United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Mark Filip	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	04 C 7403	**DATE**	8/15/2006
CASE TITLE	United States of America vs. William J. Benson		

DOCKET ENTRY TEXT

The United States brings this action under 26 U.S.C. § 7408 and 26 U.S.C. § 7402(a) to enjoin and restrain William J. Benson from engaging in activity subject to penalty under the Internal Revenue Code of 1986 § 6700, namely promoting allegedly abusive tax shelters. (D.E. 1.) Plaintiff has filed a motion for summary judgment (D.E. 37), which Defendant opposes. (D.E. 50.) Defendant has filed a motion to strike paragraphs 31-51 of the Government's "Response to Benson's Local Rule 56.1 Statement of Material Facts" and to have paragraphs 31-51 of his statement of material facts (D.E. 53) deemed admitted. (D.E. 56-1.) For the reasons stated below, the Court respectfully denies Mr. Benson's motion to strike and motion to have facts deemed admitted. (D.E. 56-1.)

■[For further details see text below.] Docketing to mail notices.

STATEMENT

The United States (also "Plaintiff" or "Government") brings this action under 26 U.S.C. § 7408 ("Claim I") and 26 U.S.C. § 7402(a) ("Claim II") to enjoin and restrain William J. Benson ("Mr. Benson" or "Defendant") from allegedly engaging in activity subject to penalty under the Internal Revenue Code of 1986 § 6700. (D.E. 1.) Particularly, Plaintiff seeks to enjoin Defendant from promoting allegedly abusive tax shelters called the "Reliance Defense Package." (*Id.*) Plaintiff has filed a motion for summary judgment (D.E. 37), which Defendant opposes. (D.E. 50.) Defendant has filed a motion to strike paragraphs 31-51 of the Government's "Response to Benson's Local Rule 56.1 Statement of Material Facts" and to have paragraphs 31-51 of his statement of material facts (D.E. 53) deemed admitted. (D.E. 56-1.) For the reasons stated herein, the Court respectfully denies Benson's motion to strike and to have alleged facts deemed admitted. (D.E. 56-1.)

I. BACKGROUND

A. General Background and Allegations in the Complaint

The Government alleges that Mr. Benson has offered to sell, and has sold, a set of documents that he has authored, which he calls the "Reliance Defense Package." (D.E. 1 ¶¶ 5, 7.) The Government alleges that Mr. Benson has held out The Reliance Defense Package as a "compendium of information giving you the education and choice toward not filing an Income tax return." (*Id.* ¶ 6.) This compendium offers buyers the alleged education to say, when refusing to pay taxes to the United States government, that "[b]ased on my state-of-mind, frame of mine [sic], reliance and belief I am obeying the dictates of Constitutional law'" (*Id.* ¶ 6.) The Reliance Defense Package, according to the Government, posits that the federal income tax is unconstitutional because the sixteenth amendment, which permits Congress to impose a federal income tax, was not properly ratified by the several states. (*Id.* ¶ 8.) Mr. Benson authored a book on this subject, titled

STATEMENT

The Law That Never Was—which the Seventh Circuit, in the course of rejecting similar claims to those Mr. Benson would seek to interpose here, has referred to as the "manifesto" of the "tax protester" movement. *Miller v. United States*, 868 F.2d 236, 240 (7th Cir. 1989) (per curiam); *see also id.* at 241 ("We find it hard to understand why the long and unbroken line of cases upholding the constitutionality of the sixteenth amendment generally, and those specifically rejecting the argument in *The Law That Never Was*, have not persuaded Miller and his compatriots to seek a more effective forum for airing their attack on the federal income tax structure."); D.E. 35 at 2 (Mr. Benson discussing *The Law That Never Was*). The Government alleges that "the Reliance Defense Package" is specifically designed to advise customers to violate the internal revenue laws, which harms both Mr. Benson's customers and the United States and its citizenry. (D.E. 1 ¶¶14-18.) The Government, therefore, seeks an injunction. (*Id.* ¶ 1.) Specifically, in Count I the Government seeks to enjoin Mr. Benson from continuing to sell "the Reliance Defense Package" by invoking 26 U.S.C. § 7408, which grants a district court the authority to enter a permanent injunction against a defendant if the court finds "(1) that the person has engaged in any [] conduct [subject to penalty under, *inter alia*, section 6700] . . ., and (2) that injunctive relief is appropriate to prevent recurrence of such conduct." 26 U.S.C. § 7408(b). In Count II, the Government alleges that Mr. Benson unlawfully interfered with enforcement of the Internal Revenue Laws under 26 U.S.C. § 7402(a). Section 7402(a) provides that "[t]he district courts . . . shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction . . . and such other orders and processes, and to render such . . . decrees as may be necessary or appropriate for the enforcement of the internal revenue laws." 26 U.S.C. § 7402(a).

B. Defendant's Motion to Strike and to Have Facts Deemed Admitted

As stated above, Defendant has moved to strike paragraphs 31-51 of the Government's "Response to Benson's Local Rule 56.1 Statement of Material Facts" and to have paragraphs 31-51 of his statement of material facts (D.E. 53) deemed admitted. (D.E. 56-1.) Paragraphs 31-51 of Defendant's Local Rule 56.1 Statement of Material Facts relate to Defendant's claims that the sixteenth amendment was not properly ratified. (D.E. 53.) For example, paragraph 31 states that "Philander Knox's certification of the ratification of the Sixteenth Amendment was premised upon presumptions that because no state has the authority to amend a proposed constitutional amendment, that no state did so." (D.E. 53 ¶ 31.) Paragraphs 32-37 detail Mr. Benson's alleged support for the contention in paragraph 38 that "[t]he presumption relied upon by Secretary of State Knox was and is false." (D.E. 53 ¶ ¶ 32-37; *Id.* ¶ 38.) Paragraph 39 further alleges that Secretary of State Knox's certification may have been "fraudulent" and "false." (D.E. 53 ¶ 39.) Paragraphs 40-42 state that Mr. Benson may have discovered information that Secretary Knox did not know regarding the ratification of the sixteenth amendment and, again, that Secretary Knox was incorrect in certifying it. (D.E. 53 ¶ 40.) Paragraphs 43-51 detail, *inter alia*, the ways various states allegedly went about ratifying, or not ratifying, the sixteenth amendment. (D.E. 53 ¶¶ 43-51.)

Rather than respond to paragraphs 31-51 of Mr. Benson's Local Rule 56.1 Statement of Material Facts individually, the Government collectively objected to these paragraphs. (D.E. 54.) In so doing, the Government stated that "[t]hese 'facts,' which relate solely to defendant's contention that the Sixteenth Amendment was never ratified, constitute matters that are irrelevant, immaterial, impertinent and scandalous with respect to the issues and the subject matter of this civil action." (*Id.*) The Government asserts that no response is necessary to paragraphs 31-51 of Mr. Benson's Local Rule 56.1 Statement of Material Facts because the ratification of the sixteenth amendment is, according to binding precedent, a "non-justiciable political question . . . beyond judicial review." (D.E. 57 at 3-4.) For this reason, the Government argues that the contentions in paragraphs 31-51 of Mr. Benson's Local Rule 56.1 Statement of Material Facts are irrelevant because "this Court cannot entertain facts or evidence regarding the ratification and validity of the

STATEMENT

Sixteenth Amendment . . . ." (D.E. 57 at 4.) In addition, the Government contends that paragraphs 31-51 of Mr. Benson's Local Rule 56.1 Statement of Material Facts contain allegations that are impertinent and scandalous, and therefore do not necessitate a response. (*Id.*)

II. LOCAL RULE 56.1

Local Rule 56.1 ("L.R.56.1") requires that statements of facts contain allegations of *material* fact, and the factual allegations must be supported by admissible record evidence. *See*, *e.g.*, L.R. 56.1; *Malec v. Sanford*, 191 F.R.D. 581, 583 (N.D. Ill. 2000) ("[T]he 56.1(a) statement should be limited to *material* facts") (emphasis in original). The Seventh Circuit teaches that a district court has broad discretion to require strict compliance with L.R. 56.1. *See, e.g., Koszola v. Bd. of Ed. of City of Chicago*, 385 F.3d 1104, 1109 (7th Cir. 2004) (collecting cases); *Curran v. Kwon*, 153 F.3d 481, 486 (7th Cir. 1998) (citing *Midwest Imports, Ltd. v. Coval*, 71 F.3d 1311, 1317 (7th Cir.1995) (collecting cases)). For purposes of summary judgment analysis under L.R. 56.1, where a party has alleged facts that, even if true, are irrelevant, failure to respond to such allegations will not be deemed an admission. *See Central States, Southeast and Southwest Areas Pension Fund v. Bomar Nat'l, Inc*., 253 F.3d 1011, 1018 (7th Cir. 2001) ("Because the facts cited by Hi-Way were not material, Central States' failure to deny them, but instead to assert their irrelevance, was not an admission. To characterize Central States' response in this manner as an admission would be ludicrous. Hi-Way's argument is therefore without merit."). The question before the Court, therefore, is whether paragraphs 31-51 of Mr. Benson's Local Rule 56.1 Statement of Material Facts contain material facts and cite to admissible record evidence. Precedent teaches that they do not.

