

D L P LT13  
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Elmer P. Vild is the Trustee for the  
D L P LT13 contractual entity.

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF ARIZONA**

United States of America, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Maria D. Forman; Jimmy C. Chisum, and )  
 Elmer P. Vild, also known as Phillip )  
 O'Neil, as Trustees for the DLP LT 13 )  
 Trust; and Arizona Department of )  
 Revenue )  
 )  
 Defendants. )  
 )

Civil No. CV 09-00444-PHX-SRB  
  
RESPONSE TO MOTION TO STRIKE  
DEFENDANT DLP LT 13'S MOTION  
TO DISMISS AND ANSWER

COMES NOW Elmer P. Vild, Trustee for the D L P LT13 contract in the form of a trust proceeding without the assistance of counsel relying on *Haines v. Kerner* and other U.S. Supreme Court decisions that hold pro se litigants cannot be held to the same standards as an attorney and the lower courts must point out any defects and allow a pro se litigant sufficient time to correct any defects. And, that the pro se litigants' pleadings are sufficient to call for an opportunity to be heard.

This Defendant requests the court take judicial notice of how each pleading (including this one) by this Defendant has begun in the very first sentence of all pleadings. E.g. "COMES

NOW Elmer P. Vild, Trustee for the **D L P LT13 contract in the form of a trust...** (emphasis added). D L P LT13 has made it clear it is a “contract” and not a “trust” and only the words contained in the actual contract itself are controlling.

The Plaintiff’s memorandum in support of its MOTION TO STRIKE DEFENDANT DLP LT13’S MOTION TO DISMISS AND ANSWER (hereafter called Motion to Strike) only quotes “trust” law which does not apply to the instant case. Defendant D L P LT13 has NEVER admitted to being a “trust” as that word is commonly utilized. Said Defendant is a “contract” only written in the “form” of a trust but none the less a CONTRACT first and foremost. As a contract, none of Plaintiff’s quotes of prior case law apply. Not one.

D L P LT13 is protected by Article I, Section X of the United States Constitution which far out weighs any “trust” law quoted by the Plaintiff. All the case law quoted by the Plaintiff is subordinate to what the D L P LT13 has claimed all along. Contract law.

Since the beginning of this instant action, D L P LT13 has attempted to inform all parties and the Court that D L P LT13 is not a trust but a very special private contract. D L P LT13’s answer to the Plaintiff’s “boiler plate” Complaint stated the same. In addition, D L P LT13 under contractual obligation to do so, attempted to inform the Court to review the contractual documents to avoid the expected forthcoming boiler plate motions. Defendant’s MOTION FOR EX PARTE IN CAMERA HEARING was very explicit in indicating that D L P LT13 is a contract not a common trust. Part of the motion as submitted to the Court is listed below and one should note the underlined portions which were underlined in the original submission.

In the instant case, the D L P LT13 is a contract only in the “form” of a trust, but none the less, a contract first and foremost. The officers of this Court have all sworn an oath to uphold the Constitution of the United States. Article One, Section Ten of the Constitution basically states that the government will not interfere in the people’s right to contract. However, bringing this instant suit would seem be a direct

interference which is barred by the U.S. Constitution. The government is not a party to the private contractual agreement called D L P LT13. The government cannot “end run” or “avoid” the United States Constitution by filing a lawsuit based on mere allegations and no proven facts simply to obtain through lawsuit discovery (access to a private contract) that which the Constitution (Article I, Section 10) forbids them from obtaining.

In the government’s “Complaint” it indicates that the D L P LT13 is a trust and makes no reference to a contract let alone a private contract. The government mischaracterizes the D L P LT13 in many ways and states so many untruths it makes the Complaint laughable and ridiculous. Defendant D L P LT13 does not characterize the misstatements as lies because Defendant D L P LT13 knows the Plaintiff is totally ignorant of the D L P LT13’s full set of documents. The label placed upon a written instrument is not controlling but the provisions or verbiage of the instrument is controlling as the courts have stated. “Designation of form of trust is not controlling; court will look to substance of circumstances and not labels placed on them by parties.” *Johnson v. Hychyk 517 P 2d 1079*.

The government is on a “fishing expedition” with this instant lawsuit to hopefully utilize information obtained in discovery against all Defendants. Defendant D L P LT13 believes this Court has a duty to review the private contractual instrument *in camera* in order to determine if the government may proceed further against D L P LT13.

