IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA, Plaintiff, v. MARILYNN F. KNUTSEN f/k/a MARILYNN C. FOGARTY; RAYMOND E. KNUTSEN; RYAN T. FOGERTY; BOMOSEEN VINEYARDS, LLC; PINE POND, LLC; CITIZENS BANK, N.A.; YANKEE FARM CREDIT, ACA; Defendants.	Case No. 2:24-cv-254

COMPLAINT

The United States of America, at the direction of a delegate of the Attorney General and with the authorization of a delegate of the Secretary of the Treasury, pursuant to 26 U.S.C. § 7401, brings this civil action to: (1) reduce to judgment unpaid federal income tax liabilities owed by Marilynn F. Knutsen; (2) to set aside fraudulent transfers of two real properties located in Rutland County, Vermont and to enforce the federal tax liens against said properties or, alternatively, to seek a judgment for the value of the fraudulent transfers of those real properties from transferees; and (3) to hold Raymond E. Knutsen and Ryan T. Fogerty liable and seek judgments against them to the extent either or both of them received money as a result of having mortgaged one of the two real properties at a time when they held title as tenants in common, and to the extent Raymond E. Knutsen received money as a result of causing his wholly-owned LLC to mortgage the other real property. For its complaint, the United States alleges as follows:

Jurisdiction, Parties, and Properties

1. This district court has jurisdiction pursuant to 26 U.S.C. §§ 7402(a) and 7403, and 28 U.S.C. §§ 1331, 1340, and 1345.

2. The defendant Marilynn F. Knutsen f/k/a/ Marilynn C. Fogarty resides within Rutland County, Vermont, within the jurisdiction of this Court.

3. The defendant Ryan T. Fogarty is the daughter or Marylinn F. Knutsen and also, on information and belief, resides within the State of Vermont.

4. The defendant Raymond E. Knutsen resides within Rutland County, Vermont, within the jurisdiction of this Court, and is also the sole member/owner of the LLCs identified below.

5. The defendant Bomoseen Vineyards, LLC, is a limited liability company with a registered and designated business address in Castleton, Vermont, within the jurisdiction of this Court.

6. The defendant Pine Pond, LLC, is a limited liability company with a registered and designated business address in Castleton, Vermont, within the jurisdiction of this Court.

7. The defendant Citizens Bank, N.A., is named as a party to this action as required by 26 U.S.C. § 7403(b) because it holds a mortgage against one of the properties described below granted by Pine Pond, LLC (the mortgagee), securing a line of credit to Raymond Knutsen (borrower) up to $500,000 dated March 28, 2017, at which time all but $237,111.50 had been disbursed. As of October 19, 2023, the amount owing was approximately $448,258.

8. The defendant Yankee Farm Credit, ACA, is named as a party to this action as required by 26 U.S.C. § 7403(b) because it holds a mortgage against one of the properties described below granted by Raymond E. Knutsen and Ryan T. Fogarty, securing a line of credit

up to $250,000 dated September 21, 2012. As of October 18, 2023, the amount owing was approximately $175,539.

9. The United States seeks to avoid the fraudulent transfer of real property located at 2240 Route 30 North, Castleton, Vermont 05732 ("Residence Property") with the legal description attached as Exhibit A.

10. The United States also seeks to avoid the fraudulent transfer of real property located at 63/65 Avalon Beach Road, Castleton, Vermont 05732 ("Winery Property") with the legal description attached as Exhibit B.

Facts Common to All Counts

11. The United States incorporates by reference paragraphs 1 through 10 as if realleged herein.

12. Marilynn F. Knutsen under the name Marilynn C. Fogarty filed joint income tax returns for tax years 2003 and 2004 with her then husband Thomas F. Fogarty (deceased). Thomas F. Fogarty died on December 12, 2008.

13. Sometime prior to October 2009, Marilynn F. Knutsen, then still known as Marilynn C. Fogarty, filed a joint income tax return for year 2008 with the decedent Thomas F. Fogarty, claiming a large net operating loss (NOL) together with a Form 1045 claiming "tentative" NOL carrybacks to years 2003 and 2004 based on amended returns and seeking what are colloquially called "quickie refunds" under Section 6411 of the Internal Revenue Code, which compels the IRS to issue a refund within 90 days without prejudice to a future examination.

14. The Form 1045 resulted in two refunds issued to Marilynn C. Fogarty (n/k/a Marilynn F. Knutsen) on October 27, 2009, totaling $518,930.00 ($160,017 for 2003 and $358,913 for 2004).

15. On May 2011, the IRS opened an examination (or "audit") of the 2008 return and shortly thereafter began to question a claimed theft loss that generated the NOL carried back to the 2003 and 2004 years.

16. On September 28, 2011, the revenue agent conducting the examination informed Marilynn F. Knutsen's representative, Frank Palino, that the theft loss on the 2008 return was going to be disallowed.

17. In early 2012, the IRS proposed to disallow the theft loss on the 2008 return and to assess additional tax for 2003 and 2004 and in February 2012, the taxpayer submitted an administrative appeal.

18. The administrative appeal resulted in allowance of the theft loss on the 2008 return (reversing the determination of the examining revenue agent) but included additional adjustments, including the addition of $1,024,935 in taxable income for 2008 due to a previously unreported withdrawal of that sum from an individual retirement account. Accordingly, the NOL carried back to years 2003 and 2004 was reduced. Additionally, it was determined that there was no change to 2003 tax from the amount proposed to be assessed by the examining revenue agent because the NOL did not affect the computation of alternative minimum tax. As a result of the substantially reduced NOL carryback from 2008, most of it was absorbed by income in 2003 with only a small amount left to carry over to 2004.

19. On October 29, 2012, Marilynn F. Knutsen individually and as the Executrix for the estate of her deceased husband signed forms waiving the issuance of notices of deficiency and the right to petition the Tax Court and consenting to the assessments indicated below.

Count One
(Claim Against Maryland F. Knutsen to Reduce Income Tax Liabilities to Judgment)

20. The United States incorporates by reference paragraphs 1 through 19 as if realleged herein.

21. A delegate of the Secretary of the Treasury made assessments against Thomas F. Fogarty (deceased) and Marilynn C. Fogarty (n/k/a Marilynn F. Knutsen), for income taxes for the periods, on the dates, and in the amounts described below as a result of the IRS audit and examination into her 2008 income tax return and the reduction of the net operating loss carryback to the 2003 and 2004 tax years. These liabilities have balances due as of March 1, 2024, in the total sum of $1,034,760.51, including assessed and accrued late-payment penalties, costs, and statutory interest, and after applying any abatements, payments, and credits, as follows:

Tax Period Ending	**Assessment Date**	**Amount Assessed**	**Balance Due as of March 1, 2024**
12/31/2003	1/25/2013	$160,017.00	$338,214.46
12/31/2004	1/25/2013	$342,424.00	$696,546.05
Total			**$1,034,760.51**

22. Notice of the liabilities described in the preceding paragraph was given to, and payment demanded from, Marilynn C. Fogarty (n/k/a Marilynn F. Knutsen).

23. Despite proper notice and demand, Marilynn F. Knutsen f/k/a Marilynn C. Fogarty, failed, neglected, or refused to fully pay the liabilities, and after the application of all

abatements, payments, and credits, remains liable to the United States in the amount of $1,034,760.51, plus statutory additions and interest accruing from and after March 1, 2024.

24. On December 20, 2016, a Notice of Federal Tax Lien (NFTL) was filed with the Town Clerk for Castleton, Vermont at Book 177, Pages 307-307, against Marilynn F. Knutsen for her unpaid federal income tax liabilities for tax years 2003 and 2004. (Earlier, in 2014, a similar NFTL named her as Marilynn C. Fogarty.)

25. On October 3, 2022, pursuant to 26 U.S.C. 6323(g), a Notice of Federal Tax Lien was refiled with the Town Clerk for Castleton, Vermont at Book 232, Page 266, against Marilyn F. Knutsen for her unpaid federal income tax liabilities for tax years 2003 and 2004. (On the same date, the NFTL in the name of Marilynn C. Fogarty was refiled.)

