

R E C E I V E D
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U.S. COURT OF APPEALS

SEP 07 2012

FILED _____	DATE _____	INITIAL _____
DOCKETED _____		

1 **Fox Group Trust, Appellant**
 2 **Terry I. Major, Trustee, *in pro per***
 3 P.O. Box 2023
 4 Cottonwood, Arizona 86326
tmajor@greytechs.com
 (928) 634-7023

5
 6 **UNITED STATES COURT OF APPEALS**
 7 **FOR THE NINTH CIRCUIT**
 8
 9

10 UNITED STATES OF AMERICA,
 11 Plaintiff - Appellee,

No. 12-16757

v.

12 JAMES LESLIE READING; CLARE
 13 L. READING, MIDFIRST BANK;
 14 STATE OF ARIZONA; FINANCIAL
 15 LEGAL SERVICES; CHASE,
 Defendants,

D.C. No. 2:11-cv-00698-FJM
 U.S. District Court for Arizona,
 Phoenix

and

16
 17 FOX GROUP TRUST, Trustee of:
 18 Terry I. Major,
 19 Defendant - Appellant.

MOTION TO STAY

COURT ORIGINAL

1 **Fox Group Trust, Appellant**
2 **Terry I. Major, Trustee, *in pro per***
3 P.O. Box 2023
4 Cottonwood, Arizona 86326
5 tmajor@greytechs.com
6 (928) 634-7023

7
8 UNITED STATES COURT OF APPEALS
9 FOR THE NINTH CIRCUIT

10 UNITED STATES OF AMERICA,
11 Plaintiff - Appellee,

No. 12-16757

12 v.

13 JAMES LESLIE READING; CLARE
14 L. READING, MIDFIRST BANK;
15 STATE OF ARIZONA; FINANCIAL
16 LEGAL SERVICES; CHASE,
17 Defendants,

D.C. No. 2:11-cv-00698-FJM
U.S. District Court for Arizona,
Phoenix

18 and

19 FOX GROUP TRUST, Trustee of:
20 Terry I. Major,
21 Defendant - Appellant.

MOTION TO STAY

22 Comes now Appellant, Terry I. Major, Trustee of Fox Group Trust, and
23 respectfully requests the indulgence of this Court as he is not schooled in law and
24 is proceeding without the assistance of counsel. Appellant asserts and relies on
25 *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. As such, having invoked
Haines v. Kerner, this court *must* point out any and all defects to the Appellant

1 and allow him sufficient time to correct said defects. Further, this Court must
2 agree that Appellant's pleadings are sufficient to call for an opportunity to be
3 heard.

4
5 In Accordance with **FRAP 8: Stay or Injunction Pending Appeal**, a
6 Motion to Stay was submitted to the District Court first. The Motion was denied.
7 Also, in accordance with FRAP 8, Appellant has attached the Motion made to the
8 District Court, Appellee's Opposition to said Motion, Appellant's Reply to
9 Opposition and the District Court Judge's Order denying said Motion. Thus,
10 Appellant has provided the relevant parts of the record for review on the issues
11 regarding the Motion to Stay. Attached Exhibits are referenced by Pacer Document
12 Numbering: 85, 88, 89, and 91.
13

14
15 Appellant will not enter into any arguments concerning representation of
16 an irrevocable trust by its trustees at this time, but only addresses here the
17 motion to stay the proceedings in the District Court until the issue of
18 representation is resolved. Appellant has provided all filed documents regarding
19 the request to stay the proceedings in the District Court for your review.
20

21
22 The District Court Judge refers to 28 USC § 1292(a). The Judge has
23 declared that "rights purportedly granted in a trust agreement cannot override
24
25

1 federal law". In this, Appellant believes that the Judge is simply in error.
2 Appellant will argue this issue in his opening brief.
3

