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16 IN THE UNITED STATES DISTRICT COURT
17 DISTRICT OF ARIZONA

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 JOSEPH J. LIPARI, EILEEN H. LIPARI and
22 EXETER TRINITY PROPERTIES, L.L.C.,

23 Defendants.

Civ. No. 10-CV-08142-JWS

**UNITED STATES' RESPONSE TO
EXETER'S CROSS-MOTION FOR
SUMMARY JUDGMENT**

24 **I.**

25 **INTRODUCTION**

26 On December 1, 2011, the United States moved for summary judgment on all the claims in
27 this case, which are made up of its tax and other assessment claims against Joseph and Eileen Lipari
28 (“the Liparis”) and its claim seeking to foreclose its federal tax liens against the Liparis’ residence
29 (“the residence”). The Liparis did not file a response to the United States’ motion but Exeter Trinity
30 Properties, L.L.C. (“Exeter”), the alleged nominal owner of the residence, filed a response and also
31 a cross-motion for summary judgment on the foreclosure claim. The United States hereby responds
32 to Exeter’s cross-motion for summary judgment.

II.

UNDISPUTED FACTS REGARDING THE FORECLOSURE CLAIM

In support of its motion for summary judgment, the United States submitted seventy-eight paragraphs of facts in support of its arguments that the two conveyances of the residence at issue were fraudulent transfers under the Arizona Fraudulent Transfer Act (“UFTA”) and or that Exeter is the nominee/alter ego of the Liparis. *See* the United States’ Statement of Material Facts filed on December 1, 2011 (“U.S. facts”), at ¶¶ 1-78. It appears that the only paragraph of the Government’s facts that Exeter challenged on the merits in its response papers was paragraph 7, which set forth that, “[i]n return for the initial transfer of the residence, the Liparis received ten dollars and “certain” certificates that Jimmy Chisum “made up.” *See* Exeter’s December 30, 2011 Response to the U.S. facts, at ¶ 2.¹ Exeter accepted the facts set forth in that paragraph but it also made an additional allegation therein.² Thus, Exeter has admitted all of the facts that the United States presented in support of its claim that it should be allowed to foreclose its tax liens of the residence and based on such facts, the Government’s summary judgment motion should be granted and Exeter’s motion should be denied.

Since Exeter has not opposed the facts presented by the United States, the following facts are undisputed.

A. Background.

A central figure regarding the foreclosure claim is Jimmy Chisum, who was a paid advisor to the Liparis. (U.S. fact 17). Mr. Chisum gave seminars on trusts and he espoused that the IRS was “evil” and that he wanted to “take it down.” (U.S. fact 28). Eileen Lipari was a student of Mr. Chisum’s, taught at his seminars and basically did “whatever” he told her to do. (U.S. fact 18).

¹Exeter alleged that some of the United States’ facts were irrelevant although it did not otherwise challenge such facts.

²The other allegation was that other, non-monetary consideration was also supposedly given by the Liparis. That allegation is addressed below.

1 Mr. Chisum has been adjudged to be “a known promoter of tax avoidance schemes.” (U.S.
2 fact 31). In one civil case litigated in this District, real property purchased by taxpayers not at issue
3 herein was transferred to entities controlled by Mr. Chisum. (U.S. fact 32). The Court permitted the
4 Government to foreclose its tax liens in that case. (U.S. fact 33).

5 Mr. Chisum was also convicted of federal tax evasion. (U.S. fact 34). The criminal charges
6 related to his involvement in a trust to conceal the taxable income of third parties. (U.S. fact 35).
7 At his deposition taken herein, Mr. Chisum recounted how he called the presiding Judge in his
8 criminal case a liar. (U.S. fact 36).

9 Mrs. Lipari has been involved in court cases similar to the instant case where taxpayers tried
10 to shield their assets from the IRS. (U.S. facts 20-21). In one case, third parties transferred their
11 residence to her (and another individual) for minimal consideration. (U.S. fact 20).

12 Both of the Liparis have espoused common tax defier arguments in the past. For example,
13 they sent a letter to the IRS that set forth that they were a “Sovereign of the Arizona Republic” and
14 not “citizen[s] of the United States subject to its jurisdiction.” (U.S. fact 22). They also alleged in
15 Bankruptcy Court that the United States was “a Municipal Corporation, chartered in the District of
16 Columbia and doing business in the State of Arizona as a foreign Corporation.” (U.S. fact 23).

