

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO**

In re: _____
LYNN BIERLY EDMONDS, _____ Case No. 14-60920-rk
Chapter 13 Proceedings
Filed April 23, 2014
Debtor. _____
PENSION BENEFIT GUARANTY _____
CORPORATION, _____
As Statutory Trustee of the Mansfield _____
Brass & Aluminum Corporation Restated _____
Pension Plan, _____
1200 K Street, NW _____
Washington, DC 20005, _____
Plaintiff, _____ Adversary No.: 14-_____
v. _____
LYNN BIERLY EDMONDS, _____
575 Woodhill Road _____
Mansfield, OH 44907, _____
Defendant. _____

COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

The Pension Benefit Guaranty Corporation (“PBGC”), as statutory trustee of the Mansfield Brass & Aluminum Corporation Restated Pension Plan (the “Pension Plan”), brings this adversary proceeding, pursuant to 11 U.S.C. §§ 523 and 553 and Bankruptcy Rule 4007, to determine the dischargeability of a debt to the Pension Plan.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this adversary proceeding under 28 U.S.C. § 157(a), 157(b), and 1334(b).

2. Venue is proper in this Court under 28 U.S.C. § 1409(a) because this proceeding is related to the above referenced bankruptcy case, currently pending in the United States Bankruptcy Court for the Northern District of Ohio.

3. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) because it concerns a determination of the dischargeability of a particular debt.

COMMON ALLEGATIONS

The Parties

4. PBGC is a wholly owned United States government corporation and federal agency that administers the nation's pension insurance program established by Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1301-1461 (2012). When a pension plan covered by Title IV terminates without sufficient assets to pay all of its promised benefits, PBGC typically becomes trustee of the plan and pays plan participants their pension benefits up to the limits established by Title IV. 29 U.S.C. §§ 1321, 1322, 1361.

5. On April 23, 2014, Lynn Bierly Edmonds ("Debtor") filed a petition for relief under chapter 13 of the Bankruptcy Code in the above referenced case, currently pending in the United States Bankruptcy Court for the Northern District of Ohio.

6. PBGC is a party in interest in this bankruptcy case and intends to file a protective claim before the bar date. *See Docket 8, Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadline.*

7. Upon information and belief, Debtor is a resident of this district and formerly served as president of Mansfield Brass & Aluminum Corporation, an Ohio corporation, ("Mansfield").

8. Mansfield has its principal place of business in Mansfield, Ohio.

9. Upon information and belief, Debtor is a shareholder of Mansfield.

10. Upon information and belief, Debtor served as Mansfield's President at all times relevant to this Complaint.

11. On or about March 21, 2014, Mansfield sold substantially all of its assets to The New Mansfield Brass and Aluminum Corporation (the "Sale").

12. Upon information and belief, Mansfield ceased all operations after the Sale.

The Pension Plan

13. Mansfield established the Pension Plan effective January 1, 1967, to provide pension benefits to certain of its employees.

14. The Pension Plan is a single-employer defined-benefit pension plan covered by Title IV of ERISA.

15. On or about March 19, 2013, Mansfield filed a PBGC Form 600 application for a "distress termination" of the Pension Plan pursuant to 29 U.S.C. § 1341(c). In the PBGC Form 600, Mansfield proposed a plan termination date of March 15, 2013.

16. Debtor signed the PBGC Form 600 as the plan administrator of the Pension Plan.

17. On March 28, 2014, PBGC issued a notice of determination that the Pension Plan should be terminated pursuant to 29 U.S.C. § 1342.

18. On April 18, 2014, the Pension Plan was terminated by an agreement between PBGC and Mansfield (the "Trusteeship Agreement"). Debtor signed the Trusteeship Agreement on behalf of Mansfield as plan administrator.

19. The Trusteeship Agreement established the Pension Plan's termination date as March 15, 2013, and appointed PBGC as statutory trustee of the Pension Plan.

20. As statutory trustee, PBGC is authorized to sue on behalf of the Pension Plan to recover all amounts due and payable to the Pension Plan. 29 U.S.C. §§ 1342(d), 1362(c).

21. The Plan's claims and rights include causes of action under Title I of ERISA for violations of ERISA's fiduciary standard of care. *See e.g.*, 29 U.S.C. §§ 1002(21), 1103, 1104, 1106.

Debtor's Status as a Fiduciary of the Pension Plan

22. Upon information and belief, at all times relevant to this Complaint, Debtor was the sole trustee of the Pension Plan. As trustee, Debtor exercised authority and control with respect to the management of Pension Plan assets.

23. Upon information and belief, at all times relevant to this Complaint, Debtor acted as the "administrator" of the Pension Plan within the meaning of 29 U.S.C. § 1301(a)(1). As administrator, Debtor exercised discretionary authority and control with respect to the management of the Pension Plan.

24. For the years 2009 through 2012, Mansfield filed Form 5500s (Annual Return/Report of Employee Benefit Plan) with the Internal Revenue Service for the Pension Plan. Upon information and belief, for each of the years 2009 through 2012, Debtor signed the Form 5500 as the Pension Plan's administrator.

25. As trustee and administrator, Debtor was a fiduciary of the Pension Plan within the meaning of 29 U.S.C. § 1002(21) in that she exercised discretionary authority and control

respecting management of the Pension Plan, and in that she exercised control respecting management and disposition of the Pension Plan's assets.

26. Debtor was also a participant in the Pension Plan, and a "party in interest" within the meaning of 29 U.S.C. § 1002(14).