4 However, for reference, Appellant includes here a few legal maxims that
5 relate to this case. A maxim is so-called because it has become universally
6 accepted as true. The following maxims seem to apply in this case:
7

- 8 1. "The law does not seek to compel a man to do that which he cannot possibly
9 perform."
- 10 2. "The law compels no one to do anything which is useless or impossible."
- 11 3. "No one is bound to do what is impossible."
- 12 4. "Impossibility excuses the law."
- 13 5. "Nothing against reason is lawful."
- 14
- 15

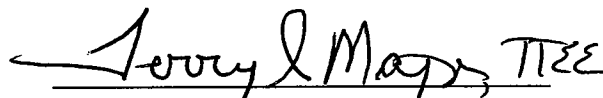
16 To "Stay the proceedings" in the District Court is important in that the
17 District Court continues to move forward with one defendant, Fox Group Trust,
18 unable to defend its position. The trust has been ordered to hire counsel, but there
19 are no funds with which to pay a lawyer and Fox Group Trust has been unable to
20 secure the services of a lawyer. Thus, it has been an impossible task to obtain
21 counsel and thus the maxims apply.
22
23
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25

1 If the District Court is permitted to continue the case without any
2 representation for Fox Group Trust, then any final judgment may well be in
3 question. In the interest of judicial economy and efficiency the case must be stayed
4 in the District Court. Any judgment unfavorable to the interests of the Fox Group
5 Trust, while the Trust is without representation, may be found to be void. Simply
6 staying the proceeding until the matter of representation is concluded should
7 avoid any such controversy.
8

9
10 Indeed, a reading of the exhibits attached to this Motion should shed some
11 light on the reasoning of Appellant, Appellee and the Court regarding this matter.
12

13 Appellant respectfully requests this honorable court order the stay of the
14 proceedings in the District Court until this matter is resolved. Appellant believes
15 this involves a *Constitutional Issue* and one of *Substantive Rights*.
16

17
18 Respectfully Submitted this 5th day of September, 2012 by:

19  TIEE

20 Terry I. Major, Trustee
21 in *Pro Per*
22 Fox Group Trust
23 P.O. Box 2023
24 Cottonwood, Arizona 86326
25 tmajor@greytechs.com
(928) 634-7023

Cert No: 7011 1570 0003 6914 2591

CERTIFICATE OF SERVICE

On **September 5, 2012** the *original* of the **Motion to Stay** was mailed by United States *Certified* Mail for filing to the **Clerk of the United States Court of Appeals for the Ninth Circuit** along with a 3 copies as per FRAP 27(d)(3). In addition, a copy was mailed by United States Mail to:

CURTIS C. PETT

Attorney for Appellee,

Appellate Section, Tax Division

U.S. Dept. of Justice

PO Box 502

950 Pennsylvania Avenue, N.W., Room 4333

Washington, DC 20044

And to:


JAMES LESLIE READING

CLARE LOUISE READING

Defendants, Pro Se

2425 East Fox Street

Mesa, AZ 85213



Terry I. Major, Trustee, in Pro Per

Fox Group Trust

PO Box 2023

Cottonwood, AZ 86326

Email: tmajor@greytechs.com

928-634-7023 (Home)

623-451-5588 (Cell)

623-243-4158 (Fax)

EXHIBITS

Documents

Downloaded from

PACER

(85, 88, 89, 91)

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AUG - 9 2012	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	Z DEPUTY

1 Terry I. Major, Trustee
 2 Fox Group Trust
 3 P.O. Box 2023
 4 Cottonwood, Arizona 86326
 5 tmajor@greytechs.com
 6 (928) 634-7023

7 IN THE UNITED STATES DISTRICT COURT
 8 DISTRICT OF ARIZONA

9 UNITED STATES OF AMERICA,
 10 Plaintiffs,

Civ. No. 11-0698-PHX-FJM

11 v.

