

APR 20 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KELLY ST. JULIAN,	)	No. 10-55470
	)	
Plaintiff – Appellant,	)	D.C. No. 8:08-cv-00147-CJC-MLG
	)	
v.	)	<b>MEMORANDUM*</b>
	)	
JOSEPH ST. JULIAN, an individual,	)	
	)	
Defendant – cross-claimant –	)	
Appellee,	)	
	)	
and	)	
	)	
METROPOLITAN LIFE	)	
INSURANCE COMPANY, a New	)	
York corporation; BUSINESS EDGE	)	
SOLUTIONS LIFE INSURANCE	)	
PLANS, an ERISA Plan,	)	
	)	
Cross-defendants – Appellees.	)	
_____	)	

Appeal from the United States District Court  
for the Central District of California  
Cormac J. Carney, District Judge, Presiding

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\*This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

Submitted April 9, 2012\*\*  
Pasadena, California

Before: FERNANDEZ and SILVERMAN, Circuit Judges, and BLOCK,\*\*\*  
District Judge.

Kelly St. Julian appeals from the district court's grant of summary judgment to Joseph St. Julian on her claim seeking to impose a constructive trust over the proceeds of an ERISA<sup>1</sup> covered life insurance policy on the life of John St. Julian. We affirm.

Kelly asserts that because she was John's surviving, though estranged,<sup>2</sup> spouse, she can claim a community property interest in the proceeds. However, regardless of whether California would determine that Kelly had a community property interest in the policy, this court has clearly held that the preemption provision of ERISA<sup>3</sup> precludes the imposition of a constructive trust upon the proceeds. See Carmona v. Carmona, 603 F.3d 1041, 1061–62 (9th Cir. 2010), cert.

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\*\*The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

\*\*\*The Honorable Frederic Block, Senior United States District Judge for the Eastern District of New York, sitting by designation.

<sup>1</sup>Employee Retirement Income Security Act, 29 U.S.C. §§ 1001–1461.

<sup>2</sup>There can be no doubt that Kelly and John were living separately and that Kelly had filed for a dissolution of the marriage.

<sup>3</sup>29 U.S.C. § 1144(a).

denied, \_\_\_ U.S. \_\_\_, 131 S. Ct. 1492, 179 L. Ed. 2d 305 (2011). As we said, “a state law constructive trust cannot be used to contravene the dictates of ERISA.” Id. at 1061.<sup>4</sup> That being so, the district court properly granted summary judgment in favor of Joseph. While Kelly launches a number of attacks on Carmona’s reasoning, we are bound by its holdings. See, e.g., Hart v. Massanari, 266 F.3d 1155, 1171 (9th Cir. 2001).

AFFIRMED.

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<sup>4</sup>Carmona, 603 F.3d at 1062, did note that, perhaps, a constructive trust could be used “to recover ill-gotten gains.” However, there is no indication that Joseph’s gains were “ill-gotten.”