Count Two
(Residence Property)

26. The United States incorporates by reference paragraphs 1 through 25 as if realleged herein.

27. On December 15, 2009, approximately six weeks after receiving the tax refunds, Marilynn F. Knutsen (f/k/a Marilynn C. Fogarty) purchased the Residence Property and caused the deed to be issued to "Marilynn Fogarty and Ryan Taylor Fogerty as joint tenants with right of survivorship." The deed was recorded the next day with the Castleton Town Clerk in Book 145, Pages 562-63. On information and belief, the purchase price was approximately $850,000. On information and belief, no part of the purchase price was provided by Ryan Taylor Fogarty.

28. After the purchase of the Residence Property, the transfer history is as follows:

a. On November 21, 2011, Marilynn Fogarty and Ryan Taylor Fogarty transferred the Residence Property via warranty deed to Raymond E. Knutsen and Marilynn Knutsen, husband and wife, and Ryan T. Fogarty.

b. On March 15, 2012, Raymond E. Knutsen and Marilynn Knutsen, husband and wife, and Ryan T. Fogarty transferred the Residence Property via warranty deed to Raymond E. Knutsen and Ryan T. Fogerty (thereby removing Marilyn Knutsen's name from record title).

c. On June 30, 2016, Raymond E. Knutsen and Ryan T. Fogarty transferred the Residence Property via quit claim deed to Pine Pond, LLC. Raymond E. Knutsen is the sole member of Pine Pond, LLC.

d. On May 8, 2019, Pine Pond, LLC transferred the Residence Property via quit claim deed to Raymond E. Knutsen.

e. Two weeks later, on May 21, 2019, the Residence Property was transferred back by Raymond E. Knutsen to Pine Pond, LLC.

29. Marilynn F. Knutsen, through her IRS representative in the examination, was aware of the IRS audit and examination of the NOL claimed on her 2008 return and the amended income tax returns for tax years 2003 and 2004 when she made the initial transfer of the Residence Property on November 21, 2011. In fact, her representative had been told less than two months earlier that the theft loss in 2008 generating the NOL carryback would be denied, and the representative told the examining revenue agent that she would appeal. As noted above, the appeal was partially successful in that the theft loss was allowed but over $1 million in additional income was added due to a retirement fund withdrawal in 2008. The unreported IRA withdrawal on the return was discussed with Marilynn F. Knutsen's representative on May 12, 2011, and it was acknowledged that the withdrawn sum needed to be added to 2008 income.

30. The transfers described above in paragraph 28 (a through e) were all made without receiving reasonably equivalent value in exchange. In fact, they were made for no nominal monetary consideration.

31. On information and belief, as a result of the combination of the transfers of the Residence Property and the Winery Property addressed in the next Count, Marilynn F. Knutsen became insolvent. Accordingly, the transfers were fraudulent as to the United States under 9 V.S.A. § 2289(a) and may be avoided under § 2291(a)(1).

32. In the alternative, the transfers were on information and belief made with actual intent to hinder, delay, or defraud the United States under 9 V.S.A. § 2288(a)(1) and may be avoided under § 2291(a)(1), based on badges of fraud listed in § 2288(b), including that the transfers were to relatives (insiders) for no significant monetary consideration while Marilynn Knutsen was already threatened with federal income tax assessments for liabilities that arose when she received the tax refunds two years earlier and the transfers rendered her insolvent.

33. As of the filing of this Complaint, on information and belief, Pine Pond, LLC remains the sole title holder to the Residence Property.

34. On January 15, 2020, a Notice of Federal Tax Lien was filed with the Town Clerk for Castleton, Vermont, at Book 203, Pages 09-90, against Pine Pond, LLC as transferee of Marilynn Knutsen for her unpaid federal income tax liabilities for tax years 2003 and 2004.

35. On October 3, 2022, pursuant to 26 U.S.C. § 6323(g) a Notice of Federal Tax Lien was refiled with the Town Clerk for Castleton, Vermont, at Book 232, Page 264 against Pine Pond, LLC as transferee of Marilynn Knutsen for her unpaid federal income tax liabilities for tax years 2003 and 2004.

