No: _____

In The

Supreme Court of the United States

THE SOCIETY OF APOSTOLIC CHURCH MINISTRIES BISHOP,
Elizabeth Gardner Corporation
Sole and Her Successors,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

COMES NOW petitioner, The Society of Apostolic Church Ministries by undersigned counsel, pursuant to Supreme Court Rule 13.5, and respectfully requests a sixty-day extension of time to file its Petition for a Writ of Certiorari to the United States Supreme Court. This application is submitted more than ten (10) days prior to the scheduled filing date for the petition, which is October 22, 2025. In support of this application, petitioner shows the following:

1. On July 24, 2025, the United States Court of Appeals for the Ninth Circuit affirmed *Society of Apostolic Church Ministries Bishop v. U.S.*, No. 24-1765, 2025 WL 2083124 (9th Cir. 2025) in a two to one split. A copy of the decision is attached hereto as Exhibit A.

2. The U.S. District Court for the District of Arizona also entered an Order upon motion for consideration at *Society of Apostolic Church Ministries, et al. v. U.S.*, No. CV-21-08277-PCT-DJH, 2024 WL 2942707 (D. Ariz. June 11, 2024), a copy of which is attached hereto as Exhibit B.

3. The Petitioner has had financial difficulties in raising funds for the Writ of Certiorari, and appellate counsel will need sufficient time to fully evaluate the merits of this matter and file the Petition for a Writ of Certiorari.

4. Also, this request is made due to the lower court having made significant legal mistakes that affected the outcome of the case. The case may involve important questions of law or public interest that warrant Supreme Court reviews. The legal error was that the court failed to consider the facts in a light favorable to the non-moving party. It is important because of the underlying animus of the lower courts towards Christian religious organizations which has resulted in a denial of sovereignty of the church organization.

WHEREFORE, Petitioner respectfully requests that the Court grant this Application for an Extension of Time to File the Petition for Writ of Certiorari to December 22, 2025.

DATED this 9th day of October 2025.

RESPECTFULLY SUBMITTED,

/s/ Dennis I. Wilenchik

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EXHIBIT A

2025 WL 2083124
United States Court of Appeals, Ninth Circuit.

The SOCIETY OF APOSTOLIC CHURCH MINISTRIES BISHOP, Elizabeth Gardner Corporation Sole and Her Successors, Plaintiff - Appellant,
v.
UNITED STATES of America, Defendant - Appellee.

No. 24-1765
|
Argued and Submitted May 12, 2025 Phoenix, Arizona
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FILED JULY 24, 2025

Appeal from the United States District Court for the District of Arizona, Diane J. Humetewa, District Judge, Presiding, D.C. No. 3:21-cv-08277-DJH

Attorneys and Law Firms

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Elizabeth Gardner, Dewey, AZ, for Plaintiff - Appellant Elizabeth Gardner.

Douglas Campbell Rennie, Jennifer Marie Rubin, Amy Talburt Matchison, DOJ - U.S. Department of Justice, Tax Division, Washington, DC, for Defendant - Appellee.

Before: RAWLINSON, BUMATAY, and SANCHEZ, Circuit Judges.

MEMORANDUM [*]

***1** Plaintiff Society of Apostolic Church Ministries Bishop ("the Society") brought this suit against Defendant United States challenging the Internal Revenue Service's ("IRS") tax lien on the Society's Apache Knolls property and levy on the Society's bank account to recover $826,381.05 in unpaid taxes owed by Elizabeth and Frederic Gardner for tax years 2002 through 2004. This action reflects another entry in a decades-long effort by the Gardners to avoid paying income taxes—an effort that has already reached this court four times. [1]

The IRS' tax lien and levy proceeded under the theory that the Society is the Gardners' "nominee." A "nominee" is "one who holds bare legal title to property for the benefit of another." *Fourth Inv. LP v. United States*, 720 F.3d 1058, 1066 (9th Cir. 2013) (citation omitted). We review the district court's grant of summary judgment for the Government de novo, considering the evidence in the light most favorable to the Society and drawing all reasonable inferences in its favor as the nonmoving party. *See Hittle v. City of Stockton*, 101 F.4th 1000, 1011 (9th Cir. 2024). [2] We affirm.

