

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

**October 16, 2012**

**Elisabeth A. Shumaker**  
**Clerk of Court**

UNITED STATES OF AMERICA,

Plaintiff-Counter-Defendant -  
Appellee,

v.

RONALD B. PORATH; MARZELL J.  
PORATH,

Defendants - Counter Claimants -  
Cross Claim Defendants - Appellants,

BATTLE WOLF, a pure trust,

Defendant-Cross Claim-Defendant,

v.

WELLS FARGO & COMPANY,

Defendant-Counter-Claimant-Cross-  
Claimant - Appellee.

No. 12-2137  
(D.C. No. 1:11-CV-00901-LH-LFG)  
(D.C. No. 1:11-CV-01145-LH-LFG)

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**ORDER**

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Before **MURPHY, HARTZ, and O'BRIEN**, Circuit Judges.

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This matter is before the court to consider the parties' responses to this court's order of September 5, 2012 regarding appellate jurisdiction. Upon consideration, this appeal is dismissed.

The United States filed a civil action in district court seeking to reduce outstanding federal income tax assessments to judgment, to foreclose federal tax liens on real property, to force sale of the property, and to obtain a judgment for any amount remaining unpaid after the distribution and application of the proceeds. The government also named Wells Fargo, which held a mortgage on the property, as a defendant in order to determine the priority of its lien. Wells Fargo also brought an action to foreclose on its lien, and named the government as one of the defendants. The district court consolidated the cases.

After Wells Fargo and the United States entered into a stipulation of lien priority, stipulating that Wells Fargo's interest had priority over the federal tax liens, the district court entered judgment. The court dismissed the taxpayers' counterclaims, set aside as fraudulent a transfer of the real property to a trust set up by the taxpayers, found in favor of the United States for the unpaid tax and penalties, and awarded Wells Fargo \$144,582.87 on its claims. Although the judgment stated that the property should be sold, the court did not order the forced sale of the property. Rather, the court ordered the United States and Wells Fargo to file motions detailing the process for selling the property and for distributing the proceeds. The taxpayers appeal.

Under facts similar to those presented here, this court has held that such judgment is not final and appealable.

While the district court has entered judgment in favor of the United States for the dollar amounts of the [taxpayers'] unpaid tax assessments, and has concluded that the government is entitled to

judgment as a matter of law foreclosing the tax liens against the [taxpayers'] property, the court left unresolved the government's ultimate request for relief seeking a forced sale of the property. The district court has not entered the government's proposed order for sale, which would leave nothing to be done but to make the sale and pay out the proceeds. Nor has it ended the litigation by denying the United States' Motion for Sale on the merits.

*United States v. Simons*, 419 Fed. Appx. 852, 856 (10th Cir. 2011) (unpublished) (citations and quotations omitted).

Moreover, because Wells Fargo's case and the government's case were consolidated, all of the claims in both cases must be fully adjudicated before a judgment is considered final for purposes of appeal. *See Trinity Broadcasting Corp. v. Eller*, 827 F2d 673, 675 (10th Cir. 1987).

This court has jurisdiction to review only final decisions, 28 U.S.C. § 1291, and specific types of interlocutory orders not applicable here. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Cunningham v. Hamilton County*, 527 U.S. 198, 204 (1999) (quoting *Van Cauwenberghe v. Biard*, 486 U.S. 517, 521-22 (1988)).

We have reviewed the appellants' response and conclude that their arguments are without merit.

**APPEAL DISMISSED.**

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script that reads "Ellen Rich Reiter".

by: Ellen Rich Reiter  
Jurisdictional Attorney