

Exeter Trinity Properties, L.L.C.
Elmer P. Vild, Tax Matters Trustee
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Elmer P. Vild is the Tax Matters Trustee
for the LLC.

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

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|------------------------------------|---|--------------------|
| United States of America, |) | CV 10-8142-PCT-JWS |
| |) | |
| Plaintiff, |) | MOTION FOR A MORE |
| |) | DEFINITE STATEMENT |
| v. |) | |
| |) | |
| JOSEPH J. LIPARI, EILEEN H. LIPARI |) | |
| and EXETER TRINITY PROPERTIES, |) | |
| L.L.C. |) | |
| |) | |
| Defendants. |) | |

COMES NOW Elmer P. Vild, Tax Matters Trustee for the Exeter Trinity Properties, L.L.C. (hereinafter called the LLC or Defendant) 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 would like to bring the Court's attention to the following Judicial Notice submitted by this Defendant.

All officers of this Court are hereby placed on notice under authority of the supremacy and equal protection clauses of the United States Constitution and the common law authorities of *Haines v Kerner*, 404 U.S. 519, *Platsky v. C.I.A.* 953 F.2d. 25 and *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000) relying on *Willy v. Coastal Corp.*, 503 U.S. 131, 135 (1992), "*United States v. International Business Machines Corp.*, 517 U.S. 843, 856 (1996), quoting *Payne v. Tennessee*, 501 U.S. 808, 842 (1991) (Souter, J., concurring). *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647, *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8th Cir. 07/25/2001). In re *Haines*: pro se litigants are held to less stringent pleading standards than BAR registered attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims. In re *Platsky*: court errs if court dismisses the pro se litigant without instruction of how pleadings are deficient and how to repair pleadings. In re *Anastasoff*: litigants' constitutional rights are violated when courts depart from precedent where parties are similarly situated. All litigants have a constitutional right to have their claims adjudicated according the rule of precedent. See *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000). Statements of counsel, in their briefs or their arguments are not sufficient for a motion to dismiss or for summary judgment, *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647.

With the above legal premises please consider that this Defendant requests that all rulings and Orders issued in the instant case be thoroughly explained in plain English (no Latin or other legal phases please) and in detail with sufficient clarity for a non-attorney to easily understand.

On page 1 of the Complaint at Paragraph 2, the Plaintiff states "This action is commenced pursuant to 26 U.S.C. §§ 7401 and 7403...". Again, on page 2 at paragraphs 3 and 4 more statutes are quoted as to jurisdiction and venue. Not all parts of these statutes apply to the instant lawsuit. The Plaintiff must inform the Defendants which parts and/or subsections of each statute are being used in the instant lawsuit. This Defendant cannot be expected to know which parts of the statutes apply and which do not.

On page 9 of the Complaint at Paragraph 37, the Plaintiff asks for relief by claiming that Exeter Trinity Properties, L.L.C. is the nominee/alter ego of Joseph J. and Eileen H. Lipari. What? Surely, the Plaintiff knows better. One cannot put a forward slash (/) between two completely different allegations and expect the Defendants to defend themselves against both allegations. The elements to prove “nominee” and the elements to prove “alter ego” are different and mutually exclusive. This Defendant cannot be expected to defend against two mutually exclusive and different claims at the same time. Neither claim has been established by the Plaintiff. One claim or the other must have been established before this lawsuit was ever filed. Plaintiff has obviously filed this lawsuit on a “fishing trip”. This abuse should not be allowed by this Court. To ask the Defendants to simultaneously prepare against multiple defenses would be grossly unfair and “smack” of favoritism towards the Plaintiff.

The Plaintiff knows it cannot move forward in the instant case on both “nominee” and “alter ego” theories because the Plaintiff’s own manual informs the Plaintiff that they are different theories. Therefore, “nominee” and “alter ego” claims as well as the defenses are different. In the Internal Revenue Manual 15.17.14 at 5.17.14.3 (10-19-2007), *Nominees and Alter Egos*, it states in paragraph number 2 the following:

“Although the Service may take the position that a person or entity is either a transferee or, alternatively, a nominee (alter ego, if an entity), the person or **entity cannot be both.**” (emphasis added)


So which is the Plaintiff claiming, “Nominee” or “Alter Ego”? The two are different theories and require different prosecutions and defenses. “Nominee” and “alter ego” are mutually exclusive. One cannot be both a “nominee” and an “alter ego” at the same time. Plaintiff must inform the Defendant which theory the Plaintiff is pursuing so

the Defendant may prepare a proper response in accordance with federal rules. But what is even more incredible is that the Plaintiff expects this Court to decide the issue and subsequently inform the parties to the suit. See the Complaint on Page 15 at Paragraph E.

Defendant requests that the Plaintiff provide a more definite statement as to which parts of A.R.S. § 44-1001, *et seq.* the Plaintiff is referencing on Page 10, Paragraph 43 of the Complaint. For instance, Arizona's Title 44, Article 1 alone, (after the definitions), lists 9 more statutes, several of which the Plaintiff might be referencing. In one statute alone, § 44-1004, there are 13 subsections or parts that the Plaintiff might be referencing. In all, the Defendants would have to prepare to defend well over fifty possible defenses if such a general allegation were allowed to stand in such an overly broad Complaint. Absolutely no one should be expected to provide defenses or respond to the Plaintiff's general allegation of A.R.S. § 44-1001, *et seq.* Plaintiff must be specific by naming exactly which statute and which sub part thereof the Plaintiff is claiming the Defendants are in violation of.

Therefore, in order that the Defendants be able to prepare a proper defense, this Defendant prays that the Court will Order the Plaintiff to inform the Defendants and this Court whether the Plaintiff is claiming that Exeter Trinity Properties, L.L.C. is a "nominee" or the "alter ego" of Joseph J. Lipari and Eileen H. Lipari and to be specific as to each and every statute and sub part thereof mentioned in the Complaint.

Respectfully submitted this 1st day of September, 2010.


Elmer P. Vild, Trustee & Tax Matters Member

CERTIFICATE OF SERVICE

Original for the Clerk of the Court and one copy for the Honorable John W. Sedwick mailed this 1st day of September, 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 1st day of September, 2010 via first class mail to:

CHARLES M. DUFFY
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, DC 20044-0683

DENNIS K. BURKE
United States Attorney
District of Arizona
Two Renaissance Square
40 North Central, Suite 1200
Phoenix, Arizona 85004-4408

Copies not mailed until address is known:

JOSEPH J. LIPARI (NOT MAILED)
ADDRESS UNKNOWN

EILEEN H. LIPARI (NOT MAILED)
ADDRESS UNKNOWN

A handwritten signature in black ink that reads "Elmer P. Vild, Trustee". The signature is written in a cursive style with a horizontal line underneath the name.

Elmer P. Vild, Trustee & Tax Matters Member
of Exeter Trinity Properties, L.L.C.