Under 28 U.S.C. §§ 6321 and 6331, the IRS has broad powers to impose tax liens and levies upon properties belonging to persons who have not paid their taxes. *See G.M. Leasing Corp. v. United States*, 429 U.S. 338, 349–50 (1977). The authority conferred by these statutory provisions is "broad and reveals on its face that Congress meant to reach every interest in property that a taxpayer might have." *United States v. Nat'l Bank of Com.*, 472 U.S. 713, 719–20 (1985). This power extends to "all property of a taxpayer, including property that is held by a third party as the taxpayer's nominee or alter ego." *Fourth Inv. LP*, 720 F.3d at 1066 (citing *G.M. Leasing Corp.*, 429 U.S. at 350–51).

Although the *Towe* factors are a helpful guide in assessing the Society's nominee status, our ultimate focus is on the "totality of the circumstances," with the "overarching consideration" being "whether the taxpayer exercised active or substantial control over the property." *Id.* at 1070 (cleaned up). Reviewing de novo, we find no genuine disputes of material fact concerning the district court's determination that the Society was the Gardners' nominee.

As the district court concluded, undisputed record evidence establishes that the Gardners exercised "active or substantial control" over the Apache Knolls property despite the Society holding legal title to it. *Id.* The property's deed chain shows that Elizabeth Gardner repeatedly transferred the property to and from herself as corporation sole of various entities, including the Society, for no consideration. Mrs. Gardner also transferred the property to and from herself and her husband in their individual capacities without consideration. [3]

***2** The record also reflects that the Gardners continued to enjoy the benefits of the Apache Knolls property through each change in legal ownership. They have lived on the property for over twenty years. The Society pays for the Gardners' utilities and living expenses, such as their gas and telephone bills, cable and internet services, and

their residential homeowner's insurance policy—despite the Gardners registering many of these accounts in their name. These undisputed facts establish the existence of a nominee relationship, *i.e.*, the Society held bare legal title to the Apache Knolls property to benefit the Gardners.

The Society does not point to any record evidence contradicting the district court's conclusion. Instead, the Society argues that a corporation sole is allowed to own and manage real property. But this appeal does not concern the legality of a corporation sole. The corporation sole form can be abused just like any other relationship or entity. Where the undisputed evidence shows that the Gardners exercised active or substantial control over the Apache Knolls property to benefit themselves despite the Society holding legal title to it, the IRS was allowed to reach the property to recover taxes owed by the Gardners.

The same conclusion holds with respect to the Society's bank account. Undisputed testimony by the Society's leadership establishes that the Gardners had decision-making authority over the Society's finances and exercised substantial control over the Society's bank account. Frederic Gardner was the co-signer on the bank account. The Society paid for the Gardners' various living expenses and utilities from this account. The Society even paid for a portion of the Gardners' legal fees from this account.

Our dissenting colleague contends that nominee status must be evaluated on an asset-by-asset basis, and the district court's failure to conduct such an analysis with respect to the Society's bank account requires reversal. [4] But the Society never raised this argument either in briefing before the district court or on appeal here. Even if it were the applicable standard, the district court did analyze the Society's bank account in its discussion of the *Towe* factors. The district court found that the Society pays for the Gardners' "bills and expenses" as well as their "legal fees" from the Society's checking account, and it concluded, under a totality of the circumstances, that the Gardners exercised "active or substantial control" over the Society's bank account and used the Society's funds to benefit themselves. The Society points to no evidence in the record contradicting the district court's conclusion. [5]

The Society and the dissent contend that a triable dispute exists with respect to a $50,000 donation made by a now-deceased Society member. The Society claims this donation was made to the Society to help a member in need. The record does not bear this out. Mrs. Gardner testified that the donor's instructions were for the money "to be used for the ministry for special need(s) – *for you if need be* – helping someone else." The donor's successor similarly stated that the donation was "for a special hardship [Mrs. Gardner] chose and if hard times came upon themselves use it for that necessity also." This instruction does not give rise to a disputed issue of material fact.

***3** Finally, the dissent contends that the Government exhibits disrespect for minority religions and does not view the Society as a bona fide religion. Nothing in the record or briefing supports this bald assertion. This is not a case about religion or how a church operates. It is about the determination of who owns and actively controls certain assets held for the benefit of another—the very purpose of nominee analysis and an inquiry that can be made without implicating protected First Amendment interests. *See Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) ("Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded.").