17 The Liparis did not file their tax returns for their 1994 through 2004 tax years until 2007,
18 which was long after they were due. (U.S. fact 25). When the returns were finally filed, they set
19 forth unpaid tax amounts due and owing. (U.S. fact 26).

20 **B. The 1993 Purported Transfer of the Residence to the Ponderosa Trust.**

21 On or about April 17, 1989, the Liparis purchased the residence for \$105,000. (U.S. facts 2-
22 3). The Liparis made a \$35,000 down payment on the residence and obtained a mortgage for the
23 remaining \$70,000. (U.S. fact 3). In May, 1992, Eileen Lipari and Jimmy Chisum set up the DD
24 Trust to operate Joseph Lipari’s Chiropractic practice. (U.S. facts 15-16).

25 As of March 22, 1993, the Liparis paid off the mortgage and owned the residence free and
26 clear. (U.S. fact 4). On March 24, 1993, which was just after the mortgage was fully paid, a
27 warranty deed that purported to transfer the residence to the Ponderosa Trust with Donna Chisum
28

1 as Trustee (hereafter “the Ponderosa Trust”) was filed with the County Recorder. (U.S. facts 5-6).
2 Donna Chisum was Jimmy Chisum’s wife and she held his same views concerning the IRS. (U.S.
3 facts 9 and 29).

4 In return for the transfer of the residence, the Liparis received ten dollars and certain
5 “certificates” that Jimmy Chisum “made up.” (U.S. fact 7). The ten dollars was the only thing of
6 monetary value that the Liparis ever received in the exchange with the Ponderosa Trust. (U.S. fact
7 8).

8 **C. The 1999 Purported Transfer of the Residence to Exeter Trinity Properties, LLC.**

9 On September 1, 1999, a Warranty Deed was recorded which purported to transfer the
10 residence from the Ponderosa Trust to Exeter. (U.S. fact 40). Jimmy Chisum made the decision to
11 transfer the Lipari residence to Exeter and nothing of value was given by Exeter in return for the
12 transfer. (U.S. fact 41). Exeter was incorporated in 1999 and Jimmy Chisum was its statutory agent.
13 (U.S. fact 42). One of the “members” of Exeter was Hunter King LLC, which was owned by Eileen
14 Lipari. (*Id.*)

15 In early 2006, because Jimmy Chisum was going to jail because of his criminal conviction,
16 the Liparis asked that he transfer control “of all structures associated with” them to Phillip O’Neil.
17 (U.S. fact 46). Mr. O’Neil’s real name is Elmer Vild and he uses Phillip O’Neil as a pseudonym
18 (hereafter he will be referred to as “Vild”). (U.S. fact 48). Eileen Lipari met Vild at Chisum’s
19 seminars. (U.S. fact 49). Vild was a friend of Chisum’s and an active participant in the seminars.
20 (*Id.*)

21 Vild has filed many federal tax cases in this District. (U.S. fact 66). In one case, he stated
22 that he would “sue, and sue, and sue, and sue; until he learns how to get this matter before a jury.”
23 (U.S. fact 67). The Court has described Vild as a “tax protester.” (U.S. fact 68). Vild has also sued
24 various Arizona state court judges. (U.S. fact 69).

25 Eileen Lipari thought when the switch to Vild occurred that maybe she could get the residence
26 back. (U.S. fact 47). Instead Vild told her that “[she] had to pay rent for the property now, because
27 [her husband Joseph Lipari] was getting sicker and [the Liparis] couldn’t really take care of it
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1 anymore.” (U.S. fact 52). In November, 2007, Vild gave documents to the Liparis which indicated
2 that he was “evicting” them from the residence. (U.S. fact 51). Vild’s “eviction” papers stated that
3 the Liparis were in violation of their “original contract and rental agreement.” (U.S. fact 53).
4 However, Vild has never seen those agreements and he does not know if the agreements were written
5 or verbal. (U.S. fact 54).

6 Terry Major, who assisted Vild with the “eviction,” now resides in the residence. (U.S. fact
7 62). In November, 2007, Major and Vild moved boxes into the residence and the Liparis left. (U.S.
8 fact 63). Major was also involved with Chisum’s seminars and he filed a court case wherein his
9 assertions were described by the presiding court as “tax protester arguments.” (U.S. facts 75-76).

