

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

In re:	)	Case No. 03-22228
	)	
RICHARD F. GOOD and	)	Chapter 7
MARY K. GOOD,	)	
	)	Judge Arthur I. Harris
Debtors.	)	

MEMORANDUM OF OPINION

This case is currently before the Court on the trustee's objection to Richard Good's claim of exemptions (Docket #11), plus additional briefing by counsel for the trustee and counsel for the debtors. On April 25, 2004, the parties filed Stipulations of Fact (Docket #29). As a result of the stipulations, the resolution of a single legal issue is dispositive – namely, whether the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001, et seq.) preempts the debtor's claimed exemption in his Simplified Employment Pension - Individual Retirement Account (SEP IRA). For the reasons that follow, the debtor's SEP IRA is exempt under the provisions of Ohio Rev. Code § 2329.66(A)(10)(b), and the trustee's objection to the debtor's claim of exemption (Docket #11) is overruled.

STIPULATIONS OF FACT

On April 25, 2004, the trustee and the debtors filed stipulations of fact (Docket #29), which provide in pertinent part as follows:

1. For over 15 years, the Debtor, Richard F. Good, has supported himself as a long haul owner operator of a truck, operating under the unincorporated name of R.G. Trucking Co.

2. On May 11, 1996, Richard Good established an Individual Retirement Account (IRA) by means of an IRA Investment Application prepared upon documents provided by American Express Financial Advisors, Inc., New Business Acceptance, P.O. Box 71, Minneapolis, Minnesota 55440-0074.

3. The IRA plan type is identified as a Simplified Employee Pension (SEP).

4. Through the remainder of 1996, and all of 1997, 1998, 1999, and 2000, Mr. Good regularly contributed the sum of \$300.00 per month into his SEP IRA account. In the year 2001, Mr. Good contributed a total of \$3,080.00. In the year 2002, Mr. Good contributed \$800.00 to the plan and withdrew the sum of \$3,260.00. In the year 2003, Mr. Good contributed a total of \$1,000.00 to the plan.

5. At no time did the contributions exceed the amounts permitted as a tax deduction on Mr. Good's federal income tax returns for each year in issue.

6. Richard and Mary Good filed a joint petition under Chapter 7 of the Bankruptcy Code on September 15, 2003.

7. On Schedule B of such petition and schedules, paragraph 11, Mr. Good disclosed an "Individual Retirement Account No. 0730 9902 0 001 (Group

number); 1690 2723 2 001 (client number) administered by American Express."

8. On Schedule C, Mr. Good claimed the SEP IRA as exempt pursuant to Ohio Revised Code Section 2329.66(A)(10)(c).

9. The parties agree that the funds held in the SEP IRA are reasonably necessary for the support of Mr. Good and his dependents.

10. The Debtors have amended their Schedule C to claim the SEP IRA as exempt in the alternative under Ohio Revised Code Section 2329.66(A)(10)(b).

11. The parties agree that if ERISA does not pre-empt the Debtor's claimed exemption in his SEP IRA, then the SEP IRA is exempt under the provisions of Ohio Revised Code Section 2329.66(A)(10)(b).

#### DISCUSSION

As a result of the parties' stipulations, the resolution of a single legal issue is dispositive – namely, whether ERISA preempts the debtor's claimed exemption in his SEP IRA. The trustee asserts that Ohio Revised Code § 2329.66(A)(10)(b) is preempted by ERISA. The trustee points specifically to the language of 29 U.S.C. § 1144(a), which provides in pertinent part:

**(a) Supersedure; effective date.**

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee

benefit plan described in section 1003(a) of this title . . . .

The debtor, while not disagreeing that the Ohio statute “relates to” an employee benefit plan, maintains that the Ohio statute is subject to the savings clause contained in 29 U.S.C. § 1144(d). That subsection provides in pertinent part:

**(d) Alteration, amendment, modification, invalidation, impairment, or supersedure of any law of the United States prohibited.**

Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States . . . .

