

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION

FEDERAL DEPOSIT INSURANCE	*	
CORPORATION, <i>as receiver for</i>		
GULFSOUTH PRIVATE BANK,	*	
 Plaintiff,	*	
 vs.	*	
 WILLIAM L. AMOS, JENIFER C.	*	CASE NOS. 4:16-CV-284,
AMOS, WLA INVESTMENTS, INC.,		4:16-MC-4
INNOVATION TREND SETTERS OF	*	
AMERICA, LLC, and AFLAC, INC.,	*	
<i>as sponsor of the Aflac</i>	*	
<i>Incorporated Market Director</i>	*	
<i>Deferred Compensation Plan,</i>	*	
 Defendants.	*	

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O R D E R

The Federal Deposit Insurance Corporation ("FDIC") holds several unsatisfied Florida judgments against William Amos. After registering the judgments in this Court, see case nos. 4:16-MC-3, 4:16-MC-4, 4:16-MC-5, the FDIC filed the present action, 4:16-CV-284, to collect on the judgments and to set aside transfers that Amos made to his wife and the subordination of a lien on real property controlled by Amos. The FDIC also filed a garnishment action, 4:16-MC-4, in this Court to collect on the judgments.<sup>1</sup>

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<sup>1</sup> Today's Order addresses motions in both actions. William Amos is a Defendant in both cases. His wife, Jenifer Amos, and WLA Investments,

The FDIC filed a motion for summary judgment regarding three transfers by Amos to his wife and the subordination of the lien, claiming that those transactions should be voided as a matter of law pursuant to Georgia's Uniform Voidable Transactions Act ("GUVTA"), O.C.G.A. § 18-2-70 *et seq.* (ECF No. 51). The FDIC also moves to modify the Consent Order that the Court previously entered that granted the FDIC's motion for a preliminary injunction (ECF No. 50).

The FDIC also filed a motion for summary judgment in the garnishment action arguing that it is entitled to garnish credits that Amos's employer, Aflac, Inc., has made to Amos's account in the Aflac Incorporated Market Director Deferred Compensation Plan ("the Plan") (ECF No. 10).

For the reasons explained in the remainder of this Order, the FDIC's motion for summary judgment in 4:16-CV-284 seeking to void certain transactions under GUVTA (ECF No. 51) is denied. The Court defers ruling on the FDIC's motion to modify the Consent Order in 4:16-CV-284 (ECF No. 50) and defers ruling on the FDIC's motion for summary judgment in the garnishment action, 4:16-MC-4 (ECF No. 10).

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Inc. are Defendants in 4:16-CV-284. Innovation Trend Setters of America, LLC and Aflac, Inc. are Defendants in 4:16-MC-4.

**I. Summary Judgment Motion in 4:16-CV-284 to Void Transactions**

**A. Transfer of Amos & Co.**

The FDIC seeks to void the transfer by Amos of his ownership in William L. Amos & Company ("Amos & Co.") to his wife. It argues that the transfer is voidable under GUVTA because the transfer was made without receiving a "reasonably equivalent value" in exchange for the transfer and that Amos was insolvent at the time of the transfer. Pretermitted whether Amos was insolvent at the time of the transaction, the Court finds that genuine factual disputes exist as to whether Amos received "reasonably equivalent value" for the transfer, thus precluding summary judgment. Viewing the evidence in the light most favorable to Amos, as required at this stage of the proceedings, a reasonable juror could conclude that this transfer conferred an indirect economic benefit on Amos. Amos claims that as a result of the transfer he was able to remain employed at Aflac, where he earns a significant salary and other benefits. The FDIC offers evidence of Amos & Co's assets to support its contention that the benefit he derived from employment with Aflac was not "reasonably equivalent" to the value of Amos & Co. But it is unclear if Amos & Co. had any liabilities. Amos describes signing checks for Amos & Co.'s expenses at the time of the transfer. See, e.g., Amos Dep. 30:7-9. And Amos & Co. certainly has ongoing expenses and

liabilities today. See Pl.'s Mot. to Modify Consent Order 2, ECF No. 50 (objecting to these expenses). With only evidence of Amos & Co.'s assets, the Court cannot find that the value of Amos's Aflac employment was not reasonably equivalent to the value of Amos & Co. at the time of this transaction as a matter of law. That is an issue for the jury to decide.

