
CASE NO 23-2841

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Gordon Green,)
Debtor – Appellant)
v.) Oral Argument Requested
David P. Leibowitz,)
Trustee-Appellee)

On Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
Case No. 1:22-cv-01402
The Honorable Sharon Johnson Coleman, Judge Presiding

BRIEF OF APPELLEE, DAVID P. LEIBOWITZ, TRUSTEE

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Short Caption: Gordon Green v. David P. Leibowitz

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Attorney’s Signature: /s/ David P. Leibowitz Date: 12/26/2023

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Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes No

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STATEMENT OF THE BASIS OF APPELLATE JURISDICTION

Appellant's statement is not complete and correct. Gordon Green (“Green”) appeals from an order of the district court entered on August 31, 2023 (Dkt. 20), affirming the decision of the bankruptcy court’s order sustaining the objection of David Leibowitz, bankruptcy trustee (“Trustee”) to Green’s claimed exemption for funds held by Sun Life Insurance Company, in Canada, in a Canadian Registered Retirement Savings Plan. Green filed a notice of appeal to this court on September 15, 2023 (Dkt. 22) under Federal Rule of Appellate Procedure 4. This court has subject matter jurisdiction through 28 USC §158(d).

Green previously appealed unsuccessfully from the bankruptcy court’s amended order of March 9, 2022 (A-8, Bkcty. Dkt. 38) by notice of appeal to the district court dated March 16, 2022 (Bkcty. Dkt. 39). The district court had jurisdiction of that appeal through 28 USC §158(d).

STATEMENT OF THE ISSUES PRESENTED

1. Whether a Canadian Registered Retirement Savings Plan is a retirement plan qualified under applicable provisions of the Internal Revenue Code, within the meaning of section 12-1006 of the Illinois Code of Civil Procedure.

2. Whether the district court correctly held that “qualified foreign plans” under section 404A of the Internal Revenue Code are not tax-qualified retirement plans entitled to the exemption in Section 12-1006 of the Illinois Code of Civil Procedure.

APPLICABLE STANDARD OF APPELLATE REVIEW

Green states that findings of law are reviewed de novo, findings of fact under a clearly erroneous standard, and that mixed questions of law and fact are subject to de novo review. However, mixed questions of law and fact are often reviewed for clear error, depending on whether the answer involves legal or factual work. *See U.S. Bank N.A. v. Village at Lakeridge, LLC*, 138 S.Ct. 960, 967 (2018); *Thomas v. General Motors Acceptance Corp.*, 288 F.3d 305 (7th Cir. 2002); *see also In re Griffin Trading Co.*, 683 F.3d 819, 824 (7th Cir. 2012). While it could be argued

that the bankruptcy court, in this case, had to make a factual determination as to whether the Canadian Registered Retirement Savings Plan was *intended* to have been established as a “qualified retirement plan” within the meaning of the United States Internal Revenue Code, the issue is not material, since the district court’s decision must be affirmed under any standard, including de novo review.

STATEMENT OF THE CASE

Green filed his bankruptcy case under Chapter 7 on May 11, 2021. (A-17, Dkt 1).¹ Debtor's Petition ("Petition") lists "Retirement Fund" as an asset. (A-28, Dkt 1, Sched. B, item 21) The Retirement Fund is a Canadian Registered Retirement Savings Plan (the "Canadian Plan") administered in Canada by Sun Life Insurance Company. The Petition claimed the Canadian Plan to be 100% exempt (the "Exemption") under Section 12-1006 of the Illinois Code of Civil Procedure, 735 ILCS 5/12-1006 ("Section 12-1006"). (A-32, Dkt 1, Sched. B)

The Trustee did not object to Green's discharge, contrary to the statement in Green's brief. (Green Brief at 2) Rather, he objected to the Exemption (A-66, Dkt 18), stating that the Canadian Plan, if, in fact, a retirement plan, is a plan organized under the laws of Canada and as such, was not intended in good faith to qualify as a retirement plan under applicable provisions of the Internal Revenue Code of 1986, as required by section 12-1006. (A-69-70, Dkt 18).

The bankruptcy court rejected Green's argument that the Canadian Plan, as a "qualified foreign plan" under section 404A of the

¹ "(A-___)" refers to the Appendix filed by Appellant Green in this appeal.

Internal Revenue Code, constituted an exempt plan under section 12-1006. The court sustained the Trustee's position that the plan was not a retirement plan intended in good faith to qualify under applicable provisions of the Internal Revenue Code because it did not come within that Code's provisions for tax-qualified retirement plans, and in particular, the provisions of section 401 requiring a trust created or organized in the United States.

While rejecting the bankruptcy court's emphasis on section 401 of the Internal Revenue Code, the district court still affirmed the ruling. The court held that "foreign qualified plans" under section 404A do not constitute tax-qualified retirement plans under the Internal Revenue Code. The court explained that although section 404A plans do "receive some sort of tax benefit," *e.g.*, certain deductions, that did not necessarily mean that they constitute tax-qualified retirement plans, a term "which otherwise covers plans governed by strict requirements" under the Internal Revenue Code. (A-6)

Green now appeals and reiterates the arguments he made unsuccessfully in the courts below.

