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Is a Union Official Who Has Been Convicted of Embezzling Union Funds Entitled to Collect His Pension Benefits?

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Is a union official who has been convicted of embezzling union funds entitled to collect his pension benefits?

by Jay E. Grenig

Curtis Guidry
v.
Sheet Metal Workers National Pension Fund; Sheet Metal Workers Local Unions and Councils Pension Plan; Sheet Metal Workers International Association, Local 9; Sheet Metal Workers Local No. 9 Pension Fund; et al.
(Docket No. 88-1105)

Argument Date: Nov. 29, 1989

ISSUE

This case raises the question of whether the anti-alienation provision of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1057(d)) prevents the imposition of a constructive trust on the pension benefits of a union official convicted of embezzling from his union. The Supreme Court is also called upon to determine whether 75 percent of this official's pension is protected by the Consumer Credit Protection Act (15 U.S.C. § 1671 *et seq.*).

FACTS

Curtis Guidry was formerly employed as chief executive officer, business manager, and financial secretary-treasurer of Local No. 9 of the Sheet Metal Workers International Association ("Union"). He was also a trustee of the Union's local pension and welfare plans. In 1982 Guidry was convicted of embezzling over $377,000 from the Union.

Among other things, Guidry had deposited into his personal account checks payable to the Union from the pension and welfare plans. While he was a Union official, the Union made contributions on Guidry's behalf to the pension funds that are parties to this action. There was no allegation that Guidry had stolen from the pension or welfare plans.

While still in a federal correctional institution, Guidry applied for early retirement benefits from the three pension funds in which he had participated while a Union official. When two of the plans refused to pay, he sued them to enforce his right, under the Employee Retirement Income Security Act (ERISA), to accrued and future pension benefits. The plans contended that, by his misconduct, Guidry had forfeited his eligibility to the benefits.

The Union also intervened in the action and asserted six claims against Guidry. The first five claims alleged breaches of Guidry's fiduciary duties to the Union. The sixth claim asked the court to impose a constructive trust on Guidry's pension benefits in favor of the Union, and to enjoin the plans from paying any further benefits to Guidry until the Union was made whole for its losses.

Guidry and the Union stipulated to the entry of a $275,000 judgment on the Union's first five claims, while agreeing to litigate the availability of the constructive trust remedy. The two plans that had denied Guidry benefits continued to argue that he had totally forfeited his right to those benefits, but asserted in the alternative that, if pension benefits were owed, the Union should receive them.

The U.S. District Court for the District of Colorado held that Guidry had not forfeited his pension benefits. 641 F.Supp. 360 (D. Colo. 1986). However, the court imposed a constructive trust on those benefits, making them payable to the Union until $275,000 plus interest had been paid.

The U.S. Court of Appeals for the Tenth Circuit affirmed the district court, concluding that it had properly used its "inherent equitable authority" to impose a constructive trust "to redress breaches of ERISA" and to recover "money embezzled by [Guidry] from the pension fund." 856 F.2d 1457 (10th Cir. 1988). According to the Tenth Circuit, the anti-alienation provision of ERISA is subject to an implied exception for fraud. The court explained that the exception is a "narrow" one, applicable only to a trustee-beneficiary of a pension fund who had directly or indirectly damaged the fund through his fraudulent actions.

BACKGROUND AND SIGNIFICANCE

Congress enacted ERISA to protect employee retirement benefits. Among the protections is the so-called anti-alienation provision. 29 U.S.C. § 105(d)(1). The anti-alienation provision of ERISA mandates that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." The only express exceptions to this provision allow assignment for a "qualified domestic relations order" and "a voluntary and revocable assignment not to exceed 10 percent of any benefit payment. . . ."

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The circuits have reached contrary conclusions on the question of whether to infer an exception to the anti-alienation provision in cases involving criminal misconduct or fraud. The courts held there was no exception in *Ellis National Bank v. Irving Trust Co.*, 786 F.2d 466 (2d Cir. 1986), and *United Metal Products v. National Bank of Detroit*, 811 F.2d 297 (6th Cir. 1987), *cert. denied*, 108 S.Ct. 1494 (1988).

The courts held there was an implied exception in *St. Paul Fire & Marine Ins. Co. v. Cox*, 752 F.2d 550 (11th Cir. 1985), and *Crawford v. La Boucherie Bernard, Ltd.*, 815 F.2d 117 (D.C. Cir.), *cert. denied*, 108 S.Ct. 328 (1987).

The Supreme Court is now asked to resolve this conflict among the circuits and to determine whether the courts can imply an exception to the anti-alienation provision of ERISA in cases of criminal misconduct or fraud, or whether such an exception is a matter for Congress.

Finally, according to the Consumer Credit Protection Act, only a maximum of 25 percent of an individual's weekly earnings may be withheld for the payment of any debt. "Earnings" include periodic payments pursuant to a pension or retirement program. The Secretary of Labor has issued a regulation interpreting the Consumer Credit Protection Act, declaring that the percentage exemption is self-executing and thus, regardless of state law, the exemption need not be timely and personally demanded by the debtor.

The Supreme Court may have to determine whether the Secretary of Labor's regulatory interpretation is correct and whether, in light of the nature of Guidry's unlawful acts, the retirement benefits he claims are protected by the Consumer Credit Protection Act.

ARGUMENTS

For Curtis Guidry *(Counsel of Record, Eldon E. Silverman, Silverman and Gelman, P.C., 1600 Stout, Suite 1000, Denver, CO 80202; telephone (303) 573-5266):*

1. The plain language of ERISA's anti-alienation clause leaves no room for a judicial exception to its mandate.
2. Even if a constructive trust were permissible under the anti-alienation provision of ERISA, the court misapprehended the clear facts and law of this case by denying Guidry a 75 percent exemption under the Consumer Credit Protection Act.

For Sheet Metal Workers National Pension Fund, Sheet Metal Workers Local Union and Councils Pension Plan; Sheet Metal Workers International Association, Local 9; Sheet Metal Workers Local No. 9 Pension Fund, et al. *(Counsel of Record, Joseph M. Goldhammer, Brauer, Buescher, Valentine, Goldhammer, Kelman, P.C., 1563 Gaylord, Denver, CO 80206; telephone (303) 333-7751):*

1. The Labor-Management Reporting and Disclosure Act ("LMRDA") authorizes the constructive trust imposed on Guidry's benefits as a federal equitable remedy for his breach of fiduciary duties and is not affected by the anti-alienation provision of ERISA.
2. Because, under ERISA, the anti-alienation provision does not bar recovery of money received in breach of fiduciary obligations by a fund trustee who is also a fund beneficiary, the provision should not be read to bar recovery from that same fund for breaches of fiduciary duty under the LMRDA that are intimately linked with ERISA breaches of trust.
3. The imposition of a constructive trust in this case is not an equitable process through which Guidry's earnings are required to be withheld for the payment of debt, and therefore it is not covered by the Consumer Credit Protection Act.
4. The contributions on behalf of Guidry to the pension plans represent double compensation to Guidry when viewed against the background of the money he stole, money which exceeded his just compensation.

AMICUS BRIEF

In Support of Curtis Guidry

The Solicitor General for the United States filed a brief arguing that no criminal misconduct exception to the anti-alienation provision should be inferred to allow employers to recoup losses by tapping an employee's pension account. The Solicitor General also argues that the Consumer Credit Protection Act protects 75 percent of Guidry's monthly pension benefits.