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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA,
Plaintiff,
vs.
JOSEPH LIPARI, et al.,
Defendants.

3:10-cv-08142 JWS
ORDER AND OPINION
[Re: Motions at Dockets 37 & 47]

I. MOTIONS PRESENTED

At docket 37, plaintiff the United States of America (“the government”) moves for summary judgment pursuant to Federal Rule of Civil Procedure 56. Defendants Joseph Lipari and now-deceased Eileen Lipari (“the Liparis”) did not respond to the government’s motion. At docket 47, defendant Exeter Trinity Properties, LLC (“Exeter”) opposes the motion and cross-moves for summary judgment in its favor. The government responds to Exeter’s cross-motion at docket 52, and its reply is at docket 53. Exeter’s reply is at docket 55.

1 **II. BACKGROUND**

2 The Liparis were advised by Jimmy Chisum (“Chisum”). Chisum is a “known
3 promoter of tax avoidance schemes”¹ and has been convicted of tax evasion in the
4 Eastern District of Oklahoma.² Eileen Lipari attended and taught at Chisum’s seminars.
5 The Liparis did not file tax returns for tax years 1994 through 2004 until 2007.
6 Assessments against Joseph Lipari for the period from 1994 through 1997 total
7 \$481,860.73; assessments against Eileen Lipari for the same period total \$178,834.09;
8 assessments against the Liparis for joint years 1993 and 1998 through 2004 total
9 \$300,454.63. The United States seeks to recover those amounts and to foreclose its
10 federal tax liens on property at 1001 South Sixth Street in Cottonwood, AZ.

11 The Liparis purchased the subject property in 1989. The property cost \$105,000;
12 the Liparis paid \$35,000 down and took out a mortgage for the remaining \$70,000. The
13 mortgage was fully paid as of March 22, 1993. Two days after paying off the mortgage,
14 Chisum or his wife Donna filed a warranty deed—previously executed by the Liparis in
15 1992—which transferred the property to the Ponderosa Trust. Donna Chisum was the
16 trustee. The Liparis received \$10 and some certificates with no value.

17 Even though title to the property had been transferred, the Liparis continued to
18 live at the subject property, without paying rent, and Joseph Lipari operated his
19 chiropractic business from the residence. The Liparis deducted expenses associated
20 with Joseph Lipari’s business for tax years 1994 through 2004. The Liparis depreciated
21 the residence on their individual tax returns for tax years 1999 through 2002.

22 On September 1, 1999, a warranty deed was recorded which transferred the
23 residence from Ponderosa Trust to Exeter. Exeter was incorporated in 1999. Chisum
24 was its statutory agent, and Hunter King LLC, owned by Eileen Lipari, was one of its
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27 ¹*Lundgren v. C.I.R.*, 92 T.C.M. (CCH) 171 (2006).

28 ²*United States v. Chisum*, 502 F.3d 1237 (10th Cir. 2007).

1 members. On August 5, 2003, the IRS filed nominee tax liens against Exeter as the
2 nominee, transferee, or alter-ego of Joseph and Eileen Lipari.

3 In 2006, the Liparis asked Chisum to transfer control of the property to Elmer
4 Veld (“Veld”)³ because Chisum was going to prison. Eileen Lipari met Veld, a friend of
5 Chisum’s, at one of Chisum’s seminars. In November 2007, Veld evicted the Liparis.
6 He told them that they owed rent and that they were in violation of their original contract
7 and rental agreement, which Veld had never seen. Eileen Lipari was unaware of an
8 original contract or rental agreement. In February 2008, Veld amended Exeter’s articles
9 of incorporation. Golden Kiwi Trust, of which Veld was trustee, and the Iron Insulator
10 Trust, of which Terry Major (“Major”) was trustee, became members of Exeter and
11 Hunter King LLC was dropped. Major, a “student” of Veld’s, currently resides at the
12 subject property.

13 The government filed suit in August 2010 to bring the assessments against the
14 Liparis to judgment and to enforce the tax liens on the subject property pursuant to 26
15 U.S.C. § 7403.

16 **III. STANDARD OF REVIEW**

17 Summary judgment is appropriate where “there is no genuine dispute as to any
18 material fact and the movant is entitled to judgment as a matter of law.”⁴ The materiality
19 requirement ensures that “only disputes over facts that might affect the outcome of the
20 suit under the governing law will properly preclude the entry of summary judgment.”⁵
21 Ultimately, “summary judgment will not lie if the . . . evidence is such that a reasonable
22 jury could return a verdict for the nonmoving party.”⁶ In resolving a motion for summary
23 judgment, a court must view the evidence in the light most favorable to the non-moving
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25 ³The Liparis knew Veld as “Phillip O’Neill”—a pseudonym.

26 ⁴Fed. R. Civ. P. 56(a).

