

D L P 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,	)	
	)	Civil No. CV 09-00444-PHX-SRB
Plaintiff,	)	
	)	REPLY TO UNITED STATES'
v.	)	RESPONSE IN OPPOSITION TO
	)	TRUSTEE ELMER P. VILD'S MOTION
Maria D. Forman; Jimmy C. Chisum, and	)	FOR DISMISSAL UNDER RULE 12(B)
Elmer P. Vild, also known as Phillip	)	
O'Neil, as Trustees for the DLP LT 13	)	
Trust; and Arizona Department of	)	
Revenue	)	
	)	
Defendants.	)	
	)	

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.

The Defendant D L P LT13 has received UNITED STATES' RESPONSE IN OPPOSITION TO TRUSTEE ELMER P. VILD'S MOTION FOR DISMISSAL UNDER RULE

12(B). It would seem that the Plaintiff still does not understand the very basics of jurisdiction. Plaintiff's only basic argument remains that the Plaintiff has quoted a statute and therefore the Court has jurisdiction. Not true. Anyone can quote a statute, but jurisdiction must be shown on the record which the Plaintiff has failed to accomplish.

Therefore, this Defendant shall attempt to give an explanation which anyone should be able to understand. There is the common law and statutory law. In common law, Mr. "A" is supposed to know he cannot kill Mr. "B" without good cause. In statute law, Mr. "A" might owe taxes to the government or United States, but the United States cannot take Mr. B's property for Mr. A's taxes. There must be shown on the record a nexus between Mr. A's alleged debt and Mr. B's property. Mr. A must have property rights or rights to the property that Mr. B owns. This must be shown on the record before a court would gain jurisdiction to allow a lawsuit regarding Mr. B's private property. The problem in the instant lawsuit is that there has been no nexus shown, and quoting a statute does not create or demonstrate a nexus.

In the past, the Plaintiff's lawyer has attempted to claim that there was a fraudulent transfer some 20 year earlier. What? Arizona's statute of limitations prevents this claim. And, who is claiming a fraudulent transfer? Lawyers cannot give testimony and no live bodies have come forward with any evidence regarding a fraudulent transfer, therefore the issue is moot. In addition, the ridiculous argument would also fail for many other reasons. By contractual agreement, the trustee at the time of the IRREVOCABLE transfer had the exclusive right to decide if the transfer was proper and if there was adequate consideration given for the irrevocable transfer. Still further, in the instant case, there was an exchange of labor. Case law clearly dictates that one cannot put a value on labor. Where are the facts in the record to even begin to claim any type of fraudulent transfer took place over twenty years ago? Nothing again.

There are only guesses and speculation by the Plaintiff's lawyer. No live body affidavit or claims in the record. In fact, the record is void of any paperwork whatsoever. Not one piece of paperwork in over 20 years?

The Plaintiff quotes a statute or two and seems to indicate that therefore the Court has jurisdiction and should not worry about it too much. However, certainly this Court is aware of the possible sever penalties for acting without jurisdiction. The following are some case law to keep in mind. "The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings." *Hagans v. Lavine* 415 U.S. 533. "The burden shifts to the court to prove jurisdiction." *Rosemond v. Lambert*, 469 F2d 416. "Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." *Latana v. Hopper*, 102 F. 2d 188; *Chicago v. New York* 37 F Supp. 150. "Once challenged, jurisdiction cannot be assumed, it must be proved to exist." *Stuck v. Medical Examiners* 94 Ca 2d 751; 211 P2d 389. "Jurisdiction, once challenged, cannot be assumed and must be decided." *Maine v. Thiboutot* 100 S. Ct. 250. "Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." *Merritt v. Hunter*, C.A. Kansas 170 F2d 739. "A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance." *Rescue Army v. Municipal Court of Los Angeles*, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409.

This Court needs to look at Plaintiff's Amended Complaint more closely and specifically the paragraph where the Plaintiff continues to claim that the Court has jurisdiction over D L P LT13's property. Plaintiff states at paragraph number 6 at page 2 of the Amended Complaint 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. Howard E. Forman passed away on or about April 16, 2008.” This is the paragraph that the Plaintiff quotes in Plaintiff’s Response. This Defendant can honestly state that anyone who says that either Maria D. Forman or her late husband had an ownership interest in the said parcel is promulgating a false statement to the Court. Lawyers cannot submit an affidavit that Howard or Maria Forman had an ownership interest, but if a lawyer did, D L P LT13 would sue them for making false statements to a Court. The Plaintiff cannot submit any affidavit or any paperwork whatsoever that the Howard and Maria D. Forman have or had an ownership interest in D L P LT13’s property because it is a falsehood. Plaintiff cannot be allowed to create a lawsuit over a falsehood. Not in any honest and honorable court because that would be “fruit of the poison tree”. Therefore, we have nothing but a false allegation before this Court and no basis upon which to grant jurisdiction.