This appeal involves a straightforward determination of whether the Society held bare legal title to property for the benefit of the Gardners. The Society has produced no evidence establishing a genuine dispute of material fact that the Society is the Gardners' nominee as to the Apache Knolls property and the Society's bank account. Accordingly, summary judgment was properly granted in the Government's favor.

AFFIRMED.

BUMATAY, Circuit Judge, dissenting:

Summary judgment is appropriate only when there is no genuine dispute of material fact. That's because "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Here, the Society of Apostolic Church Ministries Bishop ("Society") has introduced evidence that creates a triable question on whether it's Elizabeth and Fredric Gardners' nominee. On

these facts, that question should be answered by a jury—not by judges.

The Society sued the United States after the IRS recorded a tax lien against its property in Arizona ("Apache Knolls") and levied its bank account for taxes owed by the Gardners. Elizabeth Gardner is the Society's bishop and its sole corporate officeholder. Fredric, her husband, is one of its elders. Apache Knolls is the Gardners' primary residence and the meeting place of Messiah's Remnant—a church fellowship—and the headquarters of the Society. The Society's religious activity also occurs at Apache Knolls, according to the Society.

Both the Society and Messiah's Remnant are organized as corporations sole. The IRS defines a "corporation sole" as "a corporate form authorized under certain state laws to enable bona fide religious leaders to hold property and conduct business for the benefit of the religious entity." Rev. Rul. 2004-27, 2004-1 C.B. 625, 626, 2004 WL 389673, at *1. Elizabeth Gardner most recently became a corporation sole of the Society under the laws of Montana. Under Montana law, the corporation sole has the power "to purchase, take, receive, lease, take by gift, devise, or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest in real or personal property, wherever situated, provided that all property must be in trust for the use, purpose, and benefit of the religious denomination, society, or church for which and in whose behalf the corporation sole is organized." Mont. Code § 35-3-205(4).

The Gardners owe the IRS taxes. To collect on those back taxes, the IRS set its eye on Apache Knolls and the Society's bank account. The government's theory is that those assets in fact belong not to the Society but to the Gardners personally. Legally speaking, the government argues that the Society is the Gardners' *nominee* for both Apache Knolls and the bank account. While Arizona hasn't expressly adopted a nominee theory of liability, in general, a nominee is a person or entity that holds "bare title" to an asset for the actual benefit of someone else—the true owner. *See Fourth Inv. LP v. United States*, 720 F.3d 1058, 1066 (9th Cir. 2013) (analyzing California law). But if the Gardners legitimately hold those assets for the benefit of the Society and its religious activity, no nominee status has been established. In determining whether an entity is a taxpayer's nominee, we look to the totality of the circumstances. *Fourth Inv. LP*, 720 F.3d at 1070.

***4** With this standard in mind, let's turn to the facts of this case.

1. First, turning to the Apache Knolls property. Bethel Aram Ministries, the corporate entity now known as Messiah's Remnant, acquired Apache Knolls in 2003. Since then, the deed chain shows that Apache Knolls changed hands several times over the years, mostly to other successor church entities but once to the Gardners personally before being transferred back again. Here is the deed chain:

Grantor	Grantee	Date recorded
Dennis M Repan and Olga Repan	Elizabeth A Gardner, A Corporation Sole of Bethel Aram Ministries	April 8, 2003
Elizabeth A Gardner, A Corporation Sole of Bethel Aram Ministries	Pastor, Elizabeth A Gardner A Corporation	September 12, 2012
Pastor, Elizabeth A Gardner A Corporation Sole of Messiah House Fellowship	Fredric A & Elizabeth A Gardner	December 17, 2012
Fredric A & Elizabeth A Gardner	Church Restoration Ministries, Elizabeth A Gardner, A Corporation	March 7, 2013
Church Restoration Ministries, Elizabeth A Gardner, A Corporation	Society of Apostolic Church Ministries, Bishop Elizabeth A Gardner, Corporation Sole	June 27, 2019

This deed history presents a triable issue of fact on whether Apache Knolls is held for the benefit of the Society or the Gardners personally. In favor of the government are four undisputed facts. First, Elizabeth transferred the property to and from various corporation-sole entities she governs, including the Society, without consideration. Second, she transferred the property to herself and her husband one time. Third, they have enjoyed the benefits of the property by living on it for 20 years. And fourth, the Society pays for living expenses and various costs associated with homeownership, such as insurance and utilities.

