

DLP LT13

Elmer P. Vild, Trustee
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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 LT13 Trust; and
 Arizona Department of Revenue,

Defendants.

)
) **Civil No. CV 09-00444-PHX-SRB**
)
)
) **ANSWER TO SECOND AMENDED**
) **COMPLAINT**

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. **NOTE:** Hereinafter, Defendant may use DLP LT13 or D L P LT13 without regard to spacing as though they were the same entity. Original documents reflect the spacing as follows: D L P LT13.

COMES NOW Elmer P. Vild, Trustee for the D L P LT13 contract in the form of a trust and provides an **ANSWER TO SECOND AMENDED COMPLAINT**. To ask the Defendant Trustee of D L P LT13 to defend as a lay person without professional legal training is not in the interest of justice. However, this Court has refused to assist, therefore, this Defendant will do his best. Defendant, D L P LT13, reserves the right to amend the below listed answers to the full extent the Court will allow should this Defendant, D L P LT13, somehow in the future receive proper legal counsel.

1. **(1) DENIED:** Defendant, D L P LT13, has recently learned Maria D. Forman was promised her CASE WAS CLOSED because she was being classified as “uncollectible”. With her case closed she has no outstanding assessments. **(2) DENIED:** Defendant Maria D Forman owns no real property anywhere and Defendant Maria D. Forman has no beneficial interest in any real property. Property titled in the name of D L P LT13 is owned by D L P LT13 and exercises total and full control over said property. There never was any fraudulent transfer and all alleged violations and/or remedies are barred by the Statute of Limitations. Defendant Maria D. Forman is not the beneficiary of the D L P LT13 Contractual Entity.
2. **DENIED:** This action is improperly commenced because any possible actions against Maria D. Formant were “closed” when in late 2008 she received documents stating her case was closed. The administrative prerequisites and requirements of sections 7401 and 7403 of the Internal Revenue Code have never been met in regard to this Defendant. Additionally, Plaintiff failed to prove same when jurisdiction was challenged by this Defendant. **NEITHER ADMIT NOR DENY AUTHORIZATION:** Defendant, D L P LT13, has no knowledge whether this action was properly authorized.

3. **DENIED:** The administrative prerequisites and requirements to proceed under the quoted statutes have not been met among other objections to be promulgated at a later date. This Court has no jurisdiction over the portion of the lawsuit which seeks to determine proper ownership and title to property. Only a *State Court* has that jurisdiction. **DENIED FURTHER:** The D L P LT13 Trust is a *private contract*. The government has no authority to interfere with *private contract*. This Court is duty bound to protect the contract formed under Article One, Section Ten of the Constitution from government interference. **DENIED FURTHER:** The Plaintiff is not allowed by law to file a lawsuit until the Defendant, D L P LT13, has been *notified* of any tax claims and has been afforded the right to all mandated procedures including but not limited to this Defendant's *right to hearings*. In fact, the sections the Plaintiff quotes **DEMANDS** this before Plaintiff can obtain jurisdiction. In regards to the Defendant, D L P LT13, sections 7401 and 7403 of the Internal Revenue Code were not complied with and the Plaintiff has no right to assert this Court has jurisdiction. **DENIED FURTHER:** The Plaintiff has not shown any proof of nominee or alter ego, but only make false allegations. **DENIED FURTHER:** That the Plaintiff has jurisdiction over the judge in the instant case. E.G. Plaintiff may audit the tax returns of the judge. Therefore, there is a possible conflict of interest present which could prevent a fair and impartial outcome. Defendant, D L P LT13, promulgates the *obvious legal axiom* that a Court cannot have jurisdiction to institute a fair and impartial airing and ruling of legal issues when a Plaintiff in the lawsuit has any type of jurisdiction over the judge in the lawsuit.
4. **NEITHER ADMIT NOR DENY:** Defendant, D L P LT13, has limited information to determine the accuracy of this statement.

5. **NEITHER ADMIT NOR DENY:** Where Defendant, Maria D. Forman, resides.