Additionally, Elmer P. Vild’s affidavit on D L P LT13’s behalf is *prima facie* evidence that neither Mr. or Mrs. Forman held any ownership interest. Elmer P. Vild’s Affidavit trumps, supersedes, negates and invalidates the Plaintiff’s false statement regarding an ownership interest. **Therefore, there is nothing before this Court to provide the Court with jurisdiction over DLP LT13.**

The next paragraph in the Amended Complaint, paragraph 7 of page 3 states that Elmer P. Vild and Jimmy C. Chisum as Trustees may claim an interest in the said property. Well, of course, because D L P LT13 does own the property and NOT Maria D. Forman. The Plaintiff is attempting to collect monies and/or property from Maria D. Forman for an alleged tax debt. This is understandable. But that action has nothing to do with D L P LT13. The Plaintiff has failed to enter any fact into the record that connects D L P LT13’s property to Maria D. Forman’s alleged tax debt. Not one.

Elmer P. Vild's affidavit also dispels any idea or notion that D L P LT13 is the nominee of Howard or Maria D. Forman. Additionally, no live body has come forward with any evidence to dispel any of the 60 statements in Elmer P. Vild's Schedule "A" Affidavit entered June 10, 2010 as an attachment to Doc. #89, Motion for Dismissal Under Ruled 12(b). The Court should also note that the Plaintiff did not mention Elmer P. Vild's affidavit in their Response because the Plaintiff cannot defend their position against the affidavit.

The Plaintiff has not presented any substantial evidence that establishes a nexus between Maria D. Forman and D L P LT13. This fact must be established before the Court obtains any jurisdiction over DLP LT13 in the instant case. ("...the government must establish its asserted nexus between taxpayer and a third party by substantial evidence.") Flores v. United States, 551 F.2d 1169, 1175-76 (9<sup>th</sup> Cir. 1977).

Also in *Flores v. United States*, 551 F.2d 1169 (1977) at page 1176 we find:

"...our holding is limited to a requirement that the Government **trace the property to the taxpayer.**" See *Rabinof v. United States*, 329 F.Supp. 830 (S.D.N.Y.1971); *Lapp v. United States*, 316 F.Supp. 386 (S.D. Fla. 1970). (emphasis added)

The Plaintiff in the instant case has provided no documents which "trace the property to the taxpayer" from the true owner D L P LT13 as the above quote clearly states is a requirement.

Attorneys cannot testify as witnesses and there has been no one come forward to even accuse, let alone prove, that D L P LT13 is the nominee of Maria D. Forman. See *United States v. Lovasco*, 431 U.S. 783, 97 D.Ct. 2044, 52 L.Ed.2d 752 (1977) and *Gonzales v. Buist*, 224 U.S. 126, 56 L.Ed. 693, 32 S.Ct. 463 (1912). Neither has the Plaintiff submitted any documents whatsoever that even begin to indicate that D L P LT13 is the nominee of Maria D. Forman. Clearly the Court, without documents or a witness, has no jurisdiction over D L P LT13.

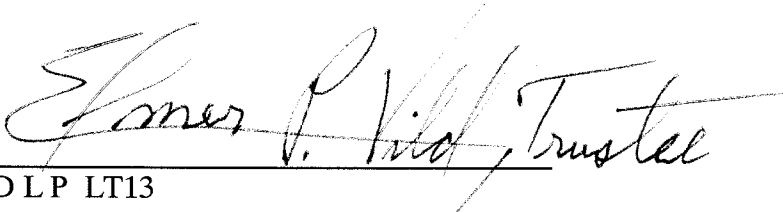
Subject matter jurisdiction consists of two parts: the statutory or common law authority for the court to hear the case and the appearance and testimony of a competent fact witness. In the final analysis, the Defendant D L P LT13 has an affidavit which lists 60 points of reasoning why the Plaintiff does not have jurisdiction over this defendant. The affidavit states that Defendant Maria D. Forman does not have any control over this Defendant (paragraph 5 of the affidavit) and that Maria D. Forman has no rights to the property in question (paragraph 6 of the affidavit). These two statements plus the 58 other paragraphs are *prima facie* evidence that there is no nexus between D L P LT13's property and Maria D. Forman. Elmer P. Vild's affidavit must be overcome on the Court's record before this Court may obtain jurisdiction over D L P LT13 for a third party's alleged tax debt.

As a pro se Defendant, the Defendant's demand of this Court is "show me in the record where there is a nexus between D L P LT13's property and Maria D. Forman." This Court is reminded of the following in the Defendant's MOTION FOR DISMISSAL UNDER RULE 12(b) found in the paragraph labeled JUDICIAL NOTICE.

In re Platsky: court errs if court dismisses the pro se litigant without instruction of how pleadings are deficient and how to repair pleadings.

This pro se Defendant will not take lightly any ruling which does not fully and completely outline any deficiency in the Defendant's motion.

Respectfully submitted this 3<sup>rd</sup> day of July, 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 3<sup>rd</sup> day of July, 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 3<sup>rd</sup> day of July, 2010 via first class mail to:

DIANE J. HUMETEWA  
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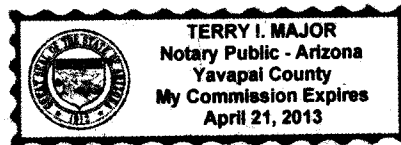
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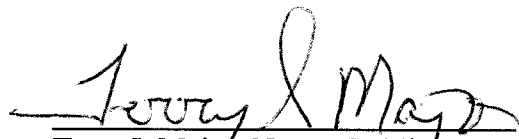
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State of Arizona        )  
                                  ) ss.  
County of Yavapai     )

{Seal}

This document has thus been served.



  
Terry I. Major, Notary Public