APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee*, v. KOMRON M. ALLAHYARI, *Defendant*, and SHAUN ALLAHYARI, *Defendant-Appellant.*	No. 18-35956 D.C. No. 2:17-cv-00668-TSZ
UNITED STATES OF AMERICA, *Plaintiff-Appellant*, v. KOMRON M. ALLAHYARI; SHAUN ALLAHYARI, *Defendants-Appellees.*	No. 18-36076 D.C. No. 2:17-cv-00668-TSZ OPINION

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Argued and Submitted February 7, 2020
Seattle, Washington

Filed November 13, 2020

Before: Milan D. Smith, Jr. and N. Randy Smith, Circuit Judges, and John R. Tunheim,[*] Chief District Judge.

Opinion by Chief District Judge Tunheim

SUMMARY[**]

Tax

The panel reversed the district court's determination that Shaun Allahyari's alleged security interest in property owned by his son, Komron Allahyari, a tax delinquent, was not entitled to priority over later-recorded federal tax liens; and remanded to the district court for reconsideration.

At issue in the case was real property owned by Komron Allahyari and two related instruments: (1) the 2005 Deed of Trust; and (2) a deed of trust that secured a $400,000 loan

[*] The Honorable John R. Tunheim, United States Chief District Judge for the District of Minnesota, sitting by designation.

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Komron took out from the Boeing Employees' Credit Union ("BECU") to refinance the real property in 2003. In order to avoid foreclosure, Shaun paid off and took assignment of the 2003 BECU loan and loan security. The Internal Revenue Service determined that Komron owed unpaid taxes, penalties, and interest. The United States filed this civil action to enforce the tax liens. Komron and Shaun argued that the 2005 Deed of Trust and Shaun's interest in the BECU loan should be senior to the tax liens.

The panel held that the district court erred: 1) by holding that the deed of trust between father and son was not entitled to priority over the later-recorded federal tax liens under local law; and 2) by failing to consider whether past consideration was sufficient to support an agreement giving rise to a security interest under Washington law. The panel concluded that the district court applied an incorrect standard of proof under Washington's Fraudulent Transfer Act. In addition, the panel concluded that, because 26 U.S.C. § 7403(a) authorized the United States to subject any property or interest of the delinquent to the payment of such tax or liability, the United States could assert any affirmative defenses that would be available to the delinquent – including that the statute of limitations has run on payments due to senior liens.

The panel remanded for reconsideration of whether Shaun Allahyari had parted "with money or money's worth" when acquiring the 2005 Deed of Trust, and for application of the correct standard of proof and for recalculation of the value of the senior lien, taking into account any statute of limitations defense raised by the United States regarding Washington's applicable six-year statute of limitations.

COUNSEL

Avi J. Lipman (argued), Gregory J. Hollon, and Curtis C. Isacke, McNaul Ebel Nawrot & Helgren PLLC, Seattle, Washington, for Defendant-Appellant/Cross-Appellee.

Komron R. Allahyari, Mercer Island, Washington, pro se Defendant/Cross-Appellee.

Karen G. Gregory (argued) and Deborah K. Snyder, Attorneys; Richard E. Zuckerman, Principal Deputy Assistant Attorney General; Tax Division, United States Department of Justice; for Plaintiff-Appellee/Cross-Appellant.

OPINION

TUNHEIM, Chief District Judge:

Shaun Allahyari ("Shaun") appeals the district court's determination that his alleged security interest in property owned by his son, Komron Allahyari ("Komron"), a tax delinquent, was not entitled to priority over later-recorded federal tax liens. He argues that the district court erred when it found that the alleged security interest was fraudulent under Washington's Fraudulent Transfer Act, Wash. Rev. Code. § 19.40.041(a)(1). The United States cross-appeals the district court's conclusion that it could not, under 26 U.S.C. § 7403, assert a state-law statute-of-limitations defense to the court's valuation of a security interest that was found to be senior to federal tax liens.

We first conclude that the district court erred: (1) by holding that the deed of trust between Shaun and Komron

recorded on July 26, 2005 ("2005 Deed of Trust") was not entitled to priority over the later-recorded federal tax liens under local law; the 2005 Deed of Trust is protected under Washington law; and (2) by failing to consider whether past consideration is sufficient to support an agreement giving rise to a security interest under Washington law. Second, we conclude that the district court applied the incorrect standard of proof to its finding under the Fraudulent Transfer Act. Lastly, we conclude that, because § 7403(a) authorizes the United States to "subject any property, of whatever nature, of the delinquent, or in which [the delinquent] has any right, title, or interest, to the payment of such tax or liability," the United States may assert any affirmative defenses that would be available to the delinquent—including that the statute of limitations has run on payments due to senior liens.

Accordingly, we reverse and remand to the district court for reconsideration of whether Shaun had parted "with money or money's worth" when acquiring the 2005 Deed of Trust, and for application of the correct standard of proof and for recalculation of the value of the senior lien, taking into account any statute of limitations defense raised by the United States regarding Washington's six-year statute of limitations.

FACTUAL AND PROCEDURAL BACKGROUND

At issue in this case are property owned by Komron on Mercer Island and two related instruments: (1) the 2005 Deed of Trust; and (2) a deed of trust ("BECU Deed of Trust") that secured a $400,000 loan Komron took out from the Boeing Employees' Credit Union ("BECU") to refinance the Mercer Island property in 2003.

I. Mercer Island Property Transactions

Komron and Shaun have a long history of financial transactions and entanglements relating to the Mercer Island property. On March 29, 1991, Komron executed a promissory note ("1991 Promissory Note") to his parents, in which Komron promised to pay $50,000 in satisfaction of a loan his parents had given him to purchase the Mercer Island property. On April 22, 1991, Komron and his parents acquired the property. During the years following the 1991 Promissory Note, Shaun regularly requested payment on the note, and Komron failed to make payments until he repaid a significant part of the loan in 1998. Afterwards, Komron's parents transferred their joint interest in the Mercer Island property to Komron, who solely owned it from September 1999 onward.

In 2003, Komron took out a $400,000 loan from BECU, which was secured by the BECU Deed of Trust on the Mercer Island property. In 2010, Shaun learned that Komron was at risk of losing the Mercer Island property because he had defaulted on the BECU loan. In order to prevent foreclosure, Shaun paid off and took an assignment of the 2003 BECU loan and loan security.

After years of failing to file federal income-tax returns, Komron filed for tax years 1999–2002 and 2004 in April of 2005. The IRS subsequently determined that Komron owed unpaid income taxes, trust-fund recovery penalties, and interest. Komron failed to make payment in full on these assessments and, at the time of the district court decision in September 2019, owed the United States $3.9 million.

Initially, Komron hid these debts from Shaun. When Komron eventually told Shaun about the outstanding tax liabilities, Shaun became concerned that the United States

would be able to record tax liens against the Mercer Island property and then force the sale of the property to satisfy the liens. Shaun and Komron then executed the 2005 Deed of Trust on the Mercer Island property, which purported to secure payment of $471,322 at 12% interest. This amount apparently represented the preexisting debts owed by Komron to Shaun, because Shaun stated (both in his deposition and at trial) that he did not loan Komron any additional money at the time the 2005 Deed of Trust was executed.

The 2005 Deed of Trust was recorded on July 26, 2005. The first notice of federal tax liens was recorded against Komron on October 4, 2005.

When the United States filed a civil action to enforce the tax liens in April 2017, Komron and Shaun argued that the 2005 Deed of Trust and Shaun's interest in the BECU loan should be senior to the tax liens. The United States argued that the 2005 Deed of Trust was not a security interest under the Internal Revenue Code because it was a fraudulent conveyance under Washington law. It also argued that some scheduled payments under the BECU Deed of Trust were time barred by Washington's six-year statute of limitations and therefore should not be included in the value of any senior claim under the BECU Deed of Trust.

II. Proceedings in the District Court

After a bench trial, the district court found that the United States had valid federal tax liens on the Mercer Island property and was therefore entitled to foreclose those liens and sell the property. The district court also found that Shaun had priority position over the federal tax liens based on the BECU Deed of Trust but not the 2005 Deed of Trust.

The district court reasoned that Shaun did not have priority based on the 2005 Deed of Trust because it was not a security interest under 26 U.S.C. § 6323(a) and because the 2005 Deed of Trust was a fraudulent conveyance under state law. First, the district court determined that the 2005 Deed of Trust did not entitle Shaun to priority position because Shaun had either actual or constructive knowledge of Komron's tax liabilities prior to recording the 2005 Deed of Trust. It also determined that, because there had been no exchange of money or money's worth when the 2005 Deed of Trust was granted or recorded, it was not a security interest under federal law. Finally, the district court found that the 2005 Deed of Trust was invalid under Washington's Uniform Fraudulent Transfer Act. Therefore, Shaun did not qualify as a holder of a security interest based on the 2005 Deed of Trust and the United States' tax liens had priority.

However, the district court did conclude that Shaun was entitled to priority over the United States' federal tax liens with respect to the BECU Deed of Trust. Shaun "stepped into BECU's 'shoes' when he purchased the BECU loan," so the assignment was a bona fide debt. The district court determined that Shaun is entitled to the same priority position as BECU would have had based on the original loan.

