No. 04-1336

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MID ATLANTIC MEDICAL SERVICES, INCORPORATED,
Plaintiff-Appellee,

v.

JOEL SEREBOFF; MARLENE SEREBOFF,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BRIEF OF THE SECRETARY OF LABOR AS AMICUS CURIAE IN SUPPORT OF MID ATLANTIC MEDICAL SERVICES, INCORPORATED'S REPLY

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INTEREST OF THE SECRETARY OF LABOR

The Secretary of Labor (the "Secretary") has primary authority to interpret and enforce the provisions of Title I of ERISA and therefore has a strong interest in ensuring that the fiduciary duties of loyalty and prudence in the administration of plan assets are strictly applied. 29 U.S.C. §§ 1132, 1135. See Donovan v. Cunningham, 716 F.2d 1455, 1462-63 (5th Cir. 1983). The Secretary's interests further include promoting the uniform application of the Act, protecting plan participants and beneficiaries, and ensuring the financial stability of plan assets. Secretary of Labor v. Fitzsimmons, 805 F.2d 682 (7th Cir. 1986) (en banc). The plans' ability to seek reimbursement of benefits from plan participants who have recovered funds from third parties is important to plans' continued financial stability, and so long as it is accomplished through specifically identifiable funds it constitutes "appropriate equitable relief" under section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3).

QUESTION PRESENTED

This case involves an ERISA subrogation claim brought by Mid Atlantic Medical Services, Inc. ("Mid Atlantic" or "Plan") against Plan participants Joel and Marlene Sereboff (collectively, the "Sereboffs" or "Participants") to be reimbursed for medical benefits paid by the Plan from

settlement funds recovered by the Sereboffs from a third-party tortfeasor. In accordance with a court ordered stipulation, the exact amount of the medical benefits the Plan seeks to recover were partitioned from the Participants' settlement funds held within their investment account, where the partitioned funds must remain until the exhaustion of all appeals related to this matter. The primary issue on appeal is whether the district court's order that Participants transfer the partitioned funds held within their investment account to the Plan as reimbursement for previously received Plan benefits in accordance with the plain language of the plan, was appropriate "equitable" relief under section 502(a)(3) of ERISA.

STATEMENT OF THE CASE

The district court based its holding upon the parties' stipulated facts, which the court attached to its published opinion. See Mid Atlantic Med. Servs., Inc. v. Sereboff, 303 F. Supp. 2d 691, 697-701 (D. Md. 2004) (Joint Appendix "J.A." document 30). In June of 2000, appellants Joel and Marlene Sereboff were injured in an automobile accident in California. Id. Both of the Sereboffs were participants of the Plan at the time of the accident and were paid a total of $74,869.37 in medical benefits for their accident related injuries; specifically Marlene Sereboff was paid $73,778.26 and Joel Sereboff was paid $1,091.11. Id. In January of 2003, the Sereboffs

settled their claims against their tortfeasors for $750,000. Id. The settlement funds were deposited into an investment account controlled by the Sereboffs. Id. In March of 2003, Mid Atlantic demanded reimbursement from the Sereboffs from their settlement proceeds for the amount paid to them as medical benefits, in accordance with the Plan's reimbursement and subrogation clause. Id. The Sereboffs refused to comply with the Plan's demand to transfer the amount of the previously paid medical benefits from their settlement funds to the Plan. Id.

Mid Atlantic initially sought a preliminary injunction against the Sereboffs to prevent the transfer of the settlement funds until the Plan's claim was adjudicated. The Plan withdrew its request for a preliminary injunction because the Sereboffs stipulated that "Joel Sereboff and Marlene Sereboff shall preserve $74,869.37 of the settlement funds recovered because of injuries sustained on or about June 22, 2000, which are currently held in investment accounts (and must keep the settlement funds in those investment accounts) until the Court rules on the merits of this case and all appeals, if any, are exhausted." See ORDER GRANTING STIPULATION TO PRESERVE FUNDS, WITHDRAW MOTION FOR A PRELIMINARY INJUNCTION, AND BRIEFING SCHEDULE (J.A. document 7).

The Plan also filed a complaint under section 502(a)(3) of ERISA for equitable reimbursement from the settlement funds for the benefits previously provided to the Participants. In addition, the Plan requested that the Court not prorate the reimbursement amount by the Participants' legal fees and court costs. On January 26, 2004, the District Court granted Mid Atlantic's motion for summary judgment and ordered the Sereboffs to transfer $74,869.37 plus interest (6%) from the partitioned funds held within their investment account to Mid Atlantic, minus Mid Atlantic's pro rata share of reasonable attorney fees and court costs. On April 6, 2004, the Sereboffs filed a timely appeal to the Fourth Circuit arguing that the relief granted by the District Court violated the Supreme Court's holding in Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204 (2002).

ARGUMENT

THE DISTRICT COURT'S ORDER DIRECTING PARTICIPANTS TO REIMBURSE THE PLAN FOR PREVIOUSLY PROVIDED MEDICAL BENEFITS FROM SPECIFICALLY IDENTIFIABLE FUNDS OBTAINED IN SETTLEMENT OF PARTICIPANTS' TORT ACTION IS APPROPRIATE EQUITABLE RELIEF UNDER ERISA AND CONSISTENT WITH THE SUPREME COURT'S RULING IN GREAT WEST AND THIS CIRCUIT COURT'S PRECEDENT

Section 502(a)(3) of ERISA authorizes a civil action "by a . . . fiduciary (A) to enjoin any act or practice which violates . . . the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such

violations or (ii) to enforce any provisions of the . . . terms of the plan." 29 U.S.C. § 1132(a)(3). In Great-West, the Supreme Court held that "appropriate equitable relief" under ERISA section 502(a)(3) refers to "'those categories of relief that were typically available in equity.'" 534 U.S. at 210 (citing Mertens v. Hewitt Assocs., 508 U.S. 248, 256 (1993)). "[F]or restitution to lie in equity," the Court explained, "the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant's possession." Id. at 214. The question in this case is whether Mid Atlantic's action seeking reimbursement of specifically identifiable settlement funds recovered by the Sereboffs constitutes such equitable restitution under Great-West, and is therefore "appropriate equitable relief" under section 502(a)(2).

The Secretary agrees with the District Court's utilization of the Fifth Circuit's three-prong test, holding that reimbursement is an appropriate equitable remedy under ERISA when the plan seeks "to recover funds (1) that are specifically identifiable, (2) that belong in good conscience to the plan, and (3) that are within the possession and control of the" beneficiary or participant. Bombardier Aerospace Employee Welfare Benefits Plan v. Ferrer, Poirot & WansBrough, et al., 354 F.3d 348, 356 (5th Cir. 2003), cert. denied, 124 S. Ct. 2412 (2004). The Fourth Circuit has expressly applied

such an approach in two unpublished decisions and agreed with this approach in the dicta of a third published post-Great-West decision.

In In re Carpenters, this Court upheld the bankruptcy and district courts' holdings that if the "plan administrator had been seeking an equitable lien on particular property in the hands of the plan beneficiaries, such a suit would sound in equity and would be authorized by § 502(a)(3)." 36 Fed. Appx. 80, 82 (4th Cir. 2002) (unpublished). The following year the Fourth Circuit held in Primax Recoveries, Inc. v. Young that "a constructive trust on identifiable funds that [the Plan administrator] claim[s] belong in good conscience to [the Plan], and those funds are in [the participant's] possession" was appropriate equitable relief under ERISA. 83 Fed. Appx. 523, 525 (4th Cir. 2003) (unpublished). The Court also discussed equitable restitution as relief under ERISA in dicta in Rego v. Westvaco Corp., stating that "a claim for equitable restitution must seek 'not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant's possession.' The plaintiff, in other words, must argue that 'money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant's possession.' It is only under such circumstances that plaintiffs can proceed in equity with a claim for restitution." 319 F.3d 140, 145 (4th

Cir. 2003). See also Local 109 Retirement Fund v. First Union Nat'l Bank, 57 Fed. Appx. 139 (4th Cir. 2003) (unpublished) (holding that courts must look to remedy sought and not the theory of recovery in evaluating appropriateness of equitable restitution under ERISA). Moreover, this approach is consistent with a pre-Great-West decision in the Fourth Circuit permitting a plan's subrogation claim for unjust enrichment to recover previously provided benefits from participants who subsequently received a tort award. See Provident Life & Accident Ins. Co. v. Waller, 906 F.2d 985, 986-87 (4th Cir. 1990).

The relevant treatises confirm the correctness of the Fourth Circuit's approach. Indeed, Dobbs points out that the remedies of constructive trust and equitable lien were created at equity precisely to remedy situations in which the defendant held the legal title to an identifiable res (including a bank account), but the plaintiff had a superior moral claim.[1] 1 Dan B. Dobbs, Law of Remedies, 590, 591, 595 (2d ed. 1993); accord Great-West, 534 U.S. at 213; Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc., 530 U.S. 238, 250-51 (2000) (noting that "[w]henever the legal title to

[1] A constructive trust is an equitable device whereby the "defendant is . . . made to transfer title to the plaintiff who is, in the eyes of equity, the true 'owner.'" Dobbs at 587. The equitable lien "uses similar ideas to give the plaintiff a security interest in the property or to give the plaintiff only part of the property rather than all of it." Id. at 588.