The Court did not avail itself of the opportunity to be informed of the Contract’s provisions and stated that “Moreover, an alleged agreement for an *in camera* proceeding among contracting parties cannot compel the Court to hold such a proceeding.” Of course, the Defendant already knew that and only showed the Court part of the contract to explain why the Defendant was obligated by contract agreement to ask for the *in camera ex parte* hearing.

Now the Plaintiff has submitted another of its boiler plate motions that one who is not an attorney cannot represent a trust in court. Defendant’s answer to that is “who cares” because the D L P LT13 is a private contact among private parties and not a trust. In the motion for an *in camera* appearance, the Defendant quotes *Johnson v. Hychyk 517 P 2d 1079*: “...court will look to substance of circumstances and not labels placed on them by parties.” This means the Court cannot utilize the label of “trust” placed upon D L P LT13 by the Plaintiff. The Plaintiff’s

Complaint is full of misstatements and/or falsehoods and its Motion to Strike follows the same boiler plate theme. The Plaintiff has not read the D L P LT13 documents and is only guessing that it is a typical trust. It is not.

Howard and Maria Forman owned the property that they transferred into D L P LT13. They chose to enter the property into an entity via "contract". Howard and Maria Forman disposed of their property in the manner that they saw fit and this concept is backed by the law in this country. "The owner of property has the right to dispose of their property in the manner and under the terms and conditions which they see fit." (emphasis added) See page #46 of *Scott v. Bank One Trust Co., N.A. (1991) 62 Ohio St.3d 39*. This same case upheld, as legal, against the IRS's intervention, a conditional spendthrift clause in which, if the Beneficiary would ever lose the enjoyment of a trust distribution, the Trustees of the trust were under no obligation to make a distribution to that particular Beneficiary. D L P LT13 has a similar clause.

When Howard and Maria Forman entered real property into D L P LT13 the word "trust" was not used in the Warranty Deed. The deed states "... do hereby convey to D L P LT13 with JIMMY C. CHISUM as TRUSTEE all right, title and ...". Even the word "trustee" is meaningless without knowing what that word means according to the D L P LT13 contractual instruments. The terms of the contract stated that the contract could be modified. As times and changes in life occurred it became necessary to change the contract. There were two extensive supplements added to the contract in 2006.

The contract currently has 15 pages of definitions of words that must be utilized to interpret the meaning of the contract. All parties to the contract have agreed that the 15 pages are the official meaning of the words utilized in the contract. The Constitutional guarantee for the parties' right to contract allows them to agree upon the meaning of words in their private

contract. The Plaintiff has not seen or read the contract with these 15 pages of definitions. As previously stated in this Defendant's motions, the Plaintiff is on nothing more than a "fishing trip" with this ill advised lawsuit.

Plaintiff's motion and memorandum in support thereof are off the mark. This Defendant believes that not one of the "trustees" in the Plaintiff's memorandum of case law claimed that their entity was "not a trust". That is where this instant case differs. D L P LT13 is not a trust. An individual who holds the title of "trustee" is just a person in whom "trust" is placed and he/she does not have to be the trustee of a trust. The title only means a trusted person. For example, in a federal bankruptcy proceeding, a "trustee" is appointed who handles the bankruptcy. No entity called a "trust" need be involved. Blacks Law Dictionary defines trustee in the broad sense as applying "...to anyone standing in a fiduciary or confidential relation to another, such as agent, attorney, bailee, etc.". Of course, the final determination of the meaning of the word "trustee" must be the meaning defined in D L P LT13's contractual agreement.

The government is the Plaintiff which carries the burden of proof. The Defendant does not have to prove anything and certainly does not have to prove D L P LT13 is not a trust which would mean proving a negative.

"... as a practical matter it is never easy to prove a negative. ..." *Elkins v. United States*, 364 U. S. 206, 218 (1960) See also *Flores v. United States*, 551 F. 2d 1169, 1175 (9th Cir. 1977). *Weimerskirch v. Commissioner*

The Plaintiff has offered no proof whatsoever that the D L P LT13 is a "trust" in its Motion to Strike and therefore this Court is obligated to rely on the Defendant's claim that D L P LT13 is not a trust but a "contract" first and foremost only written in the "form" of trust.

The law allows individuals to form contracts that control assets and property from interference by anyone if the contractual provisions and terms are not against public policy. The United States Constitution protects those individuals' rights.