The district court ordered the Mercer Island property to be sold and, after deducting the costs of sale and any amount owing in back taxes to King County, found that Shaun was entitled to the next $510,766.26 of the proceeds, based on the principal and interest owing on the BECU Deed of Trust. The district court then held that the United States was entitled to the remainder of the proceeds of the sale until its tax liens were satisfied.

Plaintiffs timely appealed and the United States timely cross-appealed.

JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction pursuant to 28 U.S.C. § 1291. We review factual findings by the district court for clear error and review its conclusions of law de novo. *Magnuson v. Video Yesteryear*, 85 F.3d 1424, 1427 (9th Cir. 1996) (citing Fed. R. Civ. P. 52(a).

ANALYSIS

When a person is "liable to pay any [federal] tax" but, "after demand," neglects or refuses to pay, a lien equal to the amount past due—plus penalties, costs, and interest—attaches to "all property and rights to property, whether real or personal, belonging to such person." 26 U.S.C. § 6321. A tax lien created under § 6321 "shall not be valid as against any . . . holder of a security interest . . . until notice thereof" is given. *Id.* § 6323(a). The putative holder of such a security interest bears the burden of showing that they qualify for the protection of § 6323(a). *See, e.g.*, *MacKenzie v. United States*, 109 F.2d 540, 542 (9th Cir. 1940) (holding that, under the predecessor of § 6323(a), "in order to be protected, the claimant must show" that they are within one of the protected third-party classes).

The district court found that Shaun had failed to meet his burden. *United States v. Allahyari*, No. C17-668, 2018 WL 4357487, at *7 (W.D. Wash. Sept. 13, 2018). It held that the 2005 Deed of Trust was not a "security interest" for the purposes of § 6323 because it failed to meet the definition of that term as provided in § 6323(h). *Id*.

I. Security Interest

Section 6323 defines a security interest as "any interest in property acquired by contract for the purpose of securing payment or performance of any obligation or indemnifying against loss or liability." 26 U.S.C. § 6323(h)(1). The statute also requires that (A) "the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation" and (B) "at such time, the holder has parted with money or money's worth." *Id.*

The district court determined that Shaun failed on both the protected-by-local-law and money-or-money's-worth prongs. The 2005 Deed of Trust was not protected by local law "because Shaun had actual and/or constructive notice of Komron's tax liabilities prior to recording the 2005 Deed of Trust." *Allahyari*, 2018 WL 4357487, at *6. The district court also held that Shaun failed to "contemporaneously" part with money or money's worth. *Id.* at *7. We will address each conclusion in turn.

A. Notice

The district court determined that § 6323 would afford priority to a security interest, but only if that interest "has become protected under local law," which thereby implicated Washington's race-notice recording statute. *Id.* at *6 (quoting 26 U.S.C. § 6323(h)(1)).[1] With this, we agree.

[1] The district court cited *Kim v. Lee*, 31 P.3d 665, 668, *as amended* (Dec. 12, 2001), *opinion corrected*, 43 P.3d 1222 (Wash. 2001), when reaching its conclusion. The citation to *Kim*—a case that revolved primarily around questions of equitable subrogation and was not a model of clarity—has created some confusion among the parties. We find that another case, interpreting Washington's recording statute to confer

The district court then reasoned that, because Shaun had either actual or constructive notice of the federal tax liens, his security interest was not entitled to priority under § 6323. *Id.* at *6. We disagree.

First, "we must keep in mind that '[a] federal tax lien is wholly a creature of federal statute,'" *TKB Int'l, Inc. v. United States*, 995 F.2d 1460, 1463 (9th Cir. 1993) (quoting *Kivel v. United States*, 878 F.2d 301, 303 (9th Cir. 1989)), and that federal law governs the priority of competing liens, *Aquilino v. United States*, 363 U.S. 509, 513–15 (1960). As we noted in *MacKenzie*, before 1913, "no third person was protected under any circumstances from an unrecorded federal tax lien." 109 F.2d at 542. At that time, however, Congress amended the federal tax lien statute to protect mortgagees, purchasers, and judgment creditors against unrecorded federal tax liens, *id.*, and, in 1966, extended the same protection to holders of a security interest, Federal Tax Lien Act of 1966, Pub. L. 89-719, 80 Stat. 1125, 1125.[2] The relevant provision, § 6232(a), now reads: "The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary." 26 U.S.C. § 6323(a).

In short, federal tax liens are invalid against the interests held by these specific classes until the United States properly

---

superior status only to one who acquires a property interest with "no actual or constructive notice" of another's prior interest, is more apt. *See Tomlinson v. Clarke*, 825 P.2d 706, 712 (Wash. 1992).

[2] For all other third parties, the common-law principle, "the first in time is the first in right," remains the rule. *United States v. McDermott*, 507 U.S. 447, 449 (1993).

records notice of the liens. *TKB*, 995 F.2d at 1466; *see also United States v. Vohland*, 675 F.2d 1071, 1074–75 (9th Cir. 1982). Further, because "'we must deem the United States' lien to have commenced no sooner than the filing of notice,"' it is "unimportant" whether a party protected under § 6323(a) had notice of any prior-existing but not-yet recorded federal tax liens. *TKB*, 995 F.2d at 1464–65 (quoting *United States v. McDermott*, 507 U.S. 447, 449 (1993)). In fact, as we noted in *TKB*, Congress explicitly rejected an attempt to preclude protection under §6323(a) for those who acquired an interest in property with actual knowledge of federal tax liens.[3] *See id.* at 1466 n.4.

Therefore, we extend our holding in *TKB*, which involved a subsequent purchaser, to holders of security interests, because both classes share the same level of protection under § 6323(a).[4] We thus conclude that § 6323(a) protects security interests acquired with or without knowledge of unfiled or later filed tax liens. *Accord In re Haas*, 31 F.3d 1081, 1088 (11th Cir. 1994) ("Actual knowledge by a secured creditor of the IRS's lien prior to filing does not enhance the IRS's position vis-a-vis that creditor[.]"). Accordingly, Shaun's actual knowledge of the federal tax liens, at least three of which had already attached to Komron's property when he recorded his 2005 Deed of

[3] This rejection occurred before the 1966 amendment of § 6323(a), which added security interests to the protected list, but this does not alter our analysis, for Congress specifically added security interests to the list of interests protected by § 6323(a), whereas other interests protected under other provisions of § 6323 are protected by differing means.

[4] We note that *TKB* similarly drew upon *McDermott*, which involved a judgment creditor, to inform its analysis of § 6323(a), as, again, both interests are provided for under § 6323(a), whereas other protected interests are covered separately.

Trust, did not destroy the priority status of his security interest, for notice of these liens was only recorded after his deed was. The district court erred by relying on Washington law and reaching the opposite conclusion.

However, this is not to say that the state law referenced by § 6323 in relation to security interests is wholly unimportant to our analysis. Instead, while federal law determines priority between competing interests, state law helps determine whether Shaun's 2005 Deed of Trust is a qualifying "security interest" under § 6323, as the first requirement of the statute is that a security interest "has become protected under local law against a subsequent judgment lien[.]" 28 U.S.C. § 6323(h)(1).

Therefore, for Shaun's security interest to qualify for priority, it must have become protected under local law before the United States filed notice of its tax liens. Under Washington law, a security interest must be perfected to be protected against a subsequent judgment lien. Wash. Rev. Code §§ 62A.9A-102(a)(52)(A), 62A.9A-317(a)(2)(A). When a security interest is created by deed of trust, an individual must record the deed in the county where the property is located to perfect the security interest. Wash. Rev. Code §§ 61.24.020, 62A.9A.308(e), 65.08.060, 65.08.070.[5] Accordingly, under Washington state law,

[5] The district court read the significance of § 65.08.070 backwards in time; that is, it assessed whether Shaun's security interest would have been protected against an already perfected judgment lien creditor. *Allahyari*, 2018 WL 4357487, at *6. Section 6323(h)(1), however, clearly states that the relevant inquiry is whether the security interest is protected against "subsequent" judgment liens. That is, § 6323(h)(1) describes the legal status a security interest must obtain to have priority over interests perfected later in time. This is further indicated by Congress's use of the present perfect, "has become," which signifies an

Shaun's security interest would have been subject to destruction by a subsequent judgment lien only until he recorded the 2005 Deed of Trust.[6]

By recording the 2005 Deed of Trust on July 26, 2005, Shaun perfected his security interest under Washington state law and protected it from that day forward. Because he perfected the 2005 Deed of Trust before the United States filed notice of its tax liens, we hold that Shaun's security interest has priority over the federal tax liens, *see McDermott*, 507 U.S. at 450, at least as far as the first prong of § 6323(h)(1) is concerned.

B. Money or Money's Worth

The district court concluded that Shaun failed to satisfy the money-or-money's-worth prong of § 6323(h)(1) because there was no contemporaneous exchange. Although the term

---

action that began in the past and extends into the present, or until the United States files notice of its tax lien. *See, e.g., In re Restivo Auto Body, Inc.*, 772 F.3d 168, 174–75 (4th Cir. 2014).