10 In February, 2008, which was about three months *after* he “evicted” the Liparis from their
11 residence, Vild amended Exeter’s Articles of Corporation. (U.S. fact 56). The Golden Kiwi Trust,
12 of which Vild was the trustee, became a new member of Exeter, replacing Hunter King, which was
13 owned by Eileen Lipari. (U.S. fact 57). Thus, when Vild signed the eviction documents in 2007 on
14 behalf of the Golden Kiwi Trust, that trust was not a member of Exeter. (U.S. fact 58).

15 At the time of the “eviction,” the Liparis had \$165,000 invested in the residence, based on the
16 purchase price and cost of improvements that they had made over the years. (U.S. facts 59-60).
17 Pursuant to Eileen Lipari, up until November, 2007, Exeter, Chisum nor Vild “paid any of the real
18 estate taxes, upkeep, insurance [or] maintenance” on the residence. (U.S. fact 61).

19 **D. From 1993 through 2007, the Liparis Lived in the Residence Rent Free,**
20 **Depreciated the Residence and Took Deductions Relating to it on Their Personal**
21 **Income Tax Returns.**

22 Joseph Lipari’s chiropractic business was located in the residence and the Liparis took
23 business deductions on their 1994 through 2004 individual tax returns tax returns that related to the
24 business. (U.S. facts 10-11). The deductions related to the following expenditures that the Liparis
25 paid from revenues generated by Mr. Lipari’s chiropractic business: real estate taxes, insurance,
26 repairs, maintenance and utilities paid on the residence. (U.S. fact 11). The Liparis also depreciated
27 the residence on their 1999 through 2002 personal income tax returns. (U.S. fact 12). The
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1 deductions and depreciation were taken by the Liparis on their personal returns during years in which
2 the residence was supposedly “owned” by the Ponderosa Trust and Exeter. (U.S. fact 13).

3 The Liparis never paid rent to live in the residence from 1993 through 2007. (U.S. fact 14).

4 **III.**

5 **EXETER’S CROSS-MOTION FOR SUMMARY JUDGMENT ON**
6 **THE FORECLOSURE CLAIM SHOULD BE DENIED AND THE**
7 **UNITED STATES SUMMARY JUDGMENT MOTION REGARDING**
8 **THAT CLAIM SHOULD BE GRANTED**

9 In support of its foreclosure claim, the United States alleged in the complaint that the two
10 purported transfers of the Lipari residence (from the Liparis to the Ponderosa Trust and from the
11 Ponderosa Trust to Exeter) were fraudulent conveyances that should be set aside. The United States
12 alleged, in the alternative, that Exeter is the nominee/alter ego of the Liparis. The Court could rely
13 on either theory (or both) to order the residence to be sold to pay the Liparis’ tax liabilities under 26
14 U.S.C. § 7403.

15 In its brief (“Exeter’s brief”), Exeter argues that the purported transfers of the residence were
16 made within the context of the Liparis’ legitimate estate planning. *See e.g.*, Exeter’s brief, at 3:26-
17 4:1 and 9:3-6. As a preliminary matter, that claim appears to be contradicted by Exeter’s assertion
18 that Mr. Chisum “directed [the Liparis] to put their house in trust.” *Id.*, at 2:23-25. If Chisum was
19 directing the Liparis actions and they did whatever Chisum said, it is unknown how *their* intentions
20 could have been carried out.

21 Exeter is obviously trying to paint a picture of legitimacy in its brief, where the individuals
22 involved in the purported transfers of the residence were allegedly acting with only the most
23 honorable intentions to help the Liparis meet their estate planning goals. But that picture could not
24 be further from the truth. Based on the undisputed facts, the reality is that such individuals are
25 mostly people who have expressed extreme views and have taken highly questionable positions
26 regarding federal taxes and or the IRS. For example:

1 -- It is undisputed that Jimmy Chisum gave seminars in which he espoused that the IRS
2 was “evil” and that he wanted to “take it down.” (U.S. fact 28). Mr. Chisum was
3 convicted of federal tax evasion, was involved in at least one other case in which a
4 taxpayer was tried to improperly shield property from the IRS and has been described
5 as “a known promoter of tax avoidance schemes.” (U.S. facts 31-35);

6 -- It is undisputed that the Liparis have expressed tax defier views in the past and Mrs.
7 Lipari has assisted others in trying to improperly shield their property from the IRS.
8 (U.S. facts 20-24);

9 -- It is undisputed that Elmer Vild, who apparently started making the decisions for
10 Exeter after Jimmy Chisum was incarcerated, has been adjudged to be a “tax
11 protester.” (U.S. facts 66-68); and

12 -- It is undisputed that Terry Major, who was involved with Exeter and Vild, and who
13 now lives in the residence filed a Tax Court case in which his arguments were
14 described by that court as “tax protester arguments.” (U.S. fact 75).