III. DISCUSSION

As the Court previously discussed at length in its opinion denying Mr. Benson's motion to dismiss, Seventh Circuit precedent holds that the sixteenth amendment is valid and was properly adopted and ratified. For example, in *United States v. Thomas*, 788 F.2d 1250 (7th Cir. 1986), the criminal defendant/appellant argued that the sixteenth amendment "was not properly ratified . . . repeating the argument of W. Benson [*i.e.*, Defendant in the case *sub judice*] & M. Beckman, *The Law That Never Was.*" *Id.* at 1253. The appellant/Thomas sought to advance arguments, quite similar if not identical to those Mr. Benson would seek to interpose here, about various alleged technicalities and deficiencies in the States' processes for ratifying the sixteenth amendment, as chronicled in Mr. Benson's *The Law That Never Was. See id.* The Seventh Circuit emphatically and unequivocally rejected this argument: "Benson and Beckman did not discover anything; they rediscovered something that Secretary Knox considered in 1913. [. . . .] The Solicitor of the Department of State drew up a list of the errors in the instruments [from the States] and—taking into account both the triviality of the deviations and the treatment of earlier amendments that had experienced more substantial problems—advised the Secretary that he was authorized to declare the [sixteenth] amendment adopted. The Secretary did so." *Id.* The Seventh Circuit further held that: "[i]n *United States v. Foster*, 789 F.2d 457, 462-63 & n.6 (7th Cir. 1986), we relied on *Leser* [*v. Garnett*, 258 U.S. 130 (1922)], as well as on the inconsequential nature of objections in the face of the 73-year acceptance of the effectiveness of the sixteenth amendment, to reject a claim similar to Thomas's." *Id.* (citation omitted). (In *Leser*, a unanimous Supreme Court, speaking through Justice Brandeis, addressed a claim that the nineteenth amendment, which extended suffrage to women voters, had not validly become part of the Constitution because of, *inter alia*, alleged procedural defects in certain state ratification processes. *Id.*, 258 U.S. at 136-37. The Supreme Court held that because the Secretary of State had reviewed the state proclamations and ratification notifications, and had proclaimed the nineteenth amendment effective, "his [*i.e.*, the Secretary's] proclamation, is conclusive upon the courts." *Id.* at 137 (collecting cases).) Accordingly, in *Thomas*, the Seventh Circuit,

STATEMENT

speaking through Judge Easterbrook, explained that similarly "Secretary Knox's decision [concerning the validity of the sixteenth amendment] is now beyond review." *Id.*, 788 F.2d at 1254.

The Seventh Circuit similarly recognized the validity of the sixteenth amendment again in *United States v. Ferguson*, 793 F.2d 828 (7th Cir. 1986):

> Ferguson invites our review of the validity of the ratification of the sixteenth amendment. Two recent panels of this Court have considered the arguments and evidence presented by Ferguson in the instant appeal. Because those two opinions analyze Ferguson's present claim and find it to be lacking, we, for the reasons stated in *Thomas* and *Foster*, reject Ferguson's contention that the amendment was improperly ratified.

Id. at 831 (internal citations omitted).