[6] We note that Washington state law allows a potential judgment lien creditor to file a *lis pendens*, which provides notice in much the same way as recording notice of a federal tax lien does. *See* Wash. Rev. Code. § 4.28.320. We also note that sister circuits have interpreted the phrase "protected under local law against a subsequent judgment lien" to be equivalent to being protected against a "lien creditor" as defined by the Uniform Commercial Code, *see In re Haas*, 31 F. 3d at 1087; *Dragstrem v. Obermeyer*, 549 F.2d 20, 25 (7th Cir. 1977), which Washington state law mirrors, *compare* U.C.C. § 9-317(a)(2) (formerly § 9-301), *with* Wash. Rev. Code § 62A.9A-317(a)(2). Moreover, the U.C.C. considers knowledge, actual or otherwise, to be irrelevant when determining the priority between competing security interests. *See, e.g.*, U.C.C. § 9-322 cmt. n.4.

is not defined in § 6323, the regulation interpreting the statute defines "money or money's worth" as:

> tangible or intangible property, services, and other consideration reducible to a money value. Money or money's worth also includes any consideration which otherwise would constitute money or money's worth under the preceding sentence which was parted with before the security interest would otherwise exist if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest . . . .

Treas. Reg. § 301.6323(h)-1(a)(3) (as amended in 2011).[7] The Treasury Regulation does not itself require a "contemporaneous" exchange. Instead, it requires determination of whether state law allows past consideration to give rise to a security interest. The district court did not address this question under Washington law—instead citing to a Fourth Circuit case, the facts of which did not necessitate a past-consideration analysis—and erred by assuming contemporaneous exchange was necessary. On remand, to determine whether Shaun "parted with money or money's worth," the district court must determine "whether past consideration is sufficient to support an agreement giving rise to the security interest" under Washington law.

[7] The 2011 amendment added the requirement that, even if past consideration was allowable under local law, "the grant of the security interest is not a fraudulent transfer under local law or 28 U.S.C. § 3304(a)(2)." 76 Fed. Reg. 18384, 18388 (Apr. 4, 2011). However, this amendment only applies after April 4, 2011 and therefore is immaterial here.

II. Fraudulent Transfer

In addition to concluding that the 2005 Deed of Trust was not a security interest under § 6323, the district court also held that the 2005 Deed of Trust was a fraudulent transfer in violation of state law "because Komron intended to 'hinder, delay, or defraud' the United States." *Allahyari*, 2018 WL 4357487, at *7 (quoting Wash. Rev. Code § 19.40.041(a)(1) (2004) ("A transfer made . . . by a debtor is fraudulent . . . if the debtor made the transfer . . . [w]ith actual intent to hinder, delay, or defraud[.]")). The district court based this conclusion on its determination that the United States "ha[d] established the elements of a fraudulent transfer by a preponderance of the evidence." *Id.* at *8.

Washington has long required clear and satisfactory proof to find a fraudulent transfer under the "hinder, delay, or defraud" prong of section 19.40.041. *See, e.g.*, *Clearwater v. Skyline Const. Co., Inc.*, 835 P.2d 257, 266 (Wash. Ct. App. 1992) (applying the clear-and-satisfactory-proof standard to Wash. Rev. Code § 19.40.041); *Sparkman & McLean Co. v. Derber*, 481 P.2d 585, 591 (Wash. Ct. App. 1971) (applying the clear-and-satisfactory-proof standard to Washington's previous fraudulent-transfer statute (citing *Rohrer v. Snyder*, 69 P. 748, 750 (Wash. 1902) ("Where the good faith of a conveyance is assailed, it is not enough that the evidence may cause a suspicion as to its good faith. The evidence must be clear and satisfactory, and such as convinces the mind that the conveyance is in reality fraudulent.")).

The United States argues otherwise,[8] relying on a 2013 decision from the bankruptcy court of the Western District of Washington, which stated that "[t]he Trustee, as plaintiff, has the burden of proving the elements of a fraudulent conveyance under federal and state law by a preponderance of the evidence." *In re Consol. Meridian Funds*, 487 B.R. 263, 267 (Bankr. W.D. Wash. 2013). However, that decision cites no authority and appears simply to misstate the law. The United States also relies on a comment from the Uniform Voidable Transactions Act ("UVTA") which states "proof of intent to 'hinder, delay, or defraud' a creditor . . . is sufficient if made by a preponderance of the evidence." Unif. Voidable Transactions Act § 4, cmt. 10 (Unif. Law Comm'n 2014). The comment reflects the addition in 2014 of a subsection (c), which specifically adopts a preponderance-of-the-evidence standard of proof. *Id.* § 4(c). Washington did not adopt the UVTA until 2017, 2017 Wash. Sess. Laws 238, 245, and it applies only to transfers made after July 23, 2017. *Id.* at ii. Therefore, both authorities on which the United States relies are inapposite. Because the transfer at issue in this case took place more than a decade before Washington adopted the UVTA, the clear-and-substantial-proof standard applies to whether the 2005 Deed of Trust is a fraudulent transfer under the then-applicable version of Wash. Rev. Code § 19.40.41(a)(1) (2004).

[8] In his opening brief, Shaun noted that the standard of proof for intent to hinder, delay, or defraud is clear and satisfactory proof. Although Shaun did not argue further regarding the standard of proof, the United States argued in its response that the district court had correctly weighed the evidence of fraud using the preponderance-of-the-evidence standard. Shaun then extensively argued the standard-of-proof issue in his response brief. Because Shaun cited the correct standard in his opening brief and the United States provided contrary argument in its response, we conclude Shaun has not forfeited the argument.

Because the district court used the incorrect legal standard in making its determinations, we remand for the district court to reweigh the evidence using the clear-and-satisfactory-proof standard of proof.[9]

III. The United States' Cross Appeal

The United States may bring a civil action to enforce a tax lien in a district court and "to subject any property, of whatever nature, of the delinquent, or in which [the delinquent] has any right, title, or interest, to the payment of such tax or liability." 26 U.S.C. § 7403(a). The district court must then "adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property" and, if the court concludes the United States has a "claim or interest," it will generally be obliged to "decree a sale of such property." *Id.* § 7403(c); *see also United States v. Rodgers*, 461 U.S. 677, 706–11 (1983)) (acknowledging that Congress amended § 7403(c) to read that district courts "*may* decree a sale" in 1936 but holding that district courts do not have "unbridled discretion" to decline to do so).

The United States argued in the district court that, whatever the value of Shaun's senior lien from the BECU Deed of Trust, it must not include the value of payments for which the six-year statute of limitations had run. The district

[9] In its response, the United States argues for the first time that the 2005 Deed of Trust could also be found to be a fraudulent transfer under Wash. Rev. Code § 19.40.051(b) (2004), presumably because that subsection requires a lower standard of proof than section 19.40.41(a)(1) (2004). However, because the United States did not raise this issue before the district court, we will not consider it. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010) ("An issue will generally be deemed waived on appeal if the argument was not raised sufficiently for the trial court to rule on it." (cleaned up)).

court did not address this argument directly; instead it simply concluded that "Shaun is entitled to the same priority position for the interest accrued on the BECU Loan" and calculated the interest as $127,721.52. *Allahyari*, 2018 WL 4357487, at *9.

Washington has a six-year statute of limitations for any "liability express or implied arising out of a written agreement." Wash. Rev. Code § 4.16.040(1). This statute of limitations applies to monthly installment payments under a deed of trust, as was the case with the BECU Deed of Trust. *See Edmundson v. Bank of Am.*, 378 P.3d 272, 277–78 (Wash. Ct. App. 2016) (holding that the six-year statute of limitations begins to run "for each installment [payment] from the time it became due"). The United States argues that the district court erred by failing to calculate and exclude from its valuation of Shaun's BECU Deed of Trust any payments that would be subject to the relevant statute of limitations.

When "subject[ing] any property . . . in which [the tax delinquent] has any right, title or interest"—that is, when identifying assets to be sold in order to satisfy the lien—the United States "steps into the taxpayer's shoes" and "acquires whatever rights the taxpayer himself possesses." *United States v. Nat'l Bank of Commerce*, 472 U.S. 713, 725 (1985) (internal quotation marks omitted).[10] Among the rights that Komron possessed vis-à-vis the BECU Deed of Trust was the ability to assert the defense that some past-due payments

[10] Although *National Bank of Commerce* concerned the ability of the United States to reach funds from a bank account in which the tax delinquent had a shared contractual right to withdraw and was based on a tax levy rather than a lien action, the Supreme Court's statement that the United States "steps into the taxpayer's shoes" cited to the section of *Rodgers* relating to § 7403. 472 U.S. at 725.

are barred by the six-year statute of limitations. Once the United States stepped into Komron's shoes, via a § 7403 action, there became no reason why it could not assert that defense.

Shaun argues, as he did below, that the United States cannot assert the statute-of-limitations defense because it lacks standing to do so, citing cases relating to third-party enforcement of contracts. This argument is unavailing. The United States is no longer a stranger to the contract between Shaun and Komron. Because the district court determined that the United States has a "claim or interest" in the property, the United States is now standing in Komron's place relative to any encumbrances upon the property. Although Komron might have chosen not to assert such a defense against his father, there is no legal basis to deny that ability to the United States once it has exercised its rights under § 7403.