15 These undisputed facts help prove that the residence was transferred to defraud the IRS and attempt
16 to keep it away from the tax liens that would surely arise as a result of the Liparis’ filing of a
17 frivolous-type 1993 return and their decision to stop filing their federal tax returns, which they did
18 starting with their 1994 return.

19 Notably, there is little mention in Exeter’s brief of relevant actions taken by Vild and Major.
20 Exeter’s failure to confront Vild’s actions is particularly important. Vild, who is apparently in-charge
21 of Exeter, was not willing to commit for sure at his deposition that he would carry out the alleged
22 wishes of the Liparis and give the residence to charity. *See* Duffy declaration exhibit 12 filed on
23 December 1, 2011 (a partial transcript of Vild’s deposition transcript), at 41:23-43:23. Vild also
24 made it very clear that someone was going to have to pay *his* various expenses - the amount of which
25 are unknown - before he would turn the residence over to charity. *Id.*, at 42:21-43:15.

26 Vild also appears to have acted without regard to what he was legally or otherwise entitled
27 to do. For example, it is undisputed that in November, 2007, Vild gave documents to the Liparis
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1 which indicated that he was “evicting” them from the residence because they were in violation of an
2 “original contract and rental agreement” even though he has never seen those agreements and does
3 not know if the agreements were written or verbal. (U.S. facts 51, 53-54).

4 Similarly, it is undisputed that in February, 2008, which was about three months after he
5 “evicted” the Liparis from their residence, Vild amended Exeter’s Articles of Corporation to make
6 the Golden Kiwi Trust a new member of Exeter. (U.S. facts 56-57). Thus, when Vild signed the
7 eviction documents in 2007 on behalf of the Golden Kiwi Trust, that trust was not even a member
8 of Exeter pursuant to state records. (U.S. fact 58).

9 Exeter also states in its brief that the Liparis “did not intend to defraud the IRS.” *See* Exeter’s
10 brief, at 6:25. Exeter’s allegation about what the Liparis intended is speculation. It is also important
11 to note that while Exeter is willing to speculate about what the Liparis intended *vis a vis* the IRS, it
12 is not willing to address the relevant undisputed facts concerning Liparis’ stated views towards the
13 IRS and their federal tax obligations, such as:

- 14 -- They sent a letter to the IRS that set forth that they were a “Sovereign of the Arizona
15 Republic” and not “citizen[s] of the United States subject to its jurisdiction.” (U.S.
16 fact 22);
- 17 -- They alleged in Bankruptcy Court that the United States was “a Municipal
18 Corporation, chartered in the District of Columbia and doing business in the State of
19 Arizona as a foreign Corporation.” (U.S. fact 23);
- 20 -- Mrs. Lipari was involved in court cases similar to the instant case where other
21 taxpayers tried to shield their assets from the IRS. (U.S. facts 20-21); and
- 22 -- They did not file their tax returns for their 1994 through 2004 tax years until 2007,
23 which was long after they were due, and when the returns were finally filed they set
24 forth unpaid tax amounts due. (U.S. facts 25-26).

25 Exeter has put blinders on and simply refuses to confront the actions taken in the past by the Liparis
26 *vis a vis* the IRS and consider how such actions are relevant herein.

27 Regarding the fact that the Liparis took deductions on their personal income tax returns for
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1 real estate taxes, insurance, repairs, maintenance and utilities paid on the residence after they
2 purportedly transferred it (U.S. fact 11), Exeter argues that returns were filed long after they were
3 due, in 2007, and thus have “little probative value.” *See* Exeter’s brief, at 4:21-23. But Exeter
4 misses the point. What is relevant is that the Liparis took deductions on returns filed after the
5 purported transfers wherein they indicated through the deductions and depreciation that they took
6 that *they* were the owners of the residence. Exeter’s allegation that the returns are not probative is
7 also without merit since the Liparis signed them under penalties of perjury.

