



affidavits, if any, show that there is no genuine issue as to any material fact and that [it] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is material if its resolution would "affect the outcome of the suit under the governing law," Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986), and the dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party," id. I view the record in the light most favorable to Reisner and I indulge all reasonable inferences in his favor. See Savard v. Rhode Island, 338 F.3d 23, 25 -26 (1st Cir. 2003). However, to the extent that Reisner has failed to place the movant's facts in dispute, I deem the properly supported facts as admitted, see Faas v. Washington County, 260 F. Supp. 2d 198, 201 (D. Me. 2003). Reisner has not filed a reply statement of material fact placing the United States' facts in dispute, but relies solely on his own separate statement of material facts, some of which the United States disputes.<sup>1</sup>

***The United States' Statement of Fact***

The United States/Farm Service Agency (FSA) is a record mortgage holder of mortgages on the real property located in the Town of Canton, County of Oxford, State of Maine, which real property is the subject of this foreclosure proceeding. (SMF, ¶ 1). On July, 29, 1994, the town recorded a Tax Lien Certificate for 1993 real property taxes, not paid by the defendants Ralph V. Sayer and Lola K. Sayer, against the subject real property. (SMF, ¶ 2). On April, 30, 1996, the Tax Lien Certificate for 1993 real property taxes, not paid by the Sayers, was automatically foreclosed. The town then became the title owner of the real property subject to FSA's mortgages on the real property. (SMF ¶3).

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<sup>1</sup> Reisner's counsel followed the same game plan during the first round of summary judgment practice, essentially ignoring Local Rule 56.

On May 19, 1997, the town granted a quitclaim deed transferring its interest in the real property to Robert Reisner and his wife, following Reisner's payment of the unpaid real property taxes of the defendants. Reisner and his wife then became the title owners of the real property subject to FSA's mortgages on the real property. (SMF, ¶ 4). On May, 19, 1997, Reisner paid the town \$12,415.48 in payment of the real property taxes owed by the Sayers to the town in order to purchase the real property. (SMF, ¶ 5). The deed to Reisner and his wife was a Quitclaim Deed from the Town of Canton which reads, in part: "This deed is given for the purpose of releasing and conveying any and all rights which this grantor may have acquired by virtue of the following tax liens." The deed is not a warranty deed of any kind. (SMF, ¶ 6). After May, 19, 1997, the Town of Canton had no title ownership interest in the real property. (SMF, ¶ 7).

Prior to 1999, the United States/FSA did not receive from the town: (a) any written notice of the recording of the tax lien certificate as mandated by 36 MRSA §942 ¶ 4 and (b) any written notice of the automatic foreclosure date of the tax lien certificate as mandated by 36 M.R.S.A. §943 ¶ 5. (SMF, ¶ 8). Prior to 1999, the Town of Canton did not otherwise inform the United States/FSA of: (a) the recording of the tax lien certificate and (b) the automatic foreclosure date of the tax lien certificate and (c) the town's notice of May, 29, 1996, to the defendants that the tax lien certificate had matured and that the town now owned the real property and (d) the town's quitclaim deed to Robert Reisner and his wife. (SMF, ¶ 9). Prior to 1999, the United States had no notice of or actual knowledge of the automatic foreclosure. Accordingly, the United States had no notice of or actual knowledge of the automatic foreclosure while the Town of Canton still held title ownership of the real property. (SMF, ¶ 10).

### ***Reisner's Statement of Fact***

The United States inquired of the Town of Canton of the unpaid taxes on the Sayer property by letter of Walter Trundy to the town dated January 26, 1995.<sup>2</sup> (Resp. SMF, ¶ 1). Reisner claims that the United States' awareness of the tax liens on the Sayer property is demonstrated by its acknowledgment in the letter of Walter E. Trundy to the Town of Canton dated April 27, 1995, that the town had submitted some information to him on Ralph Sayer. The United States replies that the letter does not support Reisner's assertion that it had notice in 1995. This letter does ask for a breakdown of taxes by year and queries what liens were in effect and their expiration dates (Reisner Aff. Ex. 2), but the United States claims it never received an answer to this letter and Reisner has not presented any evidence to the contrary.

There is no dispute that the United States later became aware of the tax lien foreclosure on the Sayer property and the transfer of the real estate to Reisner as outlined in the note contained from Mr. Sayer's FSA file; the United States admits that it received notice on June 1, 1999, of the tax lien mortgage, foreclosure, and transfer of the real estate to Reisner of the Sayer property.

Reisner contends that he met with Walter Trundy, County Supervisor for FSA, on or about July 1999. The tax lien mortgage, foreclosure, and transfer of the real estate to Reisner were discussed. Trundy agreed to meet with Reisner in August 1999 but he did not appear. According to Reisner, the United States at no time has tendered the amount of the tax lien mortgage together with interest and costs to Reisner or the Town of Canton

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<sup>2</sup> The United States argues that the letter used to support this assertion (and thus the assertion) has no relevance to the dispute.

even after receiving written copies of the materials relating to the tax lien, mortgage, foreclosure, and transfer of the real estate to Reisner.

The United States responds that it met with Reisner and the Sayers in July 1999 to discuss a potential three-way resolution of the issues surrounding the property. A payment to Reisner of the taxes he paid plus interest was discussed and Reisner conditioned any agreement by him to deed the real property back to the Sayers upon the Farm Service Agency resolving the delinquency with the Sayers and allowing the Sayers to remain on the property. Ultimately, no resolution was reached.