While these facts might support a government verdict, a jury could reasonably draw inferences favoring the Society too. On the property transfers between different church entities, a jury could credit that some of the transfers were prompted by Messiah Remnant's name changes over the years—as Fredric said in his deposition. A religious entity should be able to change its name without fear that the new name could lead to its property being levied by the government. The majority concludes that the transfers do not primarily reflect name changes. But no facts point to this. As the deed chain shows, many of the transfers show only a name change: from *Bethel Aram Ministries* to *Messiah House Fellowship* to—after the transfer to the Gardners personally—*Church Restoration Ministries.* All three of these names refer to the same house church, which is now known, indeed, as Messiah's Remnant. Inference-drawing from these facts should be for a jury, rather than circuit judges.

On the transfer to the Gardners personally, a jury could find, again as explained by Fredric, that they transferred the property to their name at the direction of a bank to qualify the Society for a loan to fund a roof repair. In claiming it's irrelevant that the Apache Knolls property was transferred to the Gardners for the benefit of the Society, the majority makes a broad ruling that would make every corporation sole (and all religious organizations using the corporation sole structure) a nominee under its view of the law. To the majority, it doesn't matter *why* a property is transferred and "[m]ultiple transfers of the Apache Knolls property to different entities controlled by the Gardners for no consideration" is enough to establish nominee status. The majority cites no Arizona law for this exceedingly broad proposition of law. It also fails to acknowledge that Montana law expressly permits a corporation sole to transfer real property between church entities without consideration. *See* Mont. Code § 35-3-205(4). Most importantly, it misunderstands what the nominee inquiry is about—it's trying to determine who truly benefits from the asset. Of course the reason why a property is transferred is crucial to that inquiry. Under the majority's novel theory of law, every corporation sole now is in danger of being deemed a nominee of its officer.

***5** The majority also holds it was sufficient that the "Society held bare legal title to the Apache Knolls property to benefit the Gardners." Again, this asks the wrong question. The right question is: Did the Apache Knolls property *also* benefit the Society? If so, then it's not dispositive that the property also happened to benefit the Gardners. For example, if the Apache Knolls property was used for weekly religious services (as the Society contends), then it serves the Society even if the Gardners also personally benefitted. At least there's a triable issue of fact on that question and so summary judgment was inappropriate.

A jury too could find that the Gardners' living at the property and the Society's paying associated expenses is not evidence of a nominee relationship but is instead simply indicative of their roles in the church. The Gardners, after all, claim that they took vows of poverty and that they conduct church business from the property, which they call a parsonage. All sorts of religions provide dwelling places for their leaders and pay their expenses, including personal expenses. Would we be here today if the parsonage-dwelling, vow-of-poverty-taking bishop led a better-known church?

Permeating the government's theory of liability is the government's dislike of the way the Society runs its internal finances and how much control it cedes to Elizabeth Gardner. But this argument treads on dubious constitutional territory. The government has no role in dictating the proper form of church governance. *See, e.g., Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 753 (2020).

Because there are triable issues of fact about whether Apache Knolls benefited the Society—rather than only the Gardners personally—this claim should have gone to the jury.

2. The bank account presents a triable question too. And here the case for remand should be even more uncontroversial: that's because the district court did not conduct nominee analysis *at all.* That's enough to send it back. The district court simply concluded that because the Society was the Gardners'

nominee for Apache Knolls, then it must also be for the bank account. But that's wrong as a matter of logic and law.

Even if the Gardners were found to be the nominee of some of the Society's assets, that doesn't mean they are the nominee for all its assets. The Gardners could hold some of the Society's assets solely for their benefit but legitimately hold some assets for the benefit of the Society. That's why the nominee analysis proceeds asset-by-asset. The idea is to establish who the true owner of the asset is. If the government wanted to avoid this searching asset-by-asset inquiry, it could have charged the Society with being the Gardners' *alter ego*. *See Oxford Capital Corp. v. United States*, 211 F.3d 280, 284 (5th Cir. 2000) (explaining the difference between a nominee and an alter ego). That's a stronger claim, one that would essentially require the government to prove that the Society's corporate status is itself is a sham or fraud. If it succeeded, the IRS could reverse pierce the Society's corporate veil and get at its assets. *See id.* But the IRS does not argue that the Society is the Gardners' alter ego—only their nominee.

