

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

In the Matter of the Tax)	No. CV-F-06-787 OWW/DLB
Indebtedness of:)	
DAVID J. EDWARDS)	ORDER DENYING MOTION TO
)	INTERVENE (Doc. 30)
)	
)	
Ex Parte UNITED STATES OF)	
AMERICA, and DENNIS R.)	
COLLINS, Revenue Officer)	
)	
Applicants for Order.)	
)	
)	
)	
)	
)	
)	
)	
)	
)	

On June 20, 2006, the United States filed an ex parte application to enter premises to effect levy, requesting an order authorizing Internal Revenue Service agents to enter the gated premises located at 5025 and 5045 Anderson Avenue, Fresno, California 93727 for the purpose of searching for and seizing an airplane owned by David J. Edwards, to wit a Piper Navajo twin

1 engine, fixed wing aircraft, PA-31-325, serial number 31-8012030,
2 registration and tail number N3552X, in satisfaction of
3 outstanding federal tax liens. The application was supported by
4 the declaration of IRS Revenue Officer Dennis R. Collins.

5 On June 20, 2006, Magistrate Judge Snyder issued an Order
6 Authorizing Entry Upon Premises to Effect Levy, finding upon the
7 showing made by Collins' declaration under penalty of perjury,
8 that there is probable cause to believe (1) David J. Edwards has
9 outstanding federal tax liabilities, (2) the IRS has made notice
10 and demand upon Edwards for such federal tax liabilities, (3)
11 Edwards has neglected or refused to pay such federal tax
12 liabilities, and (4) assets or rights to assets belonging to
13 Edwards and subject to levy and seizure, are located on or within
14 the property the subject of the application. (Doc. 2).

15 On June 26, 2006, the United States filed a Return. (Doc.
16 4). The Return attests that Revenue Officer Collins levied upon
17 and seized the airplane on June 21, 2006 at 12:15 p.m. and posted
18 a certified copy of the Order Authorizing Entry Upon Premises to
19 Effect Levy at the last known address of David J. Edwards, 451
20 Burl Avenue, Clovis, CA 93611 and mailed a certified copy of the
21 Order Authorizing Entry Upon Premises to Effect Levy to David J.
22 Edwards, 451 Burl Avenue, Clovis, CA 93611. On June 27, 2006,
23 the United States filed a Certificate of Service by Mail executed
24 by Eva Carrizales that Ms. Carrizales mailed copies of the ex
25 parte application to enter premises to effect levy and supporting
26 documents and of the Order Authorizing Entry Upon Premises to

1 Effect Levy to David J. Edwards, 451 Burl Avenue, Clovis, CA
2 93611.

3 On August 4, 2006, David J. Edwards filed a declaration
4 (Doc. 6), and a "Memorandum of Points and Authorities in Support
5 of Objection to Ex-Parte Application to Enter Premises to Effect
6 Levy" (Doc. 7), and lodged an "Order Rescnding [sic] Seizure of
7 Airplane to Effect Levy" (Doc.8).

8 On August 10, 2006, a document captioned "Marcia Doerr,
9 Trustee's REFUSAL FOR CAUSE & JUDICIAL NOTICE RESTRICTED
10 APPEARANCE" executed by "Marcia Doerr, Trustee, SIERRA TRUST LAP
11 TRUST, MAL PASO TRUST, SOL TRUST, SCOTT TRUST, TAKE FIVE TRUST,
12 SIERRA CENTRAL CINEMA, Aggrieved Party" (Doc. 9) was filed. Also
13 filed on August 10, 2006 was an "AFFIDAVIT OF NON-LIABILITY OF
14 FEDERAL INCOME TAX OBLIGATIONS" executed by "Marcia-Ann:
15 Willardson, public minister Also known as Marcia Doerr, Trustee
16 SOL TRUST, LAP TRUST, SIERRA TRUST, TAKE FIVE TRUST, MAL PASO
17 TRUST, and limited partner of SIERRA CENTRAL CINEMA" (Doc. 10).
18 Also filed on August 10, 2006 was a "Motion for Bill of
19 Particulars" filed by "Marcia Doerr, Trustee of SIERRA TRUST,
20 third party intervenor and owner of property seized" by Revenue
21 Officer Collins. (Doc. 11). On August 10, 2006, "Marcia Doerr,
22 Trustee of the SIERRA TRUST intervening for the interest of
23 SIERRA TRUST" filed a pleading captioned:

24 VERIFIED CLAIM of PROPERTY IN REM SEIZURE ON
25 LAND IN OCCUPIED TERRITORY [Supp. Rule C(6)]
26 BY RESTRICTED APPEARANCE [Supp. Admiralty
Rule E(8)] and

NOTICE OF NON-ABANDONMENT

(Doc. 12).

