[* 1]

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: TOLUB Justice

PART 15

INDEX NO. 106258/09

MOTION DATE

MOTION SEQ. NO. 1

MOTION CAL. NO.

THE CHUBB Company

- v -

TEACHERS INSURANCE & ANNUITY ASSOC.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED
AUG 27 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 8/26/09

WALTER B. TOLUB J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

----------x

THE CADLE COMPANY

Petitioner,

-against-

TEACHERS INSURANCE AND ANNUITY ASSOCIATION-COLLEGE RETIREMENT EQUITIES FUND,

Respondent.

----------x

Index No. 106758/09
Mtn Seq. 001

WALTER B. TOLUB, J.:

Petitioner seeks an order directing Respondent to turn over funds held on behalf of non-party Judgment Debtor Robert Millman in satisfaction of a Judgement of this Court dated May 12, 1992 for the sum of $240,244.52 plus interest.

Background

Mr. Millman is a doctor employed by Weill Cornell Medical College (Cornell) and earns between $350,000 and $400,000 annually.

On November 26, 1991, an action was commenced by Petitioner's predecessor in interest, entitled First New York Bank for Business v. Millman et al, Index 32365/1991. On May 12, 1992, Judgment was entered against Mr. Millman in the sum of $240,244.52 (the Judgement).

In September of 2000, the Judgment was assigned to Petitioner, The Cadle Company.

Currently, $161,851.96 together with costs and interest thereon from July 8, 1994, remains unpaid. By Order dated March

2, 2004, the Court granted Cadle's motion for installment payments and directed Mr. Millman to pay $1,200 a month towards the satisfaction of the Judgment. Four installment payments were made in 1994 and no payments were made thereafter.

Facts

Teachers Insurance and Annuity Association-College Retirement Equities Fund ("TIAA-CREF") is a not-for-profit organization issuing retirement annuity contracts to fund the retirement plans of institutions of higher education. Here, TIAA-CREF issued contracts to fund the Cornell Employee Retirement Income Security Program [ERISA](Plan) for the benefit of Robert Millman (Participant).

ERISA, codified in 29 USC §1001, was enacted to control benefit plans, the Federal taxing power, protect interstate commerce and beneficiaries by requiring disclosure, reporting and setting standards of conduct for fiduciaries (29 USC §1001).

ERISA has a preemption provision which provides, in relevant part that ERISA ". . . shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . ." (29 USC §1144[a]). Additionally, 29 USC §1056[d][1] prohibits the assignment or alienation of Plan benefits (29 USC §1056[d][1]).

Each year, Cornell would contribute, on behalf of Mr. Millman, money into the Plan.

Petitioner now seeks an order directing Respondent to turn over funds held on behalf of Mr. Millman in satisfaction of the still outstanding Judgment Petitioner holds against him. Petitioner argues that Mr. Millman, through Cornell, fraudulently deposited large sums of money into the ERISA Plan so that his creditors would not be paid. Petitioner further argues that under these circumstances, New York law permits a judgment creditor to recover property due from the judgment debtor from a third party (CPLR §§ 5225 and 5227).

Respondent argues that money placed into the Plan cannot be recovered in a turnover proceeding because of the preemption and anti-alienation provisions in ERISA.

Discussion

The question presented to this Court is whether a judgment creditor may proceed in State court for a turnover of funds allegedly transferred into a pension plan organized under ERISA, whose provisions prohibit the assignment or alienation of benefits.

Petitioner relies on Planned Consumer Marketing, Inc. v. Coats and Clark, Inc., 71 NY2d 442 [1988]. Petitioner argues that Planned Consumer Marketing, Inc., stands for the proposition that ERISA does not preempt the effect of State laws, the purpose of which is to inhibit the transfer of money to defraud creditors.

However, since Planned Consumer Marketing, Inc, was decided, the interplay between state garnishment provisions and ERISA's anti-alienation provision have be clarified. Specifically, in Guirdy v. Sheet Metal Workers National Pension Fund, 493 US 365 [1990], the Court unequivocally refused to approve any generalized equitable exception to ERISA's prohibition on the assignment or alienation of pension benefits, even though a union official embezzled funds from a union (Guirdy, 493 US 365 [1990]; Majteles v. AVL Corp., 696 NYS2d 748 [NY Sup. Kings County 1999]). As explained in Guirdy;

> [C]ourts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text. The creation of such exemptions, in our view, would be especially problematic in the context of an antigarnishment provision. Such a provision acts, by definition, to hinder the collection of a lawful debt. A restriction on garnishment therefore can be defended only on the view that the effectuation of certain broad social policies sometimes takes precedence over the desire to do equity between particular parties. It makes little sense to adopt such a policy and then to refuse to enforcement whenever enforcement appears inequitable.

(Guirdy, at 376-77 [1990]).

"'Statutory anti-alienation provisions are potent mechanisms to prevent the dissipation of funds. ERISA's pension plan anti-alienation provision is mandatory and contains only two exceptions [*citations omitted*] which are not subject to judicial

expansion.'"[1] (Majteles, *citing* Boggs v. Boggs, 520 US 833, 851 [1997]). The approach enunciated by the United States Supreme Court provides for the uniform enforcement of a "' considered congressional policy choice, a decision to safeguard a stream of income for pensioners (and their dependants, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them.'" (Majteles, *citing* Guidry, at 376 [1990]).

It follows that any proceeds paid into the Plan for Mr. Millman, even if fraudulently made, are protected by the ERISA anti-alienation provision codified in 29 USC 1056[d][1].

The Court has considered Petitioner's remaining arguments for injunctive relief and finds them to be without merit.

Accordingly, it is

ORDERED that the Petition is dismissed.

This memorandum opinion constitutes the decision and order of the Court.

Dated:

8/26/09

HON. WALTER B. TOLUB,

[1]ERISA has a provision which prohibits the assignment of alienation of Plan benefits (29 USC §1056[d][1]). There are only two exceptions tc this provision, (1)domestic relations orders and (2)defrauding the Plan (29 USC §§1056[d][2] and [d][3][A]) and neither are at issue in this case.