The majority suggests that this argument was forfeited. Reading the Society's complaint shows that this is wrong. The complaint makes clear that the Society's action was for both "quiet title" and "wrongful levy"—two separate actions. It shouldn't fall on the Society to ensure that the district court properly followed the law.

In any event, the majority concludes that the district court analyzed the bank account by mentioning in passing the Society's checking account in its discussion of a few *Towe* factors. That analysis ignores that most of the levied funds, including a sizeable donation, came not from the Society's checking account but from its money market account, which the district court did not analyze. To the extent it analyzed the Society's bank account at all, the district court collapsed the checking account and Apache Knolls into the same analysis and concluded that the Society is the Gardners' the nominee as a matter of law. The problem with this analysis is that it failed to proceed asset-by-asset. When district courts conduct the wrong analysis, we ask them to try again. Why not here?

***6** What's more, the government surprisingly admitted at oral argument that it didn't know how the Society spent the money in the account. So the government doesn't even know if the Society used the account for bona fide religious purposes—or for the Gardners' personal expenses—yet it wants to immediately claim ownership. That the government and the district court failed to do this analysis is troubling.

The record shows that a $50,000 donation was made by a late donor to "be used for the ministry for any special need(s) and for you if need be—helping someone else." The majority waves away too quickly the significance of this donation: a jury might reasonably infer from its deposit in the levied account that the account truly belongs to the Society, not to the Gardners. This is true even though Elizabeth Gardner had complete control over the donated funds—it is not uncommon that an organization's top leader is the ultimate authority on how donations are spent.

The government may be right, but the Society deserves a jury trial—not judges sitting as their overseers.

* * *

When called to weigh evidence and draw inferences from that evidence, judges must tread lightly, avoiding trespassing on the domain reserved for juries. *See Anderson*, 477 U.S. at 255 (1986). Here, because "conflicting inferences may be drawn from the facts"—on both Apache Knolls and the bank account—"the case must go to the jury." *LaLonde v. Cnty. of Riverside*, 204 F.3d 947, 959 (9th Cir. 2000). Summary judgment was thus inappropriate. We should have reversed and remanded.

I respectfully dissent.

Dissent by Judge BUMATAY.

All Citations

Not Reported in Fed. Rptr., 2025 WL 2083124, 136 A.F.T.R.2d 2025-5303

Footnotes

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

1 *See Gardner v. Comm'r of Internal Revenue*, 845 F.3d 971, 973–74 (9th Cir. 2017) (describing history of the Gardners' tax evasion efforts); *see also Gardner v. IRS*, 672 F. App'x 776, 777 (9th Cir. 2017) (holding that Gardners' church was their alter ego for tax levy purposes); *United States v. Gardner*, 457 F. App'x 611, 612 (9th Cir. 2011) (affirming injunction barring the Gardners from "promoting, organizing, and selling their corporation sole tax scheme").

2 The district court applied the factors articulated in *Towe Antique Ford Foundation v. IRS*, 791 F. Supp. 1450, 1453 (D. Mon. 1992) to determine if the Society is the Gardners' nominee. Neither party disputes the use of the *Towe* factors to determine nominee status.

3 The dissent suggests that these transfers primarily reflect the name changes of the Gardners' church, but that is belied by the record. The Apache Knolls property has been owned and transferred between the Gardners in their individual capacity, the Gardners' church, Messiah's Remnant, and the Society, which is a different legal entity altogether. Only one of the five property transfers on the deed chain could be attributable to a church name change. The dissent also contends that transfer to the Gardners individually to qualify for a personal loan raises a triable dispute. It does not. Nominee analysis is concerned with whether the taxpayer had active or substantial control over property held by a third party, not *why* they exercised such control. *See Fourth Inv. LP*, 720 F.3d at 1070. Multiple transfers of the Apache Knolls property to different entities controlled by the Gardners for no consideration establishes the uncontradicted fact that the Gardners exercised active and substantial control over the property.

