

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FIFTH DIVISION

T.G. Morgan, Inc.,

Bky. No. 4-92-578

John R. Stoebner, Trustee

Civil No. 5-95-9

of T.G. Morgan, Inc.,

Appellee

ORDER

T.G. Morgan, Inc. Defined Benefit

individually and as Trustee or  
Administrator of T.G. Morgan, Inc.

Norwest Bank Minnesota, N.A., as  
custodian,

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This matter is before the court on the appeal of Michael  
Morgan, Inc. Defined Benefit Pension Plan ("the Plan"), from  
the bankruptcy court's order dated December 16, 1994.

transfer made from the debtor, T.G. Morgan, Inc., to the Plan.  
Judge Kressel also ordered that all coins located in a safe

trustee. Based on a review of the file, record and  
proceedings herein, and for the reasons stated below, the

BACKGROUND

The debtor, T.G. Morgan, Inc., is a Minnesota corporation  
investment. Appellant Michael Blodgett was the founder,  
president and majority owner of T.G. Morgan. Blodgett's wife,  
its vice president. In 1985, the T.G. Morgan, Inc., Defined  
Benefit Plan ("the Plan") was created. Between 1985 and 1986,  
Blodgett and his wife, Diane, were the only participants in  
the Plan. On October 24, 1989, a safe deposit box was rented  
The deposit box was rented in the names of Michael and Diane

Blodgett and the T.G. Morgan, Inc., Defined Benefit Plan. On deposit box for nonpayment of rent. Several coins were found in the box, however, the coins were not the coins contributed

On January 24, 1992, an involuntary Chapter 7 bankruptcy case was commenced against T.G. Morgan in the United States

1992, T.G. Morgan converted the case to a case under Chapter 11. Judge Kressel converted the case back to a case under

was appointed as trustee. On May 26, 1994, Stoebner commenced an adversary proceeding against Michael Blodgett,

Morgan, Inc. Defined Benefit Pension Plan to recover allegedly fraudulent transfers made between October 24, 1989,

claim for recovery was based on 11 U.S.C. Section 548 and 11 U.S.C. 544(b).

1994. On December 16, 1994, the court held that several coins had been transferred from T.G. Morgan, Inc., to the Plan as

without the debtor receiving reasonably equivalent value for the transfers during a time when the debtor was insolvent and

court concluded that such transfers were fraudulent and were avoidable by the trustee. The bankruptcy court found that the

but were the property of the debtor. Thus, pursuant to 11 U.S. C. Section 542(a), Stoebner was entitled to recover

On December 19, 1994, Blodgett timely appealed the bankruptcy court Is order pursuant to Fed. Bankr. P 8002

U.S.C. Section 158(a). The gravamen of Blodgett's appeal is that the bankruptcy court did not have jurisdiction to hear

Act, 29 U.S.C. Section 1001, et. seq. ("ERISA") prevents Stoebner from recovering assets from the Plan.

The standard of review in bankruptcy appeals is well established. The district court must review legal conclusions

of the bankruptcy court may not be set aside unless clearly erroneous. See Fed. R. Bankr. P. 8013; *Wecmer v. Grunewaldt*,

clearly erroneous "when although there is evidence to support it, the reviewing court on the entire evidence is left with

committed." *Anderson v. City of Bessemer*" 470 U.S. 564, 573 (1985). With this standard at hand, the court addresses

First, Blodgett argues that the bankruptcy court lacked jurisdiction to hear and determine the case because none of

Pursuant to 28 U.S.C. Section 157 (b)(2)(H), the case was a core proceeding because it was a proceeding to avoid and

recover fraudulent conveyances. Under 28 U.S.C. Section 157(b)(1), the bankruptcy court had jurisdiction to try the case and enter a final judgment. Thus, the bankruptcy court had jurisdiction to hear and determine the case notwithstanding defendants, lack of consent. Blodgett's arguments to the contrary are without merit. Further, the court notes that, although Blodgett argues that the district court should have retained jurisdiction, no one ever moved the district court to withdraw the automatic order of reference which referred the core proceeding to the bankruptcy court. See 28 U.S.C. Section 157 (a) ; Local Rule 201. Blodgett had an opportunity to be heard by the bankruptcy court and had several months to retain counsel to defend in the proceedings. As the bankruptcy court had jurisdiction to enter a final order, the court holds that Blodgett's challenge to the order dated December 16, 1994, on this basis is without merit.

The majority of Blodgett's appellant brief focuses on the proposition that ERISA bars the trustee's recovery of the coins found in the safe deposit box rented by the Blodgetts and the Plan. Blodgett's arguments under ERISA take many forms, however, the primary arguments are that the Plan's "anti-alienation" clause prohibits the bankruptcy court's actions and that Stoebner breached several fiduciary duties owed to the Plan. ERISA only applies to employee benefit plans. 29 U.S.C. Section 1003 (a) . An "employee benefit plan" is defined as "an employee pension benefit plan," which is further defined as a plan that "provides retirement income to employees, or . . . results in a deferral of income by employees for a period extending to the termination of covered employment or beyond." 29 U.S.C. Section 1002(3); 29 U.S.C. Section 1002(2) (A). An individual or his spouse who wholly own a business cannot be employees of the business. 29 C.F.R. Section 2510.3-3(c)(1) . This limitation is based on the fact that ERISA prohibits the assets of a plan from inuring to the benefit of an employer. 29 U.S.C. Section 1103(c)(1).

The bankruptcy court found that Michael and Diane Blodgett were sole shareholders of the debtor, T.G. Morgan, Inc., and were the only participants in the Plan. Thus, the bankruptcy court held that the Plan was excluded from ERISA coverage pursuant to 29 C.F.R. Section 2510.3-3(c)(1), as it did not cover any employees within the meaning of ERISA. ERISA did not therefore prevent the avoidance or recovery of fraudulent transfers to the Plan. Blodgett has failed to cite any authority to support his conclusory statements that the Plan was qualified under ERISA. Nor has Blodgett pointed to any facts in the record which suggest that the findings of the bankruptcy court are clearly erroneous. Accordingly, the court concludes that the bankruptcy court correctly held that ERISA did not prevent the recovery of the fraudulently transferred assets. This conclusion renders moot all other ERISA-based arguments advanced by Blodgett. Finally, Blodgett advanced several constitutional challenges and arguments relating to the Federal Trade Commission. The court has considered these arguments and finds them to be without merit.

#### CONCLUSION

Based on the foregoing, the court holds that the bankruptcy court's conclusions, that any transfer from the debtor to the Plan were fraudulent and avoidable and that the

coins were recoverable by Stuebner, are correct as a matter of law and are not based on erroneous factual determinations.

IS HEREBY ORDERED that the decision of the bankruptcy court dated December 16, 1994 is affirmed.

Dated: November 3, 1995

David S. Doty, Judge