36. The United States is entitled to have the Residence Property sold in a judicial sale (including by a receiver pursuant to 26 U.S.C. 7403(d) and to recover the proceeds net of selling expenses and property taxes accrued through the time of such a sale, except to the extent that Citizens Bank’s mortgage is determined to be entitled to payment with priority over the federal

tax liens. Alternatively, unless the Court grants the additional relief sought in Count Four based on the mortgage lien placed on the Residence Property by the transferees, the United States is entitled pursuant to 9 V.S.A. § 2292(b) to recover judgment against Raymond E. Knutsen and/or Ryan T. Knutsen for the value of the Residence Property as of March 2012, adjusted by the addition of pre-judgment interest.

Count Three
(Winery Property)

37. The United States incorporates by reference paragraphs 1 through 25 as if realleged herein.

38. On July 1, 2011, Marilynn Fogarty (n/k/a Marilynn F. Knutsen) purchased the Winery Property. The deed was recorded with the Castleton Town Clerk in Book 149, Pages 377-81. On information and belief, the purchase price was approximately $330,000.

39. The Winery Property subsequently was transferred as follows:

a. On November 21, 2011, Marilynn Knutsen transferred the Winery Property via warranty deed to Raymond E. Knutsen and Marilynn Knutsen, husband and wife, and Ryan T. Fogarty.

b. On March 15, 2012, Raymond E. Knutsen and Marilynn Knutsen, husband and wife, and Ryan T. Fogarty transferred the Winery Property via warranty deed to Raymond E. Knutsen and Ryan T. Fogarty, as joint tenants with rights of survivorship, thereby removing Marilyn Knutsen's name from record title.

c. Raymond E. Knutsen and Ryan T. Fogarty subsequently transferred the Winery Property via quit claim deed to Bomoseen Vineyards, LLC. Raymond E. Knutsen is the sole member of Bomoseen Vineyards, LLC.

40. As stated in paragraph 29 above, when Marilyn Knutsen initially transferred the Winery Property in November 2011, her IRS representative in the examination had been told that the IRS would be disallowing the theft loss in the 2008 return that generated the NOL carryback

to 2002 and 2003 (representing she would appeal) and was also aware that over $1 million in unreported income from the IRA withdrawal had to be added to the 2008 return.

41. On January 25, 2020, a Notice of Federal Tax Lien was filed with the Town Clerk for Castleton, Vermont, at Book 204, Page 77, against Bomoseen Vineyards, LLC as transferee of Marilynn Knutsen for her unpaid federal income tax liabilities for tax years 2003 and 2004.

42. On October 3, 2022, pursuant to 26 U.S.C. § 6323(g) the NFTL described in the preceding paragraph was refiled with the Town Clerk for Castleton, Vermont, at Book 232, Page 261, against Bomoseen Vineyards, LLC as transferee of Marilynn Knutsen for her unpaid federal income tax liabilities for tax years 2003 and 2004.

43. The transfers described above in paragraph 39 (a through c) were all made without receiving reasonably equivalent value in exchange. In fact, there was no or nominal monetary consideration.

44. On information and belief as a result of the combination of the transfers of the Winery Property and the Residence Property addressed in the preceding Count, Marilyn F. Knutsen became, and remains, insolvent. Accordingly, the transfers were fraudulent as to the United States under 9 V.S.A. § 2289(a) and may be avoided under § 2291(a)(1).

45. In the alternative, the transfers were on information and belief made with actual intent to hinder, delay, or defraud the United States under 9 V.S.A. § 2288(a)(1) and may be avoided under § 2291(a)(1), based on badges of fraud listed in § 2288(b), including that the transfers were to relatives (insiders) for no significant monetary consideration while Marilynn Knutsen was already threatened with federal income tax assessments for liabilities that arose when she received the tax refunds two years earlier and the transfers rendered her insolvent.

46. As of the date of this Complaint, on information and belief, Bomoseen Vineyards, LLC remains the sole record title holder to the Winery Property.

47. The United States is entitled to have the Winery Property be sold in a judicial sale (including by a receiver pursuant to 26 U.S.C. 7403(d) and to recover the proceeds net of selling expenses and property taxes accrued through the time of such a sale, except to the extent that Yankee Farm Credit's mortgage is determined to be entitled to payment with priority over the federal tax liens. Alternatively, unless the Court grants the additional relief sought in Count Four based on the mortgage lien placed on the Winery Property by the transferee, the United States is entitled pursuant to 9 V.S.A. § 2292(b) to recover judgment against Raymond E. Knutsen and/or Ryan T. Knutsen for the value of the Winery Property as of March 2012, adjusted by the addition of pre-judgment interest.

Count Four
(Judgment Against Transferees)

48. The United States incorporates by reference paragraphs 1 through 47 as if realleged herein.

49. On March 28, 2017, while Pine Pond, LLC held title to the Residence Property, Raymond E. Knutsen caused it to be mortgaged to Citizens Bank to secure a line of credit up to $500,000. Raymond E. Knutsen is the borrower under said mortgage.

50. To the extent that the loan proceeds from the Citizens Bank mortgage inured to the benefit of Raymond E. Knutsen, he should be held personally liable to the United States (in addition to the relief sought in Count Two above). Such liability arises either because the loan proceeds traceable to the property value make him a transferee of Pine Pond, LLC (itself a transferee under the Vermont fraudulent transfer statute) and not a transferee for value, or to

redress unjust enrichment under principles of equity as incorporated by 9 V.S.A. § 2296 (formerly § 2294).

51. On September 21, 2012, Raymond E. Knutsen and Ryan T. Fogarty mortgaged the Winery Property to Yankee Farm Credit to secure a line of credit up to $250,000.

52. To the extent that the loan proceeds from the Yankee Farm Credit mortgage inured to the benefit of Raymond E. Knutsen or Ryan T. Fogarty, one or both of them should be held personally liable to the United States (in addition to the relief sought in Count Three above). Such liability arises either because the loan proceeds traceable to the property value make the recipient of the loan proceeds a transferee of Pine Pond, LLC (itself a transferee under the Vermont fraudulent transfer statute) and not a transferee for value, or to redress unjust enrichment under principles of equity as incorporated by 9 V.S.A. § 2296 (formerly § 2294).

WHEREFORE, the plaintiff United States of America prays that:

A. The Court enter judgment in favor of plaintiff United States of America and against defendant Marilyn F. Knutsen for unpaid tax liabilities associated with individual income taxes for tax periods ending December 31, 2003, and December 31, 2004, in the total amount of $1,034,760.51, plus interest accruing from and after March 1, 2024, according to law.

B. The Court determine and adjudge that the transfers of record title to the Residence and Winery Properties described above in paragraphs 28 and 39, were fraudulent, and allow the United States to avoid the transfers and enforce the federal tax liens against the respective real properties through a judicial sale (including by a receiver under 26 U.S.C. § 7403(d) and distribute proceeds first to pay the expenses of the sales (including any receiver's compensation), then to cover property taxes through the date of sale, and then to the United States except to the extent that Citizen's Bank and/or Yankee Farm Credit demonstrate a superior right to part of the proceeds; and

C. The Court enter judgment against Raymond E. Knutsen and/or Ryan T. Fogarty in an amount equal the loan proceeds they received in connection with mortgages they granted (in addition to the relief sought in the preceding paragraph.).

D. In the alternative to the relief sought in the two preceding paragraphs (lien enforcement plus judgments to compensate the United States for the mortgage liens), the Court should enter judgment against Raymond E. Knutsen in an amount equal to the value of the Residence Property in March of 2011 plus interest from that time, and should enter judgment against him and/or Ryan T. Fogarty in an amount equal to the value of the Winery Property as of March of 2011 plus interest from that time.

E. The Court award the United States of America such further relief that the Court deems just and proper.

DAVID A. HUBBERT
Deputy Assistant Attorney General
U.S. Department of Justice, Tax Division

/s/ Jeffrey N. Nuñez
JEFFREY N. NUÑEZ
CURTIS C. PAUL
Trial Attorneys, Tax Division
U.S. Department of Justice
P.O. Box 55
Washington, D.C. 20044
(202) 616-5218 (v)
(202) 514-5238 (f)
Jeffrey.N.Nunez@usdoj.gov
Curtis.Paul@usdoj.gov

Counsel for Plaintiff
United States of America