UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

In re John E. DiGuilio

303 B.R. 144 (N.D. Ohio 2003) · No. 03-14053 · Decided December 4, 2003

SUMMARY

The bankruptcy court considered the Chapter 7 trustee’s objection to John E. DiGuilio’s claimed Ohio exemption for a SEP-IRA. The court held that the SEP-IRA was excepted from ERISA’s anti-alienation protection, constituted property of the bankruptcy estate, and was not exempt under the asserted Ohio statute; the trustee’s objection was therefore sustained.

CASE DETAILS

COURT	United States Bankruptcy Court for the Northern District of Ohio, Eastern Division
WRITING FOR THE COURT	Randolph Baxter
JURISDICTION	Ohio
DECIDED	December 4, 2003
DOCKET	03-14053
DISPOSITION	other
PROCEDURAL POSTURE	Chapter 7 bankruptcy trustee's objection to the debtor's claimed exemption in a SEP-IRA.
STANDARD OF REVIEW	The trustee, as objectant, bore the burden of making a prima facie case by a preponderance of the evidence to defeat the claimed exemption.
PRECEDENTIAL VALUE	Published bankruptcy court opinion; persuasive authority within the jurisdiction, subject to applicable appellate precedent.

TOPICS

bankruptcy exemptions · chapter 7 · bankruptcy · statutory interpretation · asset protection

PRACTICE AREAS

bankruptcy · employee benefits · statutory interpretation

QUESTIONS PRESENTED

1. Whether the debtor's SEP-IRA was property of the bankruptcy estate.
2. Whether a SEP-IRA is excepted from ERISA's anti-alienation provision under 29 U.S.C. § 1051(b)(1), making it available for administration by the bankruptcy trustee.
3. Whether Ohio's retirement-account exemption protected the SEP-IRA from administration despite ERISA's treatment of the account.

HOLDINGS

1. The trustee met his burden of proof by demonstrating that the debtor's SEP-IRA was excepted from ERISA's anti-alienation clause.
2. An SEP-IRA is an individual retirement account expressly excepted from ERISA's anti-alienation provision and therefore is not protected from administration by the bankruptcy trustee on that basis.
3. The SEP-IRA was property of the debtor's bankruptcy estate and could be administered by the trustee absent an applicable exemption; the trustee's objection to the claimed exemption was therefore sustained.

KEY QUOTATIONS

> *"Under the Internal Revenue Code, an SEP-IRA is statutorily defined as being the specific type of individual retirement account expressly excepted from the application of ERISA's anti-alienation clause as stated above."* (148)

> *"Accordingly, the Trustee has met his burden of proof demonstrating that the subject SEP-IRA is excepted from ERISA's anti-alienation clause."* (148)

FACTUAL BACKGROUND

The debtor filed for Chapter 7 relief and claimed an exemption in an American Funds SEP-IRA with an approximate balance of $30,000. The trustee argued that the SEP-IRA was excepted from ERISA's anti-alienation protection and therefore could be administered for the benefit of the bankruptcy estate. The debtor relied on Ohio Revised Code § 2329.66(A)(10)(c), which generally exempts qualifying retirement-account assets from attachment.

PROCEDURAL HISTORY

John E. DiGuilio filed a Chapter 7 bankruptcy petition on April 2, 2003, and claimed an exemption for an American Funds SEP-IRA under Ohio Revised Code § 2329.66(A)(10)(c). The Chapter 7 trustee objected, arguing that the SEP-IRA was not protected by ERISA's anti-alienation provision and was not exempt under applicable law. After noticed hearings, the bankruptcy court sustained the trustee's objection.

DISPOSITION

other

CASES CITED

- In re Hamo, 233 B.R. 718 (6th Cir. BAP 1999)
- In re Hoppes, 202 B.R. 595 (Bankr. N.D. Ohio 1996)
- General Motors Corp. v. Buha, 623 F.2d 455 (6th Cir. 1980)
- Retirement Fund Trust v. Franchise Tax Board, 909 F.2d 1266 (9th Cir. 1990)
- Tenneco Inc. v. First Virginia Bank of Tidewater, Tenneco, Inc. v. First Virginia Bank, 698 F.2d 688-90 (4th Cir. 1983)
- In re Buzza, 287 B.R. 417, 421 (Bankr. S.D. Ohio 2002)
- Lampkins v. Golden, 28 Fed. Appx. 409 (6th Cir. 2002) (unpublished)
- In re Fixel, 286 B.R. 638 (Bankr. N.D. Ohio 2002)
- In re CRS Steam, Inc., 217 B.R. 365 (Bankr. D. Mass. 1998)
- In re Taft, 171 B.R. 497 (Bankr. E.D.N.Y. 1994), aff'd, 184 B.R. 189 (E.D.N.Y. 1995)
- In re Kellogg, 179 B.R. 379 (Bankr. D. Mass. 1995)
- In re Schreiner, 255 B.R. 545, 547 (Bankr. S.D. Ohio 2000)