12 EMERGENCY MOTION TO
 13 STAY PROCEEDINGS
 14 PENDING INTERLOCUTORY
 15 APPEAL

16 JAMES LESLIE READING, CLARE L.
 17 READING, FOX GROUP TRUST,
 18 MIDFIRST BANK, CHASE,
 19 FINANCIAL LEGAL SERVICES,
 20 STATE OF ARIZONA,
 21 Defendants.

Hon. Frederick J. Martone

22 Terry I. Major, Trustee of Fox Group Trust, hereby moves this court for an
 23 order staying proceedings until resolution of an appeal seeking to vacate the
 24 portion of the Court's July 3rd, 2012 order which denies the Trustees of Fox Group
 25 trust from representing defendant, Fox Group Trust, *in pro per* in this case.

ARGUMENT

On July 3, 2012 the Court entered an order (Document 79) striking a notice
 of appearance filed by Terry I. Major, Trustee of the Fox Group Trust. Further,
 the order stated that "Fox Group Trust may appear in this action only through a
 lawyer who is admitted to practice before this court" and that Fox Group Trust is
 ordered to have a lawyer file such notice of appearance on or before August 6,
 2012.

1 Plaintiff United States has filed a Motion for Summary Judgment on May
2 11, 2012 (Document 52) and Defendants James Reading, Clare Reading and Fox
3 Group Trust requested and were granted a 45 day extension of time within which
4 to retain new counsel and file a response to plaintiff's extensive Motion for
5 Summary Judgment. In the order (Document 73) filed on June 20, 2012, the
6 Court stated that "Defendants' response to plaintiff's motion for summary
7 judgment is due on or before August 6, 2012."

8 Pursuant to the Court's Order dated July 3, 2012 (Document 79) Defendant
9 Fox Group Trust is required to appear through a admitted lawyer on or before
10 August 6, 2012 and the Defendant Fox Group Trust, through the Court's June 20,
11 2012 Order (Document 73) is required to file a response to Plaintiff's motion for
12 summary judgment on August 6, 2012. It is not feasibly possible for Defendant
13 Fox Group Trust to comply with both orders, i.e., retaining admitted counsel and
14 having that counsel prepare and file a response to a motion for summary
15 judgment on or before the same deadline (August 6, 2012).
16
17

18 Therefore, the Court, in essence, has denied Defendant Fox Group Trust the
19 ability to respond and defend against a dispositive motion that, if granted,
20 Plaintiff will obtain a judgment against Defendant Fox Group Trust.

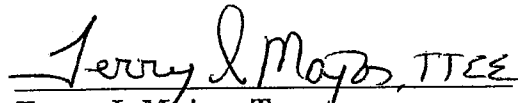
21 Defendant Fox Group Trust simply asks that this court enter an order
22 staying this case until such a time that the appellate court can determine whether
23 Terry I. Major may represent Defendant Fox Group Trust *in pro per* in this case.
24
25

1 Fox Group Trust is a contract in the form of a trust. It was created by the
2 right of contract identified in the United States Constitution under Article I,
3 Section 10. In addition, property rights are a state issue. The property is located in
4 the State of Arizona and Arizona statutes declare a Trust may be represented by
5 the trustee. In addition, the Trustees of the Fox Group Trust are parties to the
6 contract.

7 For the Court to preclude the trustee from representing the issues of the
8 trust when there is a motion for summary judgment at issue, leaves Defendant
9 Fox Group Trust in this proceeding without any means of defense.
10

11 A stay of these proceedings is warranted and respectfully requested.

12 Submitted this 8th day of August, 2012

13 
14 Terry I. Major, Trustee
15 *in Pro Per*
16 Fox Group Trust
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24
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1 KATHRYN KENEALLY
Assistant Attorney General

2 CHARLES M. DUFFY
3 Trial Attorney, Tax Division
4 U.S. Department of Justice
5 P.O. Box 683
6 Ben Franklin Station
7 Washington, D.C. 20044-0683
8 Telephone: (202) 307-6406
9 Email: charles.m.duffy@usdoj.gov
10 Western.taxcivil@usdoj.gov
11 *Attorneys for the United States of America*

12 JOHN S. LEONARDO
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 Plaintiffs,

20 v.

