Davidson County ORDER
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20151001-0100008

ATTEST AND CERTIFY
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Clerk
U.S. District Court
Middle District of Tennessee
By _____
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO. 3:00CR00108**
	)	**CHIEF JUDGE HAYNES**
MARC A. SUTTON,	)	
	)	
Defendant.	)	

ORDER

Upon review of the Settlement Agreement filed in this matter, attached as Exhibit 1 to the Motion for Approval of Settlement and incorporated herein as if set out in full, the Court finds good cause and being fully advised in the premises:

IT IS ORDERED that the Settlement Agreement is hereby approved;

IT IS FURTHER ORDERED that all installments payments made on the lien referenced in the Settlement Agreement will be deposited in the appropriate Asset Forfeiture Fund, forfeited to the United States, and act to reduce the $1,000,000.00 Money Judgment against Marc A. Sutton previously filed in this case.

IT IS FURTHER ORDERED that the ancillary proceeding concerning the Substitute Real Property known as 4924 Clarksville Pike, Whites Creek, Tennessee is hereby concluded, however, the Court retains jurisdiction for enforcement of the Settlement Agreement if necessary.

William J. Haynes, Jr.
Chief Judge
United States District Court

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CRIMINAL NO. 3:00CR00108**
	)	**Chief Judge William J. Haynes, Jr.**
MARC A. SUTTON,	)	
	)	
Defendant.	)	

MOTION FOR APPROVAL OF SETTLEMENT AND ENTRY OF PROPOSED ORDER

Comes the United States and advises that the ancillary matter involving forfeiture of Substitute Real Property known as 4924 Clarksville Pike, Whites Creek, Tennessee, has been resolved, pending the Court's approval, and Entry of the Attached Proposed Order. Exhibit 1: Settlement Agreement and attached Proposed Order.

A Preliminary Order of Forfeiture was entered against the Substitute Real Property. (D.E. 374: Preliminary Order). Pursuant to 21 U.S.C. § 853(p), an ancillary proceeding was began to quiet title, and Barbara Sutton and Marc Suttons filed petitions of interest in the Substitute Real Property. (See D.E. 385 and 386: Petitions to Return/Recognize Property Interest and/or Dismiss Government's Forfeiture). The Court denied Marc Sutton's Petition. (D.E. 392: Order).

All parties have now agreed to a Settlement and the entry of an Agreed Order which will provide, in part, for the recording of a lien against the Substitute Real Property, installment payments against the lien which act to reduce the million dollar judgment against Marc Sutton. (Exhibit 1: Settlement Agreement).

Therefore, the parties seek the entry of the attached proposed Order.

DAVID RIVERA
United States Attorney for the
Middle District of Tennessee

BY: s/ Debra Teufel Phillips
DEBRA TEUFEL PHILLIPS
Assistant United States Attorney
110 Ninth Ave., S., Ste. A-961
Nashville, Tennessee 37203-3870
Telephone: (615) 736-5151

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, 2014, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following, if registered, by operation of the Court's electronic filing system. If not registered, notice was mailed by regular U.S. mail to:

Mark C. Scruggs
95 White Bridge Road
Cavalier Building, Suite 508
Nashville, TN 37205

S/ Debra Teufel Phillips
DEBRA TEUFEL PHILLIPS

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Settlement Agreement") is entered into on the last date set forth below by Marc Sutton, Claimant Barbara Sutton ("Claimant"), and the United States of America ("United States") (collectively "the Parties").