Defendant, D L P LT13, has only a little information to determine the accuracy of where the Defendant, Maria D. Forman, resides most of the time or where her permanent domicile is located.

NEITHER ADMIT NOR DENY any information regarding federal taxes for Defendant, Maria D. Forman. Defendant, D L P LT13, has extremely limited information regarding any possible federal tax liabilities for Howard and/or Maria Forman. However, D L P LT13 did receive information that Maria D. Forman's tax situation was "closed" in 2008.

It is **DENIED** that Defendant, Maria D. Forman, has an ownership interest in the parcel of property sought to be foreclosed in this action. Defendant, Maria D. Forman, has no ownership interest in the parcel of property sought to be foreclosed in this action.

6. **DENIED:** that Defendant Maria D. Forman's husband, Howard E. Forman, held an ownership interest in the parcel of property sought to be foreclosed in this action.

Defendant's husband, Howard E. Forman, had no ownership interest in the parcel of property sought to be foreclosed in this action. **ADMITTED:** Howard E. Forman passed away on or about April 16, 2008. However, Howard E. Forman did direct his wife to sign all documents as he wished whether she understood them or not and even whether she has read them or not. Maria D. Forman is protected by the "innocent spouse rule".

7. **DENIED:** Elmer P. Vild, is the current trustee for the D L P LT13 Entity.

ADMITTED: Jimmy C. Chisum was a past trustee for D L P LT13. **NEITHER ADMIT NOR DENY FURTHER:** Defendant, D L P LT13, has no information to determine the accuracy of the rest of this statement.

8. **DENIED:** Arizona Department of Revenue has no interest in the subject property.
9. **ADMITTED:** Defendant, D L P LT13, takes notice of the purpose of this action.
10. **ADMITTED/DENIED/NEITHER ADMITTED NOR DENIED** as stated, referencing paragraphs one (1) through nine (9) above.
11. **NEITHER ADMIT NOR DENY:** Defendant, D L P LT13, has no information to evaluate the accuracy of this statement.
12. **NEITHER ADMIT NOR DENY:** Defendant, D L P LT13, has no information to evaluate the accuracy of this statement.
13. **NEITHER ADMIT NOR DENY:** Defendant, D L P LT13, has no information to evaluate the accuracy of this statement.
14. **NEITHER ADMIT NOR DENY:** Defendant, D L P LT13, has no information to evaluate the accuracy of this statement.
15. **NEITHER ADMIT NOR DENY:** Defendant, D L P LT13, has no information to evaluate the accuracy of this statement.
16. **NEITHER ADMIT NOR DENY; BUT WITH SPECIAL COMMENT:** Defendant, D L P LT13, has information to evaluate the accuracy of the alleged assessments. However, past tendencies by the Internal Revenue Service (IRS) indicate these allegations may not be fully truthful. In any case it should be noted here, that the government's assessments for 1986, 1987, 1988 and 1989 were paid in full in early June of 2009 and are no longer an issue. All issues relating to taxes for the years 1986, 1987, 1988 and 1989 have become moot in the instant suit. Because of the discovery of the 2008 notice to Maria D. Forman that all her alleged taxes were "closed", all other tax debts and this suit are moot as well.

- 17. NEITHER ADMIT NOR DENY WITH A NOTATION:** Defendant, D L P LT13, had no information to evaluate the accuracy of this statement (when the statement was made by the Plaintiff) with the exception that Defendant, D L P LT13, has learned that the assessments for the years 1986, 1987, 1988 and 1989 have recently been paid in full. Additionally, because of the recent discovery of the 2008 notice to Maria D. Forman that all her alleged taxes were “closed”, all other tax debts and this suit are moot as well.
- 18. NEITHER ADMIT NOR DENY:** Defendant, D L P LT13, has no information to evaluate the accuracy of this statement.
- 19. NEITHER ADMIT NOR DENY:** Defendant, D L P LT13, has no information to evaluate the accuracy of this statement.
- 20. NEITHER ADMIT NOR DENY:** Defendant, D L P LT13, has no information to evaluate the accuracy of this statement.
- 21. NEITHER ADMIT NOR DENY:** Defendant, D L P LT13, has no information to evaluate the accuracy of this statement. However, it should be noted that these years were addressed in the subsequent 2008 notice to Maria D. Forman that all her alleged taxes were “closed”.
- 22. NEITHER ADMIT NOR DENY:** Defendant, D L P LT13, has no information to evaluate the accuracy of this statement.
- 23. NEITHER ADMIT NOR DENY:** Defendant, D L P LT13, has no information to evaluate the accuracy of this statement.
- 24. NEITHER ADMIT NOR DENY:** Defendant, D L P LT13, has no information to evaluate the accuracy of this statement.

