes. However, he stated at trial and in his deposition that he sincerely
12 believed (and continues to believe) that the Government of Guam owed him money, so that is
13 why he was not paying his taxes. J.E. 56 at 85-86.

14 In sum, there is abundant evidence that Leon Guerrero had significant debts as of May
15 2002. However, what is strikingly lacking is any evidence regarding Leon Guerrero’s assets at
16 that time. Lacking that evidence, this court is unable to determine whether his debts exceeded his
17 assets when he transferred 50% of his interest in the parcels to Betty Jane. *See In re Koubourlis*,
18 869 F.2d at 1321. Thus, DRT has failed its burden to establish that Leon Guerrero’s 2002
19 transfer was fraudulent

20 **D. Government of Guam’s Tax Lien Attaches to Leon Guerrero’s 50% Interest in**
21 **the Six Parcels**

22 The final issue is whether DRT’s lien attaches to a portion of the six parcels. As noted
23 above, Leon Guerrero created a 50/50 joint tenancy between himself and Betty Jane on May 8,
24 2002. He then granted his 50% interest in the parcels to his sister Marie Salas, on April 24, 2003.
While Leon Guerrero attempted to transfer his 50% interest *again* to Betty Jane on August 17,

2006, that attempt was unsuccessful, because he had no interest in the properties at that time. He did not regain his interest in the properties until August 2, 2007, when Marie Salas transferred the properties back to him in a Deed of Gift.

Based on this timeline of events, this court finds that the DRT's tax lien attached to Guerrero's 50% interest in the properties on August 2, 2007. This is because the DRT's tax lien—which arose when the DRT completed its assessments in January 2006, *see* 26 U.S.C. § 6322—applies to after-acquired property. *U.S. By and Through I.R.S. v. McDermott*, 507 U.S. 447, 448 (1993). Thus, when Leon Guerrero re-acquired his interest in the properties in August 2007, the DRT's tax lien attached to them.

IV. Conclusion

For the reasons stated above,

A. This court awards judgment in favor of the Government of Guam and against Defendant Leon Guerrero in the amount of \$3,711,836.05, as of July 9, 2019, plus statutory penalties and interest that may have accrued since that date. The Government of Guam is **hereby ordered** to submit a draft judgment, indicating the exact amounts due as of the date of this Order.

B. The Government of Guam's tax liens attach to Leon Guerrero's 50% interest on Defendants' six parcels of land located in Mongmong-Toto-Maite, described as Lot Nos. 151-2-1New-4, 151-2-1NEW-1, 151-2-1NEW-5, 151-2-1NEW-R5, 151-2-1NEW-2, and 151-2-1NEW-3. The Government of Guam may foreclose upon those properties and conduct a judicial sale according to law. After all costs are paid for, up to 50% of the proceeds will be distributed to the Government of Guam to satisfy this judgment against Leon Guerrero.

SO ORDERED.



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Aug 13, 2019