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8
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10 IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ARIZONA

11 United States of America,

12 Plaintiff,

13 v.

14 Maria D. Forman et al.,

15 Defendants.

Civil No. 09-CV-444-PHX-SRB

REPLY IN SUPPORT OF UNITED
STATES' MOTION TO STRIKE ALL
PLEADINGS AND DOCUMENTS
FILED BY ELMER P. VILD ON
BEHALF OF DLP LT 13

16
17 The United States, through undersigned counsel, hereby replies in support of its
18 Motion to Strike All Pleadings and Documents Filed by Elmer P. Vild on Belhalf of DLP
19 LT 13 (Doc. 107) as follows:

20 **SUMMARY OF CASE**

21 In this case, the United States seeks to reduce to judgment certain tax liabilities
22 assessed against Defendant Maria D. Forman, and to foreclose tax liens connected with

1 those liabilities. Defendant DLP LT 13 was included in this case because it holds title to
2 the property that is the subject of the United States' foreclosure claim. The United States
3 contends that DLP LT 13 either obtained title to the Subject Property as the result of a
4 fraudulent transfer or it is a nominee of Defendant Maria D. Forman, the true beneficial
5 owner. Elmer P. Vild, as Trustee for DLP LT 13, has purported to represent DLP LT 13
6 during the entirety of this case. The United States has opposed this purported
7 representation on the grounds that Mr. Vild is a *pro se* individual prohibited from
8 representing anyone but himself. The United States' earlier Motions to Strike were
9 denied by the Court on the grounds that, while Mr. Vild "cannot represent any party
10 but himself," the Court could not yet conclude that Mr. Vild did not have an interest.
11 However, as the United States demonstrated in its Motion to Strike, Mr. Vild has now
12 affirmatively stated that he is not a beneficiary of the trust known as DLP LT 13, nor is
13 he a beneficiary of the beneficiary trust.

14 In his response, Mr. Vild fails to properly address this argument. Instead, he
15 spends two pages arguing the procedural validity of the liens against the subject
16 property – an issue wholly unconnected with the instant motion. When Mr. Vild does
17 finally address the United States' argument, he merely dismisses the case law cited by
18 the United States as "different that the circumstances in the instant suit" and thus not
19 applicable. He does not explain how or why those cases are distinguishable.¹

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21 ¹ Mr. Vild does try to distinguish this case from *C.E. Pope Equity Trust v. U.S.*, 818 F.2d 696, 697 (9th Cir. 1987), by
22 pointing out that the Trustee in that case was two steps removed from the real party in interest. However, Mr. Vild
is the Trustee for DLP LT 13, the beneficiary of which is yet *another* trust, the beneficiaries of which are Defendant
Forman's adult children. Hence Mr. Vild is, in fact, two steps removed from the ultimate beneficiaries and the real
parties in interest in this case.

1 Mr. Vild appears to confuse the issue of whether a Trustee may represent the
 2 Trust in a general way with the issue of representation *in court*. Whether Mr. Vild is the
 3 “voice” of the trust is irrelevant to whether he is permitted to appear in a court of law
 4 on his behalf. The law requires that entities – when appearing before a court of law – be
 5 represented by a licensed attorney. This rule does not originate in contract law or the
 6 law governing the formation of DLP LT 13; it is a rule originating with the courts
 7 themselves.

8 The reciprocal relation between the bar and the bench
 9 permits an exception only for a person acting personally. A
 10 federal court rightly expects a lawyer to represent a litigant.
 11 By its supervision of the bar and through its reliance on the
 12 lawyers before it, the court is enabled to function.
 13 Professional competence and professional responsibility are
 14 the sine qua non of federal litigation and effective judicial
 15 response.