RECITALS

A. Whereas, in the case of *United States v. Marc A. Sutton,* United States District Court, Middle District of Tennessee Case Number 3:00cr00108 (the "Action"), the United States initiated forfeiture proceedings pursuant to 21 U.S.C. § 853 against improved property known as 4924 Clarksville Pike, Whites Creek, Tennessee ("Clarksville Pike") and more specifically described as:

> A certain tract of land in Davison County, Tennessee, being all of Lot No. 2, Final Minor Plat, Sutton Subdivision, according to plat and survey of same appearing of record in Instrument no. 20080512-0048898 in Register's Office for Davidson County, Tennessee, to which plat reference is made for more complete details as to location and description of said lot.
>
> Being the same property conveyed to Marc and Barbara Sutton, of record in the Register's Office for Davidson County, Tennessee, Instrument Number 20080623-0064675;
>
> Being the same property to conveyed to Barbara Sutton from Marc Sutton of record in the Register's Office for Davidson County, Tennessee, Instrument Number 20130422-0039417

B. Whereas Claimant has filed a claim asserting their rights in some or all of Clarksville Pike;

C. Whereas Marc Sutton filed a claim asserting his rights in some or all of Clarksville Pike, and said claim was dismissed by the Court in the Action;

D. Whereas, Clarksville Pike is subject to a mortgage in favor of Bank of America;

E. Whereas, the Parties are unaware of any other person or entity who has an interest in the Clarksville Pike;

F. Whereas, after announcement of the intent of the United States to seek forfeiture of Clarksville Pike as a substitute asset, Marc Sutton Quitclaimed his tenancy by the entirety interest in the property to Barbara Sutton;

G. Whereas, in order to avoid the costs of litigation, the Parties have agreed to finally resolve and settle all claims and disputes between them in the Action on the terms set forth below.

EXHIBIT 1

Now therefore, in consideration of the foregoing Recitals and subject to the terms and conditions contained herein, the Parties agree as follows:

AGREEMENT AND MUTUAL RELEASE

1. The Parties will enter an Agreed Order of Forfeiture Consisting of a $130,000 Money Judgment in Lieu of Forfeiture of 4924 Clarksville Pike, Whites Creek, Tennessee ("Agreed Order"). This Agreed Order will reduce the $1,000,000.00 Money Judgment previously entered against Marc A. Sutton in this Action by $130,000.00 upon payment in full. Once entered by the Court, the United States will record the Agreed Order with the Davidson County Register of Deeds as a lien on the Subject Property. The Lien will be second in priority to the present Bank of America mortgage.

2. Upon payment in full of the Agreed Order, the United States will file a Satisfaction of Judgment Agreed Order along with a Release of Lis Pendens.

3. Claimant will execute a promissory note on Clarksville Pike in favor of the United States in the amount of $130,000.00. This Promissory Note will be deemed satisfied in full upon payment of the Agreed Order, and at time of full payment of the Agreed Order, all appropriate action will be taken to reflect that it has been paid in full.

4. Claimant will make payments to the United States by cashier's check or money order by the first of every month, beginning on March 1, 2014 in the minimum amount of $500.00 until the $130,000 money judgment is paid in full. The payments shall be made payable to the United States Marshals Service, reference CATS Number 13-DEA-380064 and mailed to the United States Attorney's Office, Attention: Asset Forfeiture Unit, 110 Ninth Avenue, South, Suite A-961, Nashville, Tennessee 37203-3870. In the event that Claimant fails to make any payments, the parties agree that the property shall be sold, and the United States shall be paid from the proceeds of the sale after satisfaction of the first mortgage. If any such installment remains unpaid for a period of thirty (30) days, the entire amount, less payments already made, shall be immediately due and payable without demand or notice, said demand and notice being expressly waived.

5. The parties agree that as long as Clarksville Pike remains in Claimant's name and is not transferred to Marc Sutton, the United States will take no further action against Clarksville Pike in this Action unless the contract is breached via a failure to timely remit payments.

6. The Parties agree to execute any documents necessary to execute this contractual agreement.

7. All funds received will be forfeited and deposited in the appropriate Asset Forfeiture fund, credited against the Money Judgment against Marc Sutton in this Action and the Promissory Note and further disbursed according to law.