property is obtained through means or under circumstances 'which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest, equity impresses a constructive trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same, although he may never, perhaps, have any legal estate therein'") (citations omitted). Through these devices, equity stepped in with a remedy – legal title to particular property – that courts of law could not provide, thus compelling the defendant "to follow good conscience rather than good title." Dobbs at 587. Thus, actions for nonpayment of a debt for specific property, breach of a promise to repay a loan, and failure to pay on a promissory note for which property was transferred, all could suffice to warrant imposition of a constructive trust on the property transferred or improved with the plaintiff's property. Dobbs at 598 & n.52 (citing Middlebrooks v. Lonas, 246 Ga. 720, 272 S.E.2d 687 (1980); Leyden v. Citicorp Indus. Bank, 782 P.2d 6 (Colo. 1989)).

The district court's order to transfer the partitioned funds in the present case fits within this understanding of equitable relief because the undisputed facts evidence: (1) the funds belong in good conscience to the Plan; (2) the funds are identifiable; and (3) the funds are within the defendants' control. The $74,869.37 in dispute belongs in good conscience

to the Plan because the Sereboffs agreed to reimburse the Plan out of any third-party recoveries when they accepted benefits under the Plan. Mid Atlantic Med. Servs., Inc. v. Sereboff, 303 F. Supp. 2d at 695 (see paragraphs 8 through 11 of the Joint Stipulation of facts). Unlike the money in Great-West, the money in this case can "clearly be traced to particular funds or property in the defendant's possession" because the Court Ordered Stipulation (J.A. document 7) required the Sereboffs to partition and remove the funds that represented the benefits at issue from their settlement award and hold these funds within their investment account until resolution of Mid Atlantic's claim and exhaustion of all related appeals. Accordingly, under the Fourth Circuit's interpretation of Great-West, the district court properly transferred title of the $74,869.37 to Mid Atlantic as an equitable remedy under ERISA section 502(a)(3).

CONCLUSION

For the reasons discussed above, the court should deny the participants' appeal.

Respectfully submitted this 8th day of July 2004.

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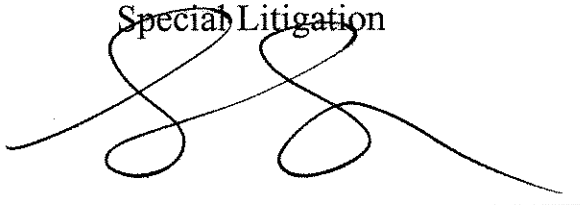

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CERTIFICATE OF COMPLIANCE

Case No. 04-1336

As required by Fed. R. App. P. 32(a)(7), I certify that the foregoing Brief of the Secretary of Labor as Amicus Curiae in Support of Mid Atlantic Medical Services, Incorporated's Reply is proportionally spaced, using Times New Roman 14-point font size and contains 2010 words.

Dated: July 8, 2004

SALVADOR SIMAO

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief of the Secretary of Labor as Amicus Curiae in Support of Mid Atlantic Medical Services, Incorporated's Reply were mailed to the following by U.S. Mail, postage prepaid, this 8th day of July 2004:

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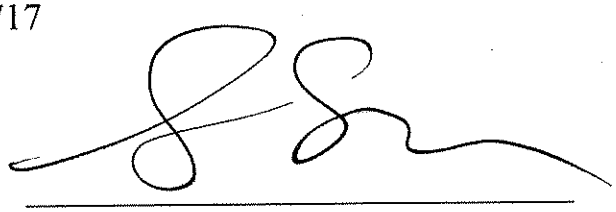

SALVADOR SIMAO

ADDENDUM

Briefs and Other Related Documents

This case was not selected for publication in the Federal Reporter.

UNPUBLISHED

Please use FIND to look at the applicable circuit court rule before citing this opinion. Fourth Circuit Rule 36(c). (FIND CTA4 Rule 36(c).)

United States Court of Appeals,
Fourth Circuit.

In re Tina L. CARPENTER, Debtor.
Wal-Mart Stores, Incorporated, Plaintiff-Appellee,
v.
Tina L. Carpenter, Defendant-Appellant.

No. 00-2348.

Argued May 8, 2001.
Decided June 3, 2002.

Chapter 7 debtor's employer, in its capacity as sponsor and administrator of employee benefit plan, sought determination as to its lien rights in proceeds from settlement of debtor's third-party tort claims. The Bankruptcy Court, Stephen C. St. John, J., 245 B.R. 39, found that it was appropriate, as matter of federal common law, to impose equitable lien on proceeds of debtor's recovery, and entered judgment in favor of employer. Debtor appealed. The District Court, Smith, J., 252 B.R. 905, affirmed. Debtor appealed. The Court of Appeals held that employer had an enforceable equitable lien on personal injury settlements proceeds that debtor received post-petition.