21 JAMES LESLIE READING, CLARE L.
22 READING, FOX GROUP TRUST,
23 MIDFIRST BANK, CHASE, FINANCIAL
24 LEGAL SERVICES, STATE OF ARIZONA

25 Defendants.

Civ. No. 11-0698-PHX-FJM

**UNITED STATES' OPPOSITION TO
TERRY MAJOR'S EMERGENCY
MOTION TO STAY PROCEEDINGS
PENDING INTERLOCUTORY APPEAL**

26 **STATEMENT**

27 On August 9, 2012, Terry Major, who is the Trustee of the Fox Group Trust ("the trust"), filed
28 a Notice of Appeal and an "Emergency Motion to Stay Proceedings Pending Interlocutory Appeal."

Mr. Major's appeal relates to the District Court's July 3, 2012 order that struck his notice of
appearance on behalf of the trust. Mr. Major's motion to reconsider the July 3, 2012 order was also
denied by the District Court on July 26, 2012. Mr. Major is not an attorney and the District Court's
order striking his notice of appearance is based on *C.E. Pope Equity Trust v. United States*, 818 F.2d
696, 697 (9th Cir. 1987), which provides that trusts must be represented in federal court by duly-

1 qualified counsel.

2 **THE COURT SHOULD DENY THE MOTION FOR STAY**

3 Mr. Major's motion for a stay should be denied for various reasons. As a preliminary matter,
4 his notice of appeal does not appear to be proper since the July 3rd and July 26th orders are not final
5 orders under 28 U.S.C. § 1291 in that the parties are still in the midst of litigating this case in the
6 District Court. Also, the Court has not certified the orders for interlocutory appeal under Federal
7 Rule of Civil Procedure 54(b) and 28 U.S.C. § 1292(b). Where there is no certification under Rule
8 54(b), there is no jurisdiction with the Court of Appeals. *See Hoonah Indian Ass'n v. Morrison*, 170
9 F.3d 1223, 1225 (9th Cir. 1999); *In re Brown*, 248 F.3d 484, 485-88 (6th Cir. 2001).

10 It should be noted also that there are no proper grounds upon which the District Court should
11 certify the referenced orders under Rule 54(b) and 28 U.S.C. § 1292(b) since the orders do not
12 involve controlling questions of law "as to which there is substantial ground for difference of
13 opinion" and an immediate appeal from such orders would not "materially advance the ultimate
14 termination of the litigation." *See* 28 U.S.C. § 1292(b) and *Couch v. Telescope Inc. et al.*, 611 F.3d
15 629, 633 (9th Cir. 2010). In this regard, it is well established that a non-lawyer cannot represent a
16 trust in federal court (*see e.g., C. E. Pope, supra.*). Further, an appeal of the subject orders will not
17 advance the ultimate termination of the litigation since there are various other issues that need to be
18 resolved (and that are being addressed) before the litigation in the District Court can be concluded.

19 There are also no grounds to stay this matter pending the resolution of Mr. Major's appeal
20 since he has not shown (1) a probability of success on the merits concerning his argument that he
21 should be allowed to represent the trust; (2) the possibility of irreparable injury; (3) that serious legal
22 questions are raised; and (4) that the balance of hardships tips sharply in his favor. *See e.g., Andreiu*
23 *v. Ashcroft*, 253 F.3d 477, 483 (9th Cir. 2001).

24 **CONCLUSION**

25 The Court should deny the motion to stay and decline to certify the July 3, 2012 and July 26,
26
27
28

1 2012 orders for interlocutory appeal.

