

1 Timeless Windsor Ventures
2 Elmer P. Vild, Trustee
3 989 S. Main St., #A-269
4 Cottonwood, AZ 86326
5 Ph. (928) 634-5669
6 E-Mail: trustoneil@cableone.net

7
8 **IN THE UNITED STATES DISTRICT COURT FOR THE**
9 **DISTRICT OF ARIZONA**

10 UNITED STATES OF AMERICA,
11 Plaintiff - Appellee,

No. 3:10-CV-08142 JWS

v.

12 JOSEPH J. LIPARI, EILEEN H.
13 LIPARI and EXETER TRINITY
14 PROPERTIES, L.L.C.,
15 Defendants,

**MEMORANDUM
IN SUPPORT OF THE
NOTICE OF APPEARANCE**

and

16 TIMELESS WINDSOR
17 VENTURES,

Honorable John W. Sedwick

18 Proposed
19 Defendant-Intervenor.

20 **MEMORANDUM IN SUPPORT**
21 **OF THE NOTICE OF APPEARANCE**

22 The Notice of Appearance and the Motion to Intervene are being
23 filed with no disrespect to the court's previous dicta found in the last
24 paragraph of the court's order entered at Document Number 71 filed on
25 July 18th, 2012. The court is being asked to revisit this issue as it had
not been previously briefed nor was it presented to the court in the form
of a motion.

BACKGROUND

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2 Elmer P. Vild, Trustee for Timeless Windsor Ventures (Timeless)
3 and Tax Matters Representative for Exeter Trinity Properties, L.L.C.
4 (Exeter) had filed a motion with this court that was stricken from the
5 record at Document 82 as Elmer P. Vild is not a lawyer and, according to
6 *Rowland v. California Men's Colony* , 506 U.S. 194, 201-02 (1993), a
7 non-lawyer may not represent a limited liability company.
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10 After a study of *Rowland*, it must be noted that the case centered
11 on the request to proceed *in forma pauperis*. Nowhere in the court
12 documents was there a reference to the type of contractual trust that
13 exists in this case. Indeed, the Trustee for Timeless is not asking to
14 proceed *in forma pauperis* but simply to proceed without the assistance
15 of counsel. We ask the court's forbearance for a moment to consider the
16 following:
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19 It is perfectly understandable that the Corporation, Limited
20 Liability Company, Limited-Partnership and other "Artificial Entities"
21 would be required to hire an attorney, but the Irrevocable Trust created
22 by a private contractual agreement for the express purpose of protecting
23 the assets of the trust for the beneficiary is a different animal. The
24
25

1 courts are to protect this right as expressed in the United States
2 Constitution at Article One, Section Ten.

3 The Trustee is under obligation to stand for the trust as though the
4 trust property were his own property to protect. The Trustee and Trust
5 are thus seen inseparable. This is unlike the relationship that members
6 have to an LLC or shareholders and officers have to a Corporation. For
7 this reason, the irrevocable contractual trust must be considered based
8 upon the actual language of the contract and the state law where the
9 trust or the property is domiciled.
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12 The State of Arizona recognizes Timeless Windsor Ventures as the
13 owner of the subject property and Arizona law allows the Timeless
14 Windsor Ventures' Trustees to defend against any lawsuit in any
15 jurisdiction without a bar attorney. In the Arizona Revised Statutes we
16 find at A.R.S. § 14-10815:
17
18

19 14-10815. General powers of trustee

20 A. A trustee, **without authorization by the court**, may exercise:

- 21 1. Powers conferred by the **terms of the trust**.
- 22 2. Except as limited by the terms of the trust:
 - 23 (a) All powers over the trust property that an unmarried
24 competent owner has over individually owned property.
25 **(emphasis added)**

(Sub item (b), (c) and part (B) not relevant here)

1 This statute makes it clear that the Trustee may exercise the
2 powers conferred by the contract terms [(A)(1) above] and that the
3 Trustee may exercise powers as if the property were "individually owned"
4 [(A)(2)(a) above]. This should be sufficient to differentiate this
5 contractual, irrevocable Trust from the "artificial entities" referred to in
6 *Rowland*. Following is the exact wording taken from the trust contract
7 for Timeless Windsor Ventures which provides the authorization at
8 paragraph 29 on page 11:
9

