

UNITED STATES BANKRUPTCY COURT
DEPARTMENT 5
JUDGE CHRISTOPHER B. LATHAM, PRESIDING
MONDAY, DECEMBER 19, 2016

10:00 AM

1 - 07-05038-CL Ch 7 DAVID M GREEN

ADV: 09-90400

LESLIE T. GLADSTONE, CHAPTER 7 TRUSTEE v. OMEGA LIFE FUND LLC & EILEEN GREEN & EILEEN GREEN INVESTMENT TRUST & COVENTRY FIRST LLC & S. MANSOUR INSURANCE TRUST DATED 5/12/05 & US BANK NATIONAL ASSOCIATION & U.S. BANCORP & BCAJ INVESTMENTS WEST INC & MANSOUR AND SIVALELLI JT TRUST & SAM MANSOUR INSURANCE TRUST DTD 5/12/05

PRE-TRIAL STATUS CONFERENCE (fr. 12/12/16)

ATTORNEY: SEAN C. COUGHLIN (LESLIE T. GLADSTONE, CHAPTER 7 TRUSTEE)

ATTORNEY: JOHN L. SMAHA (OMEGA LIFE FUND LLC, S. MANSOUR INSURANCE TRUST DATED 5/12/05)

ATTORNEY: SUSAN C. STEVENSON (COVENTRY FIRST, LLC, US BANK NATIONAL ASSOCIATION, U.S. BANCORP)

ATTORNEY: JOHN PAUL TEAGUE (OMEGA LIFE FUND LLC, S. MANSOUR INSURANCE TRUST DATED 5/12/05)

2 - 10-05848-CL Ch 7 JONATHAN SEBASTIAN & VIRGINIA LEE BOLAND

MOTION FOR CONTEMPT CITATION, DAMAGES AND SANCTIONS DUE TO VIOLATION OF THE DISCHARGE INJUNCTION FILED BY DEBTORS (fr. 11/7/16)

ATTORNEY: JAMES W. BESHEARS (JONATHAN SEBASTIAN BOLAND, VIRGINIA LEE BOLAND)

ATTORNEY: KAREN A. RAGLAND (FIDELITY NATIONAL LAW GROUP, CHICAGO TITLE INSURANCE COMPANY)

ATTORNEY: VINCENT RENDA (JONATHAN SEBASTIAN BOLAND, VIRGINIA LEE BOLAND)

3 - 12-07611-CL Ch 13 ISABELLE ROSE MONAGHAN

MOTION FOR RELIEF FROM STAY, RS #AP-1 FILED BY WELLS FARGO BANK NA

ATTORNEY: THOMAS F. MILES (ISABELLE ROSE MONAGHAN)

ATTORNEY: ROBERT ZAHRADKA (WELLS FARGO BANK NA)

4 - 13-12053-CL Ch 7 LISA E. DETTMANN

ADV: 16-90136

LESLIE T. GLADSTONE v. DEXTER FAMILY LIMITED PARTNERSHIP, A CAL & BETTY DEXTER, AN INDIVIDUAL

PRE-TRIAL STATUS CONFERENCE

ATTORNEY: CHRISTIN A. BATT (LESLIE T. GLADSTONE)

ATTORNEY: WILLIAM P. FENNELL (DEXTER FAMILY LIMITED PARTNERSHIP, A CAL, BETTY DEXTER, AN INDIVIDUAL)

10:00 AM

5 - 15-02056-CL Ch 13 TODD LOUIS SLEET

MOTION FOR RELIEF FROM STAY, RS #EAT-1 FILED BY DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR GSAA HOME EQUITY TRUST 2006-15, ASSET-BACKED CERTIFICATES, SERIES 2006-15 (fr. 12/12/16)

ATTORNEY: LARISSA L. LAZARUS (TODD LOUIS SLEET)
ATTORNEY: DARLENE C. VIGIL (DEUTSCHE BANK NATIONAL TRUST COMPANY)

6 - 15-06224-CL Ch 13 EVA MARIE BAILEY

ADV: 16-90123

EVE BAILEY v. OCWEN LOAN SERVICING, LLC & OCWEN LOAN SERVICING, LLC AS SERVICER FO

PRE-TRIAL STATUS CONFERENCE

ATTORNEY: DONALD E. WOLFE (EVE BAILEY)
ATTORNEY: DARLENE C. VIGIL (OCWEN LOAN SERVICING, LLC, OCWEN LOAN SERVICING, LLC AS SERVICER FO)

7 - 16-04210-CL Ch 7 SERGEY B. TAKHUNOV

ADV: 16-90156

TRISTINA COLE v. SERGEY B. TAKHUNOV

PRE-TRIAL STATUS CONFERENCE

ATTORNEY: DAVID BROWNSTEIN (TRISTINA COLE)
ATTORNEY: MICHAEL A. FELDMAN (SERGEY B. TAKHUNOV)

8 - 16-04941-CL Ch 13 ELEANOR M SCHACHER

MOTION FOR RELIEF FROM STAY, RS #SKI-1 FILED BY WELLS FARGO BANK NA DBA WELLS FARGO DEALER SERVICES

Court Deputy Note: Matter off calendar. Debtor's Opposition to Motion for Relief from Stay withdrawn 12/16/16 (re ECF No. 50).