Affirmed.

West Headnotes

Labor and Employment ⚿602(1)
231Hk602(1)
(Formerly 296k138)

Employer, which was the sponsor and administrator of a health benefits plan that was governed by Employee Retirement Income Security Act (ERISA) and that had a reimbursement provision, had an enforceable equitable lien on personal injury settlement proceeds received post-petition by Chapter 7 debtor-employee, who had received medical benefits pursuant to the plan after she was involved in automobile accident. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

***81** Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca B. Smith, District Judge. (CA-00-143, BK-98-26470-SCS, AP-98-01290).

ARGUED: Carolyn Louise Camardo, Marcus, Santoro, Kozak & Melvin, P.C., Portsmouth, Virginia, for Appellant. Michael Stephen Cessna, Corporate Appellate, Wal-Mart In-House Litigation Team, Bentonville, Arkansas, for Appellee. ON BRIEF: Kyle L. Holifield, Corporate Appellate, Wal-Mart In-House Litigation Team, Bentonville, Arkansas, for Appellee.

Before MICHAEL and GREGORY, Circuit Judges, and ALARCON, Senior Circuit Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

Affirmed by unpublished PER CURIAM opinion. Judge MICHAEL wrote a dissenting opinion.

OPINION

PER CURIAM.

****1** The bankruptcy and district courts held that Wal-Mart Stores, Inc., the sponsor and administrator of a health benefits plan with a reimbursement provision, had an equitable lien on personal injury settlement proceeds received by a Wal-Mart employee, Tina L. Carpenter, after she filed for bankruptcy. We affirm.

The facts are not in dispute. On November 13, 1994, Carpenter was seriously injured in an automobile wreck caused by a third party. At the time of the accident, Carpenter worked for Wal-Mart and participated in the Wal-Mart Group Health Plan (the Plan). Wal-Mart sponsors and administers the Plan, which is a self-funded, self-insured health benefits plan. The Plan is governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq. (ERISA). Although a copy of the

Plan was not introduced into evidence, the parties stipulated as follows: "Pursuant to the terms of the plan, in the event of the payment of benefits to a participant due to an injury to such participant caused by acts of a third-party, the plan retains the right of subrogation to claims of the participant against such third-party, and the right to reimbursements for recoveries of the participant from such third-party." On July 6, 1995, after the accident, Carpenter signed a "Subrogation Rights Notification Acknowledgment," acknowledging that she was aware of the Plan's subrogation and reimbursement provision.

Carpenter's medical expenses stemming from the accident totaled nearly $300,000, and the Plan paid her $106,935.11 in benefits. Carpenter was overwhelmed by her medical bills, and she filed an involuntary Chapter 7 bankruptcy petition on September 1, 1998. On October 13, 1998, within a few weeks of her bankruptcy filing, Carpenter ***82** received $125,000 in settlement from the third party who had caused her injuries. Shortly thereafter, Carpenter amended her bankruptcy schedules to reflect the settlement and to claim the proceeds as exempt under 11 U.S.C. § 522(b)(2) and Va.Code Ann. § 34-28.1. (Va.Code Ann. § 34-28.1 exempts the proceeds of personal injury settlements.) On November 25, 1998, Wal-Mart filed an adversary proceeding against Carpenter, seeking (1) a declaratory judgment that it has an equitable lien on the settlement proceeds under the terms of the Plan and (2) an order requiring Carpenter to pay the settlement proceeds to Wal-Mart.

The bankruptcy court held a short bench trial on Wal-Mart's complaint. The court found as follows: "In contracting for the right to reimbursement, Carpenter evidenced an intent to charge particular property, namely the proceeds of any subsequent recovery she would receive, with a particular obligation, namely the obligation to repay amounts paid out by Wal-Mart under the Plan. Carpenter further evidenced her assent to that provision by subsequently signing the Acknowledgment." *In re Carpenter,* 245 B.R. 39, 47 (Bankr.E.D.Va.2000). Based on this, the bankruptcy court found that Wal-Mart has an equitable lien on the proceeds of Carpenter's recovery. The court, in other words, "recognized Wal-Mart's security interest in [Carpenter's] settlement proceeds and ... determined that nothing prevents Wal-Mart from foreclosing on that interest." *Id.* at 53. Finally, the bankruptcy court ordered Carpenter to pay over the settlement proceeds (less attorneys fees and costs) to Wal-Mart. *Id.* The district court affirmed, *see In re Carpenter,* 252 B.R. 905 (E.D.Va.2000), and Carpenter appeals to us.