Rather than offering clear evidence of Amos & Co.'s 2014 value, the FDIC argues that this transfer is voidable because Amos did not receive the value of his employment at Aflac at the same time that he transferred Amos & Co. to his wife. But in determining whether a transaction is voidable, the Georgia Court of Appeals has declined to take a "narrow, piecemeal view [that] ignores the essential nature of the transaction." See *Truelove v. Buckley*, 733 S.E.2d 499, 502-03 (Ga. Ct. App. 2012) (reversing the trial court's grant of summary judgment because the evidence showed that the transfer of the property was "at essentially the same time" as the defendant paid for the property and therefore was not an antecedent debt under O.C.G.A. § 18-2-75(b)). Moreover, some courts have held that a future economic benefit may constitute "value" under similar circumstances. See *In re PSN USA, Inc.*, 615 F. App'x 925, 930 (11th Cir. 2015) (per curiam) (recognizing that some circuits have held that "[t]he mere opportunity to receive an economic benefit in the future constitutes 'value' under the [Bankruptcy]

Code.” (quoting *In re Fruehauf Trailer Corp.*, 444 F.3d 203, 212 (3d Cir. 2006))).

Here, Amos transferred Amos & Co. in August 2014 and became a W-2 employee at Aflac the following month. Amos represents that he made the transfer in anticipation of his W-2 employment. Thus, viewing the facts in the light most favorable to Amos, a reasonable juror could conclude that the essential nature of the transaction was Amos giving up ownership of Amos & Co. for W-2 employment. The Court also observes that it is difficult to conclude that Amos’s financial condition is worse due to the transfer, particularly in light of his Aflac salary and the uncertain value of Amos & Co. For all of these reasons, the FDIC fails to show that the transfer of Amos & Co. is voidable as a matter of law.

B. Cash Transfers

The FDIC also seeks to void two cash transfers from Amos to his wife’s individual bank account. The Court finds that genuine factual disputes exist regarding this claim, thus precluding summary judgment. One of the transfers was from an account that Amos and his wife held jointly. Therefore, a factual dispute exists as to whether this transfer would be deemed a transfer of assets from Amos to his wife. It is undisputed that the account was originally a joint account. And Amos states that he and his wife instructed the bank to take her

name off of the account and transfer the funds from the joint account to her personal account at the same time. See Amos Decl. ¶ 3. Thus, a reasonable juror could conclude that the transfer was a division of their mutual funds and not a transfer of Amos's assets to his wife.<sup>2</sup>

Additionally, genuine factual disputes exist as to whether Amos received reasonably equivalent value for transferring at least some of the funds in question. Amos contends that he received reasonably equivalent value for both cash transfers because his wife used the money to pay their mutual household expenses. Under GUVTA, "[V]alue does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person." O.C.G.A. § 18-2-73(a). But several courts have found that the regular payment of mutual household expenses does not fall under this exclusion. See *In re Fisher*, 296 F. App'x 494, 501 (6th Cir. 2008) (distinguishing the regular payment of household expenses from a promise to provide for the debtor in

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<sup>2</sup> The FDIC offers evidence that most of the funds in the joint account were likely contributed by Amos. See Amos Dep. 133:14-24 (testifying that his salary is the family's primary income). And under Georgia law, the funds in "[a] joint account belong[] . . . to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent." O.C.G.A. § 7-1-812; see also *Lamb v. Thalimer Enter., Inc.*, 386 S.E.2d 912, 914 (Ga. Ct. App. 1989) (holding that O.C.G.A. § 7-1-812 should be applied to determine how much of the funds in a joint account are subject to garnishment). But the FDIC fails to point to any specific calculations regarding the sources of the funds in the joint account.

the future); *United States v. Goforth*, 465 F.3d 730, 735-36 (6th Cir. 2006) (holding that the payment of regular household expenses is reasonably equivalent value and noting that this holding is consistent with the "greater weight of authority"); see also *Post-Confirmation Comm. for Small Loans, Inc.*, 2016 WL 1316767, at \*6-7 (interpreting 11 U.S.C. § 550). But see *Carneal v. Leighton*, 237 F. Supp. 2d 104, 110 (D. Me. 2002) (relying on a case holding that a son's promise to provide for his mother did not confer reasonably equivalent value on his father to hold that the defendant's wife's payments for household expenses and the support of their children was not reasonably equivalent value under Maine law).