In *Miller v. United States*, 868 F.2d 236, 241 (7th Cir. 1989) (per curiam), the Seventh Circuit again held that the sixteenth amendment was valid and part of United States law. The defendant/appellant presented (or at least attempted to present) the arguments grounded in Mr. Benson's *The Law That Never Was. Id.* at 240-41. *Miller* reviewed the Seventh Circuit's holding in *Thomas* that Secretary Knox's decision that the sixteenth amendment was validly ratified is "'beyond review.'" *Id.* at 241 (quoting *Thomas*, 788 F.2d at 1253), and citing *United States v. Stahl*, 792 F.2d 1438, 1439 (9th Cir. 1986), which held that the propriety of the ratification process is a non-justiciable political question). The Seventh Circuit rejected the defendant's attempt to litigate the validity of the sixteenth amendment and stated that, "we find it hard to understand why the long and unbroken line of cases upholding the constitutionality of the sixteenth amendment generally, and those specifically rejecting the argument advanced in *The Law That Never Was*, have not persuaded Miller and his compatriots to seek a more effective forum for airing their attack on the federal income tax structure." *Id.*, 868 F.2d at 241 (internal citations omitted). The Seventh Circuit held that Mr. Miller's *Law That Never Was* argument was precluded by binding precedent (*see id.*), and specifically underscored that Mr. "Miller and his fellow protesters would be well advised to take their objections to the federal income tax structure to a more appropriate forum." *Id.*

Lastly in this regard, and also centrally relevant, in *United States v. Benson*, 941 F.2d 598 (7th Cir. 1991), *amended as to other issues by* 957 F.2d 301—which was an appeal of a criminal conviction involving the same parties as in the case *sub judice*—the Seventh Circuit again stated its view concerning the validity of the sixteenth amendment:

> As the district court noted, we have repeatedly rejected the claim that the Sixteenth Amendment was improperly ratified. One would think this repeated rejection of Benson's Sixteenth Amendment argument would put the matter to rest. But Benson seizes on language in *Foster* in which, after rejecting the Sixteenth Amendment argument, we stated that "an exceptionally strong showing of unconstitutional ratification" would be necessary to show that the Sixteenth Amendment was not properly ratified. [. . . .] Benson insists that as the co-author of *The Law That Never Was*, and the man who actually reviewed the state documents "proving" improper ratification, he is uniquely qualified to make the "exceptionally strong showing" we spoke of in *Foster*. *Because of this, Benson insists, the district court should have at least granted him an evidentiary hearing on the Sixteenth Amendment issue*.
>
> *Benson is wrong*. In *Thomas*, we specifically examined the arguments made in *The Law That Never*

STATEMENT

> *Was*, and concluded that "Benson . . . did not discover anything." We concluded that Secretary [of State] Knox's declaration that sufficient states had ratified the Sixteenth Amendment was conclusive, and that "Secretary Knox's decision is now beyond review." *It necessarily follows that the district court correctly refused to hold an evidentiary hearing; no hearing is necessary to consider an issue that is "beyond review."*

Id. at 607 (collecting cases; emphases added; certain internal citations omitted for clarity). Lest the import of Mr. Benson's criminal appeal be obscured in the long block-quote, in *Benson*, the Seventh Circuit held that the district court properly denied Mr. Benson's request for a hearing concerning the validity of the sixteenth amendment or the propriety of its adoption because such a subject, under Seventh Circuit precedent, is "beyond review." *Id.*, 941 F.2d at 607.

In light of this precedent, the Court finds, as it did in its opinion denying Mr. Benson's motion to dismiss, that the question of whether the sixteenth amendment was properly ratified has been resolved for purposes of this litigation, as the validity of the sixteenth amendment is now "beyond review." *Thomas*, 788 F.2d at 1254; *Benson*, 941 F.2d at 607 (quoting *Thomas*, 788 F.2d at 1254). The Court is bound by this precedent and will apply it here. *Accord*, *e.g.*, *Miller*, 868 F.2d at 241 (discussing *stare decisis*). Therefore, in accordance with binding precedent, this Court will not allow the admission of evidence regarding the validity of the sixteenth amendment in this matter. That issue has been conclusively decided, is "beyond review," and is therefore not at issue here. *See Benson*, 941 F.2d at 607; *Miller*, 868 F.2d at 241.