2 DATED this 14th day of August, 2012.

3

4

KATHRYN KENEALLY
Assistant Attorney General, Tax Division
U.S. Department of Justice

5

6

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

7

8

Of Counsel:

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JOHN S. LEONARDO
United States Attorney

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of August, 2012, I served the foregoing through the Court's electronic filing system:

ROBERT P. VENTRELLA
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

PAUL M. LEVINE, ESQUIRE
LAKSHMI JAGANNATH, ESQUIRE
McCarthy, Holthus, Levine Law Firm
8502 E. Via de Ventura, Suite 200
Scottsdale, Arizona 85258

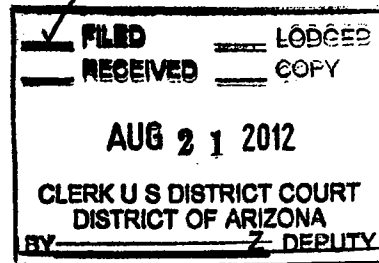
TOMMY K. CRYER
Attorney at Law
7330 Fern Avenue
Shreveport, Louisiana 71105

I also certify that on this 14th day of August, 2012, I served the foregoing on the undersigned by first class mail:

James Leslie Reading
Clare Louise Reading
2425 East Fox Street
Mesa, Arizona 85213

Fox Group Trust
P. O. Box 2023
Cottonwood, Arizona 86326

/s/ Charles M. Duffy
Charles M. Duffy
Trial Attorney, Tax Division
U.S. Department of Justice



1 Terry I. Major, Trustee
 2 Fox Group Trust
 3 P.O. Box 2023
 4 Cottonwood, Arizona 86326
 5 tmajor@greytechs.com
 6 (928) 634-7023

7 IN THE UNITED STATES DISTRICT COURT
 8 DISTRICT OF ARIZONA

9 UNITED STATES OF AMERICA,
 10 Plaintiffs,

Civ. No. 11-0698-PHX-FJM

11 v.

12 JAMES LESLIE READING, CLARE L.
 13 READING, FOX GROUP TRUST,
 14 MIDFIRST BANK, CHASE,
 15 FINANCIAL LEGAL SERVICES,
 16 STATE OF ARIZONA,
 17 Defendants.

18 **REPLY TO UNITED STATES'
 19 OPPOSITION TO TERRY MAJOR'S
 20 EMERGENCY MOTION TO STAY
 21 PROCEEDINGS PENDING
 22 INTERLOCUTORY APPEAL**

Hon. Frederick J. Martone

23 As has been previously stated, the case of *C.E. Pope Equity Trust* does not
 24 apply in this case. In this case, the order precludes a defendant from defending
 25 substantive rights and places defendant, Fox Group Trust, in a position where it's
 only asset, the subject property in this case, is threatened. Thus, it is the
 obligation of the Trustee to defend on behalf of the trust.

Indeed, Fox Group Trust has already been damaged by having been
 precluded from filing an answer to the Government's Motion for Summary
 Judgment as the Trustee was not permitted to represent the Trust and no
 attorney has agreed to provide *Pro bono publico* representation.

1 The court has stated that Fox Group Trust must be represented by an
2 attorney. Fox Group Trust has no means to hire an attorney, especially since
3 Plaintiff in this case has encumbered the only asset of Fox Group Trust with
4 notices of Federal Tax Lien so that obtaining a loan on the only asset in order to
5 pay for legal counsel is impossible. It must be a nice position to be in, encumber a
6 defendant so that hiring an attorney is not possible, and then require the
7 defendant to hire an attorney. This does not exactly seem like a fair
8 representation of justice. It is similar to putting Don Knotts in the ring with
9 Muhammad Ali and tying Don's hands behind his back. There would be no
10 defense, and the result would probably not result in many laughs.

12 This is clearly a Constitutional issue. For the courts to deny a Trustee the
13 right to defend trust property when there are no means to hire legal counsel,
14 leaves a defendant trust with no means of defense.