4 The dissent cites *Oxford Capital Corp. v. United States*, 211 F.3d 280 (5th Cir. 2000) for this proposition, but that decision required only that a court conducting a nominee analysis determine if the "taxpayer in fact has beneficial ownership" over the property in which legal title is held by a third party. *See id.* at 284. *Oxford Capital* is consistent with our "totality of the circumstances" test requiring a showing that the "taxpayer exercised active or substantial control over the property." *See Fourth Inv. LP*, 720 F.3d at 1070.

5 The dissent makes much of the distinction between the Society's checking account and money market account, both with Wells Fargo. The distinction is of no moment because the undisputed evidence establishes that the funds in the Wells Fargo money market account were transferred from the Society's checking account.

EXHIBIT B

2024 WL 2942707
United States District Court, D. Arizona.

SOCIETY OF APOSTOLIC CHURCH MINISTRIES, et al., Plaintiffs,
v.
UNITED STATES of America, Defendant.

No. CV-21-08277-PCT-DJH
|
Signed June 11, 2024

Attorneys and Law Firms

Gregory A. Robinson, Farley Robinson & Larsen, Phoenix, AZ, for Plaintiffs.

Amy Talburt Matchison, U.S. Dept., of Justice, Tax Division, Washington, DC, for Defendant.

ORDER

Diane J. Humetewa, United States District Judge

***1** Plaintiffs Society of Apostolic Church Ministries ("SACM"), Elizabeth Gardner and Fredric Gardner ("Plaintiffs") have filed an untimely [1] Motion for Reconsideration (Doc. 52) regarding the Court's Order Granting Summary Judgment in favor of the Government. (Doc. 47). Plaintiffs argue that the Court committed manifest error by erroneously applying the law and incorporating facts from prior decisions. (Doc. 52 at 5). The Court has allowed the Defendant United States of America ("the Government") to file a response to Plaintiff's Motion (Doc. 55), to which it has done. (Doc. 56).

The Government also filed its own Motion for Reconsideration (Doc. 49) in which it argues that Plaintiffs' quiet title claim should be dismissed based on the Court's finding that SACM is the Gardner's nominee. (*Id.* at 1). The Court allowed Plaintiffs to respond to the Government's Motion (Doc. 51), in which they concede that their quiet title claim should be dismissed if the Court denies their Motion for Reconsideration. (Doc. 53 at 1). For the following reasons, the Court denies Plaintiffs Motion for Reconsideration and dismisses their claim to quiet title.

I. Background

This case arises from the Gardner's unpaid tax liability. The IRS levied $73,340.37 in 2021 from a bank account owned by SACM ("the Levy") to satisfy tax obligations owed by the Gardners related to unpaid tax liability from the 2002-2004 tax years. (Docs. 25 at ¶ 18 (Amended Complaint); 27 at ¶ 18 (Answer)). Due to the Levy, Plaintiffs filed suit against the Government asserting claims to quiet title and for wrongful levy. (Doc. 1 at 4–5 (Complaint); Doc. 25 at 4–5 (Amended Complaint)).

The Gardners' underlying tax liability related to the levy arises from an adjudication of tax liability concerning their previously operated church: Bethel Aram Ministries ("BAM"). (Doc. 47 at 2). In a previous controversy with the IRS, the Ninth Circuit affirmed the Tax Court's finding that the Gardners' corporation sole, BAM, did not have any congregation, therefore, the donations that BAM received were taxable income. *Gardner v. Comm'r of Internal Revenue*, 845 F.3d 971, 973 (9th Cir. 2017). Specifically, the Tax Court found that the Gardners had unreported income of $100,070 for 2002; $217,973 for 2003; and $235,542 for 2004 and that they should have included these amounts as gross income. *Gardner v. Comm'r*, 105 T.C.M. (CCH) 1433, at *1 n.1 (T.C. 2013). The Tax Court also noted that the Gardners are liable for self-employment tax because they did not submit IRS Form 4361: "the Application for Exemption From Self–Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners" for the 2002-2004 tax years. *Id.* at *8.

***2** In the current matter, the Government filed a Motion for Summary Judgment (Doc. 37) arguing that SACM was holding property for the Gardners as their "nominee," therefore, the IRS' Levy on SACM's bank account was proper. (Doc. 37 at 13). The Court agreed and found that SACM was the Gardners' nominee as a matter of law. (Doc. 47 at 7).