ATTORNEY: THOMAS K. SHANNER (ELEANOR M SCHACHER)
ATTORNEY: SHERYL K. ITH (WELLS FARGO BANK NA)

9 - 16-06326-CL Ch 7 RIK WLODARCZYK

TELE

STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER

ATTORNEY: JON NATHAN OWENS (STEPHEN CHEIKES)
OTHER: RIK WLODARCZYK

11:00 AM

1 - 15-02444-CL Ch 7 JAMES MANUEL RODRIGUEZ

ADV: 15-90095

**STATE FARM MUTUAL AUTOMOBILE INS. CO. v. JAMES MANUEL
RODRIGUEZ**

- 1) PRE-TRIAL STATUS CONFERENCE (fr. 11/2/16)

- 2) MOTION TO STRIKE ANSWER AND/OR IMPOSE OTHER DISCOVERY
SANCTIONS FILED BY PLAINTIFF STATE FARM MUTUAL AUTOMOBILE INS.
CO.

ATTORNEY: JOSEPH M. PLEASANT (STATE FARM MUTUAL AUTOMOBILE INS.
CO.)

ATTORNEY: NATHAN M. SHILBERG (JAMES MANUEL RODRIGUEZ)

11:30 AM

1 - 12-15436-CL Ch 7 RANDOLPH MADSEN HURT

ADV: 16-90042

LESLIE T. GLADSTONE v. RANDOLPH MADSEN HURT

- 1) PRE-TRIAL STATUS CONFERENCE (fr. 10/17/16)

- 2) MOTION FOR SUMMARY JUDGMENT FILED BY PLAINTIFF/TRUSTEE
LESLIE T. GLADSTONE

Tentative Ruling: The court will **hear** the matter. It has considered Chapter 7 Trustee Leslie T. Gladstone's ("Plaintiff") motion for summary judgment, Randolph Madsen Hurt's ("Defendant") opposition, Plaintiff's reply, and the respective evidence.

Background

In December 2010, Defendant had an independent retirement account ("IRA") with Q3A Financial Corp., held under the name "IRA FBO Randolph M. Hurt Pershing LLC as Custodian Rollover Account." In March 2011, the IRA funds were rolled into an Independent Financial Group IRA Account (the "IFG IRA"). On March 5, 2011, Defendant signed the IFG Traditional IRA Adoption Agreement (the "IFG Plan"), which outlines the IFG IRA's terms and conditions.

On November 21, 2012, Defendant filed a voluntary Chapter 13 petition. On December 5, 2012, he submitted Schedule B, which included: (1) a \$115,778.05 interest in the IFG IRA; and (2) a \$23,943.92 interest in a Sun Life Assurance Co. IRA Account (the "Sun Life IRA") (collectively, the "IRAs"). He fully exempted the IRAs under California Code of Civil Procedure ("CCP") §§ 704.115(a)(1), (a) (2), and (b). On his Statement of Financial Affairs ("SOFA"), Defendant disclosed \$186,977 in "Gross Pension/Annuity Income" for 2010.

On February 10, 2014, Defendant's case was converted to Chapter 7. Plaintiff was appointed as trustee the next day. The initial § 341(a) meeting of creditors was held on March 10, 2014 and continued several times. On April 22, 2014, Plaintiff requested the January 2010 to April 2014 account statements for both IRAs and an accounting of the 2010 pension/annuity income sources (and any related loan documents). Defendant's counsel requested additional time to gather and deliver the documents, but they were never fully produced. Some were provided on October 22, 2014, but most remain outstanding.

On August 8, 2014, Plaintiff objected to Defendant's claim of exemptions in the IRAs. It received no opposition. And on September 24, 2014, the court sustained the objection and disallowed Defendant's claim of exemptions in their entirety. That order is now final.

On October 21, 2014, Defendant filed amended Schedules A, B, and C. This time, he: (1) disclosed a \$125,971.19 interest in the IFG IRA; (2) listed a \$24,289.67 interest in the Sun Life IRA; and (3) claimed both as fully exempt. On November 20, 2014, Plaintiff filed a second objection to Defendant's claim of exemptions. Defendant opposed, arguing that the IRAs are ERISA-qualified retirement accounts that are either not estate property or fully exempt under state and federal law. On January 27, 2015, the court sustained the objection to the extent the IRAs are estate property given that res judicata precluded him from claiming the same exemptions. But it noted that its previous order did not determine the estate's interest in the IRAs; such a determination would require an adversary proceeding.