SUMMARY OF ARGUMENT

Green's Canadian Plan was not exempt under section 12-1006 because it was not intended in good faith to qualify as a retirement plan under applicable provisions of the Internal Revenue Code of 1986. Both the bankruptcy court and the district court so held. This result should not be disturbed, whether seen as resolving a mixed question of law or fact or solely a conclusion of law.

Section 12-1006 is incorporated in the Bankruptcy Code under 11 USC § 522(b), since Illinois requires its residents to use state law exemptions in bankruptcy cases. 735 ILCS 5/12-1201.

Green has moved the Court to certify this appeal to the Illinois Supreme Court since it deals exclusively with state law. Regardless of whether the Court grants that motion, this Court frequently has had to consider Illinois exemptions. *See, e.g., In re Burciaga*, 944 F.3d 681 (7th Cir. 2019); *In re Hernandez*, 918 F.3d 563 (7th Cir. 2019). This Court predicts how Illinois courts would determine exemption issues. *Abstract & Title Guar. Co. v. Chicago Ins. Co.* 489 F.3d 808, 811 (7th Cir. 2007); *see also Hernandez*, 918 F.3d at 570-571. The Court uses the same statutory construction and interpretation principles used by Illinois

courts. *Hernandez*, 918 F.3d at 569; *see also Doe v. Archdiocese of Milwaukee*, 772 F.3d 437, 440–41 (7th Cir. 2014) ("When interpreting a state statute, we apply the same principles of statutory construction that a state court would apply.").

In Illinois, the primary objective in construing a statute “is to ascertain and give effect to the intention of the legislature.” *Home Star Bank & Fin. Servs. v. Emergency Care & Health Org., Ltd.*, 2014 IL 115526, 6 N.E. 3d 128, 135, 379 Ill.Dec 51, (2014). Illinois courts, like federal courts, start their interpretation of any statute with its plain language. The plain language of a statute is the most reliable indication of legislative intent. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 857 N.E.2d 229, 236, 306 Ill.Dec 136 (2006). “[W]hen the language of the statute is clear, it must be applied as written without resort to aids or tools of interpretation.” *Id.* However, if the language of a statute is ambiguous, courts may look to extrinsic tools to ascertain legislative intent, including legislative history. *See Krohe v. City of Bloomington*, 204 Ill.2d 392, 789 N.E. 2d 1211, 1212, 273 Ill.Dec. 779 (2003).

In this case, Green seeks to broaden the coverage of the exemption for plans qualified under applicable provisions of the Internal Revenue

Code by reading it to include section 404A of that Code, governing foreign plans. The legislative history of section 12-1006, and particularly debates about this law in the Illinois House of Representatives, make clear that section 12-1006 was intended to provide for an exemption of domestic qualified retirement plans.

Even if the Canadian Plan were to be recognized as a “qualified foreign plan” for the purposes of deductibility of contributions to that plan, it is not a tax-qualified retirement plan under applicable provisions of the Internal Revenue Code. Nor could it have been intended in good faith to be established as such a tax-qualified retirement plan because there is no circumstance which would allow it to be recognized as such.

Since the Canadian Plan is not a qualified retirement plan under the Internal Revenue Code, nor could it be under any circumstance, Green’s claim of exemption was properly denied, and the decision of the district court should be affirmed whether or not this Court decides to certify the issue to the Illinois Supreme Court.

ARGUMENT

I. Introduction

This appeal calls for an exercise in logic. Green insists that a Canadian Registered Retirement Savings Plan is a plan “intended in good faith to qualify as a retirement plan under applicable provisions of the Internal Revenue Code of 1986, as now or hereafter amended.”

Green’s argument is simply the construction of a “false equivalency.”

An example: A dog has four legs, is a mammal, and has teeth and a tail. A cat has four legs, is a mammal, and has teeth and a tail.

Therefore, a dog is a cat. Of course, this equivalency is facially false.

The equivalency that Green posits in the instant case, while superficially attractive, is equally false.

While Green’s Canadian Plan has some features in common with the tax-qualified retirement plans exempt under Illinois law, it is not the same, equivalent, or even congruent to such plans. The distinctions make a difference. The district court recognized this false equivalency, and its determination should be affirmed.

II. Section 12-1006 Exempts Only Tax-Qualified Retirement Plans, Qualified Under the Applicable Provisions of the Internal Revenue Code.

A. Federal Courts Employ State Rules of Decision to Predict How a State's Law Will be Interpreted.

Since this Court is called upon to determine whether the Canadian Plan is exempt under Illinois law, this Court must refer to the application of section 12-1006 by Illinois courts. *Abstract & Title Guar. Co.*, 489 F.3d at 811; *see also Hernandez*, 918 F.3d at 570-571. The Court will interpret Illinois law as it predicts the Illinois courts would interpret it. In so doing, it will incorporate Illinois decisions regarding how Illinois courts interpret Illinois statutes. *Hernandez*, 918 F.3d at 569. As addressed in the Summary of Argument, Illinois courts will look to the statute's plain language if it is unambiguous. Still, they may consider extrinsic sources such as legislative history if there is any ambiguity. *See Krohe*, 789 N.E. 2d at 1212.

B. State Rules of Decision, as Interpreted Both in Federal and State Courts, Would Hold the Canadian Plan Not to be a Tax-Qualified Retirement Plan Within the Meaning of Section 12-1006.