8 Importantly, it is undisputed that the Liparis depreciated the residence for multiple years (*i.e.*,
9 1999 to 2002) on their personal tax returns after the date that they purportedly transferred it to the
10 Ponderosa Trust. (U.S. fact 12). Exeter rightly admits that taking depreciation “does equate to a
11 claim of ownership.” *See* Exeter’s brief, at 5:21-22. However, Exeter attempts to downplay the
12 depreciation deductions by alleging - without citing to the record - that “the Liparis did not
13 understand what they were doing.” *Id.*, at 5:24-26. Again, Exeter is speculating and it cannot defeat
14 the United States’ summary judgment motion with speculation. *See e.g., Lexington Ins. Co. v. W.*
15 *Pa. Hosp.*, 423 F.3d 318, 333 (3d Cir. 2005).

16 Exeter makes other arguments in its brief that are also without merit. For example, in
17 discussing the Liparis’ 1993 federal return, Exeter alleges that “the Government has alleged no
18 impropriety in connection with that return.” *See* Exeter’s brief, at 6:26-7:2. That is not correct.
19 Regarding the Liparis’ 1993 tax year, the Government explained that the IRS alleged in the United
20 States Tax Court that the DD Trust (which the Liparis were involved with) was a sham and that the
21 Liparis failed to report a large percentage of their income for that year. (U.S. fact 19). Also, the
22 Government explained that the 1993 tax liability was at issue in the Tax Court, that the Liparis failed
23 to appear at trial and that the court ruled for the IRS. (*Id.*).

24 Exeter also argues that it is somehow relevant that the Liparis stopped filing their returns
25 starting with their 1994 return and further asserts that “[i]f [they] were intending to defraud the IRS,
26 they should have stopped filing returns in 1993.” *See* Exeter’s brief, at 7:3-4. The argument is hard
27 to follow but in any event it is without merit since, to the extent that the Liparis filed a return for
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1 1993, it was frivolous in nature. *See Lipari v. IRS*, 2000 WL 1227130 (Tax Ct. 2000). Clearly, the
2 Liparis' anti-IRS efforts were ongoing in 1993 (and before). As stated before, the Liparis - with
3 Chisum as their advisor - embarked on a path in 1992 to thwart the IRS and avoid paying their
4 federal taxes. They began in May, 1992, when they set up the DD Trust to operate Mr. Lipari's
5 Chiropractic business. Thereafter, in 1993,³ the Liparis transferred the residence to the Ponderosa
6 Trust and shortly thereafter stopped filing their federal income tax returns.

7 While discussing the badges of fraud under Ariz. Rev. Stat. ("A.R.S.") § 44-1004(B), Exeter
8 makes various statements that are controverted by the undisputed facts herein. For example, it asserts
9 that the Liparis did not retain control of the residence after the purported transfer to the Ponderosa
10 Trust in 1993 (Exeter's brief, at 9:10-11) but that is contradicted by the fact that the Liparis
11 depreciated the residence on their 1999 through 2002 personal income tax returns.

12 Exeter also argues that the Liparis received commensurate value in return for the transfer of
13 the residence because they were allowed to live in the residence rent free for 15 years. *See Exeter's*
14 *brief*, at 9:17-19. In effect, Exeter - which invested little or nothing of value in the residence - is
15 trying to bolster its case on the theory that *it allowed* the Liparis - who invested \$165,000 in the
16 residence - to live in the residence rent free. (U.S. facts 3-4, 59-61). That argument makes little
17 sense and it should be rejected.

18 Exeter also alleges that the purported transfer of the residence was not to an insider. *See*
19 *Exeter's brief*, at 9:9. Apparently, Exeter's position is that Jimmy Chisum was a legitimate,
20 independent, third party trustee. But, as explained above, Exeter is ignoring various undisputed facts
21 regarding Mr. Chisum's past actions, the close relationship that he and Eileen Lipari had and the fact
22 that each has tried to improperly thwart the IRS over the years.

23 Regarding the badges of fraud, often a single circumstance or badge "may establish and stamp
24 a transaction as fraudulent" and when "several are found in the same transaction, strong, clear
25 evidence will be required to repel the conclusion of fraudulent intent." *Torosian v. Paulos*, 82 Ariz.

26
27 ³The purported transfer deed was recorded on March 24, 1993. (U.S. fact 5).
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1 304, 312 (1957). In this matter, the badges of fraud that the United States is relying on - which are
2 based on undisputed facts - are “strong, clear evidence” of fraudulent intent.