The Pension Plan Withdrawal

27. In 2011, Debtor authorized the withdrawal of \$58,659 from the Pension Plan's trust (the "Withdrawal"). Debtor then authorized that this \$58,659 be used to pay certain operating expenses of Mansfield

28. Mansfield listed this \$58,659 as a "Receivable" owed to the Pension Plan in the Form 5500 for years 2011 and 2012. In the Form 5500 for 2011, Mansfield described the Withdrawal as a "withdrawal of funds for corporate benefit."

29. Upon information and belief, the Pension Plan has not been repaid all or any part of the assets withdrawn from the Pension Plan in the Withdrawal.

COUNT I: OBJECTION TO DISCHARGE OF DEBT PURSUANT TO 11 U.S.C. § 523(a)(4) Liability for Breach of Fiduciary Duty under 29 U.S.C. § 1104

30. PBGC restates and realleges paragraphs 1 through 29 above as if fully set forth herein.

31. Under 11 U.S.C. § 523(a)(4), an individual debtor may not discharge any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny."

32. Title I of ERISA provides that "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . for the exclusive

purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan.” 29 U.S.C. § 1104(a)(1)(A).

33. Title I of ERISA further provides that a fiduciary must exercise “the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprises of a like character and with like aims.” 29 U.S.C. § 1104(a)(1)(B).

34. After authorizing the Withdrawal, Debtor did not use the Pension Plan assets withdrawn to pay benefits due to the Pension Plan’s participants and their beneficiaries or to defray reasonable expenses of administering the Pension Plan.

35. Rather, Debtor authorized that the withdrawn Pension Plan assets be used to pay for Mansfield’s operating expenses.

36. By authorizing the use of Pension Plan assets for purposes other than paying benefits to the Pension Plan’s participants and their beneficiaries or to defray reasonable expenses of administering the Pension Plan, Debtor breached her fiduciary duties under 29 U.S.C. § 1104(a)(1).

37. Pursuant to 29 U.S.C. § 1109(a), Debtor is personally liable for all losses, including interest, incurred by the Pension Plan as a result of her violations of fiduciary duty.

38. Debtor’s misuse of the Pension Plan assets constituted a defalcation.

39. Pursuant to 11 U.S.C. § 523(a)(4), Debtor may not discharge any debt for fraud or defalcation while acting in a fiduciary capacity with respect to the Pension Plan.

COUNT II: OBJECTION TO DISCHARGE OF DEBT
PURSUANT TO 11 U.S.C. § 523(a)(4);
Liability for Breach of Fiduciary Duty under 29 U.S.C. § 1106

40. Plaintiff restates and realleges paragraphs 1 through 39 above as if fully set forth herein.

41. Title I of ERISA provides that “[a] fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect . . . transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan.” 29 U.S.C. § 1106(a)(1)(D).

42. Title I of ERISA also prohibits a fiduciary from “(1) deal[ing] with the assets of the plan in his own interest or for his own account, [or] (2) in his individual or in any other capacity, act[ing] in any transaction involving the plan on behalf of a party (or represent[ing] a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.” 29 U.S.C. § 1106(b)(1)-(2).

43. As a fiduciary, Debtor was a party in interest with respect to the Pension Plan. 29 U.S.C. § 1002(14)(A); *see also* 29 U.S.C. § 1002(14)(H).

44. As an employer of persons covered by the Pension Plan, Mansfield was a party in interest to the Pension Plan. 29 U.S.C. § 1002(14)(C).

45. Debtor’s authorization to use the Pension Plan assets withdrawn pursuant to the Withdrawal to pay Mansfield’s operating expenses constituted an improper transfer of Pension Plan assets to Mansfield and/or an improper use of Pension Plan assets for the benefit of Mansfield.

46. Accordingly, Debtor's authorization to use the Pension Plan assets withdrawn pursuant to the Withdrawal to pay Mansfield's operating expenses constituted a prohibited transaction under 29 U.S.C. § 1106(a)(1)(D), (b)(1)-(2).

47. Pursuant to 29 U.S.C. § 1109(a), Debtor is personally liable for all losses, including interest, incurred by the Pension Plan as a result of her violations of fiduciary duty.

48. Debtor's misuse of the Pension Plan assets constituted a defalcation.

49. Pursuant to 11 U.S.C. § 523(a)(4), Debtor may not discharge any debt for fraud or defalcation while acting in a fiduciary capacity with respect to the Pension Plan.

WHEREFORE, Plaintiff demands judgment and prays this Court:

- 1) Declare and adjudge that any claim of PBGC for recovery of losses incurred by the Pension Plan through Debtor's breaches of fiduciary duty both as alleged herein and for any and all other breaches of fiduciary duty to the Pension Plan are exempt from discharge, pursuant to 11 U.S.C. § 523(a)(4);
- 2) Declare and adjudge that Debtor's pension benefits under the Pension Plan may be setoff against the claim for recovery of losses incurred by the Pension Plan through Debtor's breach of fiduciary duty, pursuant to 11 U.S.C. § 553;
- 3) Order Debtor to account fully for all assets of the Pension Plan; and
- 4) Award such other relief as is just and equitable.

Dated: August 1, 2014
Washington, D.C.

Respectfully Submitted,

/s/ Colin B. Albaugh
Israel Goldowitz, Chief Counsel
Karen L. Morris, Deputy Chief Counsel
Stephanie Thomas, Assistant Chief Counsel
Colin B. Albaugh, Attorney
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