On February 23, 2016, Plaintiff - after Defendant failed to deliver evidence that the IRAs may be excluded from the estate as ERISA-qualified plans - filed a complaint seeking a declaration that, as of the petition date, the IRAs were: (1) not ERISA-qualified plans; (2) unenforceable spendthrift trusts; and (3) nonexempt estate property that should be turned over immediately.

Plaintiff now moves for summary judgment. She contends that the sole issue is whether the IRAs are excluded from the estate under § 541(c)(2) as ERISA-qualified accounts. She believes they are not - and Defendant provides

no contrary evidence. She begins by tediously analyzing the contracts, noting that neither expressly describes the IRAs as ERISA-qualified. And ERISA applies only to plans established or maintained by an employer or employee organization, not IRAs.

Plaintiff next asserts that § 541(c)(2) requires an enforceable transfer restriction. While she seemingly acknowledges that the IRAs contain transfer restrictions, she argues that neither is enforceable under state or federal law. As to the IFG IRA, it is an IRA to which ERISA does not apply. And its transfer restriction is unenforceable under ERISA or the Internal Revenue Code (the "IRC"). Simply put, there is no federal law excluding the IFG IRA from the estate. The same holds true for the Sun Life Annuity.

Plaintiff further contends that the transfer restrictions are likewise unenforceable under state law. Starting with the IFG IRA, she argues that a transfer restriction cannot be enforced where the plan is not a valid spendthrift trust. And under California law, Defendant's substantial control over the IFG IRA assets renders its anti-alienation provision unenforceable. It is likewise invalid under New York law since transfer restrictions in self-settled IRAs cannot be enforced.

Finally, Plaintiff argues that Defendant's control over the Sun Life IRA renders its transfer restriction unenforceable under California law.

For his part, Defendant agrees with Plaintiff that there are no disputed material facts - but believes those facts weigh in his favor. He asserts that the IRAs are ERISA-qualified plans that are excluded from the estate under § 541(b)(7).

Legal Standards

Summary Judgment

Federal Rule of Civil Procedure 56, applicable here through Federal Rule of Bankruptcy Procedure 7056, governs summary judgment. To prevail, the movant must show that: (1) there exists no genuine dispute as to any fact material to the underlying cause of action; and (2) the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In determining whether to grant summary judgment, inferences drawn from the underlying facts must be viewed in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

The Ninth Circuit has "long recognized that, where the party moving for summary judgment has had a full and fair opportunity to prove its case, but has not succeeded in doing so, a court may enter summary judgment *sua sponte* for the nonmoving party." *Albino v. Baca*, 747 F.3d 1162, 1176 (9th Cir. 2014) (citing *Cool Fuel, Inc. v. Connett*, 685 F.2d 309, 311 (9th Cir. 1982)). Indeed, Rule 56 itself states, "after giving notice and a reasonable time to respond, the court may: (1) grant summary judgment for a nonmovant" Fed. R. Civ. P. 56(f).

Section 541(c)(2) and ERISA

An estate is created upon the filing of a bankruptcy petition. It is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). But § 541(c)(2) excludes from estate property "any property that is held in trust and subject to a restriction on transfer under applicable nonbankruptcy law." *In re Mooney*, 248 B.R. 391, 393 (Bankr. C.D. Cal. 2000) (citing 11 U.S.C. § 541(c)(2)); *In re Metz*, 225 B.R. 173, 176 (B.A.P. 9th Cir. 1998) ("This language keeps out of the estate . . . property in which the debtor owns the trust's beneficial interest, but subject to a spendthrift clause or some equivalent that prevents the debtor from converting a stream of future payments into a capital sum for current consumption.") (quoting *In re Baker*, 114 F.3d 636, 638 (7th Cir. 1997)).

The Employee Retirement Income Security Act of 1974 ("ERISA") is codified in Title 29 of the United States Code. The Bankruptcy Court for the Central District

of California has stated:

The term "ERISA qualified," is not defined by the Bankruptcy Code, the Internal Revenue Code or ERISA. However, ERISA covers pension, profit sharing, stock bonus, and similar plans. The Internal Revenue Code qualifies an ERISA plan if the plan satisfies the numerous requirements of IRC § 401(a) and related sections. 6A NORTON BANKR. L. & PRAC. 2d § 156:5. In sum, for a plan to be "ERISA-qualified" the plan must be tax qualified under the Internal Revenue Code; be governed by ERISA and include an anti-alienation provision. *Id.*