11 29. By agreement of all the parties to this contract in the form of a
12 trust, this instrument shall not be subject to any uniform trust
13 laws or acts of any city, county, state or country regardless of the
14 domicile of the contractual entity. This contractual entity written
15 in the form of a trust shall have the same rights and privileges as
16 afforded to a natural human being. The trust may sue and/or
17 defend itself as a *pro se* the same as any human. The only
18 difference is that the trust has a trustee or trustees to speak for it
19 while the trust exercises its *pro se* rights. Specifically, the parties
20 to this contractual entity are all in agreement that each trustee as
21 a party to the contract is authorized to represent the contractual
22 entity the same as any *pro se* may represent themselves. All
23 parties to the contract agree that the Board of Trustees, whether
24 one or more human beings, shall represent the entity in any legal
25 proceeding without the aid or assistance of a bar attorney whose
first duty is to the court. To make the trust hire an attorney would
not provide equal protection under the law and therefore be a
violation of the United States Constitution which guarantees equal
protection under the law. The United States Constitution also
provides protection in Article I, Section X where it states that no
law shall be passed impairing the Obligation of Contracts.
However, nothing contained herein shall be construed as intent to

1 evade or contravene any law or to delegate any special power
2 belonging exclusively to a franchise or incorporation.

3 We also find in the Arizona Revised Statutes at A.R.S. § 14-10816
4
5 the following:

6 14-10816. Specific powers of trustee

7 Without limiting the authority conferred by section 14-10815, a
8 trustee may:

9 24. Prosecute or defend an action, claim or judicial proceeding
10 in any jurisdiction to protect trust property and the trustee in
11 the performance of the trustee's duties.

12 25. Sign and deliver contracts and other instruments that are
13 useful to achieve or facilitate the exercise of the trustee's
14 powers.

(Items 1-23 and 26 not relevant here)

15 **GENERAL TIMELINE**

- 16 1. Taxpayers, Dr. Joseph & Eileen Lipari placed their property
17 into trust in 1992.
- 18 2. The Deed was recorded in Yavapai County.
- 19 3. The taxpayers subsequently developed tax problems.
- 20 4. The property is transferred to a Limited Liability Company.
- 21 5. The IRS placed Notices of Federal Tax Lien (NFTL) against
22 the property and thus, the LLC.
- 23 6. New people replaced the former trustees and manager of the
24 LLC due to circumstances and death.
- 25 7. The new management continued the contractual obligations
and eventually had to evict the taxpayers from the property
due to the fact that they are unable to financially continue to
pay all of the overhead to maintain the property and pay the
property taxes according to the agreement with them.
8. The new management arranged for a caretaker to live on and
provide security for the vacant property.

- 1 9. The caretaker agreed to a form of rent to cover the overhead of
2 at least maintaining the property while attempts would be
3 made to remove the NFTLs.
- 4 10. The caretaker was to eventually re-roof the house and provide
5 the necessary labor to bring the property to a point where it
6 could be sold.
- 7 11. The IRS agreed to meet with the representatives of the LLC to
8 discuss the NFTLs, but was uncooperative in response to
9 FOIAs to obtain the basis for the NFTLs against the property.
- 10 12. The LLC was denied the promised meeting regarding the
11 NFTLs when the government filed this lawsuit.
- 12 13. The Trustee of one of the LLC members who was also the
13 property manager for the LLC attempted to file documents into
14 this court to represent the LLC in this matter.
- 15 14. This Court denied the request and required the LLC to hire an
16 attorney for representation.
- 17 15. The hiring of the attorney depleted all remaining funds that
18 were to be used for repairs on the property and, in addition,
19 other funds were privately borrowed in order to pay the
20 attorney.
- 21 16. The LLC survived an attempt by the Government to win at
22 summary judgment.
- 23 17. The LLC sold the property to an irrevocable trust in order to
24 again attempt to have the trustees handle the representation
25 in Court as the attorney for the LLC resigned from the case as
he had only promised to work through Summary Judgment.
- 18 18. This Court again ordered the LLC to hire an attorney and
denied substituting the trust for the LLC in the case.
- 19 19. At this point in discussions with the LLC's former attorney, an
offer was made to attempt to settle the case.
- 20 20. The attorney for the LLC agreed to work *pro bono* during these
negotiations.
- 21 21. The government eventually turned down the offer and made a
counter-offer that the LLC had no means to pay.
- 22 22. The attorney for the LLC is again preparing to resign now that
the negotiations have failed.
- 23 23. The LLC has no funds to hire an attorney, even though the
LLC is able raise the funds to pay court filing fees.
- 24 24. This brings us to where we are today.

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THE QUANDARY

1. The government was unable to obtain a win with their Motion for Summary Judgment after presenting all of their evidence.
2. The funds are depleted for the Trust that owns the property and we have spent and have liabilities consisting of the following:
 - a. Already paid our lawyer over \$13,000.00.
 - b. Still due to our lawyer over \$25,000.00.
 - c. Air-Conditioning Unit has failed and must be replaced at a cost of about \$10,000.00 to \$13,000.00.
 - d. The roof and skylight leaks have increased and will require extensive work to repair with an estimated cost of about \$25,000.00.
 - e. The plumbing in the house is original and there has been a "slab leak", thus the house needs to be re-plumbed.
 - f. In addition, there is electrical and other work that is needed.
 - g. The total cost to bring the property to a clean condition to prepare it for sale would exceed \$50,000.00.