Evidence exists in the present record that the transferred funds were used primarily for mutual household expenses. See J. Amos Feb. 2017 Dep. 17:1-16; see also Amos Decl. ¶ 4. Thus, a reasonable juror could conclude that Amos transferred at least some of the funds to his wife as part of the ordinary course of their marriage to pay their mutual living expenses. The Court declines at this time to find as a matter of law that Amos did not receive reasonably equivalent value under these circumstances. See *Goforth*, 465 F.3d at 736.

The FDIC argues that not all of the transferred funds were used to pay mutual household expenses. But it fails to establish as a matter of law the amount of funds that were not

used to pay mutual household expenses. It has presented evidence that a substantial portion of the funds were used to make a down payment on a house. But there are factual disputes as to whether all of the money used to purchase the house was transferred from Amos to his wife. See J. Amos Feb. 2017 Dep. 18:2-18 (stating that she could not indicate whether all of the funds came from transferred funds). The FDIC also failed to point to evidence regarding the Amoses' usual household expenses, how all of the transferred funds were specifically spent, and/or how the challenged transfers differed from ordinary transfers between the Amoses. Without any evidence regarding how much of the transferred funds went to pay ordinary household expenses, the Court cannot find that any particular amount of the transferred funds is voidable as a matter of law. Based on the current record, summary judgment is not appropriate on the FDIC's claim to void the cash transfers.

C. Lien Subordination

Amos is involved in several entities that own investment properties. One of those entities borrowed money from a bank to fund one of the properties. As part of that transaction, the bank obtained a mortgage lien on the property to secure the loan. Subsequently, that mortgage was transferred to "WLA Investments, Inc." Assignment of Mortgage and Endorsement of Note, ECF No. 51-17 at 3. It is undisputed that "WLA

Investments, Inc." is not a legal entity. Amos contends that the assignment of the mortgage should have been to WLA Investments, LLC, which is owned by Amos and his wife. Amos Dep. 153:1-3, 162:3-5. It is unclear if there is, or ever was, any money owed to WLA Investments on this mortgage. See *id.* at 160:15-161:5. Amos claims that the balance on the mortgage was zero when WLA Investments acquired it. *Id.*

In September 2016, an entity owned by Amos's wife but controlled by Amos granted CB&T a lien against the investment property that was the subject of WLA Investments' lien to secure a debt owed to CB&T by another Amos entity. *Id.* at 163:5-16. As part of this transaction, an entity listed as "WLA Investments, LLC, a/k/a WLA Investments, Inc." subordinated its mortgage on the property to the CB&T lien. *Id.* at 166:16-167:12. It is unclear if WLA Investments received anything in exchange for the subordination. *Id.* at 167:9-12.

The FDIC maintains that this lien subordination must be voided as a matter of law. The Court finds that genuine factual disputes exist to preclude summary judgment. The FDIC's claim to void the lien subordination is premised on its contention that WLA Investments, Inc. is not a legal entity and is simply the alter ego of Amos. But Amos points to evidence that WLA Investments, Inc. is a misnomer for "WLA Investments, LLC," an entity owned by Amos and his wife. See Amos Dep. 166:16-

167:12. Thus, the present record does not support a finding that WLA Investments, Inc. is Amos's alter-ego as a matter of law.

Additionally, even if WLA Investments is Amos's alter ego, the present record does not support the conclusion that as a matter of law WLA Investments did not receive reasonably equivalent value for subordinating its mortgage. The FDIC does not offer evidence regarding the value of the mortgage in 2016. And Amos testified that the balance owed on the mortgage was zero when WLA Investments acquired it. See Amos Dep. 160:15-161:5. It is unclear why WLA Investments would bother acquiring a worthless mortgage and subordinating a worthless lien to CB&T. But with no indication of how much the mortgage is worth, the Court has no way to determine if WLA Investments received reasonably equivalent value for subordinating it. Thus, the Court cannot find based on the present record that the lien subordination is voidable as a matter of law.

