IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DISTRICT

NO. 5:23-CV-500-FL

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
NEILL PITTMAN GUY, II, as)
personal representative of the)
Estate of Samuel Pittman Guy, II,)
BETTY NEILL GUY-PARSON,)
MARGARET ANN GUY-ALLIGOOD,)
NEILL PITTMAN GUY, II,)

RESPONSE TO PLAINTIFF'S STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

NOW COMES Neill Pittman Guy, II, as personal representative of the Estate of Samuel Pittman Guy, II ("Respondent"), responds to the United States' Statement of Facts in Support of Motion for Summary Judgment [DE 91], as follows:

1. From 2008 to 2010, Preferred Alternatives, Inc. failed to remit employment taxes it withheld from its employees. (Ex. 1).

RESPONSE: Admitted that Preferred Alternatives, Inc., failed to remit employment taxes during this period. Denied that this failure establishes Samuel Guy's personal liability under 26 U.S.C. § 6672.

2. Accordingly, the IRS assessed trust fund recovery penalties ("TFRPs") against individuals it determined to be both responsible and willful for that failure to remit, including Samuel Guy, II. (Ex. 2).

RESPONSE: Admitted that the IRS made such assessments. Denied that the assessments are valid or that Samuel Guy was in fact a responsible person who acted willfully. The validity of the assessments is the central disputed issue in this litigation.

3. The IRS assessed Samuel Guy based on admissions he made related to his activities with Preferred Alternatives. (Ex. 1; see also Ex. 6 74:3–4 (Neill Guy identifying signature on form as signature of Samuel Guy)).

RESPONSE: Admitted that the IRS relied on an interview form allegedly bearing Samuel Guy's signature. Denied that the statements on that form constitute reliable "admissions" or that they accurately reflect Samuel Guy's actual authority during the 2008-2010 tax periods. Neill Guy testified that Samuel Guy was "confused" when he provided responses to the IRS. The interview form does not account for the fundamental shift in corporate governance following the 2005 bankruptcy reorganization nor specify the time period of Samuel Guy's "authority."

4. Samuel Guy admitted that, in his role as a board member and shareholder, he could determine financial policy for the business; open or close bank accounts; guarantee or co-sign loans; sign or counter-sign checks; and authorize payroll for Preferred Alternatives during the periods at issue. (Id. at 2).

RESPONSE: Disputed. While Samuel Guy held the title of Secretary and Board member, his role was better described as honorary prior to 2005 and diminished even further after the 2005 Chapter 11 bankruptcy. Pursuant to

Orders Confirming Plan and other bankruptcy documents, Mr. James "Butch" Wilson was named President and given control of Preferred Alternatives along with the Adams Martin CPA firm. Prior to 2006, Samuel Guy oversaw maintenance and fleet management, not finances. The IRS interview form reflects general authority questions but does not distinguish between Samuel Guy's pre-bankruptcy role and his post-reorganization role during the specific 2008-2010 tax periods. A genuine dispute exists regarding whether Samuel Guy exercised the authority described in the interview form during the relevant tax periods. Mr. Wilson testified that following his appointment testified that only he and Neill Guy had authority to sign checks on behalf of Preferred Alternatives.

5. Samuel Guy also admitted that other financial obligations of the company were being paid as the employment tax liabilities accrued, including "necessary operating expenses" and "payrolls." (Id.).

RESPONSE: Disputed. This statement does not establish that Samuel Guy personally made or approved the payment decisions. If, as the Estate contends, Mr. Wilson and the Adams Martin CPA firm controlled Preferred Alternatives' finances following the 2005 reorganization, then Samuel Guy did not direct which creditors were paid. The fact that other obligations were paid does not establish that Samuel Guy willfully preferred those creditors over the United States.

6. Furthermore, Samuel Guy admits he knew as early as 2006 that these taxes were delinquent, but nothing in the record contradicts the conclusion that he disregarded Preferred Alternative's failure to remit employment taxes to the United States. (Id.).

RESPONSE: Disputed. Knowledge in 2006—before the relevant tax periods of 2008-2010—does not establish knowledge or reckless disregard during those specific quarters. The 2005 bankruptcy reorganization fundamentally altered corporate governance, and a reasonable jury could conclude that Samuel Guy reasonably believed the reorganization plan, supervised by the bankruptcy court and implemented by Wilson and the Adams Martin CPA firm, would ensure tax compliance going forward. Additionally, if Samuel Guy lacked the effective power to pay the taxes (as disputed above), he cannot have willfully failed to pay them.

7. Neill Guy knew of nothing that Samuel Guy did prior to the filing of the bankruptcy in 2010 to ensure the taxes were paid. (Ex. 6 69:19–70:6).

RESPONSE: Admitted that Neill Guy testified to this effect. However, this testimony is equally consistent with Samuel Guy lacking the authority to take such action. A reasonable jury could interpret this evidence in the Estate's favor rather than as proof of willfulness.

