

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:)
)
Louis Wanner Bechtel, Jr. and)
Cathy Jean Bechtel,) Case No. B-09-11286
)
Debtors.)
)
_____)
)
Louis Wanner Bechtel, Jr. and)
Cathy Jean Bechtel,)
)
Plaintiffs,)
)
v.) Adversary No. 10-2006
)
Kyle G. Moore, Yvonne Moore)
and David E. Shives, in his)
capacity as Trustee on the)
Deed of Trust Recorded in)
Book 6937, Page 1185,)
Guilford County Registry,)
)
Defendants.)
)

OPINION AND ORDER

This case came before the Court on March 1, 2011, for hearing on the Motion for Partial Summary Judgment (the "Motion") filed by Louis and Cathy Bechtel, the above-referenced Plaintiffs, on January 14, 2011. John H. Boddie appeared on behalf of the Plaintiffs. Kyle G. Moore appeared pro se.

JURISDICTION

The court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 151, 157, and 1334, and the General Order of Reference entered by the United States District

Court for the Middle District of North Carolina on August 15, 1984. The matter before the court is a core matter within the meaning of 28 U.S.C. § 157(b) which this court may hear and determine.

UNDISPUTED FACTS

On February 15, 2010, the Plaintiffs commenced this adversary proceeding seeking an order requiring the Defendants to cancel a deed of trust on their real property, to cancel any lien on any retirement funds, and to confirm the cancellation of any assignment of life insurance. The Motion sought partial summary judgment voiding or declaring invalid the lien on the male Debtor's Local Government Retirement Account.

It is undisputed that the Plaintiffs as buyers and the Moores as sellers entered into an agreement for the purchase of a franchised business known as "Express Personnel Services." The Plaintiffs voluntarily assigned the Moores an interest in the male Debtor's Local Government Retirement Account, as security for the seller-financed portion of the purchase price.

On July 14, 2009, the Debtors filed their chapter 7 bankruptcy petition. The male Debtor listed his Local Government Retirement Account as exempt pursuant to N.C. Gen. Stat. § 1C-1601(a)(9), which provides that a debtor may exempt individual retirement plans as defined in the Internal Revenue Code. The retirement account was abandoned by the estate pursuant to an order entered on January 5, 2010.

ANALYSIS

Summary judgment is appropriate when the matters presented to the court "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056; Celotex v. Catrett, 477 U.S. 317, 322 (1986). The party moving for summary judgment has the initial burden of proving that there is no genuine issue as to any material fact. Adickes v. S. H. Kress & Co., 398 U.S. 144, 161 (1970).

The North Carolina Local Governmental Employees' Retirement System was established "for the purpose of providing retirement allowances and other benefits under the provisions of this Article for employees of those counties, cities and towns or other eligible employers participating in the said Retirement System." N.C. Gen. Stat. § 128-22. It is undisputed that the male Debtor's retirement account was created and maintained pursuant to this statutory scheme.

The rights under a Local Government Retirement Account are generally exempt from execution. N.C. Gen. Stat. § 128-31 provides that "the right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Article, and the moneys in the various funds created by

this Article, are exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Article specifically otherwise provided." There are certain exceptions that apply in the child support and equitable distribution contexts - neither of which are applicable here. A statutory prohibition against assignment voids any assignment, even if it is voluntary. See e.g., Morlan v. Universal Guar. Life Ins. Co., 298 F.3d 609 (7th Cir. 2002) (holding that ERISA's requirement that pension plans include an anti-assignment provision prohibits both voluntary and involuntary assignments of benefits); In re Reynolds, 31 B.R. 296, 298-99 (Bankr. E.D.N.C. 1983) (holding that an assignment of retirement benefits as security for a promissory note was invalid, since under N.C. Gen. Stat. § 135-9, which contains essentially identical language to § 128-31, "a person's rights to state employee retirement benefits in North Carolina are not assignable.").

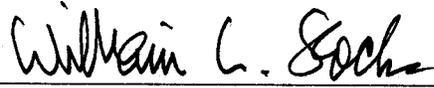
Since the Local Government Retirement Account is unassignable under North Carolina law, any lien on the retirement account is invalid. There is no genuine issue as to any material fact, since it is undisputed that the male Debtor's account is within the Local Governmental Employees' Retirement System. Therefore, the Plaintiffs are entitled to judgment as a matter of law. Accordingly, the Motion shall be granted.

Now, therefore, it is ORDERED, ADJUDGED AND DECREED as follows:

(1) Plaintiffs' motion for partial summary judgment is granted; and

(2) The assignment to the Defendants of an interest in the Local Government Retirement Account of Louis Wanner Bechtel, Jr. is hereby adjudged to be invalid and void and any lien granted pursuant to the assignment likewise is adjudged to be invalid and void.

This 15th day of March, 2011.



WILLIAM L. STOCKS

United States Bankruptcy Judge