## **II. Motion to Modify the Consent Order in 4:16-CV-284**

On October 27, 2016, the Court entered a Consent Order regarding the FDIC's motion for a preliminary injunction in this case. See Consent Order Granting Prelim. Inj., ECF No. 17. The Consent Order enjoins Amos, Jenifer Amos, WLA Investments, Paladin, and Amos & Co. from dissipating assets other than as permitted in the Order. The FDIC asks the Court to modify the

Consent Order in two ways: (1) prescribe a budget for Amos & Co.; and (2) order that funds that the FDIC garnished in state court be deposited in this Court's registry.

Regarding Amos & Co.'s budget, the Consent Order enjoins Amos & Co. from dissipating or spending any of its assets "other than to pay ordinary business expenses of Amos & Co. in accordance with the budget attached hereto as Exhibit C." Consent Order Granting Prelim. Inj. 4. The Amos & Co. budget lists three categories of permitted expenses—car payments, life insurance payments, and taxes. See Consent Order Granting Prelim. Inj. Ex. C, Amos & Co. Budget, ECF No. 17 at 14. But it does not provide an amount of money that Amos & Co. may spend on each category. Apparently, the parties anticipated working out the amount after the Consent Order was entered and failed to do so. See *id.* ("Reasonable and necessary details regarding the foregoing monthly expenses to be provided to Plaintiff by Defendants by close of business October 28, 2016.").

Since the entry of the Consent Order, the FDIC has received monthly reports of Amos & Co.'s expenses. In support of its motion to modify, the FDIC argues that Amos & Co.'s expenses currently exceed its commission income. It thus concludes that Amos & Co.'s assets will soon be depleted, irreparably harming the FDIC's ability to collect its judgments against Amos.

Based on the present record, it is not entirely clear that the FDIC's concerns are well founded. It appears that Amos & Co. has assets in addition to the monthly premium income. But the Court is not prepared today to make a definitive decision on this issue. The parties will have an opportunity to be heard on this motion at the pretrial conference.

The Court is also skeptical about whether it has authority to direct that the garnished funds held in a state court garnishment action be transferred to this Court. The FDIC should present the Court with legal authority prior to the pretrial conference to support this Court's jurisdiction to enter such an order and exercise control of those funds.

### **III. Motion for Summary Judgment in 4:16-MC-4**

The FDIC filed a garnishment action against Aflac as the sponsor of Amos's Aflac Incorporated Market Director Deferred Compensation Plan ("the Plan"). Aflac has taken the position that the funds credited to Amos's Plan account are not subject to garnishment. See Aflac's Answer, ECF No. 8. The FDIC filed a motion for summary judgment, arguing that it is entitled to garnish the credit to Amos's Plan account now (ECF No. 10).

As part of his employment with Aflac, Amos is enrolled in the Plan. "[T]he Plan is intended to be an unfunded, nonqualified deferred compensation plan covering certain designated employees who are within a select group of key

management or highly compensated employees.” Amos Decl. Ex. 1, First Am. to the Aflac Incorporated Market Director Deferred Compensation Plan ¶ 4, ECF No. 16-1 at 4 (“Plan Am.”). The Plan allows Amos to elect to defer receiving part of his compensation until a designated date or upon his separation from Aflac. Aflac Incorporated Market Director Deferred Compensation Plan ¶ 5.2, ECF No. 10-3 at 27 (“Plan”); Plan Am. ¶¶ 8-10. Aflac also makes contributions to the Plan. Quarterly Statement, ECF No. 10-3 at 45.

The Plan is unfunded, meaning that the money credited to Amos’s account is purely a bookkeeping record. Plan ¶ 3.1(b). Aflac maintains a Rabbi Trust with money that it will use to pay out accounts if participating employees leave Aflac or are entitled to funds in their accounts. The Plan states, “The right of a Participant or his Beneficiary to receive payments under the Plan may not be anticipated, alienated, sold, transferred, pledged, encumbered, attached or garnished by creditors of such Participant or Beneficiary, except [in certain circumstances not applicable here].” Plan ¶ 10.7.