8. In discovery in this case, the United States asks the Estate to identify its defenses to the assessments. (Ex. 3, 4).

RESPONSE: Admitted.

9. The Estate identified only two – (1) Samuel Guy "was not responsible for the taxes that the government is claiming in this case;" and (2) "[t]he bankruptcy that the company went through removed him from any decision making position when it came to payments of any kind." (Ex. 3 at 2).

RESPONSE: Admitted. These defenses raise genuine disputes of material fact that preclude summary judgment.

10. When asked what documents supported these contentions, the Estate responded that the only document it possessed was "the latest Will of Samuel P. Guy, II." (Ex. 3 at 3).

RESPONSE: Admitted. The Estate further stated that the majority of critical documents regarding Preferred Alternatives' bankruptcy reorganizations and corporate governance are in the possession of the United States Bankruptcy Courts and the Internal Revenue Service. The Estate's lack of access to these documents supports denial or deferral of the motion under Fed. R. Civ. P. 56(d).

11. That will says nothing about Samuel Guy's activities at Preferred Alternatives from 2008 to 2010. (Ex. 5).

RESPONSE: Admitted. However, the relevant evidence regarding Samuel Guy's authority during the tax periods is contained in the bankruptcy court records, reorganization plans, and corporate governance documents that are in the possession of the bankruptcy courts and the IRS, not in Samuel Guy's personal will.

12. Neill P. Guy, II serves as both the executor of the estate and the personal representative of the estate. (Ex. 5; Dkt. 32).

RESPONSE: Admitted.

13. At his deposition, the only defense he could offer about why Samuel Guy admitted to the facts above was that he was "confused." (Ex. 6 at 75:14–77:10; 80:7–81:6).

> **RESPONSE**: Disputed as a mischaracterization. Neill Guy testified that Samuel Guy was confused when providing responses to the IRS. This testimony creates a genuine dispute regarding the reliability and accuracy of the interview responses, particularly given that the interview form does not account for the 2005 bankruptcy reorganization's impact on Samuel Guy's actual authority during the 2008-2010 tax periods.

14. Betty Neill Guy-Parsons and Margaret Ann Guy-Alligood recorded a promissory note that grants them a prior and superior interest in parcel one, and the balance of that promissory note is $5,061.42 (and, because it did not include interest, shall remain that amount in the absence of further payment). (Ex. 7).

> **RESPONSE**: Disputed. The Estate asserts that upon information and belief, Samuel Pittman Guy, III and Jennifer Guy purchased the interests of Betty Neill Guy-Parsons and Margaret Ann Guy-Alligood, and this promissory note has been paid or is significantly less than $5,061.42. The Estate lacks sufficient information regarding the current balance and ownership of this promissory note.

15. The complaint describes parcel three as real property located at 980 S. McPherson Church Road, with parcel ID number 0417 6997. (Compl. ¶ 17). The complaint also references an attached exhibit, which describes the property as that real property whose definition is recorded at book 2538 page 437 in the Cumberland County recorder of deeds. (Id. (referencing Dkt. 3-1)).

RESPONSE: Admitted.

16. PNC identified two documents that suggest it holds a security interest in the third parcel. (Dkt. 24 ¶ 27 (citing dkt. 24-3 and 24-4)). The first of those identifies the parcel ID number as a plot of land located at 984 S. McPherson Church Road, i.e., 0417 3401 (Dkt. 24-3 at 14). When identifying the book and page where the property description can be found, it states a searcher should look to Book 7802 Page 664, which describes the property at parcel ID 0417 3401. The other document cited by PNC does not reference the real property at all, let alone describe it. (Dkt. 24-4).

RESPONSE: The Estate lacks sufficient information to admit or deny the characterization of PNC's documents and therefore denies this statement. The resolution of any ambiguity in PNC's property description is a question of North Carolina real property law that may require extrinsic evidence and adversarial briefing by PNC Bank itself. This priority dispute should not be resolved on summary judgment without affording PNC notice and an opportunity to be heard.

17. A review of Cumberland County records shows that the property described at Book 7802, Page 664 is the property located at parcel ID 0417 3401.

RESPONSE: The Estate lacks sufficient information to admit or deny this statement and therefore denies it. The Estate is not in possession of the complete Cumberland County property records necessary to verify this assertion.

18. The IRS filed a notice of federal tax lien against Samuel Guy on November 18, 2013. (Ex. 8).

RESPONSE: Admitted that the IRS filed a notice of federal tax lien on that date. Denied that the lien is valid or enforceable given the disputed liability underlying the assessments.

Respectfully submitted this, the 9th day of July 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification to those registered to receive such filing.

I further certify that I caused a copy of the foregoing document to be mailed via U.S.P.S. to the following:

Margaret Ann Guy-Alligood
988 S. McPherson Church Road
Fayetteville, N.C. 28303

Betty Neill Guy-Parsons
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