This Court has considered section 12-1006 on several occasions.

The bankruptcy court's opinion in *Helms v. Metro. Life Ins. Co (In re O'Malley)*, 601 B.R. 629 (Bankr. N.D. Ill. 2019) helpfully collects pertinent authorities. This Court's experience in addressing Section 12-1006 may assist it in considering the application of the statute to this case.²

² Section 12-1006 provides in relevant part as follow:

- (a) A debtor's interest in or right, whether vested or not, to the assets held in or to receive pensions, annuities, benefits, distributions, refunds of contributions, or other payments under a retirement plan is exempt from judgment, attachment, execution, distress for rent, and seizure for the satisfaction of debts if the plan (i) is intended in good faith to qualify as a retirement plan under applicable provisions of the Internal Revenue Code of 1986, as now or hereafter amended, or (ii) is a public employee pension plan created under the Illinois Pension Code, as now or hereafter amended.
- (b) "Retirement plan" includes the following:
- (1) a stock bonus, pension, profit sharing, annuity, or similar plan or arrangement, including a retirement plan for self-employed individuals or a simplified employee pension plan;
 - (2) a government or church retirement plan or contract;
 - (3) an individual retirement annuity or individual retirement account; and
 - (4) a public employee pension plan created under the Illinois Pension Code, as now or hereafter amended.

.....

(d) This Section applies to interests in retirement plans held by debtors subject to bankruptcy, judicial, administrative or other proceedings pending on or filed after August 30, 1989.

Exemptions in bankruptcy are governed generally by section 522 of the Bankruptcy Code. 11 U.S.C. § 522. Under that section, debtors can claim either the exemptions provided by the law of their state or the federal bankruptcy exemptions outlined in subsection (d) of § 522, unless their state has forbidden the use of the subsection (d) federal exemptions. Subsection (d) includes an exemption for payments under a stock bonus, pension, profitsharing, annuity, or similar plan unless, *among other things*, the plan “does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.”

Illinois has exercised its right to opt out of the federal scheme so that Illinois debtors must claim the exemptions provided by Illinois law. *See* 735 ILCS 5/12-1201. However, debtors in opt-out states can also claim the retirement exemption separately outlined in § 522(b)(3)(C), which exempts “retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.” Notably, it does not reference § 404A of the Internal Revenue Code.

Green claimed that the Canadian Plan is exempt under section 12-1006, not under § 522(b)(3)(C). He contends that the language of

section 12-1006 is broad enough to cover foreign plans under I.R.C. § 404A. However, the federal courts considering section 12-1006 have held that only tax-qualified retirement plans are exempt under that statute. See *In re Weinhoef*, 275 F.3d 604 (7th Cir. 2001); *In re Jokiel*, 453 B.R. 743 (Bankr. N.D. Ill. 2011); *Helms v. Metro. Life Ins. Co (In re O'Malley)*, 601 B.R. 629 (Bankr. N.D. Ill. 2019).

Illinois courts considering section 12-1006 have come to the same conclusion. Since the Illinois Supreme Court has not evaluated this issue, intermediate appellate court decisions are entitled to considerable weight.

In *Marriage of Branit*, 2015 Ill. App. 141297, 41 N.E. 3d 518, 397 Ill.Dec. 107, (Ill. App. 2015), the appellate court considered the relationship between section 12-1006 and § 522 of the Bankruptcy Code. The court held that an inherited Individual Retirement Account was not exempt under section 12-1006. The appellate court followed the Supreme Court's decision in *Clark v. Rameker*, 573 U.S 122, 134 S.Ct. 2242, 189 L.Ed.2d 157 (2014), where the retirement exemption of § 522(b)(3)(C) was at issue. The Supreme Court held that "funds held in inherited IRAs are not 'retirement funds' within the meaning of

§ 522(b)(3)(C)'s bankruptcy exemption." *Clark*, 134 S.Ct. at 2246.

Branit, in following the Supreme Court's reasoning concerning § 522 of the Bankruptcy Code, explained that the Illinois legislature had expressly provided in section 12-1006 that the retirement plan exemption applies to retirement plans held by debtors in bankruptcy.

The court stated:

The fact that the Illinois legislature intended section 12-1006 to be used in bankruptcy cases indicates that it was meant to be the Illinois equivalent of section 522 of the Bankruptcy Code.....We thus hew to the established meaning of section 522 of the Bankruptcy Code in interpreting whether the term "retirement plan" under section 12-1006..... includes inherited IRAs.

Branit, 41 N.E.3d at 523-24. Contrary to Green's contention in the district court (and the court's comments concerning it), *Branit* was not merely stating that section 12-1006 served the same purpose as section 522 of the Bankruptcy Code, but that the actual substance of Section 522, and decisions under it such as *Clark*, provide an appropriate reference point for evaluating the exemption outlined in section 12-1006. That is why the court "*hew[ed] to the established meaning of section 522*" in its analysis of the term "retirement plan" in section 12-1006. (Emphasis added)

Branit's inference from legislative intent that Section 12-1006 is comparable to section 522 of the Bankruptcy Code is supported by legislative history gleaned from the Illinois House debate concerning section 12-1006. Representative Preston, the sponsor of the bill, stated:

This just says ... and right now under the bankruptcy code, the Federal Bankruptcy Code, there are many assets that are exempt from the claim of creditors, including a homestead and on and on. There are a number of things that are exempt. This adds to that exemption. The individual retirement plans that an individual has ... because in the typical case scenario, the individual goes bankrupt, is in advanced years and close to retirement and that being the case you don't want someone who has worked for a lifetime to have after they have all their other assets taken away by virtue of the bankruptcy proceedings ... They want to protect in addition to what the code now permits. *The code will also permit if the states adopt, that qualified retirement plans also be exempt.*

State of Illinois 86th General Assembly House of Representatives

Transcription Debate, May 19, 1989, at 87 (the “House Debate”).

