

2015 WL 6471180

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United States District Court,
N.D. California.

Windmill Health Products, LLC, Plaintiff,

v.

Sensa Products (Assignment for the
Benefit of Creditors), LLC, Defendant.

No. C-15-0574 MMC

|
Signed October 27, 2015

Attorneys and Law Firms

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ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; DENYING DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT; VACATING HEARING

[MAXINE M. CHESNEY](#), United States District Judge

*1 Before the Court is plaintiff Windmill Health Products, LLC's ("Windmill") motion for summary judgment, filed September 8, 2015, and defendant Sensa Products (Assignment for the Benefit of Creditors), LLC's ("the Assignee") cross-motion for summary judgment, filed September 22, 2015.¹ The motions have been fully briefed. Having read and considered the papers filed in support of and in opposition to the motions, the Court deems the matters suitable for determination on the parties' respective written submissions, VACATES the hearing scheduled for October 30, 2015, and rules as follows.

BACKGROUND²

On May 1, 2014, Windmill filed in state court a complaint against Sensa, Inc. and Sensa Products, LLC (collectively,

"Sensa Products"). (See [Ottaunick Decl.](#), filed September 8, 2015, Ex. C.) On August 6, 2014, Windmill and Sensa Products entered into a Settlement Agreement (see [id.](#) Ex. D), under which agreement Sensa Products, *inter alia*, agreed to "pay Windmill the sum of \$2,500,000, payable in twelve monthly payments of \$200,000 and one final payment of \$100,000" (see [id.](#) Ex. D at 2). Pursuant to the Settlement Agreement, Sensa Products, on August 22, 2014, wired \$200,000 to Windmill (see [id.](#) ¶ 8), and, on September 1, 2014, wired a second payment of \$200,000 to Windmill (see [id.](#) ¶ 9). Sensa Products failed, however, to make the third required installment payment. (See [id.](#) ¶ 10.)

"On or about November 17, 2014, Windmill received notice that Sensa Products [had] made a general assignment for the benefit of creditors pursuant to California state law." ([Id.](#) at ¶ 11.) On January 29, 2015, counsel for the Assignee wrote Windmill, asserting that Windmill was obligated, under § 1800(b) of the California Code of Civil Procedure, to "return[] to the Assignment estate" the \$400,000 Sensa had paid to Windmill, which payments the Assignee referred to as "Preference Payments," and advising Windmill that "to avoid any adverse legal action," Windmill must return the \$400,000 "within thirty (30) days of [Windmill's] receipt of [the] letter." (See [id.](#) Ex. E.)

On February 5, 2015, Windmill filed the instant action, seeking a declaration that it was not obligated to return the \$400,000 to the Assignee. (See [Compl.](#) ¶¶ 9-10, 13, 16.)

LEGAL STANDARD

Pursuant to [Rule 56 of the Federal Rules of Civil Procedure](#), a "court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." See [Fed. R. Civ. P. 56\(a\)](#).

*2 The Supreme Court's 1986 "trilogy" of [Celotex Corp. v. Catrett](#), 477 U.S. 317 (1986), [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242 (1986), and [Matsushita Electric Industrial Co. v. Zenith Radio Corp.](#), 475 U.S. 574 (1986), requires that a party seeking summary judgment show the absence of a genuine issue of material fact. Once the moving party has done so, the nonmoving party must "go beyond the pleadings and by [its] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." See

[Celotex](#), 477 U.S. at 324 (internal quotation and citation omitted). “When the moving party has carried its burden under Rule 56[], its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.” [Matsushita](#), 475 U.S. at 586. “If the [opposing party's] evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” [Liberty Lobby](#), 477 U.S. at 249-50 (citations omitted). “[I]nferences to be drawn from the underlying facts,” however, “must be viewed in the light most favorable to the party opposing the motion.” See [Matsushita](#), 475 U.S. at 587 (internal quotation and citation omitted).

DISCUSSION

Section 1800 of the California Code of Civil Procedure is a “statutory scheme for recovery of avoidable preferences by an assignee for the benefit of creditors.” See [Angeles Electric Co. v. Superior Court](#), 27 Cal. App. 4th 426, 430 (1994). Pursuant to § 1800(b), “the assignee of any general assignment for the benefit of creditors...may recover any transfer of property of the assignor” under specified circumstances. See Cal. Civ. Proc. Code § 1800(b). As set forth above, the Assignee contends Windmill is obligated, under § 1800(b), to return to the Assignee the \$400,000 Sensa had paid to Windmill under the terms of the Settlement Agreement. By its motion, Windmill seeks a finding that § 1800(b) is preempted by the Bankruptcy Code, and, consistent therewith, a declaration that it is not obligated to return to the Assignee the subject \$400,000. By its cross-motion, the Assignee seeks a finding that § 1800(b) is not preempted.