3 It should also be noted also that Exeter relies heavily on its statement of facts to support its
4 arguments regarding the badges of fraud (*see e.g.*, Exeter’s brief, at 7:13-15 and 9:23-24) but the
5 United States has disputed many of Exeter’s facts.⁴ In contrast, the United States’ arguments are
6 based on undisputed facts. As the United States Court of Appeals for the Ninth Circuit stated, where
7 a party (like Exeter here) fails to produce “substantial factual evidence to combat summary judgment
8 and there is ‘overwhelming evidence’ favoring the moving party, it may be unreasonable to draw an
9 inference contrary to the movant’s interpretation of facts, and therefore a summary judgment would
10 be appropriate even when [state of mind] is at issue.” *United States v. 1980 Red Rerrari*, 827 F.2d
11 477, 479 (9th Cir. 1987) (citation omitted).

12 In its brief, Exeter addresses the Government’s alternative assertion regarding the fraudulent
13 conveyance claim, that constructive fraud is present here pursuant to A.R.S. § 44-1004(A)(2). Exeter
14 argues that the Liparis received equivalent value when they “transferred” the residence to the
15 Ponderosa trust but, as discussed above, that argument is without merit. In fact, the only thing of
16 value that the Liparis received in return for the transfer of the residence (in which they invested
17 \$165,000) was *ten dollars*. (U.S. facts 7-8).

18 Exeter also argues also that the Liparis’ tax returns filed for their 1994 tax year and for years
19 thereafter show that the Liparis had “more than sufficient funds to pay their debts as they came due.”
20 *See* Exeter’s brief, at 10:13-15. But Exeter leaves out several relevant facts, such as that the Liparis
21 failed to pay their taxes for those years and their 1993 year and now, they owe approximately
22 \$960,000 in federal taxes. (U.S. fact 85). For the 1993 year alone, the Liparis owe \$173,079.83.
23 (*Id.*) Also, Mr. Lipari’s general statement in his affidavit that he and Eileen Lipari were not rendered
24 insolvent by the purported transfer of the residence (*see* ¶ 10 of the affidavit, which was filed on
25 December 30, 2011) is conclusory and Exeter has not submitted specific facts about the Liparis assets
26

27 ⁴*See* the United States’ Response to Exeter’s Statement of Facts (filed herewith).
28

1 and liabilities that existed after the purported transfer was made.

2 Another alternative claim asserted by the United States was that Exeter is the nominee/alter
3 ego of the Liparis. As previously submitted by the United States, the nominee/alter ego argument
4 is “muddied” by the eviction issue. However, what is clear is that the Liparis exerted control over
5 the residence during years in which Exeter supposedly owned the residence by living in it rent free
6 and by depreciating it on their personal income tax returns. Further, in any event, the United States
7 is entitled to summary judgment on its fraudulent conveyance claim based on the undisputed facts
8 described above.

9 **IV.**

10 **CONCLUSION**

11 The United States’ motion for summary judgment should be granted and Exeter’s cross-
12 motion for summary judgment should be denied.

13
14 DATED this 27th day of January, 2012.

15
16 JOHN A. DICICCO
Principal Deputy Assistant Attorney
General, Tax Division
17 U.S. Department of Justice

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19 By: /s/ Charles M. Duffy
CHARLES M. DUFFY
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21 Of Counsel:

22 ANN SCHEEL
Acting United States Attorney
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January, 2012, I electronically filed the foregoing with the Clerk of Court and served the following attorney of record using the CM/ECF system:

John Friedeman, P.C.
5103 E. Thomas Road
Phoenix, Arizona 85018

I further certify that on the same day, I mailed by U.S. Postal Service the foregoing to the following party who is not represented by counsel:

Joseph J. Lipari
156 Johnson Hill Drive
Waynesville, NC 28786

/s/ Charles M. Duffy
Charles M. Duffy
Trial Attorney, Tax Division
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH J. LIPARI, EILEEN H. LIPARI and
EXETER TRINITY PROPERTIES, L.L.C.,

Defendants.

Civ. No. 10-CV-08142-JWS

**UNITED STATES' RESPONSE TO
EXETER'S STATEMENT OF FACTS IN
SUPPORT OF ITS CROSS-MOTION
FOR SUMMARY JUDGMENT**

The United States hereby responds to the Statement of Facts in Support of the Cross-Motion for Summary Judgment filed by Exeter Trinity Properties, L.L.C. ("Exeter") filed on December 30, 2011 by responding to the paragraphs set forth therein as follows:

1. The United States denies in that Joseph Lipari's signature is not set forth on the cited document and it is unknown if he directly participated in the creation of the trust. Also, it appears that Jimmy Chisum was also involved in creating the trust since, for example, his signature appears to be set forth on the cited document.