Because the district court did not consider the effect of the six-year statute of limitations when calculating the value of Shaun's senior lien under the BECU Deed of Trust, we remand for the district court to properly recalculate the value.

CONCLUSION

For the foregoing reasons, we reverse the district court and remand for the district court to apply the correct standard of proof and to recalculate the value of the senior lien, taking into account any statute of limitations defense raised by the United States regarding Washington's six-year statute of limitations.

REVERSED and **REMANDED.**

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. KOMRON M. ALLAHYARI and SHAUN ALLAHYARI, Defendants.	C17-668 TSZ FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER came on for a bench trial on September 5, 2018. The plaintiff was represented by Yael Bortnick and Nithya Senra, attorneys for the U.S. Department of Justice, Tax Division. Defendant Shaun Allahyari was present and represented by Avi Lipman and Curtis Isacke of McNaul Ebel Nawrot & Helgren PLLC. Defendant Komron Allahyari appeared pro se. At the conclusion of trial, the Court took the matter under advisement.

The IRS filed this action on April 28, 2017. On June 21, 2017, Shaun Allahyari and Komron Allahyari filed their Answer. On July 2, 2018, a Stipulation for Entry of Partial Judgment (the "Stipulated Judgment") was entered, thereby reducing Komron Allahyari's tax debt to judgment (docket no. 50). The Stipulated Judgment resolved

Counts One, Two, and Three of the First Amended Complaint (docket no. 29). By Minute Order dated July 30, 2018 (docket no. 62), the Court granted partial summary judgment in favor of Shaun Allahyari upholding in first priority the Deed of Trust and related promissory note ("2003 Deed of Trust") assigned to Shaun Allahyari by the Boeing Employees Credit Union ("BECU"), senior to the tax liens of the IRS. The Court reserved for trial the determination of whether the 2005 Deed of Trust claimed by Shaun Allahyari is a valid lien on the property, whether the 2005 Deed of Trust is entitled to priority status relative to the IRS's liens, and whether any interest that has accrued on the amount paid by Shaun Allahyari to BECU to obtain the 2003 Deed of Trust is entitled to priority over the IRS's liens. Having heard the evidence and reviewed the exhibits admitted at trial, the Court now makes the following findings and conclusions:

I. FINDINGS OF FACT

1. Shaun and Kathryn Allahyari married in 1962. Pretrial Order, docket no. 85, Admitted Fact (hereinafter "Admitted Fact") ¶ 1.

2. Shaun and Kathryn Allahyari have three children: Sandra, Komron, and Karin. *Id.* ¶ 2.

3. After Komron[1] graduated from law school, Shaun advised him to invest in real estate. *Id.* ¶ 4.

4. On April 22, 1991, Komron, Shaun, and Kathryn Allahyari acquired a parcel of real property located at 3453 77th Place S.E., Mercer Island, Washington 98040

[1] Throughout these Findings and Conclusions, the Court will refer to Shaun Allahyari and Komron Allahyari by their first names in order to avoid confusion.

(the "Subject Property") via a Statutory Warranty Deed. *Id.* ¶ 5; Ex. 3. The Court incorporates by reference the legal description contained in the Statutory Warranty Deed. Ex. 3.

5. The initial purchase price for the Subject Property was $205,000, of which the Allahyaris paid $40,000 as a down payment and borrowed the remainder. *Id.* ¶ 6.

6. Shaun borrowed $40,000 for the down payment from a line of credit. *Id.* ¶ 7.

7. Shaun and Komron refer to the $40,000 as a loan from Shaun to Komron ("$40,000 transfer"). *Id.* ¶ 8. At all times material, both Shaun and Komron understood and agreed this was a loan and not a gift.

8. A promissory note (the "Promissory Note"), which is dated March 29, 1991 states that "FOR VALUE RECEIVED ($50,000), Komron" promises to pay Shaun and Kathryn Allahyari "the total sum of this note under the terms and conditions set forth herein." *Id.* ¶ 9, Ex. 4.

9. The Promissory Note at paragraph 2 provides as follows:

> 2. PAYMENT: Payment shall be made at the above address via check by Maker, upon the occurrence of one or more of the following contingencies:
>
> 2.1 The principal amount, repaid from Maker's salary at Ulin Dann and Lambe or if the subject real property is rented and there is "net" rental income; or
>
> 2.2 If Maker starts his own practice, repaid from proceeds of his law practice when the "net" income from the practice exceeds $100,000.

Admitted Fact ¶ 10, Ex. 4.

10. In 2015, the IRS issued a summons to Shaun Allahyari, *see* Declaration of David S. Choi, Ex. 24, to provide testimony and records related to the mortgage held by Shaun with respect to the Subject Property.

11. When Komron and Shaun were interviewed by Internal Revenue Officer John Curt in 2015 in response to the summons described in paragraph 10 of these Findings of Fact, they testified that no payments had ever been made from Komron to Shaun and neither remembered the existence of the Promissory Note. Ex. 24.

12. Komron worked for Ulin Dann and Lambe for one to two years after he graduated from law school until the firm split up in the early 1990s. Admitted Fact ¶ 11.

13. Komron started his own practice in January or February of 1993. *Id.* ¶ 13.

14. Komron made no payments to Shaun for the $40,000 transfer until 1998. Admitted Fact ¶ 18.

15. During the years following the execution of the Promissory Note, however, Shaun regularly requested repayment by Komron.

16. In 1998, Komron settled a large case, for which he received $435,000 in attorney's fees. *Id.* ¶ 19.

17. After receiving the $435,000 in fees, Komron asked Shaun how much he owed Shaun for the $40,000 transfer. *Id.* ¶ 20.

18. Shaun told Komron to pay, and Komron paid Shaun $1,069.55 on March 12, 1998, $36,637.46 on June 25, 1998, and $200 on July 9, 1998. *Id.* ¶ 21.

19. Both Shaun and Komron understood that these payments represented partial repayment of loans made by Shaun to Komron. Neither party intended these payments to represent full satisfaction of the debt.

20. After Komron made the payments described in paragraph 18, Shaun and Kathryn transferred their joint interest in the Subject Property to Komron via quitclaim deed, and the property was then solely owned by Komron. Admitted Fact ¶ 22; Ex. 8. From September 10, 1999, until at least August 31, 2018, the Subject Property has remained in Komron's name.

21. Beginning in January 2000, Shaun made a series of additional transfers to Komron (the "post-2000 transfers"). *Id.* ¶ 23; Ex. 101. At all times material Shaun and Komron intended these post-2000 transfers to be loans and not gifts. The Court makes no finding as to the total amount of the loans and repayments between Shaun and Komron or the accuracy of Exhibits 101 and 102.

22. Shaun borrowed from lines of credit he had with US Bank and Washington Mutual Bank to make the loans to Komron. Admitted Fact ¶ 24.

23. Komron's financial status in 2000 and thereafter was not good: he had borrowed significant sums against the Subject Property, and he was unable to make payments owed on various debts and business obligations without loans or assistance from his father. During trial, Komron explained that he had invested heavily in the stock market, lost substantial amounts of money, and took out additional loans to obtain more money to invest. He also explained that during this time he was sometimes unable to make payments or meet other expenses—for example, Komron received a series of loans

from his father in order to meet his payroll obligations to his employees. By about 2005, Komron owed the IRS more than a million dollars in taxes, penalties, and interest.

24. An "Addendum and Promissory Note," ("2000 Addendum"), dated February 25, 2000, states as follows: "Komron Allahyari ('Maker') currently owes Shaun Allahyari ('Holder') certain monies with interest (12 percent) to be calculated under a previous Promissory Note dated March 1991 ('Original Note'), but Maker desires to obtain additional loans on the account under the terms and conditions set forth herein. . . . Payment shall be made under the terms of the Original Note with the same 12 percent interest rate on any subsequent loans." Admitted Fact ¶ 25, Ex. 9.

25. Shaun was always concerned with being repaid for the loans he made to his son, but he was also concerned with seeing Komron succeed in his legal practice and other business endeavors.

26. In 2003, Komron took out a $400,000 loan from the Boeing Employees' Credit Union ("BECU Loan"), which was secured by a Deed of Trust ("BECU Deed") on the Subject Property. Admitted Fact ¶ 27; Ex. 10.

27. The BECU Loan included an Adjustable Rate Rider. Admitted Fact ¶ 30.

28. According to the Adjustable Rate Rider, the BECU note provided for an initial interest rate of 4.375%, which could change on September 1, 2006, and every twelve months thereafter. *Id.* ¶ 31; Ex. 10.

29. The amount of interest was tied to the weekly average yield on 1-year United States Treasury securities, and could never increase or decrease by more than two percentage points in any year. Admitted Fact ¶ 32; Ex. 10.

30. The interest rate could never exceed 10.375% and did not establish a minimum interest rate after the first "Change Date" of September 1, 2006. Admitted Fact ¶ 33; Ex. 10.

31. The Adjustable Rate Rider requires written notice be given to the borrower before a change is made to the payment amount. Admitted Fact ¶ 34.