(Emphasis added) (SA-9)³ It is also clear from the House Debate that the Illinois General Assembly was following the lead of several other states, including New York, which had previously enacted similar legislation. *Id.* at 81. (SA-3)

³ “(SA-_)” refers to the Trustee’s Supplemental Appendix, included at the end of this document.

Section 404A is not among the Internal Revenue Code provisions listed in section 522, and nothing in section 522 suggests that a “qualified foreign plan” was contemplated to be an exempt asset under the Bankruptcy Code. Moreover, none of the states on which the Illinois statute was modeled, or indeed any state or federal court, has ever held that a foreign plan of any sort is exempt under either state or federal law.

Indeed, a bankruptcy court in New York, considering that state’s exemption statute, has explicitly held that a Canadian Registered Retirement Savings Plan – the same type of plan as the Canadian Plan at issue in this case – is not exempt. *In re Ondrey*, 227 B.R. 211 (Bankr. W.D. N.Y. 1998), *aff’d in part, vacated in part*, 1999 WL 409497 (W.D.N.Y. June 15, 1999) (vacating, only as to the debtor’s separate and distinct pension plan, a “reasonable needs” limitation imposed by the court). The analysis in *Ondrey* is helpful in addressing the arguments that Green makes asserting the equivalency of a “qualified retirement plan” and a “qualified foreign plan.”

In *Ondrey*, the debtor had transferred funds from an employer-sponsored plan (which had been terminated by the employer) to an

RRSP and sought to claim the RRSP as exempt under the New York statute. The New York statute lists the sections of the Internal Revenue Code under which plans can qualify to be entitled to the exemption, and the sections listed are among those outlined in the federal exemptions in section 522 of the Bankruptcy Code.⁴ One of those provisions is I.R.C. section 408, governing IRAs, and the debtor in *Ondrey* argued that an RRSP was analogous to an IRA. The court found that the RRSP could not be treated as an IRA and denied the exemption. In the course of its analysis, the court noted that the RRSP was established in a foreign country; “[t]hat alone could undermine any policy basis for an exemption, at least in the minds of regulators, because (for example) §408(i) of the I.R.C. contemplates that the trustee of an I.R.A. be subject to the regulatory jurisdiction of the Secretary of the Treasury.” *Ondrey*, 227 B.R. at 213 n. 6.

⁴ The New York statute, in §282(2)(e), provides an exemption for “[t]he debtor’s right to receive or the debtor’s interest in . . . (e) all payments under a stock bonus, pension, profit sharing, or similar plan or contract on account of illness, disability, death, age, or length of service unless (i) such plan or contract, except those qualified under section 401, 408 or 408A of the United States Internal Revenue Code of 1986, as amended, was established by the debtor or under the auspices of an insider that employed the debtor at the time the debtor’s rights under such plan or contract arose, (ii) such plan is on account of age or length of service, and (iii) such plan or contract does not qualify under section four hundred one (a), four hundred three (a), four hundred three (b), four hundred eight, four hundred eight A, four hundred nine or four hundred fifty-seven of the Internal Revenue Code of nineteen hundred eighty-six, as amended.

Green contended in the court below that *Ondrey* is inapplicable because the New York statute lists specific provisions of the Internal Revenue Code that can give rise to the exemption, whereas Section 12-1006 does not. However, this type of distinction was capably addressed by the bankruptcy court in *In re Jokiel*, 453 B.R. 743 (Bankr. N.D. Ill. 2011). The *Jokiel* court, first noting that the categories of retirement plans listed in subsection (b) of section 12-1006 correspond to the Internal Revenue Code sections listed in the exemption enacted by Congress in section 522, found it “... not ... surprising that the Illinois legislature, generally agreeing with the policy choices made by Congress ..., might have adopted and deferred to such policies by making such qualified plans eligible for an exemption under state law.” *Id.* at 748. The court then observed that the general reference to “applicable provisions” in Section 12-1006 was necessitated by the frequent and complex revision of the tax code, explaining:

“Nor is it surprising that the Illinois legislature would refer generally to the Internal Revenue Code rather than list specific code sections as Congress did in 11 *U.S.C.* § 522(d)(E). The Internal Revenue Code is complex and changes frequently. When Congress amends the Internal Revenue Code, it can be expected [to] make conforming changes to cross-references in other federal laws. In contrast, it would be difficult for the Illinois legislature to monitor changes in

specific sections of federal law, and there could be a lag between when Congress changes a law and the Illinois legislature is able to make conforming changes in Illinois law.”

Id. at 749.