16 *C.E. Pope Equity Trust v. U.S.*, 818 F.2d 696, 698 (9th Cir. 1987), cited in *U.S. v. Stepard*, 876
 17 F. Supp. 214, 215 (D. Ariz. 1994). The representation of a person other than himself
 18 constitutes the practice of law, and only licensed attorneys are permitted to so practice.²
 19 *Mosher v. Hiner*, 62 Ariz. 110, 113-114, 154 P.2d 372, 374 (Ariz. 1944). Thus “[a] non-
 20 attorney trustee may not represent a trust pro se in an Article III court.” *Hale Joy Trust*
 21 *v. C.I.R.*, 57 Fed. Appx. 323, 324 (9th Cir. 2003) (unpublished).³

22 ² Representing oneself does not constitute the practice of law. *State ex rel. Frohmiller v. Hendrix*, 59 Ariz. 184, 190, 124 P.2d 768, 772 (Ariz. 1942); Arizona Supreme Court Rule 31(a)(2)(A)(3).

³ This prohibition is recognized both in Arizona and—contrary to Mr. Vild’s assertions—Nevada, where he claims DLP LT 13 was created. See *U.S. v. Melluzo*, 2010 WL 1779644, *1 (D. Ariz. 2010) (order dated May 3, 2010, citing *R. Charles Brygfogle/MacKenzie Trust (1998) v. Afinowich*, 2007 WL 5463550 (Ariz.App. Div. 1, 2007) (unpublished) (“no Arizona statute or rule provides an exception for a non-attorney trustee to appear in court on behalf of a trust”)); Arizona Supreme Court Rule 31(b); Local Civil Rule 83.1(b); *Salman v. Newell*, 110 Nev. 1333, 1336, 885 P.2d 607, 608 (Nev. 1994) (“Although a person is entitled to represent himself or herself in the district court, [...] no rule or statute permits a person to represent any other person, a company, a trust, or any other entity in

1 Mr. Vild is essentially asking for permission to practice law without being an
2 active member of any bar.⁴ There is no legal basis for such a claim in either state or
3 federal law.

4 Mr. Vild's arguments regarding his "loans" to DLP LT 13 are similarly
5 unpersuasive. Mr. Vild seems to be arguing that he is entitled to represent DLP LT 13
6 by virtue of his status as a creditor thereof.⁵ This novel argument, if extended to its
7 logical conclusion, would allow shareholders to represent corporations *pro se* and
8 would ultimately permit creditors to represent debtor entities – hardly a desirable
9 result. If the mere loaning of funds to an entity enabled a non-attorney to represent that
10 entity, the longstanding prohibition on non-attorney representation would be rendered
11 meaningless. Indeed, Mr. Vild can point to no statutory or other authority for his claim
12 that his loan of fund to DLP LT 13 entitles him to represent that entity in court.

13 Accordingly, all pleadings and documents filed on behalf on DLP LT 13 or any
14 party other than Mr. Vild himself are improper and should be stricken from the docket.

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20 the district courts or in this court.”) (emphasis added); see also N.R.S. § 7.285 (prohibiting the practice of law by
other than an active member of the state bar).

21 ⁴ In both Nevada and Arizona, the unlicensed practice of law is prohibited; in Nevada, it actually constitutes a
criminal offense. See N.R.S. § 7.285.

22 ⁵ Mr. Vild refers to himself as a lienholder, but does not appear to claim that he has actually filed a lien with the
appropriate government office. While his loan to DLP LT 13 might give rise to a cause of action which, if
successful, could yield a judgment lien, the mere fact that he has loaned DLP LT 13 money does not transform him
into a lienholder.

1 Respectfully submitted this 5th day of November, 2010.

2 DENNIS K. BURKE
3 United States Attorney

4 By: /s/ Alexis V. Andrews
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11 **CERTIFICATE OF SERVICE**

12 It is hereby certified that service of the foregoing REPLY IN SUPPORT OF
13 UNITED STATES' MOTION TO STRIKE ALL PLEADINGS AND DOCUMENTS FILED
14 BY ELMER P. VILD ON BEHALF OF DLP LT 13 has been made this 5th day of
15 November, 2010, by placing copies in the United States Mail addressed to the following:

16 Maria D. Forman
17 c/o 5640 E. Duane Lane
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/s/ Alexis V. Andrews
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