16 It should not be a matter of being "allowed" to represent the trust. It must
17 be viewed as a substantive right to defend. The form of trust, in this case, is an
18 irrevocable trust. The Trust is defined by a private contract between the parties to
19 the contract. The Trustee is a party and is duty bound to defend the trust property
20 when it is under attack. The references and rules cited by plaintiff's counsel and
21 the court regarding representation of an "entity" simply do not apply to the
22 instant case. In the case of an irrevocable, contractual form of trust, the Fox
23 Group Trust and the Trustee must be considered inseparable for purposes of any
24 legal action. The Trustee is the trust and may thus represent himself, as the
25

1 Trust. Without this capability, the trust loses by default. The Trustee and the
2 Trust must be considered one, and the Trustee is representing *pro se* and/or *pro*
3 *per* as a matter of right.

4 What happens if this court's order stands? The case proceeds and Fox
5 Group Trust, a named defendant in this case, goes unrepresented. Indeed, the
6 Trustee is barred from representing. Thus, the position of Fox Group Trust is
7 silenced. This would definitely create a reviewable situation where the Plaintiff
8 and the court have effectively required the representative of one defendant to
9 obtain "court approved" counsel yet did not require other defendants to do so. If
10 Fox Group Trust was named as a defendant, it must be allowed representation.

11 It was never the intention of this nation's founders that the courts should
12 be the exclusive jurisdiction of those designated as "lawyers" or "duly qualified
13 counsel". The courts are supposed to be the people's courts and were to have been
14 open to all citizens. To close the courts to all but "bar certified lawyers", removes
15 the foundation stone of our liberty and makes the citizens of this great land the
16 mere subjects to the whim of an oligarchy.

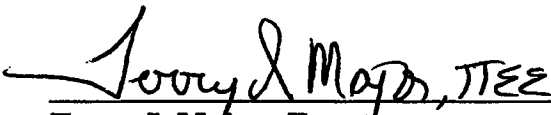
17 Statutorily defined entities must be represented by Attorneys. These would
18 include: Corporations, Limited Liability Companies and Limited Partnerships.
19 These entities are found within the statutory scheme and are thus regulated and
20 required to have attorneys represent them.

21 Fox Group Trust, however, was not statutorily created nor defined. A trust
22 and/or a contract in the form of a trust is not required to be filed with the state
23
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1 and not subject to the control of the state but is protected by Article One, Section
 2 Ten of the United States Constitution which supersedes and is superior to all the
 3 legal cites made by the government and the court in the instant case. Additionally,
 4 it would seem that justice dictates that courts may be barred from ruling upon
 5 documents the court has neither seen nor read. This Court has placed a label on
 6 Fox Group Trust without reading its controlling documents. "Designation of form
 7 of trust is not controlling; court will look to substance of circumstances and not
 8 labels placed on them by parties." *Johnson v. Hychyk* 517 P 2d 1079. How can the
 9 Court look to the substance of this case without reading the controlling
 10 documents? The contractual form of an irrevocable trust makes it a completely
 11 different form of entity. The one placing assets into the trust is no longer in
 12 control of the assets, the Trustee is in control. As such, the Trustee must be able to
 13 defend. The entity is defined by the contract and the Trustee and Trust are to be
 14 considered inseparable from the standpoint of legal action. The Trust and the
 15 Trustees are as one.

18 Terry I. Major, Trustee of Fox Group Trust, requests this honorable court
 19 stay these proceedings pending the outcome of the Appeal on the issue of
 20 representation of Fox Group Trust or in the alternative, simply permit the
 21 Trustees of Fox Group Trust to participate through *pro per* representation of the
 22 Fox Group Trust.