- 25. ADMIT:** On August 29, 1983, Defendant, Maria D. Forman, and her husband, Howard E. Forman, acquired title to the Subject Property as joint tenants with right of survivorship.
- 26. ADMIT:** On May 15, 1990, Defendant, Maria D. Forman, and her husband, Howard E. Forman, signed a warranty deed conveying the Subject Property to D L P LT13 with Jimmy Chisum as Trustee. **DENY:** That the transfer was for little or no consideration and without receipt of reasonably equivalent value in exchange for the transfer. The transfer was legally valid and there was an equivalent exchange of property for property, value for value according to law. **ADMIT:** The deed was recorded on May 30, 1990, at recording number 90-239325.
- 27. DENY:** That upon the death of Howard E. Forman, on or about April 16, 2008, his interest in the Subject Property passed to Defendant, Maria D. Forman. Howard E. Forman had no interest in the property which could pass to Maria D. Forman.
- 28. DENY:** that Defendant, Maria D. Forman, continues to occupy, possess, exercise dominion and control over, and have use and enjoyment of the property such that, to the extent that D L P LT13 purports to hold title to the Subject Property, it does so as a nominee of Defendant, Maria D. Forman. Defendant, Maria D. Forman, has the privilege of use of the property via a Life Tenancy. All dominion and control over the property is held and exercised by the D L P LT13 contractual entity.
- 29. ADMITTED/DENIED/NEITHER ADMITTED NOR DENIED** as stated, referencing paragraphs one (1) through twenty-eight (28) above.
- 30. NEITHER ADMIT NOR DENY:** Defendant, D L P LT13, has no information to determine the accuracy of this statement.

- 31. DENY:** Because of the recent discovery of the 2008 notice to Maria D. Forman that all her alleged taxes were “closed”, all other tax debts and this suit are moot as well.
- 32. DENY:** The Court is barred from issuing any judgment since the case was “closed” by the IRS.
- 33. ADMITTED/DENIED/NEITHER ADMITTED NOR DENIED** as stated, referencing paragraphs one (1) through thirty-two (32) above.
- 34. DENIED:** Again, as described above, there was FULL LEGAL CONSIDERATION for the transfer of the subject property at the time of transfer. Further, to allege Maria D. Forman and Howard E. Forman somehow knew or somehow had reason to know that they would incur any type of liability in the future is absurd. Additionally, action against the Formans is barred by Arizona State Statute of Limitations. Further, any action against them is barred by the “closure” of their case by the IRS.
- 35. DENIED:** The legal transfer of the Subject Property as described above was made for estate planning purposes, to avoid probate, asset protection, provide privacy and many other legal functions. Arizona’s Uniform Fraudulent Transfer Act simply does not apply in the instant case. The Plaintiff’s “boiler plate” allegations are not specific and only make general claims as to the Arizona Uniform Fraudulent Transfer Act. Additionally, only the Arizona State Courts can make that determination. The government is in the wrong court for that determination. Further, since the case against Maria D. Forman was closed by the IRS, the issue is moot.
- 36. DENIED:** The transfer was legal and Arizona’s Uniform Fraudulent Transfer Act does not apply, therefore Plaintiff’s expectation that the transfer will be set aside is premature. This Court has no power to rule upon legal and/or equitable title which is a State Court’s

privilege. The true owner is D L P LT13 as the Arizona legal title records reflect. By contractual agreement, Maria D. Forman has no legal or equitable title to the Subject Property. Further, since the case against Maria D. Forman was closed by the IRS, the issue is moot.