The Court reached this decision after reviewing the evidence presented at the summary judgment stage and analyzing the factors set out in *Towe Antique Ford v. IRS*, 791 F.Supp. 1450, 1454 (D. Mon. 1992). [2] (*Id.* at 6–7). The Court concluded evidence that (1) Mrs. Gardner had "consistently transferred the property in and out of entities for which she is the corporation sole for no consideration;" (2) the Gardner's payment of personal legal fees from SACM's checking account; and (3) the Gardner's enjoyment of the benefits of

the property after each transfer "affirmatively demonstrate[d] that no reasonable trier of fact could find other than for the [Government]." *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). (*Id.*) The Court reasoned that "the 'overarching consideration' is whether the Gardners exercised active or substantial control over the property—which they [did]." (*Id.*) (citing *Fourth Inv. LP v. United States*, 720 F.3d 1058, 1070 (9th Cir. 2013)).

II. Legal Standard

Motions for reconsideration should be granted only in rare circumstances. *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). "Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Indeed, Arizona Local Rule of Civil Procedure 7.2 ("LRCiv 7.2") provides that "[t]he Court will ordinarily deny a motion for reconsideration of an Order absent a showing of manifest error or a showing of new facts or legal authority that could not have been brought to its attention earlier with reasonable diligence." LRCiv 7.2(g)(1). The movant must specify "[a]ny new matters being brought to the Court's attention for the first time and the reasons they were not presented earlier." *Id.* This is because "[m]otions for [r]econsideration may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Kona Enterprises, Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000); *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009).

A motion for reconsideration should not be used for the purpose of asking a court "to rethink what the court had already thought through—rightly or wrongly." *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995) (quoting *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)). A mere disagreement with a previous order is an insufficient basis for reconsideration. *See Leong v. Hilton Hotels Corp.*, 689 F. Supp. 1572, 1573 (D. Haw. 1988).

III. Discussion

***3** Plaintiffs argue that the Court's Order rests on manifest errors of fact and law because it was improper for the Court to incorporate and rely on facts from prior decisions that include evidence that is not in the record in this case. (Doc. 52 at 2–3). Plaintiffs also argue that the State of Arizona recognizes the existence of corporation soles, contrary to what the Court noted. [3] (*Id.* at 5). Plaintiff finally argues that the Court erred in finding that SACM is the Gardner's nominee based on the *Towe* factors and Ninth Circuit law as these are issues of fact and credibility that the Court should not have decided. (*Id.* at 6–8). None of these arguments entitle Plaintiffs to relief.

First, the Court's reference to facts from the Gardner's previous cases was to provide context to this case. The Court restated these in its background section because they are intertwined with the current litigation and indeed gives rise to it. It would be impossible to understand the current facts and arguments without restating those is *Gardner v. Comm'r of Internal Revenue*, 845 F.3d 971, 973 (9th Cir. 2017) & *Gardner v. Comm'r*, 105 T.C.M. (CCH) 1433, at *1 n.1 (T.C. 2013). However, the Court did not rely on any fact not presented by the parties in their respective pleadings. For example, the Court noted that the independent fact that Mrs. Gardner frequently transferred the Property between entities for no consideration bolstered the Government's argument that "the church has functioned the same since its initial inception, and all iterations have been governed by Elizabeth Gardner as a corporation sole." (Doc. 47 at 7). The Court did not use this argument as evidence to reach its conclusion, as Plaintiffs argue. (Doc. 52 at 2–3). Instead, the Court relied on the deed chain—independent evidence from any previous case—to show that the nominee (SACM) (1) paid no or inadequate consideration for the property and that (2) the transferor (Mrs. Gardner) retained possession of the Property. (*Id.* (discussing the first and fifth *Towe* factors)). The deed chain shows that the Property was transferred (1) directly to Mrs. Gardner by BAM, then (2) to Mrs. Gardner as corporation sole of Messiah House Fellowship, then (3) to Mrs. Gardner as corporation sole of "church restoration ministries," and (4) finally to "Bishop" Gardner as corporation sole of SACM—all within a sixteen-year period. (*Id.* (citing Doc. 37-10 at 2)). Thus, because the Court did not rely on facts outside of the evidence presented to reach its ultimate conclusion, Plaintiffs' first argument fails.