8. Mutual Specific Releases.

A. In consideration of the terms and provisions of this Settlement Agreement, the sufficiency of which is acknowledged by the execution of this Settlement Agreement, Claimant and Marc Sutton, on one hand, and the United States on the other hand, hereby fully and forever relieve, release, and discharge one another, and any of their respective parents, subsidiaries and affiliated companies, successors, assigns, current and/or former owners, directors, officers, general partners, limited partners, employees, attorneys, representatives, agents, and stockholders, and each of them from any and all debts, liabilities, demands, obligations, promises, acts, contracts, costs, expenses, attorneys' fees, damages, and causes of action of every nature, character, and description, known or unknown, suspected or unsuspected, certain or contingent, arising out of, in connection with, or relating to the claims asserted by the Claimants for any interest they may have now or in the future in or to the Defendant Property that is the subject of this Action or any claims that could have been asserted in this Action (the "Released Claims").

B. Subject to Paragraphs 1-7, the Parties further agree that, except for purposes of enforcing this Settlement Agreement, or otherwise for the purpose of seeking redress for breach of this Agreement, none of the Parties shall in the future institute any suit, charge, complaint, claim, or cause of action at law, in equity, or otherwise, against the others, arising from, in connection with, or relating to the Released Claims.

C. THE RELEASED CLAIMS COVER ALL DAMAGES AND CLAIMS, INCLUDING BUT NOT LIMITED TO THOSE IN CONTRACT AND TORT, WHETHER KNOWN OR UNKNOWN, AND WHETHER ACTUAL AND/OR PUNITIVE. EACH PARTY AND THEIR RESPECTIVE REPRESENTATIVES, HEIRS AND ASSIGNS HEREBY EXPRESSLY WAIVES ANY RIGHT TO THE BENEFIT OF THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO IT MAY HAVE MATERIALLY AFFECTED SETTLEMENT WITH THE DEBTOR.

9. Attorneys' Fees. Pursuant to 28 U.S.C. § 2465, and except as otherwise provided herein, each Party shall bear its own costs and attorneys' fees.

10. Integration Clause. This Settlement Agreement contains the entire agreement of the Parties with regard to the matters set forth and shall be binding upon and inure to the benefit of the Parties hereto and their parent or subsidiary corporations, predecessors, successors, assigns, and each of their respective shareholders, officers, directors, and insurers.

11. Modification. This Settlement Agreement may not be modified, amended or changed in any way unless in a writing executed by each of the Parties and/or the duly authorized representatives of the Parties.

12. Waiver. The failure of any Party to this Settlement Agreement to require the performance of any term or obligation imposed by this Settlement Agreement, or the waiver by any Party of any breach of this Settlement Agreement shall not prevent any subsequent enforcement of such term or obligation nor shall it constitute a waiver of any subsequent breach.

13. Breach of this Agreement. None of the releases set forth herein is intended to or does release any claims arising out of a breach of this Settlement Agreement. The prevailing party in any litigation arising out of the breach of this Settlement Agreement shall be entitled to its attorneys' fees and costs.

14. Authority. The signatories warrant and represent that they are properly empowered to enter into this Settlement Agreement on behalf of the Parties.

15. Jurisdiction and Choice of Law. This Settlement Agreement is entered into in the State of Tennessee and shall be construed and interpreted in accordance with the laws of the State of Tennessee, except for its conflicts of laws provisions. The Parties agree that jurisdiction over any and all disputes regarding the Settlement Agreement shall lie exclusively in the United States District Court for the Middle District of Tennessee, Nashville Division.

16. Execution in Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument binding upon all of the Parties, notwithstanding that all of the Parties are not signatories to the same counterpart.

17. Cooperation of Parties. The Parties acknowledge and agree to cooperate fully and to execute any supplementary documents and to take any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

18. No Admission. This Settlement Agreement has been signed as a compromise and resolution of disputed claims and the execution of this Settlement Agreement is not to be considered as an admission of liability by any Party.

