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13 United States Attorney  
14 District of Arizona  
15 *Of Counsel*

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' OPPOSITION TO  
EXETER'S RENEWED MOTION TO  
SUBSTITUTE**

24 **I.**

25 **STATEMENT**

26 On July 19, 2012, defendant Exeter Trinity Properties, L.L.C. (hereafter "Exeter") filed a  
27 renewed motion to substitute Timeless Windsor Ventures, a Nevada Trust ("Timeless"), for Exeter.  
28 Exeter's original motion to substitute was denied without prejudice on July 18, 2012 because it was  
not served properly.

The stated grounds for the motion to substitute Timeless as a party for Exeter is that on June  
1, 2012 - after discovery closed and after the Court ruled on dispositive motions - Exeter supposedly  
"sold" the residence at issue in this case to Timeless for \$1,000.00. Timeless is controlled by Elmer

1 Vild and Terry Major, who were involved with Exeter and/or now reside in the residence. *See* U.S.  
2 memorandum in support filed on December 1, 2011, at 8:24-10:10 and the “Sales Agreement” filed  
3 on June 14, 2012. Both Vild and Major have taken frivolous positions in other federal tax cases.  
4 *See* U.S. memorandum in support filed on December 1, 2011, at 9:18-19 and 10:3-5.

5 It is likely that the real reason behind the motion to substitute is that Exeter’s attorney has  
6 filed a motion to withdraw as counsel and Terry Major, who is a Trustee for Timeless, believes that  
7 he can represent a trust in Federal District Court even though he is not an attorney. Mr. Major  
8 recently filed a notice of appearance on behalf of a trust that he is involved with in another case in  
9 this District, *i.e.*, *United States v. Reading, et al.*, Case Number 11-0698, arguing that State of  
10 Arizona law permitted him to do so. Judge Frederick Martone struck the notice of appearance. *See*  
11 Exhibit A filed herewith (a copy of Judge Martone’s order).

## 12 II.

### 13 THE COURT SHOULD DENY EXETER’S MOTION

14 The United States opposes the motion to substitute. In its complaint, the United States  
15 alleged, *inter alia*, that the Joseph and Eileen Lipari (“the Liparis”) fraudulently transferred their  
16 residence to Exeter to avoid paying their federal income tax liabilities. Timeless had nothing to do  
17 with the transfer from the Liparis to Exeter and it seems improper for it to be allowed to “step into  
18 the shoes” of Exeter to litigate that claim. *See e.g.*, *United States v. Miller Brothers Construction*,  
19 505 F.2d 1031, 1036 (10<sup>th</sup> Cir. 1974) (if substitution is allowed under Federal Rule of Civil  
20 Procedure 25, the substituting party would “step[] into the same position” as the other party). Exeter  
21 is a necessary party here since the foreclosure claims cannot be adjudicated without it. *See e.g.*,  
22 *Disabled in Action of Pennsylvania v. SEPTA*, 635 F.3d 87, 97 (3<sup>rd</sup> Cir. 2011) (A party is necessary  
23 if, in its absence, a court cannot “accord complete relief among the existing parties”).

24 The United States also opposes a joinder of Timeless since Timeless does not appear to be a  
25 necessary party under the facts here since the United States filed a Notice of Lis Pendens with the  
26 Yavapai County Recorder’s Office on August 16, 2010 regarding the residence and any interest that  
27 Timeless may have acquired from the “sale” would be subject to the determinations made in this  
28

1 litigation.

2 Exeter and Timeless would not be prejudiced if Exeter's motion is denied since Exeter could  
3 effectuate a transfer of the residence if it prevails on the foreclosure claims. It should also be noted  
4 that if joinder of Timeless is allowed, there is little to prevent Vild and Major from "selling" the  
5 residence again during the pendency of the suit and seeking joinder or substitution of the new  
6 "buyer."

7 To the extent that the Court allows joinder or substitution, the United States requests that it  
8 be given the opportunity to undertake discovery concerning Timeless, its trustees and the recent  
9 transfer of the residence.

10 DATED this 30th day of July, 2012.

11  
12 KATHRYN KENEALLY  
13 Assistant Attorney General, Tax Division  
14 U.S. Department of Justice

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

18 Of Counsel:

19 JOHN S. LEONARDO  
20 United States Attorney  
21 (Attorneys for the United States)  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30th day of July, 2012, I served the following attorney of record using the Court's 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



1 appearance informing the court that he is not a lawyer, but he proposes to represent the Trust  
2 in this litigation. (Doc. 76). A.R.S. § 14-10816 provides that a trustee may "[p]rosecute or  
3 defend an action, claim or judicial proceeding in any jurisdiction to protect trust property and  
4 the trustee in the performance of the trustee's duties." But this statute only gives the trustee  
5 standing and authority on behalf of the trust. It does not purport to address the practice of  
6 law. Even if it did, it does not apply to practice in federal court.

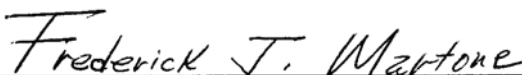
7 Pursuant to 28 U.S.C. § 1654, "[i]n all courts of the United States the parties may  
8 plead and conduct their own cases personally or by counsel[.]" Although a non-attorney may  
9 appear on his own behalf, "[h]e has no authority to appear as an attorney for others than  
10 himself." C.E. Pope Equity Trust v. United States, 818 F.2d 696, 697 (9th Cir. 1987). "He  
11 may not claim that his status as trustee includes the right to present arguments *pro se* in  
12 federal court." Id. at 698. Fox Group Trust may appear in this action only through a lawyer  
13 who is admitted to practice before this court.

14 **IT IS ORDERED DENYING** defendants' motion to modify Rule 16 scheduling  
15 deadlines and motion to extend time (doc. 74).

16 **IT IS ORDERED GRANTING** plaintiff's motion to strike notice of appearance (doc.  
17 77).

18 **IT IS ORDERED** that Fox Group Trust file a notice of appearance by an admitted  
19 lawyer on or before August 6, 2012.

20 DATED this 3<sup>rd</sup> day of July, 2012.

21  
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23 \_\_\_\_\_  
24 Frederick J. Martone  
25 United States District Judge  
26  
27  
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