Because the parties have stipulated that the Debtor’s claim of exemption is valid if the Ohio statute is not preempted by ERISA, the resolution of this dispute boils down to whether the Ohio statute is subject to the savings clause in 29 U.S.C. § 1144(d).

At least three circuit courts have concluded that the savings clause in ERISA removes any possibility of preemption when it comes to a debtor’s use of state law exemptions authorized under Section 522(b)(2) of the Bankruptcy Code. *In re Schlein*, 8 F.3d 745, 752 (11th Cir. 1993); *In re Vickers*, 954 F.2d 1426, 1429 (8th Cir. 1992); *In re Dyke*, 943 F.2d 1435, 1449 (5th Cir. 1991). A contrary decision from the Ninth Circuit has been withdrawn. *See Pitrat v. Garlikov*, 947 F.2d 419 (9th Cir. 1991), *withdrawn and superseded by*, 992 F.2d 224 (9th Cir. 1993)(based on previous decision’s conflict with the Supreme Court’s

decision in *Patterson v. Shumate*, 504 U.S. 753 (1992)).

As the Eleventh Circuit noted in *In re Schlein*, " 'It would be incongruous to hold pension benefits exempted under the federal bankruptcy law, but to strike down identical provisions enacted by the state under the express authorization of the bankruptcy code.' " 8 F.3d at 752, quoting *In re Vickers*, 954 F.2d at 1429. Accord *In re Abbate*, 289 B.R. 62, 68-70 (E.D. Va. 2003); *In re Buzza*, 287 B.R. 417, 422-23 (Bankr. S.D. Ohio 2002); *In re Fixel*, 286 B.R. 638, 644 (Bankr. N.D. Ohio 2002); *In re Schwartz*, 185 B.R. 479 (Bankr. D.N.J. 1995). Moreover, as Judge Clark explained in *In re Buzza*, the reach of ERISA's savings clause was also addressed by the United States Supreme Court in *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983):

In *Shaw*, the Supreme Court held that the savings clause also saves from preemption state laws which enforce federal legislation. . . .

As in *Shaw*, state exemption statutes play a significant role in enforcing and implementing a federal statutory scheme, the Bankruptcy Code. . . . By allowing states to "opt-out" of the list of federal exemptions in favor of those created under state law, Congress clearly contemplated the important role state exemption statutes would play in bankruptcy.

287 B.R. at 423 (citations omitted).

Although the trustee cites the Sixth Circuit's unpublished decision in *Lampkins v. Golden*, 28 Fed. Appx. 409 (6th Cir. 2002) (unpublished) as supporting preemption, this Court respectfully disagrees. First, as an unpublished

decision, the *Lampkins* decision is not binding precedent in this case. See Local Rule 28(g) of the Sixth Circuit. In addition, the holding in *Lampkins* can be distinguished because the state exemption law deemed preempted by ERISA in *Lampkins* did not occur in the context of a bankruptcy case, but in a garnishment action. But see *In re Digulio*, 303 B.R. 144 (Bankr. N.D. Ohio 2003)(following *Lampkins* in context of a bankruptcy case and sustaining, on the basis of preemption, trustee's objection to debtor's claim of exemption in SEP IRA). To the extent that the unpublished decision in *Lampkins* is of precedential value to the facts of this case, this Court respectfully declines to follow it, particularly in light of the published decisions from the three circuit courts that have reached a conclusion contrary to *Lampkins* in the bankruptcy context.

#### CONCLUSION

For the foregoing reasons, the debtor's SEP IRA is exempt under the provisions of Ohio Revised Code § 2329.66(A)(10)(b), and the trustee's objection to the debtor's claim of exemption (Docket #11) is overruled.

IT IS SO ORDERED.

/s/ Arthur I. Harris      05/18/2004  
Arthur I. Harris  
United States Bankruptcy Judge