The district court in this case observed that the *Jokiell* analysis quoted above not only reiterates how plans must be tax-qualified retirement plans to fall within the Illinois exemption, “but also suggests why it is useful to consider the Federal Bankruptcy Code when determining *which* Internal Revenue Code provisions cover such plans.” (A-5).

Green, recognizing the weakness of his position, repeatedly characterizes Section 12-1006(a) as referencing “provisions of the Internal Revenue Code” rather than “applicable provisions.” (Green Brief, at 4, 8, and 9) On several occasions, he omits the limiting adjective “applicable” and even goes so far at one point as to state: “Given the broad reference to ‘*provisions of the Internal Revenue Code*’ in Section 12-1006(a) or the inclusive terminology referencing *any* ‘similar plan or arrangement’ and *any* ‘government... retirement plan’ in Section 12-1006(b), the best interpretation of Section 12-1006 is that it at least refers to a plan under *any* retirement provision in the

Internal Revenue Code.” (Emphasis added) (Green Brief, at 9) Of course the term “any” is not in the statute, and while he does not place it within the quoted phrases but directly preceding them, he utilizes it to come to the strikingly false conclusion that section 12-1006 refers to *any* retirement provision in the Internal Revenue Code. That is not what the statute provides, and the statements Green makes mischaracterize the substance of the statutory text and treat the word “applicable” as surplusage.

Elsewhere in his brief, however, where Green does acknowledge the requirement that the plan qualify under “*applicable* provisions” of the Internal Revenue Code, he contends that section 404A of that Code is such an “applicable provision.” As discussed below, that contention is without merit.

III. A “Qualified Foreign Plan” under Section 404A is Not a Retirement Plan Intended in Good Faith to Qualify Under Applicable Provisions of the Internal Revenue Code

Green argues that since the Canadian Plan may be a “qualified *foreign* plan” under section 404A of the Internal Revenue Code, it thus constitutes a qualified *retirement* plan under that Code and meets the

requirement that the plan was intended in good faith to qualify as a *retirement* plan under its applicable provisions.

The opinion of the district court in this case carefully and ably addressed and disposed of Green's argument on this point. The court held that to qualify for an exemption under section 12-1006, the plan must be a tax-qualified retirement plan. While section 404A plans receive some form of tax benefit, including certain deductions, "that does not necessarily mean that they are qualified retirement plans. Retirement plans, like ERISA plans or IRAs, are subject to the Code's very specific requirements." (A-6) Although Section 404A plans are labeled "qualified foreign plans," they are qualified for specific purposes, e.g., deductibility of certain sums as specified in the section; "the Code does not say anything more about whether they are qualified *retirement* plans, a term which otherwise covers plans governed by strict requirements." *Id.* A "qualified foreign plan" does not have all the attributes of a tax-qualified retirement plan under the Internal Revenue Code.

The district court also found that reference to section 522 of the Bankruptcy Code, while not determinative, was instructive "because it

identifies certain Internal Revenue Code provisions associated with retirement plans to the exclusion of Section 404A.” (A-6) Indeed, the Trustee is aware of no decision holding a 404A plan as exempt by any court in the nation. While the US-Canada tax treaty included in the Appendix may address specific tax attributes of a Canadian plan such as Green’s, nothing in the treaty elevates the status of any Canadian plan, including Green’s Canadian Plan, to that of a tax-qualified retirement plan under United States law.

Conclusion

No matter how hard Green tries, it is impossible to transmute something into something that it is not. His Canadian Plan is not a tax-qualified retirement plan entitled to the section 12-1006 exemption. Under any standard of review employed by the Court on this appeal, the district court's decision was correct and should be affirmed.

Respectfully submitted

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**CERTIFICATE OF COMPLIANCE WITH
TYPE-VOLUME LIMITATION**

The attached Brief of Appellee complies with the type-volume limitation of Rule 32 of the Federal Rules of Appellate Procedure and Circuit Rule 32 because, according to the “word count” function of Microsoft, this brief contains 4,130 words, excluding the parts of the brief exempted from word count by Rule 32(f).

This brief also complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure because this brief employs a proportionally spaced typeface using Microsoft Word in 14 Point Century Schoolbook for main text and 11 Point Century Schoolbook for footnotes.

Dated: January 16, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: January 16, 2024

/s/ David P. Leibowitz

CASE NO 23-2841

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Gordon Green,)	
Debtor – Appellant)	
v)	Oral Argument Requested
David P. Leibowitz,)	
Trustee-Appellee)	

On Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
Case No. 1:22-cv-01402
The Honorable Sharon Johnson Coleman, Judge Presiding

APPELLEE’S SUPPLEMENTAL APPENDIX
PURSUANT TO RULE 30(a)

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Speaker Giglio: "Ladies and Gentlemen, the hour of 9:00 o'clock having arrived, the House will come to order. The Chaplain for the day will be Reverend Ron Snyder, from St, John's Lutheran School in Red Bud, Reverend Snyder is a guest of Representative Goforth. The guests in the gallery will please rise for the invocation. Reverend Snyder."