“Anyone Competent to Contract may make such disposition of the legal title to his property as he pleases, may annex such conditions and limitations to its enjoyment as he chooses, and may vest it in Trustees for the purpose of carrying out his intention.”  
[See 26 R. C. L. 1179, 1180; 5 R. C. L. Supp. 1444]

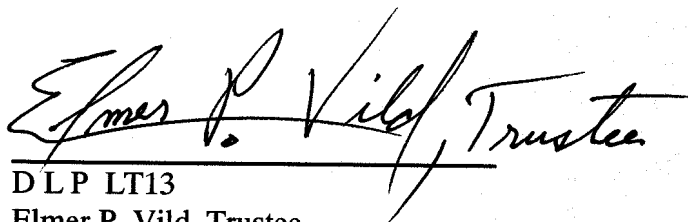
Previous statement found on page 485 of 58 A.L.R.A. 485 and later on page 492 is found:

“In considering whether any contract is against public policy, it should be remembered that it is to the interests of the public that persons should not be unnecessarily restricted in their freedom to make their own contracts. Agreements are not held to be void, as being contrary to public policy, unless they are clearly contrary to what the Constitution, the statutes, or the decisions of the courts have declared to be the public policy, or unless they be manifestly injurious to the public welfare. Courts must act with care in extending those rules which say that a given contract is void because against public policy, since, if there be one thing more than any other which public policy requires, **it is that men of full age and competent understanding shall have the utmost liberty of contract, and that their contracts, when entered into fairly and voluntarily, shall be held sacred and shall be enforced by the courts.** *Steen v. Modern Woodmen*, 296 Ill. 104, 17 A.L.R. 406, 129 N.E. 546.” (emphasis added)

As stated above, the D L P LT13 was a contract “entered into fairly and voluntarily” and “shall be enforced by the courts”. The Plaintiff’s mere allegation that D L P LT13 comes under the umbrella of former trust case law is not controlling. What is controlling is the verbiage of the written instruments of the contract which this Court must protect as stated above and written in the U.S. Constitution. Since neither the Plaintiff nor this Court has read the contract, no conclusion may be drawn by the Plaintiff or the Court other than the Defendant’s word that D L P LT13 is a private contract.

I, Elmer P. Vild, am first and foremost representing myself as a party to D L P LT13 which is a private contract under contract law as protected by Article One, Section Ten of the United State Constitution. With that in mind, it is not unreasonable that my obligations to the private contract may be reflected in my contractual duties by utilizing the title "trustee". But the simple title of "trustee" which may reflect some of my obligations to the private contract in no way makes the D L P LT13 entity a "trust" which might otherwise be subject to some so called established "trust laws". D L P LT13 is not a trust but a "private contract" and the Plaintiff in its Motion to Strike did not state one word as to why a party to a contract could not defend his/her personal position as a party to the contract. D L P LT13 is a private contract and the government is not a party to the contract. Therefore, the government cannot see the contract until a court reviews the controlling contractual instrument no matter what the government "calls" the agreement. Recommend the Court deny the Plaintiff's Motion to Strike.

Respectfully submitted this 6<sup>th</sup> day of January, 2010.

  
D L P LT13  
Elmer P. Vild, Trustee

# CERTIFICATE OF SERVICE

This document has been submitted into the court record as evidence by Terry I. Major, Notary Public, in and for the state of Arizona, County of Yavapai. My stamp is attached to identify me and my commission.

Original for the Clerk of the Court and one copy for the Honorable Susan R. Bolton mailed this 8<sup>th</sup> day of January, 2010 via first class mail to:

Clerk of the Court  
Sandra Day O'Connor U.S. Courthouse  
SPC 1  
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Phoenix, AZ 85003-2118

Copies mailed this 8<sup>th</sup> day of January, 2010 via first class mail to:

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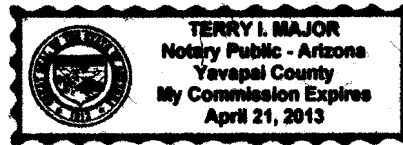
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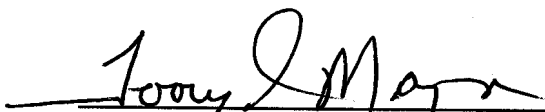
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State of Arizona     )  
                                  ) ss.  
County of Yavapai    )

{Seal}



This document has thus been served.

  
Terry I. Major, Notary Public