27 ⁵*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

28 ⁶*Id.*

1 party.⁷ The reviewing court may not weigh evidence or assess the credibility of
2 witnesses.⁸ The burden of persuasion is on the moving party.⁹

3 **IV. DISCUSSION**

4 **A. The Assessments Against the Liparis Have Not Been Disputed**

5 The government has presented evidence supporting the IRS's assessments
6 against the Liparis for tax years 1993-1996 and 1998-2004. Specifically, the
7 government has Forms 4340 for each of those tax years.¹⁰ Because the Liparis have
8 not presented any evidence to the contrary, there is no disputed issue of material fact
9 preventing summary judgment in the government's favor with respect to the tax
10 assessments against them. Although Exeter has opposed the government's motion, its
11 opposition is limited to the government's foreclosure claim. The government has not
12 supported the assessments for tax year 1997. Without the assessments for tax year
13 1997, total assessments against Joseph Lipari for the period from 1994 through 1996
14 total \$401,670.44; assessments against Eileen Lipari for the same period total
15 \$142,384.88; assessments against the Liparis for joint years 1993 and 1998 through
16 2004 total \$300,454.63.

17 **B. The Government's Foreclosure Claim**

18 The government advances two theories in support of its claim for foreclosure.
19 First, the government argues that the conveyances of the subject property—from the
20 Liparis to the Ponderosa Trust and from the Ponderosa Trust to Exeter—were fraudulent
21 conveyances and should be set aside. In the alternative, the government alleges that
22 Exeter is the alter-ego of the Liparis.

23 ⁷*Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000).

24 ⁸*Dominguez-Curry v. Nevada Transp. Dept.*, 424 F.3d 1027, 1036 (9th Cir. 2005).

25 ⁹*Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

26 ¹⁰Docs. 39-1, 39-2 at 1–28. Forms 4340 are self-authenticating, admissible public
27 records under Federal Rules of Evidence 902(1) and 803(8). *See Hughes v. United States*, 953
28 F.2d 531, 539–40, (9th Cir. 1992).

1 **1. Fraudulent Conveyance**

2 A transfer of property that is undertaken to avoid tax liability may be set aside if it
3 is fraudulent under state law.¹¹ In Arizona, a transfer is fraudulent “if [a] debtor made
4 the transfer . . . with actual intent to hinder, delay or defraud any creditor.”¹²

5 Among the factors bearing on actual intent to defraud are 1) whether the transfer
6 was to an insider,¹³ 2) whether the debtor retained possession or control of the
7 transferred property,¹⁴ 3) whether the value of the consideration received by the debtor
8 was reasonably equivalent to the value of the asset transferred,¹⁵ and 4) whether the
9 transfer occurred shortly before of after a substantial debt was incurred.¹⁶

10 Given Chisum’s relationship to the Liparis as their “advisor,” Chisum is properly
11 considered an insider. After the subject property was transferred to the Ponderosa
12 Trust, the Liparis continued to live there and thus retained possession of it. The Liparis
13 also deducted business expenses relating to the property and depreciated it on their tax
14 returns. The consideration received—\$10 and worthless certificates—was nowhere near
15 the subject property’s \$105,000 purchase price. Finally, the transfer of the property to
16 the Ponderosa Trust occurred in the year before the Liparis stopped filing federal tax
17 returns. Because actual intent may be inferred from the circumstances of the

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20 ¹¹See *United States v. Ranch Located in Young, Ariz.*, 50 F.3d 630, 632 (9th Cir. 1995)
21 (applying Arizona law to set aside a fraudulent conveyance to a criminal defendant in an *in rem*
22 action for criminal forfeiture). See also 28 U.S.C. § 3003(b)(1) (United States may rely on state
23 law “to collect taxes or to collect any other amount collectible in the same manner as a tax”
under the Federal Debt Collections Procedures Act).

24 ¹²A.R.S. § 44-1004(A)(1).

25 ¹³*Id.* § 44-1004(B)(1).

26 ¹⁴*Id.* § 44-1004(B)(2).

27 ¹⁵*Id.* § 44-1004(B)(8).

28 ¹⁶*Id.* § 44-1004(B)(10).

1 transaction,¹⁷ the government has presented evidence sufficient to support its position
2 that the transfer of the subject property from the Liparis to the Ponderosa Trust was
3 fraudulent.

4 In the alternative to actual intent, a transfer is fraudulent if the debtor made the
5 transfer “[w]ithout receiving a reasonably equivalent value in exchange for the transfer,”
6 provided “the debtor . . . believed or reasonably should have believed that he would
7 incur[] debts beyond his ability to pay as they became due.”¹⁸ Similarly, because the
8 transfer of \$105,000 property was made in exchange for \$10, and because the Liparis
9 reasonably should have believed that they would incur substantial debts when they
10 stopped filing federal tax returns, the government’s evidence supports its position that
11 the conveyance was constructively fraudulent as well.