24 Submitted this 20th day of August, 2012


 Terry I. Major, Trustee,
 in *Pro Per*
 Fox Group Trust

Cert No: 7011 1570 0003 6914 2614

CERTIFICATE OF SERVICE

On August 20th, 2012 the *original* of the **REPLY TO UNITED STATES' OPPOSITION TO TERRY MAJOR'S EMERGENCY MOTION TO STAY PROCEEDINGS PENDING INTERLOCUTORY APPEAL** was mailed by United States *Certified* Mail for filing to the Clerk of the District Court along with a copy to **Honorable Judge Frederick J. Martone**. In addition, copies were mailed by United States Mail to:

CHARLES M. DUFFY
Attorney for Plaintiff
Trial Attorney, Tax Division
U.S. Dept. of Justice, Tax Div.
PO Box 683
Ben Franklin Station
Washington, DC 20044

KATHRYN KENEALLY
Attorney for Plaintiff
Assistant Attorney General, Tax Division
U.S. Dept. of Justice, Tax Div.
PO Box 683
Ben Franklin Station
Washington, DC 20044

ANN BIRMINGHAM SCHEEL
Attorney for Plaintiff
Acting United States Attorney
District of Arizona
Two Renaissance Square
40 North Central Ave. Suite 1200
Phoenix, AZ 85004

JAMES LESLIE READING
CLARE LOUISE READING
Defendants, Pro Se
2425 East Fox Street
Mesa, AZ 85213

ROBERT P. VENTRELLA
Attorney for the State of Arizona
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

PAUL M. LEVINE, ESQUIRE
LAKSHMI JAGANNATH, ESQUIRE
Attorneys for Defendant, Midfirst Bank
McCarthy, Holthus, Levine Law Firm
8502 E. Via de Ventura, Suite 200
Scottsdale, Arizona 85258

Terry I. Major, Trustee, in Pro Per
Fox Group Trust
PO Box 2023
Cottonwood, AZ 86326
Email: tmajor@greytechs.com
928-634-7023 (Home)
623-451-5588 (Cell)
623-243-4158 (Fax)

1 **WO**

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IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

United States of America,

No. CV 11-00698-PHX-FJM

9

Plaintiff,

ORDER

10

vs.

11

James Leslie Reading, et al.,

12

Defendants.

13

14

The court has before it Terry I. Major's emergency motion to stay proceedings pending interlocutory appeal (doc. 85), plaintiff's opposition (doc. 88), and Major's reply (doc. 89). Major is the trustee of defendant Fox Group Trust. The court struck his notice of appearance on behalf of the trust on July 3, 2012 (doc. 79) and denied his motion for reconsideration (doc. 81). He now seeks to stay proceedings until his interlocutory appeal of the court's July 3 order is resolved.

20

The order regarding Major's representation of the trust did not adjudicate the claims against any defendant and did not end this action. It is not a final order subject to appeal.

22

Nor does the order appealed here fall into one of the categories of appealable interlocutory orders under 28 U.S.C. § 1292(a). The order does not involve "a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b).

27

Major fails to address these issues and instead continues to argue that C.E. Pope Equity Trust v. United States, 818 F.2d 696 (9th Cir. 1987), does not apply to the facts of this

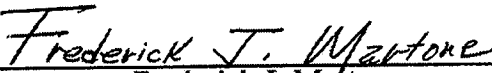
28

1 case. But C.E. Pope controls here and prevents a non-attorney trustee from representing the
2 trust pro se. As the court stated when denying Major's motion to reconsider, "[r]ights
3 purportedly granted in a trust agreement cannot override federal law" (doc. 81). Natural
4 persons may always represent themselves. But artificial entities, like trusts, must always be
5 represented by counsel. When a person chooses to take advantage of separate entity status,
6 the person accepts the downside of that separate status – the person is not the entity and
7 cannot represent it.

8 **IT IS ORDERED DENYING** trustee Terry I. Major's emergency motion to stay
9 proceedings pending interlocutory appeal (doc. 85).

10 DATED this 28th day of August, 2012.

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Frederick J. Martone
United States District Judge