In re Mooney, 248 B.R. at 403 n.2. ERISA-qualified plans are excluded from the estate to the extent they contain applicable nonbankruptcy law restrictions on alienation. *In re Mooney*, 248 B.R. at 393 (citing *Patterson v. Shumate*, 504 U.S. 753 (1992)). "In the context of applying nonbankruptcy ERISA law to § 541(c)(2), a restriction on transfer is enforceable against the trustee in bankruptcy because the anti-alienation provision of an ERISA qualified plan is enforceable against a general creditor outside of bankruptcy." *In re Switzer*, 146 B.R. 1, 3 (Bankr. C.D. Cal. 1992) (citing *In re Lucas*, 924 F.2d 597, 603 (6th Cir. 1991); *In re Moore*, 907 F.2d 1476, 1480 (4th Cir. 1990); *In re Threewitt*, 24 B.R. 927, 929 (Bankr. D. Kan. 1982)).

Accordingly, "an ERISA-qualified plan which contains an anti-alienation provision 'constitutes an enforceable transfer restriction for purposes of § 542(c)(2) exclusion of property from the bankruptcy estate.'" *In re Conner*, 165 B.R. 901, 903 (B.A.P. 9th Cir. 1994) (quoting *Patterson*, 504 U.S. at 760). See also *In re Reuter*, 11 F.3d 850, 851-52 (9th Cir. 1993) ("[*Patterson*] held that the anti-alienation provision in an ERISA-qualified pension plan constitutes a restriction on transfer that is enforceable under 'applicable nonbankruptcy law.'").

Defendant must prove by a preponderance of the evidence that the IRAs contain enforceable anti-alienation restrictions that would permit him to exclude them from the estate under § 541(c)(2). *In re Switzer*, 146 B.R. at 4. "The relevant inquiry in the bankruptcy context is whether, on the petition date, [Defendant] could have enforced under ERISA [the IRAs'] transfer restriction[s]." *In re Lowenschuss*, 171 F.3d 673, 680 (9th Cir. 1999) (citing *Patterson*, 504 U.S. at 757-58; 11 U.S.C. § 541(a)(1)). See also *In re Switzer*, 146 B.R. at 3 ("Any right of exclusion that the Debtors may claim is dependent on legal and equitable rights that nonbankruptcy law accords retirement assets at the time bankruptcy is commenced.") (citing *In re Polycorp Assoc.*, 47 B.R. 671, 673 (Bankr. N.D. Cal. 1985)).

Discussion

The parties do not dispute that the IRAs qualify as individual retirement accounts. They also agree that both contracts contain anti-alienation provisions. But "[i]ndividual retirement accounts . . . are specifically excepted from ERISA's antialienation requirement." *In re Rawlinson*, 209 B.R. 501, 503 (B.A.P. 9th Cir. 1997) (quoting *Patterson*, 504 U.S. at 763).

That said, the crucial issue is whether the IRAs are also ERISA-qualified accounts. If they are, the inquiry ends and they are properly excluded from the estate under § 541(c)(2). *In re Reuter*, 11 F.3d at 852 ("Under *Shumate*, a court need look no further than whether the ERISA-qualified plan at issue has an anti-alienation provision that satisfies the literal terms of § 542(c)(2) Because this Plan qualifies for § 541(c)(2)'s exclusion as an ERISA-qualified pension plan, we need not reach the issue whether it also qualifies under state law as a spendthrift trust. We also need not discuss whether the Plan is exempt from the bankruptcy estate under § 522(b)(2)(A)."). But if they are ordinary IRAs, they are not automatically excluded, and the court must then determine whether they are enforceable spendthrift provisions under applicable nonbankruptcy law. *In re Reid*, 139 B.R. 19, 20 (Bankr. S.D. Cal. 1992) ("The trustee argues that the debtor's interest in the Plan can be excluded from property of the estate only if it is a spendthrift trust under state law. This is the majority position and current law

of this circuit.").

On the current record, it appears that the IRAs do not meet ERISA's requirements. Defendant does not meaningfully explain what makes the IRAs special; instead bringing a separate yet related argument under § 541(b)(7). This issue must be decided before the court can complete its analysis, *viz.*, whether it must analyze the IRAs' spendthrift provisions under California and New York law. Defendant should come prepared to discuss this issue.

Defendant should also be prepared to explain why he has not provided Plaintiff with documentation showing that the IRAs are ERISA-qualified plans - despite numerous requests over the past two years.

Conclusion

The parties should come prepared to discuss the above issues.

ATTORNEY: CHRISTIN A. BATT (LESLIE T. GLADSTONE)

ATTORNEY: SHAWN A. DOAN (RANDOLPH MADSEN HURT)

ATTORNEY: WILFRED E. BRIESEMEISTER (RANDOLPH MADSEN HURT)