

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

IRA MILLER, IRENE MILLER,
ELLA MILLER, WILMA MILLER,
COLUMBIA COUNTY, WISCONSIN,
and STATE OF WISCONSIN
DEPARTMENT OF REVENUE,

Defendants.

OPINION AND
ORDER

05-C-505-C

This is a civil action brought pursuant to 28 U.S.C. § 1340 and 26 U.S.C. §§ 7402 and 7403 in which plaintiff United States of America seeks to reduce to judgment tax assessments against defendants Ira and Irene Miller and foreclose on property titled in defendants Ella Miller's and Wilma Miller's name, but allegedly owned by defendants Ira and Irene Miller. The case is before the court on the government's motion to strike defendant Ira Miller's responsive pleading entitled "plea in abatement, parts 1 and 2" and motion to extend the deadline for filing dispositive motions. (Because the only documents at issue are written by defendant Ira Miller, all references in this order to "defendant" are

to defendant Ira Miller.) Both motions will be granted.

On August 18, 2005, the government filed the complaint in this case. On September 21, 2005, defendant Ira Miller filed a document entitled “Part One: Plea in Abatement,” which was docketed by the court as an answer to the complaint. Defendant supplemented this filing on October 11, 2005, with a document entitled “Part Two: Plea in Abatement.” On October 7, 2005, plaintiff moved to strike defendant’s pleading, contending that it is non-responsive and fails to express any legally recognizable propositions.

Defendant’s pleading is captioned and styled as an early nineteenth century plea of abatement and order granting the plea. At common law, pleas of abatement were responsive pleadings recognized as a means of challenging a defect in the form, but not the substance, of an allegation. Stephen C. Yeazell, Civil Procedure 390 (5th ed. 2000). Throughout the nineteenth century, when a property forfeiture suit was commenced, often a plea of abatement would be used to defer adjudication of any collateral lawsuits that depended upon the outcome of the forfeiture proceeding. See, e.g., Liter v. Green, 15 U.S. 306, 311 (1817); Gelston v. Hoyt, 16 U.S. 246, 247 (1818). Occasionally, such cases involved property being forfeited as a result of failure to pay taxes.

Defendant’s plea suffers several deficiencies. Most important, the plea of abatement is no longer a recognized pleading. It was abandoned in civil cases in 1938, when Congress adopted the Federal Rules of Civil Procedure and replaced common law writs and pleas with

the more liberal notice pleading system described in Fed. R. Civ. P. 8. Yeazell, supra, at 396. In 1946, the plea was eliminated in criminal cases as well and was replaced by the motion to dismiss an indictment under Fed. R. Crim. P. 12. United States v. Ponto, 454 F.2d 657, 660 (7th Cir. 1971).

However, even if the plea of abatement were still recognized by the court, defendant has failed to allege any non-frivolous defect in plaintiff's complaint. Among other things, defendant contends that he is beyond the reach of this court, that the complaint does not bear his "full Christian Appellation in upper case and lower case letters" and that the complaint is "a trespass into [his] dominion and a breach of the peace." Defendant provides no reason why any of these assertions is either relevant or true. Because defendant's pleading is procedurally and substantively deficient, plaintiff's motion to strike will be granted.

Nevertheless, because defendant has attempted to file a responsive pleading, I will provide him with an additional opportunity to do so in a manner consistent with modern federal procedure. Under the Federal Rules of Civil Procedure, a responsive pleading should answer in short, plain terms each allegation made in the complaint. Fed. R. Civ. P. 8(b). The numbered paragraphs of the answer should match the numbered paragraphs of the complaint and should respond to each allegations by (1) admitting; (2) denying; or (3)

stating that defendant has insufficient information to respond to *each statement* contained in the complaint. Id. If defendant wishes to deny only a portion of a statement, he should indicate the portion to which he objects. Id. For additional guidance on how to respond properly to the government's complaint, defendant should consult the Federal Rules of Civil Procedure in general and Rule 8 in particular. If defendant Ira Miller wishes to answer the complaint, he must do so by December 27, 2005. Should he fail to respond as directed above, plaintiff may move promptly for entry of default against this defendant.

Pursuant to the pre-trial conference order issued on October 31, 2005, the current deadline for filing dispositive motions in this case is December 9, 2005. Obviously, that deadline will need to be extended. However, I will stay a decision on the new scheduling order until after plaintiff has had an opportunity to respond to plaintiff's complaint.

ORDER

IT IS ORDERED that

1. Plaintiff's motion to strike defendant's plea in abatement is GRANTED;
2. Defendant Ira Miller may have until December 27, 2005 to file a properly formatted answer to plaintiff's complaint;
3. Plaintiff's motion for an extension of the deadline for filing of dispositive motions is

GRANTED. A new deadline will be set by the court after December 27, 2005.

Entered this 6th day of December, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge