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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GARFINKLE FAMILY TRUST,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. SACV 10-1885-JST (MLGx)

**ORDER GRANTING DEFENDANT'S
MOTION TO TRANSFER**

1 **I. INTRODUCTION**

2 Before the Court is Defendant United States of America's ("Government's")
3 Motion to dismiss, transfer, strike, and for a more definite statement pursuant to Federal
4 Rules of Civil Procedure 12(b)(6), 12(b)(1), 12(b)(3), 12(f), and 12(e), respectively. (Doc.
5 7.) Plaintiff Garfinkle Family Trust filed an opposition (Doc. 11), and the Government
6 replied (Doc. 14). The Court finds this matter appropriate for decision without oral
7 argument. Fed. R. Civ. P. 78; C.D. Cal. R. 7-15. Accordingly, the hearing set for March
8 21, 2011, at 10:00 a.m. is removed from the calendar. Having read the papers and for the
9 reasons set forth below, the Court GRANTS the Government's Motion to transfer, and
10 DENIES as moot the Government's Motions to dismiss, strike, and for a more definite
11 statement.

12 **II. BACKGROUND**

13 Plaintiff is a grantor trust created in April 14, 1994 by since-deceased Judith
14 Garfinkle. (Compl. ¶ 3.) This dispute arises out of a tax lien placed by the IRS on June
15 17, 2010 on Plaintiff's real property located at 5629 American Circle, Delray Beach,
16 Florida (the "Property") as the nominee or "alter ego" for Paul Garfinkle, Judith
17 Garfinkle's surviving husband. (*Id.* ¶ 37, Exh. 3.) Plaintiff disputes that it is the nominee
18 of Paul Garfinkle (*see id.* ¶¶ 38-46), and on December 10, 2010, filed suit against the
19 Government seeking (1) declaratory relief, (2) quiet title on the Property, and (3)
20 subordination, allocation, and contribution of the tax lien. (*Id.* ¶¶ 47-52.) On January 24,
21 2011, the Government moved to dismiss the case, arguing that it is a "local action" based
22 on the Property's location in Florida and that this Court lacks jurisdiction. (Govt.'s Not. of
23 Mot. at 2.) In the alternative, the Government moves to transfer the case for improper
24 venue, to dismiss the Complaint for failure to state a claim, to strike portions of the
25 Complaint, or for a more definite statement. (*Id.*)

1 **III. DISCUSSION**

2 The local action doctrine instructs that “federal district courts’ jurisdiction over
3 actions concerning real property is generally coterminous with the states’ political
4 boundaries.” *United States v. Byrne*, 291 F.3d 1056, 1060 (9th Cir. 2002). Thus, when a
5 party seeks remedies that “act directly upon the land itself, jurisdiction is properly
6 exercised in the state where the land is situated.” *Id.*; see *Casey v. Adams*, 102 U.S. 66, 67
7 (1880) (“Local actions are in the nature of suits *in rem*, and are to be prosecuted where the
8 thing on which they are founded is situated.”); *Hayes v. Gulf Oil Corp.*, 821 F.2d 285, 287
9 (5th Cir. 1987) (“A local action involving real property can only be brought within the
10 territorial boundaries of the state where the land is located.”). A court applies state law to
11 determine whether an action is local. See *Josevig-Kennecott Copper Co. v. James F.*
12 *Howarth Co.*, 261 F. 567, 569 (9th Cir. 1919) (“It is admitted that the question whether the
13 action is local or transitory is to be determined by the law of the state.”); *Prawoto v.*
14 *Primelending*, 720 F. Supp. 2d 1149, 1154-155 (C.D. Cal. 2010) (applying California law
15 to determine local action). “Once a federal court determines the state that has exclusive
16 jurisdiction over a local action, it must dismiss or transfer the action to a court sitting in
17 that state.” *Prawoto*, 720 F. Supp. 2d at 1157.

18 Here, Plaintiff seeks to quiet title to the Property located in Florida. (Compl. ¶ 50
19 (“[Plaintiff] is entitled to a judgment determining that [Plaintiff] owns the Property free
20 and clear of the nominee Tax Lien.”) Under California Code of Civil Procedure section
21 392, the “court in the county where the real property that is the subject of the action, or
22 some part thereof, is situated, is the proper court . . . for the recovery of real property, or of
23 an estate or interest therein, or for the determination in any form, of that right or interest,
24 and for injuries to real property . . .” Cal. Civ. Proc. Code § 392(a)(1). Quiet title claims
25 fall under section 392 because “[t]he object of the [quiet title] action is to finally settle and
26 determine . . . all conflicting claims to the property in controversy, and to decree to each
27 such interest or estate therein as he may be entitled to.” *Newman v. Cornelius*, 3 Cal. App.
28 3d 279, 284 (Cal. Ct. App. 1970) (quoting *Peterson v. Gibbs*, 147 Cal. 1, 5 (Cal. 1905).

1 Moreover, California Code of Civil Procedure section 760, the applicable statute
2 governing quiet title claims, similarly states that “the proper county for the trial of an
3 action . . . is [,] where the subject of the action is real property or real and personal
4 property, the county in which the real property, or some part thereof, is located.” Cal.
5 Civ. Proc. Code § 760.050. The Court finds that it lacks jurisdiction over this case because
6 it is a local action and proper venue for its adjudication is in the Southern District of
7 Florida.

8 Under 28 U.S.C. section 1631, “whenever the court finds a lack of jurisdiction, it
9 ‘shall, if it is in the interest of justice, transfer such action or appeal to any other such court
10 in which the action or appeal could have been brought at the time it was filed or noticed.’”
11 *Hays v. Postmaster General of United States*, 868 F.2d 328, 331 (9th Cir. 1989). “Section
12 1631 serves to aid litigants who were confused about the proper forum for review.” *Miller*
13 *v. Hambrick*, 905 F.2d 259, 262 (9th Cir. 1990) (quoting *In re McCauley*, 814 F.2d 1350,
14 1352 (9th Cir. 1987)) (internal quotation marks omitted). Thus, “[o]nce the district court
15 has determined that it lacks jurisdiction, but that another federal court has authority to hear
16 the case, the district court must consider [1] whether the action would have been timely if
17 it had been filed in the proper forum on the date filed, and if so, [2] whether a transfer
18 would be ‘in the interest of justice.’” *Hays*, 868 F.2d at 331 (quoting *Taylor v. Social Sec.*
19 *Admin.*, 842 F.2d 232, 233 (9th Cir. 1988)) (internal quotation marks omitted).

20 Both factors are present here. As to timeliness, the applicable statute of limitations
21 in this case is six years “after the right of action first accrues.” 28 U.S.C. § 2401(a)
22 (“[E]very civil action commenced against the United States shall be barred unless the
23 complaint is filed within six years after the right of action first accrues.”). Plaintiff’s right
24 of action would have first accrued on June 17, 2010, the date of the tax lien, so Plaintiff’s
25 suit would have been timely if it had been filed in the proper forum. The Court further
26 finds that transfer would be in the interests of justice because “dismissal of an action that
27 could be brought elsewhere is ‘time-consuming and justice-defeating.’” *Miller*, 905 F.2d
28 at 262 (citing *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 467 (1962)).

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V. CONCLUSION

For the aforementioned reasons, the Court GRANTS the Government’s Motion to transfer the case to the Southern District of Florida, and DENIES as moot its Motions to dismiss, strike, and for a more definite statement.

DATED: March 17, 2011

JOSEPHINE STATON TUCKER
JOSEPHINE STATON TUCKER
UNITED STATES DISTRICT JUDGE