32. The BECU Loan had a fixed schedule for repayments, with a maturity date of September 1, 2033. *Id.* ¶ 35.

33. Komron filed his IRS Forms 1040 (U.S. Individual Income Tax Return) for tax years 1999-2002 and 2004 in April 2005. *Id.* ¶ 36. Prior to the spring of 2005, Komron never told Shaun that he had failed to file tax returns and that he had incurred significant tax liability in those years.

34. Komron's Forms 1040 filed in 2005 showed taxes owing, but he did not submit payment with his returns. *Id.* ¶ 37.

35. The IRS made timely assessments against Komron for unpaid income taxes, trust fund recovery penalties, interest, and other statutory additions in the following amounts. *Id.* ¶ 38.

Tax Period Ending	**Tax Type**	**Assessment Date**	**Assessment Amount and Type of Assessment**	
12/31/1999	Form 1040	07/25/2005	Tax Assessed	$22,270.00
		"	Estimated Tax Penalty	$ 861.98
		"	Late Filing Penalty	$4,135.50
		"	Failure to Pay Tax Penalty	$4,595.00
		"	Interest Assessed	$ 8,401.20
		11/11/2013	Interest Assessed	$ 18,760.81

Tax Period Ending	Tax Type	Assessment Date	Assessment Amount and Type of Assessment	
12/31/2000	Form 1040	08/01/2005	Tax Assessed	$ 60,603.00
		"	Estimated Tax Penalty	$ 1,056.25
		"	Late Filing Penalty	$ 13,533.30
		"	Failure to Pay Penalty	$ 15,037.00
		"	Interest Assessed	$ 18,825.03
		11/11/2013	Interest Assessed	$ 56,001.61
12/31/2001	Form 1040	05/30/2005	Tax Assessed	$ 63,009.00
		"	Estimated Tax Penalty	$ 2,447.00
		"	Late Filing Penalty	$ 14,177.02
		"	Failure to Pay Penalty	$ 11,971.71
		"	Interest Assessed	$ 12,665.70
		11/09/2009	Failure to Pay Penalty	$ 3,780.54
		11/11/2013	Interest Assessed	$ 55,967.57
12/31/2002	Form 1040	05/23/2005	Tax Assessed	$454,994.00
		"	Late Filing Penalty	$102,373.65
		"	Failure to Pay Penalty	$59,149.22
		"	Interest Assessed	$56,210.15
		10/24/2005	Fees and Collection Costs	$77.28
		11/09/2009	Failure to Pay Penalty	$54,599.28
		11/11/2013	Interest Assessed	$366,561.03
		07/13/2015	Fees and Collection Costs	$1,762.00
		11/09/2015	Fees and Collection Costs	$196.00
12/31/2004	Form 1040	05/23/2005	Tax Assessed	$141,692.00
		"	Failure to Pay Penalty	$1,416.92
		"	Interest Assessed	$887.79
		11/08/2010	Failure to Pay Penalty	$34,006.08
		11/11/2013	Interest Assessed	$80,233.44
12/31/2005	Form 1040	02/18/2008	Additional Tax Assessed	$1,023.00
		"	Interest Assessed	$158.79
		11/08/2010	Failure to Pay Penalty	$253.02
		11/11/2013	Interest Assessed	$322.29
12/31/2006	Form 1040	11/26/2007	Tax Assessed	$386,959.00
		"	Estimated Tax Penalty	$709.12
		"	Failure to Pay Penalty	$14,142.12
		"	Interest Assessed	$17,870.56
		11/08/2010	Failure to Pay Penalty	$74,246.13
		11/11/2013	Interest Assessed	$112,806.47

Tax Period Ending	Tax Type	Assessment Date	Assessment Amount and Type of Assessment	
12/31/2007	Form 1040	12/08/2008	Tax Assessed	$47,512.00
		"	Estimated Tax Penalty	$1,405.39
		"	Late Filing Penalty	$1,823.89
		"	Failure to Pay Penalty	$1,621.24
		"	Interest Assessed	$1,516.03
		02/09/2009	Fees and Collection Costs	$130.00
		11/08/2010	Failure to Pay Penalty	$4,661.06
		11/11/2013	Interest Assessed	$9,585.21
		"	Failure to Pay Penalty	$3,850.44
12/31/2008	Form 1040	11/23/2009	Tax Assessed	$40,838.00
		"	Estimated Tax Penalty	$990.53
		"	Late Filing Penalty	$1,799.50
		"	Failure to Pay Penalty	$1,599.56
		"	Interest Assessed	$992.46
		11/11/2013	Interest Assessed	$6,561.01
		"	Failure to Pay Penalty	$8,397.68
12/31/2009	Form 1040	12/06/2010	Tax Assessed	$256,719.00
		"	Estimated Tax Penalty	$1,195.00
		"	Late Filing Penalty	$11,552.35
		"	Failure to Pay Penalty	$10,268.76
		"	Interest Assessed	$6,762.91
		04/18/2011	Fees and Collection Costs	$124.00
		08/15/2011	Failure to Pay Penalty	$10,268.76
		11/11/2013	Interest Assessed	$28,862.29
		"	Failure to Pay Penalty	$34,657.06
12/31/2011	Form 1040	11/19/2012	Tax Assessed	$43,827.00
		"	Estimated Tax Penalty	$2.00
		"	Failure to Pay Penalty	$1,753.08
		"	Interest Assessed	$790.14
		03/04/2013	Fees and Collection Costs	$110.00
12/31/2012	Form 1040	10/21/2013	Tax Assessed	$35,666.00
		"	Estimated Tax Penalty	$639.00
		"	Failure to Pay Penalty	$1,426.64
		"	Interest Assessed	$704.53
		08/11/2014	Interest Assessed	$781.80
		"	Failure to Pay Penalty	$2,318.29
		03/23/2015	Fees and Collection Costs	$190.00
12/31/2013	Form 1040	12/01/2014	Tax Assessed	$44,193.00
		"	Estimated Tax Penalty	$783.00
		"	Failure to Pay Penalty	$1,767.72
		"	Interest Assessed	$843.34
03/31/2000	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$4,561.47
		01/08/2007	Fees and Collection Cost	$128.00
		09/15/2008	Fees and Collection Costs	$84.00
		09/22/2008	Fees and Collection Costs	$222.00
		11/11/2013	Interest Assessed	$2,290.90

Tax Period Ending	Tax Type	Assessment Date	Assessment Amount and Type of Assessment	
06/30/2000	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$8,857.80
		11/11/2013	Interest Assessed	$4,233.57
09/30/2000	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$7,787.98
		11/11/2013	Interest Assessed	$3,722.24
12/31/2000	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$7,625.42
		11/11/2013	Interest Assessed	$3,644.55
03/31/2001	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$8,152.07
		11/11/2013	Interest Assessed	$3,896.25
06/30/2001	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$8,768.26
		11/11/2013	Interest Assessed	$4,190.76
09/30/2001	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$7,248.18
		11/11/2013	Interest Assessed	$3,464.26
12/31/2001	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$10,300.50
		11/11/2013	Interest Assessed	$4,923.10
03/31/2002	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$14,143.78
		11/11/2013	Interest Assessed	$6,760.00
06/30/2002	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$13,758.21
		11/11/2013	Interest Assessed	$6,575.70
09/30/2002	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$11,292.47
12/31/2002	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$15,515.74
03/31/2003	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$12,623.06
06/30/2003	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$10,714.31
09/30/2003	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$11,429.95
12/31/2003	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$13,593.27
03/31/2004	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$11,075.32
06/30/2004	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$13,577.70
09/30/2004	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$14,805.35
12/31/2004	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$21,019.23
03/31/2005	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$16,618.73
06/30/2005	§ 6672	12/19/2005	Trust Fund Recovery Penalty	$7,028.11

36. Despite proper notice and demand for payment of the assessments, Komron has neglected, failed, or refused to make payment in full of the assessed amounts to the United States. *Id.* ¶39.

37. There remains due and owing the sum of $3,910,470.35 plus accrued statutory interest and additions from June 14, 2018, less payments or credits. Komron has stipulated to Judgment in this action for the full amount of the assessments. *Id.* ¶ 40. A partial judgment has now been entered against Komron for these amounts.

38. For each tax period, a federal tax lien arose and became choate on the date of assessment. Federal tax liens arose and attached to the Subject Property on May 23, 2005, for tax years 2002 and 2004, on May 30, 2005, for tax year 2001, and on July 25, 2005, for tax year 1999. *Id.* ¶ 38.

39. Komron filed his federal income tax returns for 1999-2002 and 2004, which reported large balances due, and told Shaun that he had outstanding tax liabilities. *Id.* ¶ 41.

40. Shaun was concerned that the United States would be able to foreclose its tax liens on the Subject Property. *Id.* ¶ 42.

41. A Deed of Trust was recorded on July 26, 2005 (hereinafter, the "2005 Deed of Trust"). Ex. 13. The 2005 Deed of Trust purports to secure payment of $471,322.00 at 12 percent interest. *Id.*

42. In both his deposition and at trial, Shaun testified that he paid no money to Komron at or around the time of the 2005 Deed of Trust. Transcript of Deposition of Shaun Allahyari, docket no. 41-1, p. 30.