37. DENIED: Defendant, Maria D. Forman, has no beneficial ownership of, and does not exercise dominion and control over, the Subject Property. She is limited to certain privileges completely controlled by the true owner of the property, D L P LT13.

38. DENIED: Defendant, Maria D. Forman, is not using the D L P LT13 contractual entity in any capacity because full control of the entity and the subject property rests with the Trustee, Elmer P. Vild.

39. DENIED: The D L P LT13 entity stands on its own and the Defendant, Maria D. Forman, has no ownership in the D L P LT13 entity or the Subject Property. Maria D. Forman exercises no dominance or control over D L P LT13.

40. ADMITTED/DENIED/NEITHER ADMITTED NOR DENIED as stated, referencing paragraphs one (1) through thirty-nine (39) above.

41. DENIED: Defendant, D L P LT13, did not initially have sufficient information to comment regarding the validity of the alleged assessments and/or liens purported to exist which indicated that a debt exists. However, since the case against Maria D. Forman was closed by the IRS, the issue is moot. Defendant, Maria D. Forman, does not have any “rights to property and/or property interest” in the Subject Property. Defendant, Maria D. Forman, has been granted some privileges to some of D L P LT13’s property. Said privileges are not transferable, cannot be sold and are of no value to anyone but Mrs. Forman.

- 42. DENIED:** Any federal tax liens alleged against Maria D. Forman have nothing to do with D L P LT13's property now or in the future. Additionally, this Court has no "foreclosure" authority as it relates to the true title holder D L P LT13 as alleged by the government in this paragraph. Further, since the case against Maria D. Forman was closed by the IRS, the issue is moot.
- 43. DENIED:** Any federal tax liens alleged against Defendant, Maria D. Forman, have nothing to do with D L P LT13's property now or in the future. Maria D. Forman has no property rights in D L P LT13. The United States is not "entitled to a decree of sale of the Subject Property" to enforce someone else's alleged tax debt. Additionally, any "sale" of the Subject Property, if ever ordered by a Court would have to come from an Arizona State Court. Further, since the case against Maria D. Forman was closed by the IRS, the issue is moot.
- 44. DENIED:** Regardless of whatever is in any United States Code book which may or may not apply to Defendant, Maria D. Forman, the D L P LT13 entity is unaffected because Defendant, Maria D. Forman, has no ownership interest in the Subject Property. Additionally, whatever instrument that would purport to transfer an ownership interest in the subject property's title would not stand scrutiny or be lawful without an order from an Arizona State Court to back it up. In no instance would the government be entitled to sell, lien or encumber the D L P LT13's property for someone's else's alleged tax liability. To date, the D L P LT13 does not have a federal income tax liability of any kind. Further, since the case against Maria D. Forman was closed by the IRS, the issue is moot.

PRAYER FOR DISMISSAL

WHEREFORE, the Defendant, D L P LT13, prays as follows:

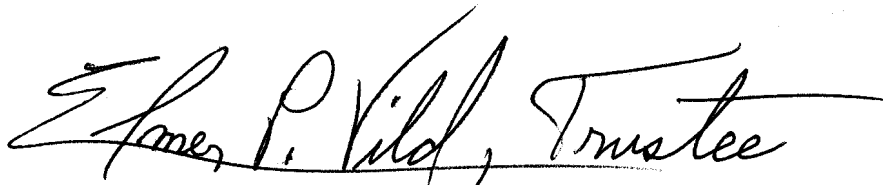
- A. That **JUDGMENT** be *entered in favor* of Defendant, D L P LT13, and against the United States in the matter of any unpaid balance of the alleged federal tax liabilities which were allegedly assessed against Defendant, Maria D. Forman, as described in the complaint together with accrued but un-assessed interest and other statutory additions, together with statutory interest and other additions, less any applicable credits and payments;
- B. That the Court **RULE** D L P LT13 is a *separate entity* formed by contract and protected by the United States Constitution to exist on its own.
- C. That the Court **RULE** that the Plaintiff has the *burden of proof*, and although Plaintiff made unproven allegations, has provided no proof that the D L P LT13 is the alter-ego or nominee of Maria D. Forman. That there is no proof of any kind present that Howard or Maria Forman utilized the D L P LT13 entity as a mere conduit for the transaction of their own private business affairs.
- D. That the Court **RULE** D L P LT13 is *not responsible* for Howard or Maria Forman's alleged personal tax liability.