Reverend Snyder: "You all would be gratified to hear the prayers that were written by my students. The 8th graders who are presently in the gallery. In lieu of that, this succinct prayer. Merciful and gracious Heavenly Father, we Your humble servants approach Your Heavenly throne in this morning hour. Imploring Your guidance throughout this day. Lift up Your countenance upon us, as we contemplate the affairs of this state. Forgive us the many ways in which we fail You and Your commandments. Direct our thoughts and decisions that all legislation we produce, may serve for the welfare of all our constituents and thus redound to Your glory. Preserve through us the sanctity and dignity of life. Ever make us truly thankful for all the blessings You have showered upon our state and our country. Keep us ever mindful of our responsibilities to preserve the good and the just for our posterity. Lead us in Your ways of truth and peace throughout our remaining days in Your service. In the name of our resurrected and ascended Lord Jesus, who has sent us His counselor and who is coming again soon. Amen,n

PP kPr Ginr.gi: "We'll be led in the Pledg of AllPgiAnr.P. by Representative Goforth."

Goforth et al: "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."

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Cullerton: "Ask leave for postponed consideration."

Speaker Keane: "The Gentleman asks leave for postponed consideration. Is there leave? Leave and the Bill goes to postponed consideration,"

Speaker Keane: "We'll go back to pick up two Bills on this Order, 1198, Representative Wojcik. Mr. Clerk, read the Bill."

Clerk O'Brien: "House Bill 1198, a Bill for an Act to amend an Act relating to contractors. Third Reading of the Bill,"

Speaker Keane: "Representative Wojcik."

Wojcik:) "Yes, Mr, Speaker and Members of the House, What House **Bill** 1198 does is it raises the interest **rate** on mechanics liens from five percent to ten percent...and that's all it• ties. I ask for its favorable passage."

Speaker Keane: "Is there any discussion on the issue? There being none the question is, 'Shall this Bill pass?' All those in favor vote 'aye', all those opposed vote 'no'. The voting is open. Have all voted who **wish**? Have all voted who wish? Have all voted who wish? Mr. Clerk, take the record. On this Bill there are 111 voting 'aye', none voting 'no', and none voting 'present' and House Bill 1198 having received the required Constitutional Majority is hereby declared passed. House **Bill 247**, Representative Preston."

Preston "Thank you, Mr. Speaker and Ladies and Gentlemen of the House..."

Speake; Keane: "Mr. Clerk, Mr, Clerk, read the Bill."

Clerk O'Brien: "House Bill 247, a Bill for an Act to amend the Code of Civil Procedure. Third Reading of the Bill."

Speaker Keane: "Representative Preston,"

Preston¹: "Thank you, Mr. Speaker and Ladies and Gentlemen of the House. House Bill 247, amends the Code of Civil Procedure to exempt from the claim of creditors any funds that an individual may have in a retirement or pension plan. These

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are creditors in a bankruptcy proceeding. So that exempt from creditors claims when an individual goes bankrupt late in life in a typical situation...the creditors cannot by virtue of this Bill, claim any of the funds that are in a retirement plan, This serves a dual purpose actually. It not only makes those retirement plans sacrosanct to some extent, but from a taxpayers point of **view** it means that that individual who through business failings had to pursue bankruptcy, that individual will not become thereafter a tax eater by being on the public dole and having to go on welfare and public assistance and other programs. The states of New York, California, Texas, Florida, Kansas, **awaii** and Washington have passed similar legislation that's pending in Alabama and Arizona. The Illinois State Bar Association is strongly in support of this legislation, i'd be glad to answer any of your questions and I urge an 'aye' vote."

Speaker;Keane: wRepresentative Klemm,"

;
Klemm: "Yes, thank you, Mr, Speaker. Would the Sponsor yield for a question?"

Speaker'.Keane: wHe indicates he will.ft

Klemm: "Representative Preston, how many retirement funds could I set up before I declare bankruptcy?"

Preston "Representative, under current law, which is federal legislation, you can have an IRA and that would be one IRA, here you're entitled to put in 2,000 dollars per year. If you own a corporation as I believe you do, you could have a corporate profit sharing and/or pension plan and basically to my knowledge that is it, unless you happen to be...in addition to that, have a third occupation that covers you. But basically, you are covered only to a certain statutory maximum that is permitted in the federal statutes..."

Klemm: "So you as a professional...you are saying you can't have

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a profit sharing, retirement plan yourself and shelter, if you will, or put in what...15 percent or up to 30,000 dollars **a year** in a profit sharing plan **that** would be exempt from this?"

Preston: "Yes, you can because I have a corporation..."

Klemm: "So you could accumulate...you could accumulate and you probably already have, hundreds of thousands of dollars and yet then...and then probably go to the small business community and say, 'I'm going to be declaring bankruptcy letting you carry all of this obligation, while I'll sit there and shelter this money and I have, and not have a fair redistribution of those dollars that the person is keeping for themselves.' Now do you think that's fair of our small merchants and business people in Illinois?"