43. Shaun executed the 2005 Deed of Trust to "make sure [he was] going to be ahead of the IRS." Because he knew Komron was delinquent on his taxes and that the IRS wanted payment, Shaun retained an attorney who advised him that "the IRS is going to come and take the house and so you're going to lose your interests in the house" and recommended a deed of trust.

44. Komron informed his father of his tax liabilities prior to the 2005 Deed of Trust, and Komron believed Shaun "was informed about the tax liabilities and was

concerned of the consequences of those liabilities."[2] Transcript of Deposition of Komron Allahyari, docket no. 41-1, p. 65 ("In general I would say at some point I alerted my father to the fact that I had tax problems. I owed a lot of taxes. I owed a lot of money to the IRS, and I recall him being almost immediately concerned about the IRS being able to take the home that he had, you know, used as security for his loans. I think he even asked me can they take your home, and I said well, maybe. I don't know. So he asked – I think he asked me, what – do I have security on the home? How do I get it?").

45. Prior to obtaining the 2005 Deed of Trust, Shaun believed Komron owed a "lot" of money to the IRS. He believed the tax liability might exceed $1,000,000.

46. On October 4, 2005, the first Notice of Federal Tax Lien was filed in King County, Washington, against Komron M. Allahyari and Leslie R. Cover (Komron's then-spouse) that listed their federal income tax liabilities for tax years 1999-2001, 2002, and 2004. Additional Notices of Federal Tax Lien were filed in King County on the dates and for the periods stated in the United States' First Amended Complaint. Admitted Fact ¶ 44; Ex. 30.

47. In 2010, Shaun learned that Komron was defaulting on the BECU Deed and was at risk of losing the Subject Property. Admitted Fact ¶ 45.

---

[2] The Court finds Komron's trial testimony not credible to the extent he minimized his own involvement in drafting the 2005 Deed of Trust and to the extent he suggested the transfer was done without intent to hinder, delay, or defraud the United States. Komron lied to his own father regarding the extent of his financial troubles in the 1990s and early 2000s, he lied to his own lawyer regarding the existence of the 1991 Promissory Note (Ex. 155), and he continues to offer conflicting accounts of his involvement in drafting the 2005 Deed of Trust (compare docket no. 41-1, p. 65-66 ("[Jamie Olander] and I kind of worked [the deed of trust] up and then showed my father and then we filed it.") with his testimony at trial that he had no involvement in the preparation of the Deed of Trust).

48. Shaun borrowed money in order to pay off the BECU Loan and take an assignment of that loan in order to prevent foreclosure of the Subject Property. *Id.* ¶ 46. Shaun also was aware of Komron's outstanding tax liabilities and that Komron had defaulted on the BECU Loan—resulting in multiple foreclosure proceedings.

49. A "Second Addendum to Promissory Note" is dated August 15, 2010 ("2010 Addendum"). Admitted Fact ¶ 48; Ex. 16.

50. The 2010 Addendum states,

> Shaun Allahyari hereby desires to take an assignment of the mortgage on the real property and pay off the prior mortgage (BECU) to protect Shaun's interest in the 2005 Deed of Trust.
>
> Komron agrees that any funds Shaun Allahyari pays to take an assignment of the prior mortgage with BECU is to be considered part of the ongoing loans to Komron and will be paid back at 12 percent interest under the terms of the previous Promissory Note(s).

Admitted Fact ¶49; Ex. 16.

51. An Assigmnent of Deed of Trust was recorded on September 8, 2010 ("2010 Assignment"). Admitted Fact ¶ 50; Ex. 14.

52. Shaun never gave Komron written notice of a change in the interest rate for the BECU Loan.

53. Komron stopped taking new cases and wound down his law practice in spring or summer 2010. He resigned from the Washington State Bar Association in lieu of disbarment in 2011.

54. Komron currently resides in an apartment owned by Shaun, and pays no rent to Shaun for the apartment other than working part-time for Shaun.

55. Komron and Shaun were summoned to appear before IRS Revenue Officer John Curt in summer 2015 to testify regarding Shaun's interest in the Subject Property. Ex. 24. Komron and Shaun told Curt that no written contract existed between Shaun and Komron for any of the amounts transferred from Shaun to Komron. *Id.*[3] Shaun also told Curt that no specific amount of repayment was discussed but payment was to be made at some point in the future. *Id.* Shaun explained to Curt that he originally required a 12% interest rate but lowered the interest rate to 8% to give Komron a break. *Id.*

II. CONCLUSIONS OF LAW

1. Any Conclusion of Law denominated as a Finding of Fact shall be deemed a Conclusion of Law and any Finding of Fact denominated as a Conclusion of Law shall be deemed a Finding of Fact.

2. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. § 7402.

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1396 because defendants reside in this district and the Subject Property is located in this district.

4. The United States has established that, on the various dates of assessment, valid liens in favor of the United States arose against Komron M. Allahyari and attached

[3] At trial, Shaun testified that he did not remember his interview with John Curt. Therefore, Shaun's trial testimony is not credible to the extent he attempts to dispute the accuracy of Curt's notes regarding that interview.

to all of his property and rights to property, whether real or personal, including the Subject Property at issue in this case. 26 U.S.C. § 6321.

5. The tax lien continues in full force until the liability is paid in full or becomes unenforceable due to the lapse of time. 26 U.S.C. § 6322.

6. The Court finds that the transfers from Shaun to Komron beginning in 1991 through 2005 were bona fide loans, not gifts. The Promissory Note and Addenda underlying the 2005 Deed of Trust do not contain illusory promises to pay. Repayment was not solely within Komron's discretion, and the contingencies requiring repayment occurred. Shaun regularly and repeatedly requested repayment. *See Vancouver Clinic, Inc. v. United States*, 2013 WL 1431656, at *2 (W.D. Wash. Apr. 9, 2013) (holding that for a transaction to constitute a bona fide loan, "there must be an unconditional promise to repay at the time the funds are advanced") (citations omitted).

7. Komron repaid significant sums to Shaun between 1991 and 2005 providing additional evidence that the transfers were bona fide loans. Ex. 102; *Calumet Indus., Inc. & Subsidiaries v. Comm'r*, 95 T.C. 257, 286 (1990); *Van Anda v. Comm'r*, 12 T.C. 1158, 1162 (1949); *In re Estate of Miller*, 134 Wn. App. 885, 895, 143 P.3d 315 (2006).

8. Under 26 U.S.C. § 6321, a lien arises in favor of the United States "upon all property and rights to property, whether real or personal," belonging to a taxpayer who has refused or neglected to pay tax after demand.

9. The lien arises "at the time the assessment is made" and continues "until the liability for the amount so assessed . . . is satisfied or becomes unenforceable by reason of lapse of time." 26 U.S.C. § 6322.

10. Tax liens arising from assessments are enforceable without the recording of a notice of lien and have priority over all interests in property acquired after the attachment of the tax liens, except as provided by 26 U.S.C. § 6323(a). *United States v. City of New Britain*, 347 U.S. 81, 84 (1954) (federal tax liens are choate and perfected under federal law as soon as they arise upon assessment).

11. In general, federal law follows the principle that first in time is first in right. However, another statute, 26 U.S.C. § 6323, protects certain third parties from the effect of the government's automatic lien. It provides that a federal tax lien "shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until" notice of the lien is duly recorded. 26 U.S.C. § 6323(a). The only category of Section 6323(a) into which Shaun could possibly fall is that of "holder of security interest."

12. The United States' federal tax liens for tax years 1999, 2001, 2002, and 2004 arose before the 2005 Deed of Trust was filed and therefore are entitled to priority unless Shaun is entitled to the protection of 26 U.S.C. § 6323(a).

13. A person seeking protection from federal tax liens under 26 U.S.C. § 6323(a) has the burden of showing that he qualifies for that protection. *In re Nerland Oil, Inc.*, 303 F.3d 911, 920 (8th Cir. 2002). Shaun has failed to establish that he qualifies for that protection.

14. A security interest exists only where (1) the interest was "acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability"; (2) the interest is "protected under local law against a subsequent judgment lien arising out of an unsecured obligation"; and (3) the interest holder "parted with money or money's worth." 26 U.S.C. § 6323(h)(1); *see also* Treas. Reg. § 301.6323(h)-1(a)(1)(i)-(ii).

15. The 2005 Deed of Trust is not entitled to priority over the federal tax liens because Shaun cannot meet his burden to show that he is a holder of a security interest for two reasons.

16. First, the 2005 Deed of Trust is not entitled to priority under local law with respect to the tax liens described in Findings of Fact 35-38 because Shaun had actual and/or constructive knowledge of Komron's tax liabilities prior to recording the 2005 Deed of Trust. *Kim v. Lee*, 31 P.3d 665, 668, *as amended* (Dec. 12, 2001), *opinion corrected*, 43 P.3d 1222 (Wash. 2001). Shaun and Komron both testified that the purpose of drafting, executing, and recording the 2005 Deed of Trust was to get ahead of the IRS with respect to Shaun's interest in the Subject Property.

17. Second, Shaun did not part with money or money's worth in connection with the granting or recording of the 2005 Deed of Trust. While the 2005 Deed of Trust purported to secure preexisting debts, Shaun did not contemporaneously part with money or money's worth. *United States v. 3809 Crain Ltd. P'ship*, 884 F.2d 138, 143 (4th Cir.