Defendants argue that the Plan account is not subject to garnishment because: (1) the funds are not yet owed to Amos; and (2) the Plan explicitly provides that it is not subject to garnishment. The Court must first determine whether Georgia law

provides for garnishment of the funds credited to the Plan account before these funds are owed to Amos.

Generally, "[a]ll obligations owed by the garnishee to the defendant" and "[a]ll money or other property of the defendant in the possession or control of the garnishee" during the garnishment period are subject to garnishment. O.C.G.A. § 18-4-4(a) & (b). Under a plain reading of this text, a strong argument exists that the funds in Amos's Plan account are not subject to garnishment at this time because Aflac did not owe Amos the funds or hold the funds specifically for Amos during the garnishment period. Such a conclusion is consistent with Georgia's general rule that:

The rights of a garnishing creditor rise no higher than those of the defendant [debtor]. What one cannot recover himself cannot be recovered by garnishment against him. . . . The creditor may stand in his debtor's shoes by means of garnishment, but he gains no additional privileges.

*First Nat. Bank of Atlanta v. Sinkler*, 317 S.E.2d 897, 900 (Ga. Ct. App. 1984) (quoting *Summer v. Allison*, 193 S.E.2d 177, 184 (Ga. Ct. App. 1972)).

The FDIC does not contend that Amos is currently owed any payment from the Plan account. Nevertheless, the FDIC argues that the express exclusion of deferred compensation plans from an exemption in the Georgia garnishment statute indicates that the funds in the Plan account are subject to garnishment,

regardless of whether the funds are presently owed to Amos.

O.C.G.A. § 18-4-6 provides:

Funds or benefits from an individual retirement account or from a pension or retirement program shall be exempt from the process of garnishment until paid or otherwise distributed to a member of such program or beneficiary thereof.

Funds in an unfunded plan maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees shall not be exempt from the process of garnishment.

O.C.G.A. § 18-4-6(a)(2) & (3). The FDIC reasons that the distinction between retirement benefits and deferred compensation plans would be meaningless if the Court does not allow garnishment of the funds in Amos's Plan account before the funds are owed to Amos.

The FDIC's argument does not consider the following. The exemption provides that retirement benefits are exempt from garnishment "*until paid or otherwise distributed*" to the defendant. O.C.G.A. § 18-4-6(a)(2) (emphasis added). This means that a creditor cannot garnish retirement benefits directly from a defendant's employer, even if the funds are owed to the defendant—the funds must literally pass through the defendant's hands before they are subject to garnishment. See *Davis v. Davis*, 288 S.E.2d 748, 749 (Ga. Ct. App. 1982) ("*Paid or otherwise transferred*" in [the former version of this provision] means exactly what it says; if the legislature had

intended the statute to mean 'payable' or 'transferable,' it would have used those words."). The statute excludes funds in a deferred compensation plan from this exemption, meaning that if and when the funds in Amos's Plan account are owed to Amos, the FDIC may garnish these funds directly from Aflac. As noted above, the FDIC makes no argument that the funds are owed to Amos at this time. Thus, a strong argument exists that the FDIC is not entitled to summary judgment on this issue.

Because a decision on this issue may have ramifications beyond this specific garnishment action, the Court finds that oral argument on this motion is necessary before the Court issues a final ruling. Accordingly, the parties should be prepared to address this motion at the pretrial conference.

#### CONCLUSION

As explained in today's Order, the FDIC's motion for summary judgment in 4:16-CV-284 seeking to void certain transactions as a matter of law under GUVTA (ECF No. 51) is denied. The Court defers ruling on the FDIC's motion to modify the Consent Order in 4:16-CV-284 (ECF No. 50) and defers ruling on the FDIC's motion for summary judgment in the garnishment action, 4:16-MC-4 (ECF No. 10).

IT IS SO ORDERED, this 28th day of July, 2017.

S/Clay D. Land  

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CLAY D. LAND  
CHIEF U.S. DISTRICT COURT JUDGE