- E. That the Court **RULE** there is *no evidence* that Howard or Maria Forman exercised any dominance of control over D L P LT13.
- F. That the Court **DETERMINE** that the United States has *no valid and subsisting* federal tax liens against D L P LT13's personal or real property, by virtue of the alleged assessments against Maria D. Forman as set forth in the Second Amended Complaint.
- G. That the Court **DETERMINE** that the *purported transfer* of the Subject Property from Defendant Maria D. Forman and Howard E. Forman was valid and thus Subject Property is excluded from the lien claims of the United States; or in the alternative, that the Court determine that D L P LT13 holds title to the Subject Property and is not the nominee of Defendant Maria D. Forman, and that the United States' tax liens do not attach to the Subject Property.
- H. That the Court **ORDER** that the United States' tax liens *do not encumber* the Subject Property, and that any liability which may attach to Defendant, Maria D. Forman, shall have no effect on the Subject Property.
- I. That the Court **DECLARE** Plaintiff has provided *no substantial facts* which prove that there was a fraudulent transfer without consideration.

J. That the Court **AWARD** the Defendants, Maria D. Forman and D L P LT13, **\$500,000** each in *punitive damages*: The Court declare the instant suit should not have be filed after sending a letter of closure to Maria D. Forman in 2008. The Plaintiff has determined that Defendant Maria Forman is “uncollectible” with no possible chance of collecting any back taxes for any year. The Plaintiff, without justification, has burdened the Defendants and caused them undue stress and burden, especially to Maria Forman, by bring this lawsuit. Therefore, because of the reckless accusations without a factual basis, foundation or reasonable investigation into the true facts of the case regarding the nominee or fraudulent transferee theory in order to attempt to collect alleged back taxes from an uncollectible person, the Defendant, D L P LT13 contractual entity, asks for **\$500,000** in punitive damages be *awarded to each* of the Defendants, Maria Forman and the D L P LT13 entity, to be paid by Plaintiff.

K. That the Defendants, Maria D. Forman and D L P LT13, be **AWARDED** costs and such **other relief** as is just and proper.

Respectfully submitted this 23rd day of February, 2010.



Elmer P. Vild, aka, Phillip O'Neil, Trustee
D L P LT13

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 23rd day of February, 2010 via first class mail to:

Clerk of the Court
Sandra Day O'Connor U.S. Courthouse
SPC 1
401 W. Washington Street, Suite 130
Phoenix, AZ 85003-2118

Copies mailed this 23rd day of February, 2010 via first class mail to:

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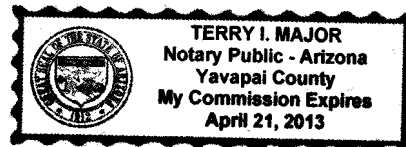
Jimmy Chisum, 84388-008
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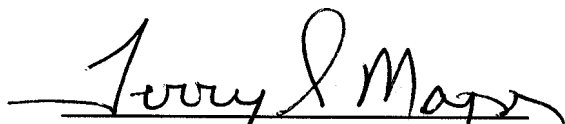
DENISE ANN FAULK
Assistant Attorney General
1275 West Washington St.
Phoenix, AZ 85007-2926

State of Arizona)
) ss.
County of Yavapai)

{Seal}

This document has thus been served.




Terry I. Major, Notary Public