Preston: "Representative, let me...in simple, answer yes and let me explain **why**. Because the typical situation, the overwhelming number of situations **is where** the small business person is the individual, who because of changes in the business climate and being unable in some cases to compete with better financed corporations that in hard times can keep themselves afloat, it's the small businessman who is the person who goes bankrupt, not the small businessman **who is** the victim...of the bankrupt individual, but the small businessman who himself or herself finds that they...simply when there's a down turn in the economy, they can't survive during that period of and they end up going bankrupt. And when they...and when that small businessman or businesswoman goes bankrupt his will give them some small protection in their retirement plans that they have built up over many, many, many years, That's the typical situation. It's always possible to depict a hypothetical that gives the worst case scenario, but in the typical 90 plus percent of the cases,

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you have a small individual who has to go bankrupt and this
ill allow them as they have done in other states and
pending in still more states, to protect **what** they have
accumulated over many years and put aside for retirement.
nd as you amply put out...pointed out, this amounts to in
ach year, a maximum of 15 percent of a person's income and
I want to emphasize maximum, because most people are on
these plans cannot afford to have 15 percent put **away**. You
indicated how many hundreds of thousands of dollars I have
n my plan, I can't afford to put the maximum **away** in
he...profit sharing plan I have. I can't shelter 15
ercent, because I have a growing family and I can't afford
lt. And at the end of my career, if I or if you or
omebody else outside of this room, should make an
investment through their business, it goes bad...they lose
hll of their assets, they lose everything to creditors as
the law says that they should, but this says that what they
have put **away** for retirement in old age, is protected. And
the federal law permits this, other states are doing it and
hope Illinois will be one of them."

Speaker Keane: "Representative Wolf, Representative Wolf."

Wolf: "Thank you, Mr. Speaker. Would the Sponsor yield to a
question?"

Speaker Keane: "He indicates he will,"

Wolf: "Representative Preston, perhaps you've answered this
question and I didn't catch it, but does Amendment #1
, satisfy the request of the State Employees Retirement
System?"

Preston: "I apologize, I could not hear your question."

Wolf: "As said, does Amendment 11 satisfy the request of the State
Employees Retirement System?"

Preston: "It does and they are in favor of this Bill."

wolf: "Alright, thank you."

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Speaker Keane: "Representative Hultgren."

Hultgren: "Will the Sponsor yield?"

Speaker Keane: nHe indicates he will.q

Hultgren: "Representative, we have a discussion going on here as to exactly what you can and can't put into an IRA. There's a \$2,000.00 limitation annually. That's the amount that can be deducted if you put in \$2,000.00, but is there any limitation as to actually how much you put in that IRA nnually?"

Preston: "Representative, first of all, through changes in the ederal law, contributions to individual retirement accounts are no longer deductible. They haven't been for a eouple of years. The one they've put in is no deduction, but this does not change how much you can put in at all. Still...you can still today put in \$2,000.00 and no more than that into anIRA."

Hultgren: nAre you sure that there's limitation as to how much you can put in?"

Preston: "I'm sorry, would you repeat that?"

Hultgren: "Are you certain that there's a limitation as to how uch you can put in?"

Prestonⁱ: "I am virtually...I **will** be glad to be corrected, but l'm virtually positive that the most that you can put in **with** the exception of a roll over from some other qualified retirement plan where you can...if you're rolling it over, 'you can go from one plan and take all the money that is in one plan and put all that money in a lump sum into another That is permitted. But aside from that, it is my understanding that you can only put \$2,000.00 into an **IRA** yesterday, last year and today. The difference **was** two years ago you would get a deduction for it, today you do not get a current tax deduction for it..."

Hultgreb: "Well, I'm not an expert on this area, but I think

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you're wrong on both counts. I think you can still get a deduction today, if you're qualified and number two, I think you can put in more than \$2,000.00, but \$2,000.00 is in fact the limitation on the amount of the deduction. If I'm correct...then conceivably someone who was anticipating filing bankruptcy could place all of their assets in their IRA and shelter all of those assets from the bankruptcy creditor."

Preston: "Mr. Speaker, in response ...let me correct, was corrected on part of what I said, I am told that the lowest certain income threshold level and I don't know what that level is, but if you're below it you can still currently get a deduction for contribution to an IRA is what I'm told, if you're above that threshold there is no current deduction. But there is a cap on how much you can put in an IRA and it is absolutely not so that you can go and shelter all your income. That's simply is not the case. The Illinois State Bar Association would not be in favor of that and neither would Representative Preston."

Speaker Keane: "Representative Piel."

Piel: "Thank you, Mr. Speaker. Will the Gentleman yield?"

Speaker Keane: "He indicates he will."

Piel: Representative Preston, you mentioned a ten percent of your total income. Now, were you talking about that could be claimed under this, or were you talking about money that would be...that a person was putting into a retirement?"

Preston: "First of all, I think the number was 15 percent in each year in most plans."

Piel: "Okay, so were not talking about basically no limit. In other words a person could, let's say that they've been putting into retirement accounts...my question right now is, is there a max in this Bill to what a person could have in retirement accounts?"

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Preston: "No, not in this Bill. There is a maximum under federal law as to what your annual contribution to a retirement account may be.w

Piel: "No, I'm talking about...you know when a person goes bankrupt, let's say that they..."

Preston: "There is no limit in this Bill as to how much the person may have as long as they've complied with the Federal Annual Law of the maximum contribution."

Piel: Okay, so in other words...whatever was in that retirement account would still technically be sheltered by the Bill?"

Preston: "That is correct."