2. The United States admits that Eileen Lipari testified that Jimmy Chisum told her that the Ponderosa Trust was irrevocable. See Eileen Lipari's deposition ("E.Lip. dep."), at 73:23-24.

1 However, the United States denies that the Trust, in fact, was irrevocable since there is evidence that
2 suggests that it was not. For example, the referenced trust agreement does not appear to specifically
3 provide that the Ponderosa Trust was irrevocable. The subject trust agreement is also of questionable
4 legal import in any event since, for example, the Internal Revenue Service (“IRS”) asserted to the
5 United States Tax Court that the DD Trust (which is the beneficiary listed in the trust agreement) was
6 a sham and the IRS prevailed in that court case. *See Lipari v. Commissioner*, 2000 WL 1227130
7 (Tax Ct. 2000). Also, the fact that Jimmy Chisum purported to later transfer the residence out of the
8 Trust to Exeter also appears to undercut the argument that the Trust was irrevocable.

9 3. The United States denies the first sentence. As a preliminary matter, the warranty
10 deed that purportedly transferred the house was not filed until March 24, 1993. (E.Lip. dep., at 62:5-
11 25 and E.Lip. dep. ex. 13). Also, any claim that the purported “transfer” of the residence was valid
12 and legal to transfer ownership thereof is contradicted by the fact that the Liparis exerted control over
13 the residence subsequent to the “transfer” in that, for example, they depreciated the residence on their
14 personal income tax returns. *See* United States of Facts filed on December 1, 2011 (“U.S. facts”),
15 at ¶ 12. Regarding the second sentence, the United States admits that Joseph Lipari asserted in his
16 affidavit that the Liparis were “completely solvent” because the transfer of the residence “did not
17 consist of all of [their] assets.” However, the statement is conclusory and Exeter has not provided
18 evidence of the Liparis’ specific assets and liabilities after the “transfer.” It is notable that the
19 purported transfer was recorded in 1993 and the Liparis owe \$173,019.83 for that year, plus interest
20 accruing after November 1, 2011. *See* U.S. fact 85.

21 4. The United States admits that the Liparis gave different reasons for the purported
22 transfer of the residence to the Ponderosa Trust. Regarding why the Liparis engaged in the
23 purported transfer, Exeter ignores evidence that the transfer was made to try to prevent IRS’s tax
24 liens from reaching the residence. *See e.g.*, U.S. facts 18-23, 25 and 28-35. Also, any claim that
25 the purported “transfer” of the residence was valid and legal to transfer ownership thereof is
26 contradicted by the fact that the Liparis exerted control over the residence subsequent to the
27 “transfer” in that, for example, they depreciated the residence on their personal income tax returns.

1 See U.S. fact 12.

2 5. The United States admits the allegations in the first two sentences although the transfer
3 was a *purported* transfer and, further, the Liparis continued to exert control over the residence by,
4 for example, thereafter depreciating it on their personal tax returns. See U.S. fact 12. Any allegation
5 that the residence was legally transferred is contradicted by the fact that the Liparis continued to
6 exert control over it. The United States denies the third sentence since Elmer Vild appeared to
7 equivocate (in the cited deposition pages) about whether he was going to give the residence to charity
8 for sure. Furthermore, regarding the reference to “net” proceeds, apparently Mr. Vild will ensure
9 that his expenses are paid before any transfer to charity is made.

10 6. The United States denies the first sentence since, for example, the language referenced
11 in the subject document relates to beneficiaries and the Liparis do not appear to be designated as
12 beneficiaries in the document. Regarding the second and third sentences, the United States admits
13 that the Liparis lived in the residence but the assertion that they needed permission to live there or
14 pay rent is contradicted by the fact that they purchased and paid for the residence and exerted control
15 over it by, for example, depreciating it on their personal tax returns after they purportedly transferred
16 it. See U.S. facts 4 and 12. Regarding the fourth sentence, the United States admits that the Liparis
17 ran their businesses out of the residence.

18 7. The United States denies the allegation since if the Liparis believed that they lost all
19 interest in the residence they would not have depreciated it on their personal income tax returns after
20 they purportedly transferred it to the Ponderosa Trust.