12 Exeter maintains that the Liparis transferred the property to the Ponderosa Trust
13 for estate planning purposes.¹⁹ Specifically, to protect it from their estranged daughter
14 and ensure that the property would go to charity.²⁰ Joseph Lipari also stated, however,
15 that the transfer “was supposed to protect us in the sense of if we got sued, we couldn’t
16 get sued personally because we don’t own anything.”²¹ Exeter also points out that there
17 are alternative explanations for the circumstantial evidence that the conveyance was
18 fraudulent. For instance, with respect to the Liparis deducting business expenses
19 related to the subject property and depreciating it on their tax returns, Exeter argues
20 that the Liparis obviously did not understand the tax code—depreciation was
21 inconsistently taken and the business expense deductions only indicate a belief that
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24 ¹⁷See, e.g., *In re Marriage of Benge*, 726 P.2d 1088, 1092 (Ariz. Ct. App. 1986).

25 ¹⁸A.R.S. § 44-1004(A)(2)(b).

26 ¹⁹See, e.g., doc. 48-2 at 2.

27 ²⁰Doc. 48-2 at 2; doc. 49-3 at 3.

28 ²¹Doc. 48-2 at 4.

1 they could deduct business expenses (regardless of ownership of the property).²²
2 Exeter also argues that not paying rent could be considered a form of consideration.
3 Finally, Exeter emphasizes that, when the Liparis were evicted from the subject
4 property, they left and that behavior is inconsistent with a belief that they owned it.

5 The question is whether a reasonable jury could find for Exeter on the question of
6 intent. Although the circumstantial evidence supports the conclusion that the transfer
7 was fraudulent, deposition testimony from the Liparis supports the proposition that the
8 conveyance was undertaken for estate planning purposes. Because the evidence (on
9 the government's motion) must be viewed in the light most favorable to Exeter, Joseph
10 Lipari's statement that the conveyance would protect him and his wife from creditors
11 cannot be viewed to conflict with Exeter's theory. The supposed protection could have
12 been an ancillary benefit to the intended method of estate planning. Moreover, given
13 the standard of review, for purposes of this motion, the court is required to accept
14 Exeter's alternative explanations for the circumstantial evidence in question.
15 Consequently, summary judgment on the government's foreclosure claim is
16 inappropriate under the government's fraudulent conveyance theory.

17 **2. Alter Ego**

18 The government maintains, in the alternative, that Exeter is a nominee or alter
19 ego of the Liparis, and therefore, that the court should disregard Exeter's nominal
20 ownership interest.²³ The question is whether transfer of title from the Liparis to the
21 Ponderosa Trust (and subsequent transfer to Exeter) shield the subject property from
22 the federal tax liens on the Liparis' property.²⁴ "Even where a taxpayer has structured a
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24 ²²The government argues in its reply that "Exeter is speculating and it cannot defeat the
25 United States' summary judgment motion with speculation." Doc. 52 at 9. The government
26 confuses speculation with an alternative explanation of the same evidence.

27 ²³See, e.g., *Wolfe v. United States*, 798 F.2d 1241, 1243–44 (9th Cir. 1986).

28 ²⁴See 26 U.S.C. § 6321 ("If any person liable to pay any tax neglects to pay the same
after demand, the amount . . . shall be a lien in favor of the United States upon all property . . .

1 transaction so that it satisfies the formal requirements of the Internal Revenue Code,
2 legal effect will be denied if its sole purpose is to evade taxation.”²⁵

3 The government identifies one factor—whether the transferor remains on the
4 property and continues to treat it as his or her own after the transaction—which supports
5 its theory. Exeter responds that the government’s alter ego theory must fail because
6 the Liparis did not have control over the Ponderosa Trust. The overarching issue is
7 whether the initial transfer of the subject property—from the Liparis to the Ponderosa
8 Trust—was undertaken to evade taxation. As discussed in the previous section, there
9 are genuine issues of material fact precluding summary judgment on the issue of the
10 Liparis’ intent in making the transfer.

11 **C. Exeter’s Cross-Motion**

12 The issues of material fact that preclude summary judgment in favor of the
13 government also preclude summary judgment in favor of Exeter.

14 **V. CONCLUSION**

15 For the reasons above, the government’s motion at docket 37 is **GRANTED** in
16 part and **DENIED** in part as follows:

17 1) It is granted with respect to the tax assessments against Joseph Lipari,
18 individually, for tax years 1994 through 1996, the tax assessments against Eileen Lipari,
19 individually, for tax years 1994 through 1996, and the tax assessments against the
20 Liparis jointly for tax years 1993 and 1998 through 2004.

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27 belonging to such person.”).

28 ²⁵*Neely v. United States*, 775 F.2d 1092, 1094 (9th Cir. 1985).

