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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

NOREEN CARDINALE, Plaintiff and Respondent, v. KEITH CHARLES KNAPP et al., Defendant and Appellant.	A141412 (Solano County Super. Ct. No. FCR302185)

This appeal is the latest in a series of attempts by Keith Knapp to evade plaintiff and appellant Noreen Cardinale's efforts to collect on her 2011 fraud judgment against Knapp and his company, Home Loan Service Corporation (CHL). (See *Cardinale v. Miller* (2014) 222 Cal.App.4th 1020.) This time around, Knapp challenges a superior court order rejecting his claim that his California Home Loans Profit Sharing Plan (the Plan) is an ERISA qualified retirement plan that is exempt from execution and attachment. We affirm.

BACKGROUND

We adopt the superior court's accurate and succinct summary of the pertinent facts and expression of the rationale for its decision. "Briefly stated, the events leading to this hearing are that Plaintiff Noreen Cardinale (judgment creditor) obtained a jury verdict against [Knapp] and [CHL] in May 2011. In her efforts to collect the subsequent judgment on verdict, she levied against funds on deposit in First Republic Bank. Defendant/judgment debtor, as first party beneficiary and trustee of the California Home

Loans Profit Sharing Plan, claimed exemption and has objected by way of many legal motions in this Court and the U.S. District Court, Northern District of California, and taken the position that those funds are/were exempt from levy execution by Plaintiff/judgment creditor because they belong to the California Home Loans Profit Sharing Plan, an ERISA[[1]] plan which existed prior to the judgment. Therefore, the issues addressed by this court are whether the First Republic Bank funds at issue are exempt because they belong to a legitimate ERISA 'employee benefit plan,' and whether or not the funds were fraudulently transferred."

The court found that Knapp failed to prove his exemption claim. To the contrary, "[t]he weight of the evidence is that he did nothing to establish by his actions or any documentation that an ERISA employee benefit plan had been set up, until after judgment was entered in favor of Plaintiff/judgment creditor and documents were retroactively created. In fact, his actions and those documents which were filed previously and those prepared and filed retroactively establish the contrary. Until then, all documents had been filed by Mr. Knapp under oath as a single participant non-ERISA plan. Defendant's contentions are almost exclusively dependent on [the] credibility of his testimony, and unfortunately for him, his testimony was largely incredible." The court ruled the Plan "was not a valid employee benefit plan, but instead was a non-ERISA Sole Participant Plan at all relevant times."

This appeal is timely.

DISCUSSION

Knapp has not challenged the superior court's substantive conclusion that the Plan is not an ERISA qualified employee benefit plan. As far as we discern from his appellate brief, he contends the court lacked jurisdiction to determine the plan's status and that Cardinale lacks standing to levy on the Plan's funds. He is wrong on both counts.

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[1]Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.).

A substantial body of federal and state authority—including a District Court ruling rejecting Knapp's federal iteration of this same contention (*Knapp v. Cardinale* (2013) 963 F.Supp.2d 928, 932–933)—recognizes that state courts have jurisdiction to decide the ERISA status of an employee benefits plan.[2] (*Delta Dental Plan of California, Inc. v. Mendoza* (9th Cir. 1998) 139 F.3d 1289, 1296–1297 ["state courts amply are able to determine whether a state statute or order is preempted by ERISA"]; *Int'l Ass'n of Entrepreneurs of America v. Angoff* (8th Cir. 1995) 58 F.3d 1266, 1269 (*Angoff*); *Weiner v. Blue Cross & Blue Shield of Maryland, Inc.* (4th Cir. 1991) 925 F.2d 81, 82–83; *Browning Corp. Int'l v. Lee* (N.D. Tex. 1986) 624 F.Supp. 555, 557; see *Marshall v. Bankers Life & Casualty Co.* (1992) 2 Cal.4th 1045 [determining whether an employer's group health insurance policy was an ERISA employee benefit plan so that a state court action for the denial of policy benefits was preempted by federal law].)

Knapp's attempt to distinguish these federal cases on the ground that "the ERISA or an entity claiming to be the ERISA was a party" to each of the state actions is unavailing. The scope of ERISA preemption depends on principles of federal preemption law, not on whether the benefits plan was named as a party to the state action. Those principles are straightforward. "ERISA nowhere makes federal courts the exclusive forum for deciding the ERISA status *vel non* of a plan or fiduciary. Unless instructed otherwise by Congress, state and federal courts have equal power to decide federal questions. [Citations.] Because ERISA is silent on the matter of the power to declare ERISA status, we conclude that the question of . . . ERISA status falls under the usual concurrent state and federal jurisdiction." (*Angoff, supra*, 58 F.3d at p. 1269.) Knapp would have us believe that the CHL Plan's ERISA status is a question exclusively for the federal courts, but wishing does not make it so.

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[2]We grant Cardinale's November 11, 2014 request to take judicial notice of certain filings in two related federal court filings. (Evid. Code, §§ 459, 452, subd. (d).) Her December 26, 2014 supplemental request for judicial notice is denied as unnecessary for resolution of this appeal.

Knapp's purported standing argument is also meritless. Its gist, as far as we can discern, is that Cardinale's effort to levy on funds held in the Plan is an attempt to "invade the ERISA as the effective assignee of the beneficiary, Knapp," and, as such, is preempted by ERISA . He adds also that the Plan had nothing to do with the fraudulent activities that make him the target of Cardinale's collection efforts. Neither point has any bearing on Cardinale's standing to enforce her judgment. "To have standing, a party must be beneficially interested in the controversy; that is, he or she must have 'some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.'" (*Holmes v. California Nat. Guard* (2001) 90 Cal. App. 4th 297, 315; see generally Witkin, Cal. Procedure (4th ed. 1996) Actions, §21, pp. 84–85.) Cardinale sued Knapp for fraud and won a sizeable judgment. She plainly has standing to enforce that judgment.

DISPOSITION

The order is affirmed.

Siggins, J.

We concur:

Pollak, Acting P.J.

Jenkins, J.