



IT IS ORDERED as set forth below:

Date: September 18, 2013

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:	:	Case No. 11-82598-MGD
	:	
Kirk Montgomery dba K.M. Employee	:	Chapter 7
Benefits Services,	:	
	:	
Debtor.	:	Judge Mary Grace Diehl
	:	
Santa Ana Unified School District,	:	
	:	
Movant,	:	
v.	:	CONTESTED MATTER
	:	
Kirk Montgomery dba K.M. Employee	:	
Benefits Services,	:	
	:	
Respondent.	:	

**ORDER OVERRULING SANTA ANA SCHOOL DISTRICT'S OBJECTION TO
EXEMPTION, DENYING SANTA ANA SCHOOL DISTRICT'S MOTION FOR SUMMARY
JUDGMENT, AND DENYING SANTA ANA SCHOOL DISTRICT'S MOTION TO STRIKE**

The Court held a hearing on September 17, 2013 on three motions filed by Santa Ana School District ("Santa Ana") and the responsive briefs thereto. (Docket Nos. 17, 23, 41, 51, 58, 60, 61 & 64).

Bryan Bates and Gary Marsh of McKenna Long & Aldridge LLP appeared for Santa Ana. Jocelyn Curry appeared on behalf of Debtor. The Court heard argument from the parties and, at the close of the hearing, made an oral ruling. This Order memorializes the oral ruling.

This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (B), and jurisdiction over this action is set forth in 28 U.S.C. §§ 157(b) and 1334(b).

The facts at issue are based on the same set of facts in a related adversary proceeding, 12-5109-MGD, and the parties do not dispute the material facts. In that adversary proceeding, judgment was entered in favor of Santa Ana, deeming its debt (in excess of \$3 million) non-dischargeable and determining that certain sums (approximately \$1.2 million) exempted by Debtor in his IRAs were not property of the estate based upon a constructive trust imposed by a California Superior Court Order. (Docket Nos. 49 & 50).

Debtor was a former consultant to Santa Ana and fraudulently obtained unauthorized commissions from Blue Cross/Blue Shield through his work for Santa Ana. His actions resulted in a judgment against him and in favor of Santa Ana for more than \$3 million and the imposition of a constructive trust on approximately \$1.2 million of traceable funds in an action litigated over seven years in the California Superior Court. In the related adversary proceeding, this Court found Santa Ana's debt to be nondischargeable based on the findings of the California Superior Court satisfying the elements of § 523(a)(2)(A). This Court also found that the approximately \$1.2 million within the constructive trust was not property of the estate, and, therefore not exemptible. Debtor filed a Chapter 7 bankruptcy petition on November 10, 2011 and claimed the following IRA accounts exempt: (1) Pacific Life (\$794,368.12), (2) Western Reserve Life (\$553,046.61), and (3) SEI (\$255,378.95). Santa Ana reported at the hearing that

it had recovered the judgment from the Pacific Life account and a portion of the Western Reserve Life account. Therefore, the objection to Debtor's exemption is now limited to the remaining IRA funds in the amount of \$355,999.75.¹

Santa Ana has failed to meet its burden of proof with respect to its objection to Debtor's remaining IRA exemptions. FED. R. BANKR. P. 4003(c); *In re Cassell*, 443 B.R. 200, 203-04 (Bankr. N.D. Ga. 2010) *subsequently aff'd* 713 F.3d 81 (11th Cir. 2013). Debtor's IRA exemptions are properly claimed under Georgia law. Debtor disclosed all the pertinent funds in his bankruptcy petition that he now seeks to exempt. The legal theory for disallowing Debtor's remaining IRA exemptions that Santa Ana asserts is simply not supported by law.

Santa Ana did not establish that Debtor's unlawful and fraudulent conduct resulted in the now-exempt IRA funds. In fact, the undisputed facts reveal that Debtor had over \$700,000 in a pension plan that, according to the record, was exemptible under § 522(b)(4) of the Bankruptcy Code (and under Georgia law) before Santa Ana and Debtor entered into a consulting contract. 11 U.S.C. § 522(b)(4)(C); O.C.G.A. §44-13-100(a)(2.1)(C). While Debtor did subsequently convert the pension funds to IRA accounts, the record does not support that Debtor converted non-exempt assets to exempt assets in this conversion from a pension plan to IRA accounts. Further, *In re Daly*, 717 F.3d 506 (6th Cir. 2013), provides that the boilerplate language in the SEI IRA alone, is not sufficient to disqualify the SEI IRA from exempt status.

Despite the circumstantial evidence or badges of fraud that Santa Ana relies upon to support its

¹ This amount is reflective of the petition date and does not take into account growth of the accounts during the pendency of the case.

theory of disallowing Debtor's exemptions, Santa Ana has failed to meet its burden in establishing that the remaining IRA funds are instruments of fraud. The cases relied upon by Santa Ana in support of its position are inapplicable to this action.

For example, Santa Ana asserts that *In re Hill*, 163 B.R. 598 (Bankr. N.D. Fla. 1994) supports its position. Although, in *Hill*, debtor's IRA exemption was disallowed based on the funds being traced to debtor's fraudulent actions under a contract, the more applicable fact pattern is with respect to the *Hill* court's treatment of debtor's homestead exemption. *Id.* at 601-602. Because the evidence showed that the home was purchased with monies preceding debtor's bad acts, debtor's homestead exemption was allowed. The *Hill* court determined that because the creditor failed to show that the investments used to purchase the property were themselves funded by illicit monies the "objection to the [] home cannot be sustained on the basis that the home is a repository for the fruits of debtor's fraudulent acts." *Id.* at 602. Likewise, here, Santa Ana improperly requests that the Court impute Debtor's fraudulent acts to the IRA accounts when the evidence does not support that the remaining IRA funds were procured as a result of Debtor's unlawful acts. The remedy Santa Ana seeks in this action is simply not available as a matter of law. Accordingly, for the above reasons and those stated on the record, it is

ORDERED that Santa Ana's Motion to Disallow Exemptions and Motion for Summary Judgement are hereby **DENIED**.

Based upon the Court's discretionary review of all papers in the record, Santa Ana's Motion to Strike Debtor' Sur-Reply brief is also **DENIED**.

The Clerk is directed to a copy of this Judgment of the parties listed below.

END OF DOCUMENT

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