

**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 OPPOSITION TO APPELLANT’S
MOTION FOR A STAY PENDING APPEAL**

The United States of America, appellee herein, through its counsel, respectfully requests that this Court deny the motion for a stay pending appeal filed by Terry Major, the trustee of Fox Group Trust, because he has not satisfied the requirements for a stay.

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

- 2 -

taxpayers' unpaid federal income tax assessments for their 1993-1995, 2000 and 2008 tax years, and frivolous-return penalty assessments made against them with respect to their 1997-2006 and 2008 returns; (2) to set aside fraudulent conveyances of a certain parcel of property by taxpayers to the Fox Group Trust; (3) a judgment that the Fox Group Trust holds the 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.) Major is not a lawyer.

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 -

The Government moved to strike Major's appearance, because an artificial entity such as the Fox Group Trust may appear in court only through a licensed attorney. (Doc. 77.) The District Court granted the Government's motion, holding that, under this Court's decision in *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987), the "Fox Group Trust may appear in this action only through a lawyer who is admitted to practice before this court." (Doc. 79 at 2.) Major moved 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 filed a notice of appeal from the orders striking his appearance on behalf of the trust and denying his motion to reconsider. (Doc. 84.)³

³ Contemporaneously with this opposition, the Government has moved to dismiss this appeal on the ground that Major, as a non-attorney, cannot represent the trust in federal court. Granting this motion to dismiss would necessarily moot Major's request for a stay.

- 4 -

After filing his notice of appeal, Major moved the District Court “for an order staying this case until such time that the appellate court can determine whether Terry I. Major may represent Defendant Fox Group Trust *in pro per* in this case.” (Doc. 85 at 2.) The District Court denied the motion. (Doc. 91.) The District Court observed that the only issue in Major’s appeal, namely, whether a non-attorney trustee may represent the trust in federal court, is controlled by *C.E. Pope Equity Trust*, notwithstanding Major’s protestations to the contrary. (*Id.* at 2.)

On September 7, 2012, Major moved this Court for a stay pending appeal. The Government hereby opposes Major’s stay request for the reasons stated below.

ARGUMENT

Major has not satisfied the requirements for a stay pending appeal

“A stay is not a matter of right, even if irreparable injury might otherwise result.” *Nken v. Holder*, 556 U.S. 418, 427 (2009). To obtain a stay, Major must: (1) make a strong showing that he is likely to succeed on the merits; (2) demonstrate irreparable injury absent a stay;

- 5 -

(3) show that a stay will not substantially injure the other parties; and (4) show that a stay is “where the public interest lies.” *Nken*, 556 U.S. at 426, 434 (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). All four of these requirements must be satisfied to obtain a stay. *Nken*, 556 U.S. at 434. Moreover, in this Circuit, a party seeking a stay must show both the likelihood of success on the merits and irreparable injury or, alternatively, that serious legal questions are raised and that the balance of hardships tips sharply in his favor. *Artukovic v. Rison*, 784 F.2d 1354, 1355 (9th Cir. 1986); *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir.), *rev’d on other grounds*, 463 U.S. 1328 (1983).

In his motion, Major does not assert that he has met *any* of the requirements for a stay (let alone all of them). Major fails to satisfy the first requirement for a stay, because he has no chance (much less a strong likelihood) of prevailing on the issue whether he should be permitted to prosecute this appeal on behalf of the trust, despite the fact that he is not a licensed attorney. That argument is contrary to binding precedent in this Circuit. Major’s failure to pass the first hurdle defeats his stay request. (That is in no way to be taken as a

- 6 -

concession that Major could satisfy any of the other requirements for obtaining a stay, and nothing in his request for a stay suggests that he could do so.)

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 § 1654 permits an individual litigant to represent himself, it does not allow a trust, such as the Fox Group Trust, to appear in an Article III court 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

- 7 -

right to present arguments pro se in federal court” on behalf of a trust).

The notice of appeal in this case was signed only by “Terry I. Major, Trustee, in *Pro Per*.” Major, as a non-attorney, may not appear on behalf of the trust in this Court. *C.E. Pope Equity Trust*, 818 F.2d 696, 697-98. Consequently, as indicated in our motion to dismiss, which we have filed contemporaneously with this opposition, the appeal is subject to dismissal. *Id.* It necessarily follows that Major has no chance of prevailing on appeal, and his request for a stay pending appeal should be denied.

- 8 -

CONCLUSION

For the reasons stated above, Major's motion for a stay pending appeal should be denied.

Respectfully submitted,

KATHRYN KENEALLY
Assistant Attorney General

/s/ Curtis C. Pett

JONATHAN S. COHEN (202) 514-2970
CURTIS C. PETT (202) 514-1937

Attorneys
Tax Division
Department of Justice
Post Office Box 502
Washington, D.C. 20044

Of Counsel:
JOHN S. LEONARDO
United States Attorney

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
P.O. Box 2023
Cottonwood, AZ, 86326

/s/ Curtis C. Pett
CURTIS C. PETT
Attorney