****2** After oral argument we placed this appeal in abeyance pending the Supreme Court's decision in *Great-West Life & Annuity Ins. Co. v. Knudson,* 534 U.S. 204, 122 S.Ct. 708, 151 L.Ed.2d 635 (2002), a case that deals with the extent to which ERISA authorizes a plan administrator to enforce a plan's reimbursement provision. In *Knudson* the personal injury proceeds had been paid directly into a trust, and the money therefore was not in the hands of the ERISA plan beneficiaries. *Id.* at 715. The plan brought a contract action against the beneficiaries, seeking legal relief under the plan's reimbursement provision. The Supreme Court held that ERISA § 502(a)(3) did not authorize the action because the plan was seeking legal relief. *Id.* at 719. The Court indicated that if the plan administrator had been seeking an equitable lien on particular property in the hands of the plan beneficiaries, such a suit would sound in equity and would be authorized by § 502(a)(3). *Id.* at 714- 15. *Knudson* therefore does not affect the conclusion of the bankruptcy and district courts that Wal-Mart has an enforceable equitable lien on Carpenter's settlement proceeds. We agree with the conclusion of the bankruptcy and district courts, and we affirm on their reasoning. *See In re Carpenter,* 245 B.R. 39 (Bankr.E.D.Va.2000); *In re Carpenter,* 252 B.R. 905 (E.D.Va.2000).

AFFIRMED.

MICHAEL, Circuit Judge, dissenting:

I respectfully dissent because I do not believe that Wal-Mart presented sufficient evidence to allow an equitable lien to be imposed on Carpenter's personal injury settlement proceeds. The Plan was not placed in evidence, and the bankruptcy court acknowledged that "it cannot be ascertained from the record whether the terms of the Plan specifically call for the imposition of an equitable lien." *In re Carpenter,* 245 B.R. 39, 47 (Bankr.E.D.Va.***83** 2000). Nevertheless, the bankruptcy court found (and the district court agreed) that the existence of the reimbursement provision, and Carpenter's signed acknowledgment of that provision, evidence her intent to subject the settlement proceeds to a lien. This

evidence falls short of the strict proof of intent necessary to create a security interest giving rise to an equitable lien. *See, e.g., In re O.P.M. Leasing Services, Inc.,* 23 B.R. 104, 119 (Bankr.S.D.N.Y.1982).

Briefs and Other Related Documents (Back to top)

. 2001 WL 34385038 (Appellate Brief) Reply Brief of Appellant (Mar. 09, 2001)

. 2001 WL 34385037 (Appellate Brief) Brief of Appellee Wal-Mart Stores, Inc. (Feb. 20, 2001)

. 2001 WL 34385036 (Appellate Brief) Brief of Appellant (Jan. 17, 2001)

. 00-2348 (Docket) (Oct. 23, 2000)

END OF DOCUMENT

This case was not selected for publication in the Federal Reporter.

UNPUBLISHED

Please use FIND to look at the applicable circuit court rule before citing this opinion. Fourth Circuit Rule 36(c). (FIND CTA4 Rule 36(c).)

United States Court of Appeals,
Fourth Circuit.

PRIMAX RECOVERIES, INCORPORATED,
Plaintiff-Appellee,
v.
Edna YOUNG, Defendant-Appellant.

No. 02-2115.

Submitted July 29, 2003.
Decided Dec. 18, 2003.

Background: Health care plan administrator brought action under Employee Retirement Income Security Act (ERISA) to recover funds received by plan participant from tortfeasor and her uninsured motorist carrier. The United States District Court for the District of Maryland, Peter J. Messitte, J., entered summary judgment in favor of plan administrator, and participant appealed.

Holdings: The Court of Appeals held that:
(1) plan administrator was entitled to seek constructive trust on funds;
(2) plan administrator was entitled to recover payments from uninsured motorist insurer; and
(3) state insurance law did not affect plan administrator's ability to reach uninsured motorist proceeds.

Affirmed.

West Headnotes

[1] Labor and Employment ⚿706
231Hk706
(Formerly 296k87)

Health care plan administrator was entitled under ERISA to seek constructive trust on funds paid to plan participant in settlement of her claims against tortfeasor and her uninsured motorist insurer, where disputed funds were identifiable, plan administrator's claim was made in good conscience, and funds were in participant's possession. Employee Retirement Income Security Act of 1974, § 502(a)(3), as amended, 29 U.S.C.A. § 1132(a)(3).

