

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RED LION AREA SCHOOL DISTRICT : CIVIL ACTION
: :
: :
v. : :
: :
ROBERT J. BRADBURY, Individually :
and as Trustee, Custodian and :
Plan Administrator, Dolphin & :
Bradbury, Inc., 401(k) Profit :
Sharing Plan and :
MARGARET B. BRADBURY : NO. 07-cv-00563-JF

PERKIOMEN VALLEY SCHOOL DISTRICT : CIVIL ACTION
and BOYERTOWN AREA SCHOOL :
DISTRICT :
: :
v. : :
: :
ROBERT J. BRADBURY and :
MARGARET B. BRADBURY : NO. 07-cv-00720-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

April 9, 2007

On August 3, 2006, the Securities and Exchange Commission filed a 203-paragraph, 58-page complaint charging the defendant Robert J. Bradbury with a wide range of securities law violations and related wrongs which allegedly caused damage to various school districts in which he served as broker or investment advisor.

The complaint also alleged that, in anticipation of or as a result of the Commission's investigation, Mr. Bradbury made various fraudulent conveyances - specifically, to his wife, the defendant Margaret B. Bradbury.

Shortly after the SEC complaint was filed, the affected school districts filed their own actions in state court, seeking to set aside the various fraudulent conveyances allegedly committed by Mr. Bradbury. Their complaints merely echoed many of the allegations of the SEC complaint. The defendants promptly removed the school districts' cases to this court, alleging federal question jurisdiction. Now pending are the school districts' motions to remand.

It is clear that, for the most part, the school districts' complaints do not, on their face, allege claims arising under federal law or the United States Constitution. There is, however, one significant exception: the school district plaintiffs allege that one of the fraudulent conveyances chargeable to the defendant Bradbury was his use of over \$7 million of his own money to set up what purports to be a § 401(k) retirement plan. The complaints seek re-transfer of those assets to the defendant in his individual capacity (in effect, a rescission of the § 401(k) plan). Thus, the issue to be decided is whether a lawsuit challenging the establishment of an ERISA plan as a fraudulent conveyance, and seeking transfer of all of the assets of such a plan, is preempted by ERISA. I conclude that it is, and that the motions for remand must be denied.

I readily agree with plaintiffs' contention that the Third Circuit decision in Goepel v. National Postal Mail Handlers

Union, 36 F.3d 306 (3d Cir. 1994), held that there is no preemption unless plaintiff's claim is one of the remedies specifically provided for in the ERISA statute itself. But I am persuaded that the more recent decision of the United States Supreme Court in Grable & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 125 S. Ct. 2363 (2005), impairs the continued validity of the Goepel precedent. The test established by the Court in Grable & Sons is described by that Court as follows:

"The question is, does a state-law claim necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities."

Under that test, I am satisfied that removal was proper. The existence and validity of an ERISA plan is an issue best left to the federal courts.

An order follows.

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ROBERT J. BRADBURY and :
MARGARET B. BRADBURY : NO. 07-cv-00720-JF

ORDER

AND NOW, this 9th day of April 2007, upon consideration
of the plaintiffs' motion to remand, IT IS ORDERED:

That the motion to remand is DENIED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.