1989); *In re Marine Energy Sys. Corp.*, 2009 WL 1465352, at * 13 (Bankr. D.S.C. Mar. 24, 2009), aff'd, 430 B.R. 348 (D.S.C. 2010).[4]

18. Because Shaun does not qualify as a holder of a security interest, he is not entitled to the protection of 26 U.S.C. § 6323. As a result, the United States is entitled to priority for the tax liens that arose before the 2005 Deed of Trust was recorded.

19. Separately, the Subject Property was fraudulently encumbered by Komron Allahyari with the 2005 Deed of Trust. The encumbrance is voidable under Washington's Uniform Fraudulent Transfer Act because Komron intended to "hinder, delay, or defraud" the United States. RCW § 19.40.041(a)(1).

20. The Court finds that the majority of factors under RCW § 19.40.041(a)(1) support the conclusion that Komron acted to hinder, delay, and defraud the United States.

a. The transfer was made to an insider – Komron's father.

b. Komron retained possession of the property at the time of and after the transfer. In later years, although Komron moved out of the Subject Property, his immediate family members—also relatives of Shaun's—remain in possession.

[4] Defendants also raised at trial a new argument that the 1991 Promissory Note, standing alone, was sufficient security to establish priority over the unrecorded federal tax liens. That argument is not well-taken. The Promissory Note was executed prior to closing on the Subject Property, indicating that the parties were in no position to transfer any interest in the property or otherwise encumber the property. That the 1991 Promissory Note apparently sought to grant Shaun a *right* to later file and record a security interest in the Subject Property is not the equivalent of actually transferring a security interest. RCW § 64.04.010 ("Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed . . . .").

c. Komron concealed documents he now claims are related to the transfer (e.g., the 1991 Promissory Note) from the IRS during administrative proceedings.[5]

d. The transfer was of substantially all of Komron's assets. Komron was already deeply in debt and unable to make various payments as they became due in the early 2000s. *See* Finding of Fact 21. By 2003, his position had worsened, and he had taken out another mortgage against the Subject Property, which was the same property Komron used as security for the 2005 Deed of Trust.

e. The transfer occurred after Komron was threatened with legal action by the IRS. It would have been abundantly clear to Komron that enforcement proceedings were likely, and that a civil action could result from his failure to pay taxes. The Court finds and concludes the 2005 Deed of Trust was prepared and filed for the express purpose of attempting to gain priority over the IRS with respect to the Subject Property.

f. The transfer occurred shortly before and shortly after a substantial debt was incurred—i.e. the tax liabilities at issue, which were assessed both shortly before and shortly after the 2005 Deed of Trust was filed.

[5] Komron's testimony that he simply forgot about the 1991 Promissory Note and the 2005 Deed of Trust when interviewed by IRS officers is not credible.

g. At the time of the transfer, Komron was generally not paying his debts as they became due, and under Washington law he was presumptively insolvent. RCW § 19.40.021(2).

21. Plaintiff has established the elements of a fraudulent transfer by a preponderance of the evidence.

22. That the transfer purported to be made in connection with a preexisting obligation (i.e. the 1991 Note) does not outweigh the evidence demonstrating a fraudulent transfer. *Martin v. McEvoy*, 1996 WL 335996 (Wash. Ct. App. June 17, 1996); *see also In re Fleming*, 1997 WL 111302, at *8 (Bankr. D. Md. Jan. 7, 1997) (involving similar factors under Maryland law and similar facts such as ongoing dependence on family members for financial support, negligible assets at the time of the transfer, tax liabilities pending at the time of the transfer, and the debtor remaining in possession after the transfer).

23. Because the encumbrance was recorded by Komron and Shaun with the actual intent to hinder, delay, or defraud the United States it is voidable and is subject to being set aside. *United States v. Sygitowicz*, 2016 WL 3438489 (W.D. Wash. June 23, 2016); *United States v. Smith*, 2012 WL 1977964 at *6 (W.D. Wash. June 1, 2012); *United States v. Black*, 725 F. Supp. 2d 1279, 1292 (E.D. Wash. July 16, 2010); *see also Clearwater v. Skyline Const. Co., Inc.*, 67 Wash. App. 305, 317 (Wash. Ct. App. Aug. 31, 1992) ("A creditor's remedies for fraudulent transfer include, *inter alia*, avoidance of the transfer or the attachment of the transferred property.").

24. Because the Court concludes that the 2005 Deed of Trust is not entitled to priority over the federal tax liens pursuant to 26 U.S.C. § 6323 and is separately voidable as a fraudulent transfer under RCW 19.40.041, the Court need not determine whether Shaun is entitled to simple or compound interest on the 2005 Deed of Trust. Nor does the Court need to determine the precise amount of the debt purportedly secured by the 2005 Deed of Trust, other than to conclude that any security would not be prior to the BECU Loan and the federal tax liens, respectively.

25. Shaun is entitled to priority over the United States' federal tax liens with respect to interest that has accrued on the amount Shaun paid to BECU.

26. Shaun stepped into BECU's "shoes" when he purchased the BECU Loan. The Court finds that the actual substance of the assignment indicates a bona fide debt, which Shaun and Komron intended to be repaid. Because Shaun never provided Komron with written notice of any change in the applicable interest rate, he has not proven that he is entitled to a rate any different than the 4.125% rate in effect at the time of assignment. Ex. 110.

27. The total interest on the BECU Loan is $127,721.52 as of September 30, 2018, calculated at 4.125% annually.

28. Shaun did not modify the BECU Loan in any manner materially prejudicial to the United States' interests in the Subject Property. He neither changed the interest

rate, nor modified the terms of the Loan in other ways that have substantially impaired the United States' interests or effectively destroyed its equity.[6]

29. The Court makes no conclusion regarding whether Shaun is entitled to recover attorney's fees from Komron for work related to the BECU Loan. Regardless, Shaun has not argued—let alone proven—that those fees would be entitled to priority over the United States' tax liens. The Court concludes that Shaun is not entitled to attorney's fees against the United States in connection with the BECU Loan and this litigation.

30. Under 26 U.S.C. § 7403, once it is established that the United States has liens upon certain property, the United States may foreclose those liens, sell the property, and apply the proceeds toward the tax liens at issue. *United States v. Craft*, 535 U.S. 274 (2002); *United States v. Rodgers*, 461 U.S. 677, 693-94 (1983).

31. This is true even if a third party, along with the delinquent taxpayer, holds an interest in the encumbered real property. 26 U.S.C. § 7403; *Rodgers*, 461 U.S. at 699-700.

32. Under *Rodgers*, district courts have limited discretion to not order a foreclosure sale under 26 U.S.C. § 7403. *Rodgers*, 461 U.S. at 706-712.

---

[6] The United States alludes to other potential alterations to the BECU Loan—including Shaun's failure to enforce the repayment schedule and other terms related to payment for escrow items—but fails to connect those alleged alterations to any quantifiable injury to the United States. As such, the United States has failed to demonstrate substantial impairment sufficient to overcome the BECU Loan's priority position.

33. The discretion to preclude foreclosure "should be exercised rigorously and sparingly, keeping in mind the Government's paramount interest in prompt and certain collection of delinquent taxes." *Id.* at 711.

34. Defendants have failed to carry the burden of proof that this Court should exercise discretion not to issue a foreclosure order.

35. The United States has established that it has valid federal tax liens against the Subject Property, and therefore the United States is entitled to judgment and to foreclose those liens, sell the Subject Property, and apply the proceeds toward its tax liens. 26 U.S.C. § 7403.

36. Pursuant to 26 U.S.C. § 6323(b)(6) and the stipulation filed in this case (docket no. 17), the United States recognizes the superior interest of King County in the Subject Property by virtue of any assessed and owing real property taxes or special assessments that may be owing at the time of sale. The United States shall include in any proposed order of sale a provision that the net proceeds for sale, defined as the proceeds resulting from the sale of the property less distribution to the United States for the costs of sale, shall be applied to satisfy any amounts entitled to priority under 26 U.S.C. § 6323(b)(6) that are assessed and owing to King County for the Subject Property prior to application of the funds to fully or partially satisfy the United States' interest secured by federal tax liens.

37. Pursuant to the Court's Minute Order (docket no. 63), the Court has found that Shaun is entitled to the same priority position that BECU held with respect to the amount that he paid to BECU for an assignment deed of trust. The Court now finds that

Shaun is entitled to the same priority position for the interest accrued on the BECU Loan as set forth in Conclusion of Law 27. Any proposed order of sale shall include a provision that after the costs of sale and any amount due and owing to King County, Shaun is entitled to the next $510,766.26[7] of the proceeds of the sale of the Subject Property based on the 2010 Assignment of Deed of Trust.

38. The United States is entitled to the remainder of the proceeds of the sale of the Subject Property until the United States' tax liens are satisfied.

39. The United States is entitled to costs and fees herein.

Based on the foregoing Findings of Fact and Conclusions of Law, the United States of America is directed to file a proposed final judgment and proposed order for judicial sale within seven (7) days of entry of these Findings of Fact and Conclusions of Law. Defendants shall have seven (7) days after such filings to file any objections to the proposed judgment and order of sale.