21 8. The United States denies the allegation since if the Liparis believed that they had no
22 interest in the residence they would not have depreciated it on their personal income tax returns after
23 they purportedly transferred it to the Ponderosa Trust.

24 9. The United States denies the allegation since the Liparis’ expectation to the referenced
25 proceeds can be inferred from the fact that Eileen Lipari testified that she thought she would get the
26 residence back at some point after the purported transfer to the Ponderosa Trust. See U.S. facts 46-
27 47. Other evidence of the referenced expectation is that the Liparis paid for the residence and
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1 depreciated it on their personal tax returns after the purported transfers. (U.S. facts 4 and 12).

2 10. The United States denies because Exeter has not shown by admissible evidence that
3 the 1993 return was timely filed. In this regard, the fact that the IRS may not have assessed the
4 Liparis for a late filing penalty for the 1993 year does not establish that the return was timely filed.

5 11. The United States admits the first sentence to the extent that Eileen Lipari did what
6 Chisum told *her* to do. Exeter did not set forth a citation regarding whether Mr. Lipari acted
7 similarly. Regarding the second sentence, the United States admits that the Liparis apparently
8 believed that Chisum was going to handle some aspects of their financial lives but notes that Lipari
9 testified at her deposition that at some point she began “to have problems” with that. *See* E.Lip. dep.,
10 at 25:1-11. Regarding the third sentence, the United States denies because the Liparis “controlled”
11 the residence in that they, for example, depreciated it on their personal tax returns. *See* U.S. fact 12.

12 12. The United States admits allegations in the first sentence although it is unknown if such
13 entities filed tax returns in which they reported receiving such income for the years in question. The
14 United States admits that Eileen Lipari testified consistent with the second and third sentences.

15 13. It appears that none of the parties to this suit have filed copies of the Liparis’ 1993 tax
16 return but the United States denies for lack of information whether the return is “not available.”
17 Regarding the second sentence, the United States admits that the Liparis’ 1994 through 2004
18 personal income tax returns were received by the IRS in about July and August, 2007. Regarding
19 the third sentence, the United States denies the allegation because it is not clear whether the Liparis’
20 2005 to 2007 returns were filed in June, 2007. The United States admits the allegations in the last
21 two sentences.

22 14. The United States admits that the Liparis filed the Forms 8829 which set forth, among
23 other things expenses that the Liparis incurred in their businesses. Regarding the second sentence,
24 the United States denies because Exeter does not indicate specific years to which it is referring but,
25 in any event, the subject returns speak for themselves. Also, the United States denies the second and
26 third sentences because Exeter has not established that DD Trust and Morningstar filed tax returns
27 reporting that they received the referenced income and paid the referenced expenses. Also, the IRS
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1 asserted that the DD Trust was a sham was litigated in the United States Tax Court and the IRS
2 prevailed in that case. *See* U.S. fact 19. Regarding the third sentence, the United States admits that
3 the referenced expenses were paid from monies earned by the Liparis.

4 15. The United States admits the allegations in the first two sentences. Regarding the third
5 sentence, the United States denies because Exeter has not submitted the 1993 return and has not
6 otherwise established the fact.

7 16. The United States neither admits nor denies the allegation since the referenced
8 document apparently has not been authenticated by Exeter and it is inadmissible.

9 17. The United States denies the allegation since Eileen Lipari testified that she owned the
10 referenced entity. *See* E.Lip. dep., at 19:23-20:3; *see also* U.S. fact 42 which was not denied by
11 Exeter.

12 DATED this 27th day of January, 2012.

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15 JOHN A. DICICCO
Principal Deputy Assistant Attorney
General, Tax Division
16 U.S. Department of Justice

17
18 By: /s/ Charles M. Duffy
CHARLES M. DUFFY
19 Trial Attorney, Tax Division

20 Of Counsel:

21 ANN SCHEEL
Acting United States Attorney
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January, 2012, I electronically filed the foregoing with the Clerk of Court and served the following attorney of record using the CM/ECF system:

John Friedeman, P.C.
5103 E. Thomas Road
Phoenix, Arizona 85018

I further certify that on the same day, I mailed by U.S. Postal Service the foregoing to the following party who is not represented by counsel:

Joseph J. Lipari
156 Johnson Hill Drive
Waynesville, NC 28786

/s/ Charles M. Duffy
Charles M. Duffy
Trial Attorney, Tax Division
U.S. Department of Justice

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