Information regarding the property may be found at:
<http://www.cottonwoodpinkhouse.com/>

If the Trust were to settle this case for what was offered, we would still be hard pressed to make this a worthwhile situation for the Trust and the ultimate beneficiary. The only hope is that in the interest of justice, the Court will allow the Trustees to represent the interests of the Trust for the remainder of this case and hope for the best. Any funds put into legal defense at this point, assuming that funds would be available, would be to put good money after bad.

1 Defending against the government never has a high rate of success.
2 Part of this is due to the fact that the government is able to out-spend
3 the defendant and is willing to go to extreme lengths to win a case.
4
5 Should Exeter/Timeless prevail in this case and the property be declared
6 clear of the Federal Tax Liens, we have a long way to go after the
7 damage we (Exeter/Timeless) has suffered. The Trustees hope to recover
8 the value to the property and provide the highest possible amount to the
9
10 ***Guiding Eyes for the Blind.***

11 The complete denial of Federal Courts to permit a trustee of an
12 irrevocable trust from proceeding without a “licensed” attorney is not
13 understood. The contract in the form of a trust is not a statutorily
14 defined entity. The *Rowland* case only names corporations and “artificial
15 entities”, but the Trustee of Timeless would submit that the operation of
16 the Contract in the Form of a Trust is far from an “artificial entity”. The
17 Trustee takes personal responsibility to guard the trust assets for the
18 beneficiary, as this is directed in the contractual instrument which
19 clearly allows him to proceed in *pro per* status. The trustee cannot be
20 interchanged like a CEO of a Corporation. The Trustee and the Trust are
21 inseparable.
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1 These United States were not formed to exclude the common man
2 or the contracts that the common man enters into from obtaining a just
3 outcome when legal challenges arise. The irrevocable trust in the form of
4 a contract must be viewed differently from the “artificial entities”
5 referred to in *Rowland*.
6

7 These rights fall under the “*Equal Protection*” and the “*Due*
8 **Process**” clauses of the Constitution.
9

10 The parties who will be ultimately injured in this case are the
11 people who would be the beneficiaries of the assistance provided by the
12 *Guiding Eyes for the Blind*. Without the funds that will eventually
13 come from the sale of the property for their benefit, that organization will
14 be that much less able to assist those in need of “Seeing Eye Dogs”.
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16 Since property is a state and not a federal issue, the final
17 determination of the ownership of the property in this case lies with the
18 State of Arizona and not with Federal Jurisdiction. The Federal court
19 may determine that the tax liability of the defendant taxpayers is due
20 and owing, and may order that any property “owned” by them is subject
21 to levy, but the actual determination of the ownership of the subject
22 property still lies with the state and county where the property is
23 located.
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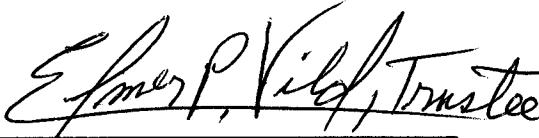
1 It has already been briefed in this case outlining the reasons why
2 Exeter and now Timeless should be declared the clear owner of the
3 property. Indeed, with all that has transpired in this case,
4 Exeter/Timeless should simply be dismissed from the case as the
5 Government was unable to conclusively prove their case in their motion
6 for Summary Judgment and thus, without a clear delineation in favor of
7 the government, the defendant must be given the benefit of doubt.
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10 It can be clearly stated that the remaining taxpayer, Joseph J.
11 Lipari, has no interest in the property and will never receive any benefit
12 from the property. (See Attached Affidavit)
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14 It is for these reasons so stated in this document that the Trustees
15 of Timeless Windsor Ventures move this honorable court to accept the
16 Notice of Appearance of the Trustees for the remainder of this case.
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19 Dated this 25th day of March, 2013
20 Respectfully Submitted

21 
22 Mike Macek, TRUSTEE
23 Mike Macek, Trustee

24 
25 Elmer P. Vild, Trustee
Elmer P. Vild, Trustee

Certificate of Service

I HEREBY CERTIFY that on the 25th of March, 2013 the original of the **Notice of Appearance** with the **Memorandum in Support** was hand delivered and filed with the Clerk of Court. In addition, a copy was hand delivered to the Clerk of Court for the Honorable Judge John W. Sedwick.


A copy of the documents was mailed by U.S. Postal Service on the same day to each of the attorneys listed below:

Charles M. Duffy
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683

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

In addition, a copy of the documents was mailed by U.S. Postal Service on the same day to a party who is not represented by counsel:

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



Mike Macek, Trustee
Timeless Windsor Ventures