

**U.S. BANKRUPTCY COURT
District of South Carolina**

Case Number: 97-01929-jw

**ORDER CONFIRMING ENFORCEMENT OF JUDGMENT AND ORDER
ENTERED MARCH 24, 2009 REGARDING TRUSTEE DISBURSEMENTS ON CLAIMS
FOR WILLIAM J. GILLIAM**

The relief set forth on the following pages, for a total of 8 pages including this page, is hereby **ORDERED**.

**FILED BY THE COURT
09/11/2015**



Entered: 09/11/2015

Handwritten signature of John E. Waites in cursive script, underlined.

US Bankruptcy Judge
District of South Carolina

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

In re:

Marine Energy Systems Corporation, A South
Carolina Corporation

Debtor.

Chapter 7

Case No. 97-01929-jw

**ORDER CONFIRMING ENFORCEMENT OF
JUDGMENT AND ORDER ENTERED MARCH 24, 2009
REGARDING TRUSTEE DISBURSEMENTS ON CLAIMS
FOR WILLIAM J. GILLIAM**

This matter comes before the Court upon on the Motion for Order Confirming Enforcement of Judgment and Order Entered March 24, 2009 Regarding Trustee Disbursements on Claims For William J. Gilliam and Gilliam Exempt Family Trust (hereinafter the "Motion") (Docket # 1069) filed by Janet B. Haigler, Trustee ("Trustee"). A hearing on the Motion was held on August 14, 2015. All parties in interest were served with a copy of the Motion and Notice of Hearing. No objection to the Motion was filed with the Court. The United States of America filed a Brief in Support of Trustee's Motion (Docket #1078). The Trustee and counsel for the United States appeared at the hearing. No other interested parties were present.

After considering the pleadings in the matter, the arguments of the Trustee and counsel for the United States, and the evidence presented at the hearing, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACTS

1. Marine Energy Systems Corporation, A South Carolina Corporation filed for relief under Chapter 11 of the United States Bankruptcy Code on March 4, 1997. On November 30, 1998, the case was converted to chapter 7 and Ryan Hovis was appointed Trustee ("Hovis"). After disbursement of all funds on hand, the bankruptcy case was closed on November 19, 2010.

2. Prior to the closing of the case, Hovis filed an adversary action to determine the priority of competing tax claims of the Internal Revenue Service ("IRS") and the South Carolina Department of Revenue and allegations by William J. Gilliam ("Gilliam") that Gilliam Exempt Family Trust ("GEFT")¹ held a senior lien as to the taxing authorities. *See Hovis v. William J. Gilliam, Internal Revenue Service, South Carolina Department of Revenue, and the Gilliam Exempt Family Trust*, Adv. Pro. No. 08-80017-jw, filed in the Bankruptcy Court for the District of South Carolina.

3. In the adversary proceeding, the United States asserted tax liens against Gilliam for years 1993, 1995, 1996, 1997 and a Trust Fund Recovery Penalty tax for the period ending June 30, 1995 totaling \$6,226,977.62 (hereinafter the "Tax Debt") and sought payment of the Tax Debt from funds to be paid by the bankruptcy trustee on claims held by Gilliam.

4. On March 24, 2009, over Gilliam's objection, the Court entered its Judgment and Order Granting the United States of America's Motion for Summary

¹ Gilliam, as settlor, created the Gilliam Exempt Family Trust.

Judgment (“Final Order”)² (Adversary 08-80017-jw, Docket Nos. 111 and 112). In granting the United States’ Motion for Summary Judgment, the Court found that:

- a. the IRS assessed deficiencies against Mr. Gilliam for his failure to pay income taxes owed for tax years 1993 and 1995, among other years (Id. ¶ 30);
- b. federal tax liens arose in favor of the United States and against Mr. Gilliam and attached immediately to all property and rights to property belonging to Gilliam, including the funds Hovis held for his benefit (Id. at ¶ 14); and
- c. those tax liens were valid and enforceable (Id. at ¶ 35).

5. The Final Order provides that the bankruptcy trustee is to distribute to the United States all funds held for Gilliam as well as any additional funds the trustee receives that would be payable to Gilliam, up to the amount of the Tax Debt.

6. On January 4, 2015, this case was reopened to disburse proceeds received from a claim filed by Hovis in the Raytheon bankruptcy case filed in Nevada. The net proceeds received after litigation costs were \$96,146.67.

7. According to the Trustee, under the terms of Liquidating Trust Agreement approved by the Court on September 9, 2005, Gilliam is entitled to an administrative claim in the amount of \$19,229.33 which is twenty (20%) percent of the net proceeds recovered from the Nevada bankruptcy litigation.

² Gilliam filed an appeal as to the Final Order. On appeal, District Judge Seymour found the bankruptcy court’s findings of fact to be accurate, and affirmed the judgment in favor of the United States. Gilliam v. Hovis, 430 B.R. 348, 354 (D.S.C. 2010) (Case No. 2:09-cv-01367-MBS). No subsequent appeal was taken.