Piel: hso a person...alright, a person could have an **IRA**, they could have a deferred comp. The **way** I read it is they tould have a deferred comp plan besides a retirement trust and **we're** talking about more than 15 percent. Like in our...let's take a Legislator for instance, you're talking bout 10 percent automatically goes into your retirement, your deferred comp can go as I recall 20, 25 percent. I think it's 25 percent, if I'm not mistaken, of your annual salary."

Preston: "I agree with most of what you said, I'm not sure about a deferred compensation. It may be qualified, I'm just not t,C>sitive."

Piel: "I believe the deferred comp..."

Preston: "It may come under this, I'm not sure."

Piel: "...I believe the deferred comp equals out to, I'm almost positive, it's either 20 or 25 percent. Now a person tan...has arranged stipulation about a time before a person goes bankrupt that this has to go in there. The reason I'm asking the question, I'll explain. In our deferred comp plan I might be mistaken, but I think I'm correct, when I ay that you could put it in in one lump sum, it's a 'aximum figure per year. But let's say I take \$7,000.00

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dollars and have it put in on a two or three month basis, in anticipation of going bankrupt...Do you have areas in the Bill that would stop this type of abuse?"

Preston: "No, I don't, The worse case scenario that you're giving here simply applies to almost no percent of the cases. The majority, vast, vast 90 plus percent majority of cases are where an individual is in business and for one reason or another the business goes under and they go through bankruptcy and because they personally guaranteed the corporate debts of this small business, they go through personal bankruptcy at the same time. This just says...and tight now under the bankruptcy code, the Federal Bankruptcy Code, there are many assets that are exempt from the claim of creditors, including a homestead and on and on. There are a number of things that are exempt. This adds to that exemption. The individual retirement plans that an individual has...because in the typical case scenario, the individual goes bankrupt, is in advanced years and close to retirement and that being the case you don't want someone who has worked for a lifetime to have after they have all their other assets taken away by virtue of the bankruptcy proceedings...They want to protect in addition to what the code now permits. The code will also permit if the states adopt, that qualified retirement plans also be exempt."

Piel: "I understand when you're saying a business, If a person goes just through a personal bankruptcy I could see a person coming into a situation, let's say, over 50 years old, where they've been working at a job for quite a few years having a deferred comp retirement, etcetera...and having hundreds of thousands of dollars accumulated in his and going bankrupt. I think it would be wise if you had a max in a retirement account of X number of dollars. Because, you know, I'm not talking about a business

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bankruptcy, I'm talking about strictly a personal bankruptcy."

Preston: nThe personal bankruptcy situation which occurs is caused by illness...that's the other side of the business bankruptcy, when people are sick and undergo medical and doctor, hospital and doctor expenses, that's the single largest cause of bankruptcy and to have the physicians and the hospitals now after a person has been virtually wiped but because of illness, now be able to go and attach retirement accounts, is part of what the protection that we hope to provide by virtue of House Bill 247.n

Piel: - Thank you."

Speaker: Keane: "Representative Goforth.g

Goforth¹: "Move the previous question."

Speaker'. Keane: "The Gentleman has moved the previous question.

All those in favor say 'aye', all those opposed 'no'. The 'ayes' have it and the question has been moved. representative Preston to close."

Preston: "I think this has been amply debated, Mr. Speaker. We want to protect people who are nearing retirement and because of either business reverses or health conditions we want to protect just the retirement accounts. It doesn't protect their other assets. There's a limit in how much can be in a retirement account by virtue of what the annual contribution can be and it's limited to basically 15 percent every year, if you give the maximum. And for those reasons, I'd urge and encourage your 'aye' vote."

Speaker Keane: "The question is, 'Shall this Bill pass?' All those in favor vote 'aye', all those opposed vote 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, take the record. On this Bill there are 103 voting 'aye', 7 voting 'no', 3 voting 'present' and

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House Bill 247 having received the required Constitutional Majority is hereby declared passed. Representative...we'll skip a few and go to House Bill 1660, Representative Churchill. Out of the record. House Bill 1673, Representative Countryman. Mr. Clerk, read the Bill."

Clerk O'Brien: "House Bill 1673, a Bill for an Act to amend the Illinois Administrative Procedure Act. Third Reading of the **Bill.**"

Speaker: Keane: "Representative Countryman."

Countryman: "Thank you, Mr. Speaker, Ladies and Gentlemen of the house, This Bill is a JCAR Bill and what it does is it requires the agency which...an agency is not required to take in 'a referenced' rule regulation standard a guideline available for copying if in doing so, the agency would 'infringe upon another's entitled copyright. That's all the Bill does, it's pretty simple and it solves a problem many agencies have had with regard to rules before JCAR and I move its adoption."

Speaker, Keane: "Any discussion? There being none, the question **'is, 'Shall this Bill pass?'** All those in favor vote **'aye'**, all opposed vote 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, take the record. On this Bill there are 113 voting 'aye', none voting 'no', none voting 'present'. Vote Representative Williams 'aye'. There are 114 voting 'aye', none voting 'no', none voting 'present' and House Bill 1673 having received the required Constitutional **Majority is hereby declared passed.** Alright, House Bill 1489, Representative Terzich. Out of the record. House Bill 1496, Representative Homer. Mr. Clerk, read the **Bill.**"

Clerk O'Brien: "House Bill 1496 a Bill for an Act to amend the Local Governmental and Governmental Employees Tort Immunity