[2] Labor and Employment ⚿602(1)
231Hk602(1)
(Formerly 296k138)

Health care plan administrator was entitled to recover, as reimbursement for medical expenses it had paid, payments received by plan participant from her uninsured motorist insurer, despite participant's claim that payments were not intended to compensate her for medical expenses, where general release entitling participant to uninsured motorist proceeds did not specify any particular purpose for funds,and specific language of plan allowed plan administrator to assert its rights as to unspecified settlements.

[3] Insurance ⚿3502
217k3502

[3] Labor and Employment ⚿602(1)
231Hk602(1)
(Formerly 296k138)

Maryland insurance law did not affect ERISA health care plan administrator's ability to reach plan participant's uninsured motorist proceeds pursuant to plan provision permitting reimbursement for medical expenses paid by plan. Employee Retirement Income Security Act of 1974, § 2 et seq., as amended, 29 U.S.C.A. § 1001 et seq.

***524** Appeal from the United States District Court for the District of Maryland, at Greenbelt. Peter J. Messitte, District Judge. (CA-02-554-PJM).

Norris C. Ramsey, Norris C. Ramsey, P.A., Baltimore, Maryland, for Appellant. Brooks R. Amiot, David W. Stamper, Piper Rudnick, L.L.P., Baltimore, Maryland, for Appellee.

Before MICHAEL, TRAXLER, and KING, Circuit Judges.

Affirmed by unpublished PER CURIAM opinion.

OPINION

PER CURIAM:

1 Primax Recoveries, Inc. ("Primax") filed suit against Edna Young, seeking equitable and declaratory relief under the Employee Retirement Income Security Act of 1974, 29 U.S.C.A. §§ 1001 -1461 (West 1999 & Supp.2003) ("ERISA"). After the parties filed cross-motions for summary judgment, the district court found Young sustained injuries in an automobile accident and her health care plan ("the Plan") [FN1] provided benefits. Young settled ***525 her claims with the tortfeasor for $25,000, and with her own uninsured motorist carrier for $275,000. The district court granted Primax's motion for summary judgment, entered judgment in the amount of $154,830.74 and allowed Primax a constructive trust in that amount over funds held in trust by Young's counsel.

> FN1. Young was a participant of the Fresenius Medical Care North America Medical Plan, a health care plan sponsored by National Medical Care, Inc. Primax was an assignee of the Plan.

On appeal, Young argues Primax could not proceed under ERISA. Alternatively, Young argues Primax was not entitled to a constructive trust over the disputed funds and Maryland insurance law precluded Primax's attempt to seek reimbursement from those funds. Finding no error, we affirm.

This Court reviews an award of summary judgment de novo. *Higgins v. E.I. DuPont de Nemours & Co.*, 863 F.2d 1162, 1167 (4th Cir.1988). Summary judgment is appropriate only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). This Court views the evidence in the light most favorable to the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Under ERISA § 502(a)(3) a civil action may be brought:

> by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan.

29 U.S.C. § 1132(a)(3).

Whether restitution is a legal or equitable remedy depends on the basis of the plaintiff's claims and the type of underlying remedies requested. *Great-West Life & Annuity Ins. Co. v. Knudson,* 534 U.S. 204, 213, 122 S.Ct. 708, 151 L.Ed.2d 635 (2002). A plaintiff could obtain restitution in equity, generally in the form of a constructive trust or equitable lien, when "money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant's possession." *Id.* (citation omitted). When, however, the property or proceeds were dissipated so that no product remained, the plaintiff was considered a general creditor, and could not enforce a constructive trust or equitable lien. *Id.* at 213-14. "Thus, for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant's possession." *Id.* at 214.

[1] Because the funds at issue are within Young's possession, this case is distinguishable from *Great-West. See Bauhaus USA, Inc. v. Copeland,* 292 F.3d 439, 445 (5th Cir.2002) (noting fact that defendants not in possession of disputed funds was "extremely important" in *Great-West*). Because Primax seeks a constructive trust on identifiable funds that they claim belong in good conscience to them, and those funds are in Young's possession, we find Primax properly proceeded under ERISA.

2 [2] Young next argues Primax was not entitled to the disputed funds under the terms of the Plan. Young first argues that under the language of the Plan, Primax could only recover benefits received from the Plan that were related to her medical expenses. Although Young claims the funds sought by Primax were not intended to compensate her for medical expenses, Young's general release entitling her to the uninsured motorist proceeds did not specify any particular purpose for the funds. Because the specific language of the Plan allows Primax to assert its rights as to unspecified settlements, and the ***526 uninsured motorist proceeds were not specified for any purpose, we do not find Young's after-the-fact characterization of the purpose of those funds creates a genuine factual dispute that precludes summary judgment.