8. At the hearing, counsel for the United States entered into evidence a Certificate of Official Record of: (1) Form 4340, Certificate of Assessments, Payments and other Specified Matters for William Gilliam, social security number xxx-xx-4751, covering United States Individual Income Tax – Separate Assessment for the period ending December 31, 1993 evidencing an outstanding balance of \$1,084,398.87, and (2) Form 4340, Certificate of Assessments, Payments and other Specified Matters for William Gilliam, social security number xxx-xx-4751, covering United States Individual Income Tax – Separate Assessment for the period ending December 31, 1995 evidencing an outstanding balance of \$1,819,807.30. Interest and other statutory additions have accrued on these balances as a matter of law, and will continue to accrue until payment in full. These certified transcripts evidence that Gilliam currently has an outstanding Tax Debt for the assessments addressed in the Final Order in the amount of at least \$2,904,206.17, not including interest and other statutory additions. Therefore, Gilliam still owes a balance on the Tax Debt referenced in the Final Order.

9. Pursuant to the terms of the Final Order all funds currently held for Gilliam shall be distributed to the United States and additional funds received by the Trustee shall continue to be paid to the United States until such time as the United States is no longer owed the Tax Debt set forth in the Final Order.

CONCLUSIONS OF LAW

Pursuant to the terms of the Final Order, all funds currently held by the Trustee for Gilliam shall be distributed to the United States and additional funds received by the Trustee shall continue to be paid to the United States until such time as the United States is no longer owed the Tax Debt set forth in the Final Order. Based on the

Certificates of Assessments entered into evidence at the hearing, Gilliam still has an outstanding balance due on the Tax Debt described in the Final Order. The Certificate of Assessment for year ending 1993 is \$1,084,398.87 and year ending 1995 is \$1,819,807.30. Interest and other statutory additions have accrued on these balances as a matter of law and will continue to accrue until payment in full. The balance due on the Tax Debt far exceeds the funds available to be disbursed by the Trustee.

The United States has provided in its pleadings filed with the Court further information that the Tax Debt is still collectable as the statute of limitations on the tax liabilities addressed in the Final Order remain open. As the Court previously recognized, Mr. Gilliam's income tax deficiencies for tax years 1993 and 1995 were assessed on November 16, 1995 and September 8, 1997, respectively. (Adversary 08-80017-jw, Docket No. 111 at ¶ 30.) Although more than 10 years have elapsed since those assessments were made, the period of time to collect those liabilities under section 6502(a) of Title 26 has not yet expired. See 26 U.S.C. §§ 6502(a)(1), 6503. The Court previously determined that the limitations period to collect Mr. Gilliam's income tax liabilities for 1993 and 1995 had been tolled by his three bankruptcy filings. (*Id.* at 18.) The Certificate of Assessments, Payments, and Other Specified Matters for tax year 1993, which was admitted as evidence at the hearing on August 14, shows that Gilliam requested a collection due process equivalency hearing on December 18, 2007 to challenge the filing of notices of federal tax lien against him. From that date until March 13, 2013, when the Ninth Circuit Court of Appeals dismissed Gilliam's appeal of the Tax Court's judgment for failure to prosecute, the period of time to collect Gilliam's tax liabilities for 1993 and 1995 was tolled for 1913 days. This action extended the earliest

expiring deadline to collect the unpaid Tax Debt, the deadline for the 1993 liabilities, until October 20, 2015. 26 U.S.C. §§ 6320(b)(4), 6330(e)(1).

Additionally, the tax liabilities addressed in the Final Order are due despite an alleged Release of Recorded Liens. It is well-settled that Certificates of Assessments are presumptive proof of a valid assessment. See United States v. Childs, 871 F.2d 1015, 1017 (11th Cir. 1989), cert. denied, 493 U.S. 975 (1989). Federal tax liens are sometimes called “silent” liens, because they arise automatically at the moment the tax is assessed and attach to all property and rights to property held by the taxpayer, regardless of whether a notice of federal tax lien is later recorded with the local county clerk’s office. 26 U.S.C. § 6322. As demonstrated in the certified copies of the Certificates of Assessments admitted into evidence at the hearing, Gilliam’s tax liability has not been satisfied and it remains legally enforceable. At the hearing, Counsel for the United States stated that the liens appear to have been released in error. Section 6325(f)(2) provides that in the case of a certificate of release issued erroneously, the IRS may revoke and reinstate the lien if the period of limitation on collection has not expired. The reinstated lien shall have the same force and effect as the original “silent” lien until the expiration of the limitations period. The statute of limitations on collection of Gilliam’s 1993 and 1995 tax liabilities remains open. Therefore, an erroneous release of recorded lien does not bar the United States from pursuing collection as long as the tax liability has not been satisfied and the statute of limitations remains open.

The Court further notes that Gilliam was served with the Motion and Notice of Hearing and, despite having several informal communications with the Trustee disputing

the United States' continued right as to funds held by the Trustee, he did not file a response to the Motion or attend the scheduled hearing.

CONCLUSION

Based on the foregoing, it is hereby ORDERED that the Trustee is to comply with the Judgment and Order entered in Adversary 08-80017-jw, Docket Nos. 111 and 112, by disbursing to the United States all funds payable to Gilliam until such time as Gilliam no longer owes an outstanding balance on the Tax Debt.

AND IT IS SO ORDERED.