

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee)	
v.)	
)	
FOX GROUP TRUST, Trustee of Terry I. Major,)	No. 12-16757
)	
Defendant-Appellant)	
)	
JAMES LESLIE READING, CLARE L. READING,)	
MIDFIRST BANK, STATE OF ARIZONA,)	
FINANCIAL LEGAL SERVICES, CHASE,)	
)	
Defendants)	

APPELLEE’S MOTION FOR DISMISSAL OF APPEAL

The United States of America, appellee herein, through its counsel, moves this Court for dismissal of this appeal because the appellant, Fox Group Trust, is not represented by a licensed attorney.

STATEMENT

The United States brought this suit against James Reading and Clare Reading (taxpayers) and the Fox Group Trust in the District Court for the District of Arizona, seeking (1) to reduce to judgment taxpayers’ unpaid federal income tax assessments for their 1993-1995, 2000 and 2008 tax years, and frivolous-return penalty assessments

-2-

made against them with respect to their 1997-2006 and 2008 returns; (2) to set aside fraudulent conveyances of a certain parcel of real property by taxpayers to the Fox Group Trust; (3) a judgment that the Fox Group Trust holds that property as taxpayers' nominee or alter-ego; (4) to foreclose federal tax liens that arose against that property with respect to taxpayers' unpaid tax liabilities; and (4) to have the property sold, and the sale proceeds applied against taxpayers' unpaid tax liabilities.¹ (Doc. 1.)² See 26 U.S.C. §§ 7401-7403; 28 U.S.C. § 1340. The Government filed a motion for summary judgment, which is pending in the District Court. (Docs. 52-65.)

Terry Major, the trustee of the Fox Group Trust, filed a notice of appearance on behalf of the trust. (See Doc. 76.) He is not an attorney. The Government moved to strike Major's appearance, because an artificial entity such as the Fox Group Trust may appear in court only

¹ The Government also named as defendants other individuals and entities that it believed might claim interests in the properties. (See Doc. 1 at 2.)

² "Doc." references are to the documents in the original record, as numbered by the Clerk of the District Court.

-3-

through a licensed attorney. (Doc. 77.) The District Court granted the Government's motion, holding that the "Fox Group Trust may appear in this action only through a lawyer who is admitted to practice before this court" under this Court's binding precedent set forth in *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987).

(Doc. 79 at 2.) Major filed a motion for reconsideration, asserting that "[t]he 'Pope' case is unrelated to this case." (Doc. 80 at 3.) The District Court denied Major's motion, holding that "[t]his case is controlled by 28 U.S.C. § 1654 and *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987)." (Doc. 81.) Major now appeals from the orders striking his appearance and denying his motion to reconsider. (Doc. 84.)

DISCUSSION

Section 1654, 28 U.S.C., provides that: "[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." Although this statute permits an individual litigant to represent himself, it does not

-4-

allow a trust, such as the Fox Group Trust, to appear in Article III courts except through a licensed attorney. *Rowland v. California Men's Colony*, 506 U.S. 194, 201-02 (1993) (“It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel. As the courts have recognized, the rationale for that rule applies equally to all artificial entities.” (emphasis added; internal citations omitted)); *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697-98 (9th Cir. 1987) (a non-attorney “has no authority to appear as an attorney for others than himself” and the appellant could “not claim that his status as trustee includes the right to present arguments pro se in federal court” on behalf of a trust).

Here, the notice of appeal was signed only by “Terry I. Major, Trustee, in *Pro Per*.” Major, as a non-attorney, may not appear in this Court on behalf of the trust. *C.E. Pope Equity Trust*, 818 F.2d at 697-98. The appeal that he is attempting to prosecute on behalf of the trust should therefore be dismissed. *Id.*

-5-

CONCLUSION

For the reasons stated above, this appeal should be dismissed.

Respectfully submitted,

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SEPTEMBER 2012

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2012, I electronically filed the foregoing with the Clerk of the Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. On September 18, 2012, I mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

Mr. Terry L. Major
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/s/ Curtis C. Pett
CURTIS C. PETT
Attorney