Second, the Court did not weigh conflicting evidence or make credibility determinations to reach its ultimate conclusion. (Doc. 52 at 2–3). Instead, as many district courts in this Circuit do, the Court utilized the *Towe* factors and Ninth Circuit precedent to reach a conclusion as a matter of law. *See e.g., United States v. Bigley*, 2017 WL 2417911, at *7 (D. Ariz. May 10, 2017) (citations omitted); *United States v. Secapure*, 2008 WL 820719, at *7 (N.D. Cal. Mar. 26, 2008)

(noting that courts throughout the Ninth Circuit rely on the *Towe* factors to determine nominee status). These factors are but a "tool[ ] used to determine the amount of control the delinquent taxpayer has over an asset." *911 Mgmt., LLC v. United States*, 657 F. Supp. 2d 1186, 1214 (D. Or. 2009). The *Towe* factors only bolster the Court's conclusion, as the undisputed facts demonstrate that the Gardner's exercised active or substantial control over the Property. *Fourth Inv. LP*, 720 F.3d at 1070. The Court could have reached this outcome without discussing any of the *Towe* factors, however, as a matter of law the overwhelming undisputed evidence establishes that SACM is the Gardner's nominee. *See id.* The Court applied the *Towe* factors not to weigh evidence or judge credibility, but to determine the amount of control the Gardner's have over SACM—which is, in essence, total control. *911 Mgmt., LLC*, 657 F. Supp. 2d at 1214.

***4** In sum, after reviewing Plaintiffs' arguments on reconsideration and the Court's previous Order, the Court concludes that it did not err in finding that SACM was the Gardner's nominee as a matter of law. Because the Court denies Plaintiffs' Motion for Reconsideration (Doc. 52), it must grant the Government's Motion for Reconsideration (Doc. 49) and enter judgment on Plaintiffs' remaining quiet title claim.

Accordingly,

IT IS ORDERED that Plaintiffs' Motion for Reconsideration (Doc. 52) is **DENIED**.

IT IS FURTHER ORDERED that the Government's Motion for Reconsideration (Doc. 49) is **GRANTED**. Summary judgment should have been granted in favor of the Government on Plaintiffs' quiet title claim. The Clerk of Court is kindly directed to enter judgment in the Government's favor on Plaintiffs' last remaining claim to quiet title and terminate this action.

All Citations

Not Reported in Fed. Supp., 2024 WL 2942707, 133 A.F.T.R.2d 2024-1744

Footnotes

1 The Court notes that Plaintiffs' Motion for Reconsideration is untimely. LRCiv 7.2(g)(2) states that "[a]bsent good cause shown, any motion for reconsideration shall be filed no later than ***fourteen (14) days*** after the date of the filing of the Order that is the subject of the motion." (emphasis added). The Courts Order was filed on February 22, 2024. (Doc. 47). Plaintiffs' Motion was filed on March 11, 2024—eighteen days after the Court's Order was filed. (Doc. 52). Thus, Plaintiffs' Motion is untimely. *See* LRCiv 7.2(g)(2).

2 The *Towe* factors include: (1) Whether the nominee paid no or inadequate consideration; (2) Whether the property was placed in the name of the nominee in anticipation of litigation or liabilities; (3) Whether there is a close relationship between the transferor and the nominee; (4) Whether the parties to the transfer failed to record the conveyance; (5) Whether the transferor retained possession; and (6) Whether the transferor continues to enjoy the benefits of the transferred property. 791 F.Supp. at 1454.

3 The Court notes that whether or not Arizona recognizes corporations sole was not a fact necessary, or even relevant, to the disposition of the Government's Motion. So, this discussion was essentially dictum. *See Lamorie v. Davis*, 485 F. Supp. 3d 1065, 1072 (D. Ariz. 2020) ("A statement is dictum when it is 'made during the course of delivering a judicial opinion, but ... is unnecessary to the decision in the case and [is] therefore not precedential.' ") (citing *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1173 (9th Cir. 2004)). Furthermore, SACM is incorporated as a corporation sole in Nevada under N.R.S. § 84.050—not Arizona's A.R.S. § 10-11904. (Doc. 47 at 5).