Young also argues the uninsured motorist proceeds do not constitute a settlement from a third-party within the terms of the Plan. Assuming without

deciding the Plan limited its recovery rights to third-party settlements, we find the uninsured motorist proceeds were such a settlement. *See, e.g., Bill Gray Enters. Inc. Employee Health & Welfare Plan v. Gourley,* 248 F.3d 206, 220 (3d Cir.2001).

Lastly, Young contends Maryland insurance law precludes Primax from seeking reimbursement from her uninsured motorist proceeds. [FN2] Young notes Maryland provides a statutory scheme mandating automobile insurance. *See Van Horn v. Atl. Mut. Ins. Co.,* 334 Md. 669, 641 A.2d 195, 200-03 (Md.1994). Because the statutory provisions provide for certain set-offs or reductions from motor vehicle insurance coverage, Maryland courts have invalidated insurance provisions that allow for other reductions to their motor vehicle insurance policies. *See, e.g., Lewis v. Allstate Ins. Co.,* 368 Md. 44, 792 A.2d 272, 275 (Md.2002).

FN2. Primax concedes ERISA does not preempt this provision.

[3] Young argues these statutory provisions preclude Primax from reaching her uninsured motorist proceeds. However, Young relies primarily upon cases that concern when a motor vehicle insurance carrier may impose reductions or exclusions as to its coverage under Maryland's statutory scheme. [FN3] We find these cases to be inapposite. We therefore conclude that Maryland insurance law does not affect Primax's ability to reach Young's uninsured motorist proceeds.

FN3. Similarly, to the extent Young cites *Erie Ins. Co. v. Curtis,* 330 Md. 160, 623 A.2d 184 (Md.1993), we find it inapposite to these facts.

Accordingly, we find the district court properly granted summary judgment in favor of Primax and affirm its order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED.

83 Fed.Appx. 523, 2003 WL 22973630 (4th Cir.(Md.)), 31 Employee Benefits Cas. 2515

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This case was not selected for publication in the Federal Reporter.

UNPUBLISHED

Please use FIND to look at the applicable circuit court rule before citing this opinion. Fourth Circuit Rule 36(c). (FIND CTA4 Rule 36(c).)

United States Court of Appeals,
Fourth Circuit.

LOCAL 109 RETIREMENT FUND; George Papageorge, Trustee, Plaintiffs-Appellants,
v.
FIRST UNION NATIONAL BANK, Defendant-Appellee.

No. 02-1216.

Argued Dec. 3, 2002.
Decided Jan. 23, 2003.

After administrators of retirement and welfare funds were removed for embezzling money from the funds, a new trustee was appointed to marshall the assets of the original funds, and he brought beach of contract action against bank to recover monies owed under certificate of deposit that he had discovered in an abandoned safe deposit box. The United States District Court for the Eastern District of Virginia, Claude M. Hilton, Chief Judge, dismissed and trustee appealed. The Court of Appeals held that trustee's breach of contract action was not authorized by Employee Retirement Income Security Act of 1974 (ERISA) because relief sought was legal, not equitable.

Affirmed.

West Headnotes

Labor and Employment ⚿643
231Hk643
(Formerly 296k83.1)

Retirement fund trustee's breach of contract action, in which he sought to recover monies owed under certificate of deposit from bank, was not authorized by Employee Retirement Income Security Act of 1974 (ERISA), where relief sought was legal, not equitable; bank's agreement in a certificate of deposit to repay a specified amount of money, plus interest, was legal agreement, and trustee's effort to categorize his lawsuit as one seeking equitable remedies did not work. Employee Retirement Income Security Act of 1974, § 502(a)(3), 29 U.S.C.A. § 1132(a)(3).

***139** Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Chief District Judge. (CA-01-1155).

ARGUED: Joseph Semo, Feder, Semo, Clark & Bard, P.C., Washington, D.C., for Appellants. Rebecca Everett Kuehn, Leclair Ryan, Alexandria, Virginia, for Appellee. ON BRIEF: Terence G. Craig, Michael I. Baird, Feder, Semo, Clark & Bard, P.C., Washington, D.C., for Appellants. Grady C. Frank, Jr., Jerry L. Hall, Leclair Ryan, Alexandria, Virginia, for Appellee.

Before MICHAEL and GREGORY, Circuit Judges, and James H. MICHAEL, Jr., Senior United States District Judge for the Western District of Virginia, sitting by designation.

Affirmed by unpublished PER CURIAM opinion.

***140** OPINION

PER CURIAM.

****1** A retirement fund and its trustee sue a bank under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq., and state law to recover on a certificate of deposit. We agree with the district court that this action is not authorized by ERISA because the relief sought is legal, not equitable. We therefore affirm the dismissal.

I.