On August 18, 2006, the United States filed an "Opposition to Filings by David J. Edwards and Marcia Doerr and Suggestion that Matter Be Closed" (Doc. 13).

On August 28, 2006, David J. Edwards filed a "Memorandum of Points and Authorities in Support of Objection to Ex-Parte Application to Enter Premis [sic] to Effect Levy Amended", (Doc. 14), and his amended declaration, (Doc. 15), and lodged an "Order Rescnding [sic] Seizure of Airplane to Effect Levy Amended" (Doc. 16).

On August 31, 2006, David J. Edwards filed "Defendant's Answer to Opposition Statement by US Attorney" (Doc. 17)

On September 7, 2006, "Marcia Doerr, Trustee of the SIERRA TRUST intervening for the interest of SIERRA TRUST" filed a document captioned:

VERIFIED CLAIM of Property IN REM SEIZURE ON
LAND IN OCCUPIED TERRITORY [Supp.Rule C(b)]
BY RESTRICTED APPEARANCE [Supp. Admiralty
Rule E(8)] and

NOTICE OF NON-ABANDONMENT

(Doc. 19). Also on September 7, 2006, "Marcia Doerr, Trustee of SIERRA TRUST, third party intervenor and owner of property seized" filed a "Motion for Bill of Particulars". (Doc. 20). "Marcia Doerr, Trustee for SIERRA TRUST, SOL TRUST, MAL PASO TRUST, TAKE FIVE TRUST, SCOTT TRUST, LAP TRUST and limited partner of SIERRA CENTRAL CINEMA" filed on September 7, 2006 a

1 document captioned "Marcia Doerr, Trustee's REFUSAL FOR CAUSE &
2 JUDICIAL NOTICE RESTRICTED APPEARANCE" (Doc. 21).

3 On September 15, 2006, David J. Edwards filed a "Request for
4 Injunctive Relief and Opposition to Second Request by United
5 States of America and Dennis R. Collins to Deny Hearing and Close
6 Case, Amended" (Doc. 23).

7 By Order filed on September 26, 2006, the various pleadings
8 filed by David J. Edwards and Marcia Doerr were stricken as being
9 procedurally improper in this action, citing *United States v.*
10 *Kersten*, 155 F.3d 1177 (9th Cir.1998) ("issuance of an order
11 authorizing entry is to take place in a summary, *ex parte*
12 proceeding and is not to be converted into an adversary
13 proceeding"), and closing the case (Doc. 24).

14 On October 23, 2006, David J. Edwards filed a "Motion for
15 Reconsideration and Relief from Judgment, and To Include and
16 Augment the Record", (Doc. 25), and an "Ex Parte Application for
17 Motion for Reconsideration and For Relief from Judgment" (Doc.
18 26).

19 By Order filed on October 31, 2006, these motions for
20 reconsideration were denied. In pertinent part, it was ruled:

21 In seeking reconsideration, Edwards asserts,
22 as was asserted in the pleadings described
23 above that were stricken, that the airplane
24 seized by the IRS is not his property but,
25 rather, the property of Marcia Doerr as
26 trustee of Sierra Trust and that Marcia Doerr
should have been given notice. He argues
that this matter should be re-opened to
present evidence in support of these
contentions.

1 Assuming solely for the purposes of this
2 Order that these contentions are true,
3 reconsideration and re-opening to present
4 evidence is not mandated. Marcia Doerr as
5 trustee of Sierra Trust may have a remedy
6 pursuant to 26 U.S.C. § 7426(a)(1). Such
7 remedy must be pursued by her as a separate
8 civil action and, given Edwards'
9 representations that he does not own the
10 airplane, he would not have standing to
11 participate in an action under Section
12 7426(a).

13 On November 20, 2006, Marcia Doerr, Trustee, filed a Notice
14 of Appeal, appealing the rulings in this action to the Ninth
15 Circuit Court of Appeals. Accompanying the Notice of Appeal is a
16 Motion to Intervene.

17 The Motion to Intervene is DENIED. Not only is the motion
18 untimely but, as previously ruled, Doerr's remedy is a separate
19 civil action pursuant to 26 U.S.C. § 7426(a), not intervention in
20 the instant action.

21 IT IS SO ORDERED.

22 **Dated: December 5, 2006**
23 668554

24 **/s/ Oliver W. Wanger**
25 **UNITED STATES DISTRICT JUDGE**