IT IS SO ORDERED.

Dated this 13th day of September, 2018.

Thomas S. Zilly
United States District Judge

[7] This total reflects the principal and interest on the BECU Loan.

Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. KOMRON M. ALLAHYARI and SHAUN ALLAHYARI, Defendants.	Case No. 2:17-cv-00668-TSZ **JUDGMENT**

Following a bench trial on September 5-6, 2018, and having issued Findings of Fact and Conclusions of Law, docket no. 94, which is incorporated by this reference, IT IS HEREBY ORDERED AND ADJUDGED:

1. Judgment was entered in favor of the United States and against Komron M. Allahyari on June 29, 2018 for federal income tax periods 1999-2002, 2004-2009, and 2011-2013, and for trust fund recovery penalties pursuant to 26 U.S.C. § 6672 for all four quarters of 2000-2004 and the first two quarters of 2005, in the total amount of $3,910,470.35, plus additional interest and statutory additions accruing from June 14, 2018, pursuant to 28 U.S.C. § 1961(c)(1) and 26 U.S.C. §§ 6621 and 6622, less any payments or credits as provided by law.

2. The bench trial concerned Counts 4 – 6 of the United States' Amended Complaint, docket no. 29, which encompassed all claims against Defendant Shaun Allahyari and concerned the parcel of real property which is the subject of this action (the "Subject Property") and which is commonly described as 3453 77th Place SE, Mercer Island, Washington 98040, and bears King County Assessor's Parcel No. 545880-0265-09. The legal description of the Subject Property is as follows:

> LOT 8, BLOCK 4, MERCERDALE NUMBER 1, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 59 OF PLATS, PAGES 94 THROUGH 96, IN KING COUNTY, WASHINGTON

3. With respect to the Subject Property, pursuant to the Court's Minute Order (docket no. 63), the Court has found that Shaun Allahyari is entitled to the same priority position that the Boeing Employees Credit Union ("BECU") held with respect to the amount that he paid to BECU for an assignment of deed of trust, which was recorded in King County, Washington at instrument number 20030805002125 ("BECU Deed of Trust"). Shaun Allahyari paid $383,044.74 for the assignment. Docket No. 63. The Court concluded that as of September 30, 2018, $127,721.52 of interest had accrued on the BECU loan. Docket No. 94, ¶ 27. Therefore, as of September 30, 2018, Shaun Allahyari was entitled to priority in the amount of $510,766.26, representing both principal and interest on the BECU loan. *Id.* ¶ 37. Interest shall accrue after September 30, 2018 at a rate of 4.125% annually.

4. With respect to the Subject Property, the 2005 Deed of Trust, which was recorded in King County, Washington at instrument number 20050726002070 ("2005 Deed of Trust"), is not a valid security interest pursuant to 26 U.S.C. § 6323. Additionally, the 2005 Deed of Trust is a fraudulent encumbrance pursuant to the Washington Uniform Fraudulent Transfer Act. The fraudulent encumbrance is hereby set aside.

5. The United States has valid and subsisting federal tax liens arising from the liabilities set forth in paragraph 1 on all property and rights to property of Komron M. Allahyari, including the Subject Property. The United States' federal tax and judgment liens against the

Subject Property are foreclosed, and the Subject Property shall be sold pursuant to 26 U.S.C. § 7403 and 28 U.S.C. § 2001, with the net proceeds to be disbursed as set forth in the Order of Foreclosure and Judicial Sale.

6. The United States is entitled to its costs as the prevailing party on its claims against Defendant Komron Allahyari. The United States is not entitled to its costs against Defendant Shaun Allahyari, as neither party prevailed.

IT IS SO ORDERED.

Dated: October 30, 2018.

Thomas S. Zilly
United States District Judge

Presented by,

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General

/s/ Yael Bortnick
YAEL BORTNICK
Trial Attorney, Tax Division

/s/ Nithya Senra
NITHYA SENRA
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Washington, D.C. 20044
202-514-6632 (Bortnick)
202-307-6570 (Senra)
202-307-0054 (fax)
Yael.Bortnick@usdoj.gov
Nithya.Senra@usdoj.gov
Attorneys for the United States of America

ANNETTE L. HAYES
United States Attorney
Western District of Washington
Of Counsel

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 20 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. KOMRON M. ALLAHYARI, Defendant, and SHAUN ALLAHYARI, Defendant-Appellant.	No. 18-35956 D.C. No. 2:17-cv-00668-TSZ Western District of Washington, Seattle ORDER

UNITED STATES OF AMERICA, Plaintiff-Appellant, v. KOMRON M. ALLAHYARI; SHAUN ALLAHYARI, Defendants-Appellees.	No. 18-36076 D.C. No. 2:17-cv-00668-TSZ Western District of Washington, Seattle ORDER

Before: M. SMITH and N.R. SMITH, Circuit Judges, and TUNHEIM,* District Judge.

* The Honorable John R. Tunheim, Chief United States District Judge for the District of Minnesota, sitting by designation.

The panel unanimously voted to deny the petition for panel rehearing. Judge M. Smith voted to deny the petition for rehearing en banc, and Judges N.R. Smith and Tunheim so recommend.

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on it. Fed. R. App. P. 35. The petition for panel rehearing and the petition for rehearing en banc are **DENIED.**

APPENDIX D

FILED

FEB 11 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. KOMRON M. ALLAHYARI, Defendant, and SHAUN ALLAHYARI, Defendant-Appellant.	No. 18-35956 D.C. No. 2:17-cv-00668-TSZ Western District of Washington, Seattle ORDER

UNITED STATES OF AMERICA, Plaintiff-Appellant, v. KOMRON M. ALLAHYARI; SHAUN ALLAHYARI, Defendants-Appellees.	No. 18-36076 D.C. No. 2:17-cv-00668-TSZ Western District of Washington, Seattle

Before: M. SMITH and N.R. SMITH, Circuit Judges, and TUNHEIM,* District Judge.

* The Honorable John R. Tunheim, Chief United States District Judge for the District of Minnesota, sitting by designation.

Defendant-Appellant's motion for stay of the mandate pending its petition for writ of certiorari is GRANTED. Fed. R. App. P. 41. The mandate shall be stayed until June 21, 2021 pending the filing of a petition for writ of certiorari in the Supreme Court. Defendant-Appellant shall file correspondence in this court confirming it has filed such a petition, at which point the stay shall continue until certiorari is denied or final disposition by the Supreme Court.

APPENDIX E

PROMISSORY NOTE

1. PROMISE TO PAY: FOR VALUE RECEIVED ($50,000.00), Komron Allahyari, (hereinafter "Maker") promises to pay to the order of Shaun and Kathryn Allahyari (hereinafter "Holder") at 2520 70th Ave SE, Mercer Island, WA 98040, or such other place as the holder may direct, the total sum of this note under the terms and conditions set forth herein. The term "subject real property", as referred to herein, refers to that certain real property located at, 3453 77th Place SE, Mercer Island, Washington.

2. PAYMENT: Payment shall be made at the above address via check by Maker, upon the occurrence of one or more of the following contingencies:

2.1. The principal amount, repaid from Maker's salary at Ulin Dann and Lambe or if the subject real property is rented and there is "net" rental income; or

2.2. If Maker starts his own practice, repaid from proceeds of his law practice when the "net" income from that practice exceeds $100,000.

3. INTEREST: The rate of interest on the unpaid principal balance of this Note shall be 12% until paid in full. Holder agrees to keep records of Note balance, payments and interest owed.

4. JURISDICTION, VENUE, AND ATTORNEY'S FEES AND COSTS: All claims and disputes relating to this instrument shall be subject to binding and final arbitration at the option of either party. The parties agree that the arbitrator's final decision may be filed by either party as a judgment in any court with jurisdiction and venue. The parties agree that every such dispute must be submitted within one year of the date it arises, or it shall be forever barred. The venue and jurisdiction shall be King County, Washington. The substantially prevailing party in any arbitration shall be entitled to its reasonable attorney's fees and costs incurred therein.

5. SECURITY AGREEMENT: Maker grants Holder a security interest in the subject real property as of the date this note is executed. It is the Holder's responsibility to ensure that this security interest is properly filed and otherwise perfected as required by law.

IN WITNESS WHEREOF, the Maker has executed the Promissory Note at Mercer Is. WA Washington this 29th day of March, 1991.

Komron Allahyari

By Komron Allahyari
818 NE 58th Street
Seattle, WA 98154

004-001

Addendum and Promissory Note

Komron Allahyari ("Maker") currently owes Shaun Allahyari ("Holder") certain monies with interest (12 percent) to be calculated under a previous Promissory Note dated March 1991 ("Original Note"), but Maker desires to obtain additional loans on the account under the terms and conditions set forth herein.

Payment shall be made under the terms of the Original Note with the same 12 percent interest rate on any subsequent loans.

Maker understands Holder has a security interest in the same real property listed in the Original Note and Holder may at any time file liens or other security again the same real property.

All other terms of the Original Note not modified herein remain in full force and effect.

Dated: February 25, 2000.

Komron Allahyari

009-001