The Court feels compelled to address an argument Mr. Benson presents in trying, with all respect, to whipsaw the judiciary with the Seventh Circuit precedent discussed above. Specifically, Mr. Benson suggests that if the Government's opposition to his motion to strike and deem facts admitted (*i.e.*, the facts allegedly showing that the sixteenth amendment is not a valid part of U.S. law) is credited, as is required by Seventh Circuit precedent, then "Benson is to have no defense." (D.E. 56-1 at 2.) From this, Mr. Benson suggests that his due process rights would be violated. This argument is not well taken. As the Court has previously explained, Mr. Benson, as appropriate, will have an opportunity to present testimony concerning other issues, as relevant to the case. *See United States v. Benson*, No. 04 C 7403, 2005 WL 947291, *4 (N.D. Ill. Apr. 19, 2005) (suggesting that Mr. Benson might contend, for example, that he was unaware of Seventh Circuit precedent about the validity of the sixteenth amendment). This situation will be no different than was the case in *United States v. Benson*, 941 F.2d 598 (7th Cir. 1991), where the Seventh Circuit explained that Mr. Benson was not entitled to a hearing on the validity of the sixteenth amendment, but otherwise reviewed the propriety of the criminal trial that took place, in which Mr. Benson was convicted. *Id.* at 607. Mr. Benson appears to suggest that this civil judicial proceeding cannot go forward if the validity *vel non* of the sixteenth amendment is not open to debate because it is a non-justiciable political question. He cites no precedent to that effect, and the Seventh Circuit's decision in *Benson*, as well as all the other Seventh Circuit precedent cited herein (to say nothing of other circuit precedent consistent with Seventh Circuit law) would appear to preclude any such argument. As previously stated, Mr. Benson, if appropriate, will have a chance to present evidence as to other open issues—but one of those issues will not be whether the sixteenth amendment is a valid part of U.S. law.

Where Local Rule 56.1 statements contain immaterial and inadmissible allegations, an objection based on irrelevance can be proper. *See Central States, Southeast and Southwest Areas Pension Fund*, 253 F.3d at 1018 ("Central States' response asserting that the facts were irrelevant is sufficient because the local rule requires a moving party to submit *material* facts") (emphasis in original); *see also McLaughlin Equipment Co., Inc. v. Servaas,* No. IP98-0127-C-T/K, 2004 WL 1629603, *13 (S.D. Ind. Feb. 18, 2004) (denying

STATEMENT

motion to strike objections to a statement of additional material facts and finding that where "materiality objections are, for the most part, briefly stated and without extensive argument," they are not "improper under L.R. 56.1(f)"). That is the case here, and Mr. Benson's motion accordingly is respectfully rejected.

Moreover, and as an independent reason for denying Defendant's motion, precedent instructs the Court not to consider irrelevant, and thus inadmissible, facts when ruling on a motion for summary judgment, be those facts objected to, admitted, or denied. "Evidence presented to defeat a summary judgment motion need not be in admissible form, but it must be admissible in content." *Juarez v. Menard, Inc.,* 366 F.3d 479, 484 n.4 (7th Cir. 2004) (citing *Payne v. Pauley*, 337 F.3d 767, 775 n.3 (7th Cir. 2003)). The Court is capable of determining for itself which alleged facts are relevant to its decision on summary judgment without striking or deeming admitted immaterial facts alleged in a Rule 56.1 statement. *See Stark v. PPM America, Inc*., No. 01 C 1494, 2002 WL 31155083, *3 (N.D. Ill. Sept. 26, 2002) (Hibbler, J.) (denying a motion to strike allegedly immaterial facts because "the Court is fully capable of parsing through the parties' factual statements and deciding which facts should be considered and which should not") (citing *Ogborn v. United Food and Commercial Workers, Local No. 881*, No. 98 C 4623, 2000 WL 1409855, at *3 (N.D. Ill. Sept. 25, 2000) (Hart, J.) ("[T]o the extent any factual assertion has been inadequately or improperly supported, such assertions will not be incorporated into the facts taken to be true" for purposes of summary judgment)). Where, as here, a party's L.R.56.1 statement contains immaterial allegations, the Court simply will not consider them, regardless of the opposing party's response. *Id.*

Thus, for the reasons stated above, the Government's objection to paragraphs 31-51 of Mr. Benson's Local Rule 56.1 Statement of Material Facts is well-taken and shall not be deemed an admission of the allegations contained in those paragraphs. For the same reason, the Government's Response to Mr. Benson's Statement of Material Facts shall not be stricken under Fed. R. Civ. P. 12(f). Finally, the Court does not, at this time, rule on Plaintiff's motion for summary judgment. (D.E. 37) Ruling on that motion shall be forthcoming by mail in the ordinary course. The Court may hold an evidentiary hearing, as appropriate, to resolve other parts of the case, but there will not be any hearing to resolve whether the sixteenth amendment is actually part of U.S. law. *Accord*, *e.g.*, *Benson*, 941 F.2d at 607.