NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

JOSEPH KEEFE AND MARGUERITE KEEFE, ET AL.,
Plaintiffs-Appellants,

v.

UNITED STATES,
Defendants-Appellees.

2008-5116, -5118, -5119, -5120, -5121, -5122, -5123, -5124, -5125, -5126, -5127, -5128, -5130, -5131, -5132, -5133, -5134, -5135, -5136, -5137, -5138, -5140, -5141, -5142, -5143, -5144, -5145, -5146, -5147, -5148, -5149, -5150, -5151, -5152, -5154, -5155, -5156, -5157, -5158, -5159, -5160, -5161, -5162, -5163, -5164, -5165, -5166, -5167, -5168, -5169, -5170, -5171, and -5172

Appeals from the United States Court of Federal Claims in various cases, Judge Lawrence J. Block.

ON MOTION

Before LOURIE, MAYER, and DYK, *Circuit Judges*.

DYK, *Circuit Judge*.

ORDER

The United States moves to summarily affirm the judgments of the United States Court of Federal Claims in the above-captioned appeals.* The appellants oppose. The United States replies. The appellants move to continue to stay these cases pending the disposition by the United States Supreme Court of petitions for writ of certiorari related to this court's combined decision in *Prati v. United States*, 2008-5117, 603 F.3d 1301 (Fed. Cir. 2010) and *Deegan v. United States*, 2008-5129, 603 F.3d 1301. In the alternative, the appellants move to stay these cases pending disposition of two additional representative cases to resolve what appellants assert are remaining unresolved issues.

On June 22, 2009, this court stayed proceedings in the above-captioned cases pending disposition of two representative cases, *Prati v. United States*, 2008-5117 and *Deegan v. United States*, 2008-5129. In these two cases, the taxpayers claimed that they were due refunds on two grounds: first, they argued that the Internal Revenue Service assessed tax and interest after the statute of limitations expired. Second, the taxpayers argued they were due refunds of penalty interest paid because their underpayments were not attributable to "tax motivated transactions." This court affirmed the Court of Federal Claims' determination that the taxpayers' claims for refunds were attributable to partnership items and thus not within that court's jurisdiction.

Summary affirmance of a case is appropriate "when the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists." *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994). In the above-captioned cases, the appellants' claims are the same as the claims asserted

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* For purposes of this order, we use a combined caption. The cases are not consolidated.

in either *Prati* or *Deegan*. Based on our decision in *Prati*, it is clear that summary affirmance is warranted in all the above-captioned appeals. We see no basis for staying these cases pending disposition of petitions for writ of certiorari in *Prati* and *Deegan*.

Accordingly,

IT IS ORDERED THAT:

(1) The appellants' motions to continue the stay are denied.

(2) The United States' motions to summarily affirm are granted.

(3) Each side shall bear its own costs.

FOR THE COURT

DEC 0 9 2010
Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

cc: Sallie W. Gladney, Esq.
Deborah K. Snyder, Esq.

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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

DEC 0 9 2010

JAN HORBALY
CLERK