Local 109 Retirement Fund (the Retirement Fund) and Local 109 Welfare Fund (the Welfare Fund) are plans covered by ERISA. In the 1970s the Welfare Fund purchased a certificate of deposit from a bank that is now owned by First Union National Bank (First Union). Under its terms the certificate would be rolled over until surrendered.

In the late 1980s administrators of both funds embezzled money from the funds and destroyed

documents that would have left a paper trail of their wrongdoing. These administrators were ultimately removed, the two plans were merged, and the Retirement Fund became the surviving plan. George Papageorge was appointed as the new trustee for the Retirement Fund, and one of his tasks was to marshall the assets of the original funds. He discovered in an abandoned safe deposit box the original certificate of deposit that had been purchased by the Welfare Fund. He attempted to redeem the certificate, but First Union denies that it owes any money on the certificate. First Union relies in part on New Jersey law, which creates a rebuttable presumption that after fifteen years a bank has paid off an account. *See* N.J. Stat. Ann. §§ 17:16W-2 & 17:16W-4. The Retirement Fund and Papageorge (together, "Papageorge") brought this action against First Union in the U.S. District Court for the Eastern District of Virginia. Papageorge asserts a claim under ERISA, seeking to recover monies owed under the certificate of deposit and requesting an accounting, restitution, and disgorgement. He also seeks damages under New Jersey state law. The district court dismissed the action, holding that it lacked jurisdiction under ERISA and declining to exercise supplemental jurisdiction over the state law claim. Papageorge appeals.

II.

Papageorge must seek equitable relief for the district court to have jurisdiction. ERISA authorizes a federal action "by a [plan] participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates [ERISA] or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of [ERISA] or the terms of the plan." 29 U.S.C. § 1132(a)(3). The use of the limiting phrase "other appropriate equitable relief" allows an action in district court only when the relief sought falls within the "categories of relief that were *typically* available in equity." *Great-West Life & Annuity Ins. Co. v. Knudson,* 534 U.S. 204, 210, 122 S.Ct. 708, 151 L.Ed.2d 635 (2002) (internal quotation marks omitted). A plaintiff's decision to label his claim as one seeking traditional forms of equitable relief is not dispositive. *See id.* at 210-18 (concluding that the plaintiffs were seeking legal relief, despite their characterization of their suit as one for an injunction and restitution). Our inquiry must focus on " 'the basis for [the plaintiff's] claim' and the nature of the underlying remedies sought." *Id.* at 213 (alteration in original) (quoting *Reich v. Continental Casualty Co.,* 33 F.3d 754, 756 (7th Cir.1994)). *See also Bauhaus USA, Inc. v. Copeland,* 292 F.3d 439, 450 (5th Cir.2002) (Weiner, J., dissenting).

***141 **2** Here, the basis for Papageorge's claim is a simple breach of contract--a legal claim. Banks have legal title to the funds deposited with them and are free to loan, reinvest, and commingle those funds. *See Santee Timber Corp. v. Elliott,* 70 F.2d 179, 181 (4th Cir.1934). As a general rule, banks are considered to be in debtor-creditor relationships with their depositors. *See Beane v. First Nat'l Bank & Trust Co.,* 92 F.2d 382, 384 (4th Cir.1937). A bank's agreement in a certificate of deposit or other instrument to repay a specified amount of money (plus interest) is quintessentially a legal agreement.

Papageorge's effort to categorize his lawsuit as one seeking equitable remedies does not work. Thus, his argument that the money deposited belonged to a trust does not, without more, convert the deposit itself into a trust or place the special responsibilities of a trustee on the bank. *See Santee,* 70 F.2d at 181-83. Moreover, Papageorge does not point to any wrongdoing by the bank that would permit a court to impose a constructive trust. *Cf.* Restatement of Restitution, § 160 (discussing constructive trusts). Because no trust or trust relationship flows from the certificate of deposit, the traditional equitable remedies to protect a trust, such as accounting, restitution, and disgorgement, are not available here. Finally, Papageorge's apparent inability to overcome the state law presumption (assuming the presumption applies) that certificates of deposit of a certain age have been paid does not convert his legal claim into an equitable one. The fact that a legal claim might face impediments to its proof does not mean there is an inadequate remedy at law.

Finally, because the district court properly dismissed Papageorge's federal claim, the court did not abuse its discretion in dismissing his related state law claim without prejudice. *See Jordahl v. Democratic Party of Va.,* 122 F.3d 192, 203 (4th Cir.1997).

The judgment of the district court is

AFFIRMED.

57 Fed.Appx. 139, 2003 WL 152851 (4th Cir.(Va.)), 29 Employee Benefits Cas. 2284, Pens. Plan Guide (CCH) P 23982Y

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