19. Successors and Assigns. This Settlement Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties to this Settlement Agreement and each of them. This Settlement Agreement is intended to and shall release and inure to the benefit of the Parties' respective successors-in-interest, parents, subsidiaries, affiliated and/or related corporations, divisions, owners, officers, directors, partners, agents, employees, representatives, stockholders, accountants, and attorneys, both individually and in the capacity indicated.

20. No Assignment or Transfer of Claims. The Parties warrant and represent that the Parties have not assigned or agreed to assign to any person or entity all or any part of any claims addressed in this Settlement Agreement.

21. Severability. If any term, provision, covenant, or condition of this Settlement Agreement is determined by any court to be invalid, void, or unenforceable, the Parties agree to negotiate in good faith to restore the effect of the provision determined to be invalid.

22. Interpretation. This Settlement Agreement is entered into between financially sophisticated and knowledgeable parties and is entered into by the Parties in reliance upon the economic and legal bargains contained herein and shall be interpreted and construed in a fair and impartial manner without regard to the relative bargaining power of the Parties.

23. Notices. Unless specifically stated otherwise, all notices, documents and demand of any kind which any Party may be required or may desire to serve upon or deliver to any of the other Parties in connection with this Settlement Agreement may be served, at the election of the Party serving the notice, either by personal service or by mailing a copy of the notice or demand by Certified or Registered mail, proper postage pre-paid and return receipt requested, or by fax, addressed to such Party's representatives and attorneys at the addresses set forth below; if any such notice or demand is mailed, it shall be deemed to have been received on the date reflected on the return receipt or if the receipt is refused or such mailing is not accepted, then 14 days after the date of mailing. For any such notice sent by fax it shall also be sent by mail and shall be deemed received on the Court date transmitted if transmission is completed by 5:00 p.m. Central Time, or the next Court day if transmitted after 5:00 p.m. (Central Time) or on a Court holiday or weekend.

If sent to Barbara Sutton or Marc Sutton, it shall be sent to:

Mark Scruggs, Esq.
95 White Bridge Road
Cavalier Building, Suite 508
Nashville, TN 37205
Fax: (615) 356-6954

If sent to the United States, it shall be sent to:

Debra T. Phillips, AUSA
United States Attorney's Office
Middle District of Tennessee
110 Ninth Avenue South, Suite A-961
Nashville, TN 37203
Fax: (615) 401-6626

THIS SETTLEMENT AGREEMENT AND RELEASE IS FULLY AND VOLUNTARILY ENTERED INTO BY THE PARTIES WITHOUT ANY DURESS OR COERCION. THE PARTIES HAVE BEEN GIVEN AN AMPLE AND LENGTHY OPPORTUNITY TO CONSULT WITH COUNSEL, IF THEY SO CHOOSE. THE PARTIES HAVE CAREFULLY AND COMPLETELY READ ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT.

THE PARTIES UNDERSTAND AND AGREE WITH ALL OF THE PROVISIONS AND TERMS STATED ABOVE.

Barbara Sutton Date: 1-14-14
Barbara Sutton, Claimant

Marc A. Sutton Date: 1-14-14
Marc A. Sutton, Claimant

Date: 1-14-14
Mark Scruggs
Attorney for Barbara Sutton and Marc A. Sutton

David Rivera
United States Attorney
Middle District of Tennessee

By Date: 1-14-14
Debra Teufel Phillips
Assistant United States Attorney
Asset Forfeiture Coordinator

True Copy of Certification

I, Debra T. Phillips, do hereby make oath that I am a licensed attorney and/or the custodian of the electronic version of the attached document tendered for registration herewith and that this is a true and correct copy of the original document executed and authenticated according to law.

Debra T. Phillips

State of Tennessee

County of Davidson

Personally appeared before me, Deborah T. Krause, a notary public for this county and state, Debra T. Phillips, who acknowledges that this certification of an electronic document is true and correct and whose signature I have witnessed.

Deborah T. Krause, Notary Public

My commission expires: My Commission Expires: June 21, 2016

Notary Seal