**The impact, if any, of the 36 M.R.S.A. § 943 window of opportunity on the United States' mortgage interest in the real property and the status and priorities of the interest of the United States and Robert Reisner in the real property**

Paragraph four of Maine Revised Statute Annotated section 942 states with respect to tax lien foreclosures:

At the time of the recording of the tax lien certificate in the registry of deeds, in all cases the tax collector shall file with the municipal treasurer a true copy of the tax lien certificate and shall hand deliver or send by certified mail, return receipt requested, to each record holder of a mortgage on that real estate, to the holder's last known address, a true copy of the tax lien certificate. If the real estate has not been assessed to its record owner, the tax collector shall send by certified mail, return receipt requested, a true copy of the tax lien certificate to the record owner.

36 M.R.S.A. § 942 ¶4. Paragraph five of § 943, provide:

The municipal treasurer shall notify the party named on the tax lien mortgage and each record holder of a mortgage on the real estate not more than 45 days nor less than 30 days before the foreclosing date of the tax lien mortgage, in a writing signed by the treasurer or bearing the treasurer's facsimile signature and left at the holder's last and usual place of abode or sent by certified mail, return receipt requested, to the holder's last known address of the impending automatic foreclosure and indicating the exact date of foreclosure. .... If notice is not given in the time period specified in this section to the party named on the tax lien mortgage or to any record holder of a mortgage, the person not receiving timely notice

may redeem the tax lien mortgage until 30 days after the treasurer does provide notice in the manner specified in this section.

36 M.R.S.A. § 943 ¶ 5.

It is Reisner's contention that when the United States received actual notice in May/June 1999,<sup>3</sup> which was after the eighteen-month period of redemption, it had an obligation to tender (to either the town or Reisner) the sum Reisner paid for the tax lien mortgage together with interests and costs. Reisner relies heavily on a letter by the Deputy Regional Attorney, which he has not set forth in a statement of material fact but excerpts in his memorandum. That letter states:

Assuming the Town did not provide the Government with actual notice of the tax sale, the government's mortgage still exists and may be enforced. The relation of the third parties to the government is the same as that of the Town prior to the tax sale; they hold a first lien for the amount of tax plus interest and penalties or any lesser sum that may be required to redeem under Maine law. In other words, with respect to the Government and any other interested party that did not receive actual notice, the third parties have merely acquired the Town's lien for taxes. The Government is free to foreclose subject to their interest or it can redeem.<sup>4</sup>

Because the United States did not do this, Reisner believes he holds clear title.

The United States contends that § 943 is simply not applicable to this dispute because no notice was ever sent by the town to the Farm Service Administration as record mortgage holder. Because the United States did not receive notice in advance of the automatic foreclosure date -- after which the town no longer had title ownership in the property -- there was no tax lien mortgage to be redeemed by the United States under paragraph five of § 943 when it finally received notice. The United States also directs

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<sup>3</sup> As noted Reisner contends that the FSA had notice as early as January 1995, but there is no record evidence that the agency ever received information in response to the letter of inquiry, much less the type of notice sufficient under § 924 and § 923.

<sup>4</sup> Reisner does not even set forth the final sentence when he quotes this passage in his memorandum.

the court's attention to paragraph seven of § 943 which addresses the record mortgage holder's right to redeem if proper notice is given to the holder after the eighteen-month period of redemption.<sup>5</sup> The United States contends that this provision also can only have effect if the municipality in question still has title ownership of the property and could entertain redemption.

On the facts of this case, the United States' reading of the inapplicability of paragraph five of § 943 given the posture of the property interests is correct. The United States could not exercise its § 943 rights within ninety days of learning of the tax lien sale because the Town no longer owned the property at that point in time. It does not follow that the United States then lost its interest in the property. Even if it were properly before me as a statement of fact or a qualification of one the United States' facts, I do not read the cited letter by the Deputy Regional Attorney as espousing this position.

With respect to the status of the United States' and Reisner's relative interests in the property, the United States does not dispute that Reisner's lien, acquired from the municipality, takes priority over that of the United States'. In its own words, "the United States concedes that, upon the foreclosure sale of the subject real property, the first priority payment from the sale proceeds will be to Robert Reisner in the amount of \$12,415.48. Further, the United States concedes that, if the remaining sale proceeds pay in full all the amounts owed by the defendants to the United States plus allowed costs,

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<sup>5</sup> This paragraph reads:

After the expiration of the 18-month period for redemption, the mortgagee of record of said real estate or his assignee and the owner of record if the said real estate has not been assessed to him or the person claiming under him shall, in the event the notice provided for said mortgagee and said owner has not been given as provided in section 942, have the right to redeem the said real estate within 3 months after receiving actual knowledge of the recording of the tax lien certificate by payment or tender of the amount of the tax lien mortgage, together with interest and costs, and the tax lien mortgage shall then be discharged by the owner thereof in the manner provided.

36 M.R.S.A. § 943 ¶ 7.

then any remaining balance of the sale proceeds will be paid to Robert Reisner." (Mot. Summ. J. at 8.)

***Conclusion***

For the reasons stated, I recommend that the Court **GRANT** the United States' motion for summary judgment as to party-in-interest Robert Reisner (Docket No. 86).

**NOTICE**

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

February 23, 2005.

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge

UNITED STATES OF AMERICA v. SAYER et al  
Assigned to: JUDGE GENE CARTER  
Referred to: MAG. JUDGE MARGARET J.  
KRAVCHUK  
Cause: 28:1345 Foreclosure

Date Filed: 01/23/2004  
Jury Demand: None  
Nature of Suit: 220 Real Property:  
Foreclosure  
Jurisdiction: U.S. Government  
Plaintiff

**Plaintiff**

**UNITED STATES OF  
AMERICA**

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**Defendant**

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**Interested Party**

**ESTATE OF H MILTON  
KEENE**

*by and through Lola K Sayer, the  
only surviving heir*

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**Interested Party**

**ESTATE OF CLARA O  
KEENE**

*by and through Lola K Sayer, the  
only surviving heir*