The Ninth Circuit has considered the precise issue presented in the instant case. In [Sherwood Partners, Inc. v. Lycos, Inc.](#), 394 F.3d 1198 (9th Cir.), cert. denied, 546 U.S. 927 (2005), the Ninth Circuit held that § 1800(b) “is preempted by the Bankruptcy Code,” see [id.](#) at 1206, and, accordingly, directed the district court therein to dismiss a claim in which the assignee alleged the defendant was obligated under § 1800(b) to return to the assignee payments previously made to the defendant by the debtor, see [id.](#) at 1200, 1206.

In so holding, the Ninth Circuit observed that chapter 7 of the Bankruptcy Code provides for the equitable distribution of a debtor's assets among competing creditors, see [id.](#) at 1203, and that “the power to avoid preferential transfers” is given to the bankruptcy trustee upon a filing of a bankruptcy

petition, see [id.](#) at 1204 (citing 11 U.S.C. § 547(b)). As the Ninth Circuit explained, “if a state assignee under § 1800 recovers a preferential transfer and distributes its proceeds to creditors, this will preclude a federal trustee from recovering the same sum under the federal preferential statute if a federal bankruptcy proceeding is begun.” See [id.](#) at 1204. The Ninth Circuit further explained that Congress, in enacting the Bankruptcy Code, had “carefully delineate[d] the circumstances under which federal bankruptcy proceedings are to be initiated,” and that § 1800(b) interfered with the “statutory incentives” in a manner Congress had not “contemplated.” See [id.](#) at 1205 (noting that once § 1800(b) proceedings are instituted, they “will affect the incentives of various parties as to whether they wish to avail themselves of federal bankruptcy law”). In sum, the Ninth Circuit found that § 1800(b) could not “peacefully coexist” with the Bankruptcy Code. See [id.](#) at 1202, 1206.

*3 Windmill argues that this Court is bound by the Ninth Circuit's decision in [Sherwood Partners](#) and likewise must find § 1800(b) is preempted. See [Hart v. Massanari](#), 266 F.3d 1155, 1170 (9th Cir. 2001) (holding “[b]inding authority must be followed unless and until overruled by a body component to do so”).

The Assignee argues that this Court is not bound by [Sherwood Partners](#), and instead should find persuasive two decisions of the California Court of Appeal, specifically, [Haberbrush v. Charles and Dorothy Cummings Family Ltd. Partnership](#), 139 Cal. App. 4th 1630 (2006) and [Credit Managers Ass'n v. Countrywide Home Loans, Inc.](#), 144 Cal. App. 4th 590 (2007), each of which considered the reasoning set forth in [Sherwood Partners](#), declined to follow [Sherwood Partners](#), and found, instead, that § 1800(b) is not preempted by the Bankruptcy Code. See [Haberbrush](#), 139 Cal. App. 4th at 1637 (2006) (“disagree[ing] with the analysis in [Sherwood Partners](#)”; finding it “impossible to conclude that Code of Civil Procedure section 1800 is inconsistent with the essential goals and purposes of federal bankruptcy law”) (internal quotation and citation omitted); see also [Credit Managers Ass'n](#), 144 Cal. App. 4th at 598 (noting federal court of appeals’ “decisions on federal questions are persuasive authority, but they are not binding on [state appellate] court[s]”; finding “the [Haberbrush](#) court's analysis of the issue more persuasive”).

The Assignee argues [Sherwood Partners](#) is “distinguishable” because it is now “contrary” to “well-established California case law.” (See Def.'s Opp. at 8:21–9:13.) In support thereof,

the Assignee relies on “the rule that when (1) a federal court is required to apply state law, and (2) there is no relevant precedent from the state's highest court, but (3) there is relevant precedent from the state's intermediate appellate court, the federal court must follow the state intermediate appellate court decision unless the federal court finds convincing evidence that the state's supreme court likely would not follow it.” See [Ryman v. Sears, Roebuck & Co.](#), 505 F.3d 993, 994 (9th Cir. 2007).

In this instance, however, the Assignee's reliance on the above-referenced authority is misplaced. The rule on which the Assignee relies pertains when the legal issue presented is an issue of “state law.” See [id.](#) at 995 (holding, in reliance on decision of Oregon “intermediate appellate court,” Oregon Family Leave Act provided cause of action for retaliatory discharge). The principle underlying the rule is that the “highest state court is the final authority on state law,” see [Fidelity Union Trust Co. v. Field](#), 311 U.S. 169, 177 (1940), and, consequently, all federal courts, including the United States Supreme Court, are bound by decisions issued by the highest state court on issues of state law, see, e.g., [Crane v. Campbell](#), 245 U.S. 304, 307 (1917) (holding, where petitioner challenged constitutionality of state statute, statute's “validity under the state Constitution is not open for [the United States Supreme Court's] consideration”).

By contrast, the issue of whether a state statute is preempted by federal law is not an issue of state law, but, rather, one of federal law, see [Local Union 598 v. J.A. Jones Construction Co.](#), 846 F.2d 1213, 1218 (9th Cir. 1988) (holding “preemption is a question of federal law”), specifically, an issue arising under the “Supremacy Clause of the United States Constitution,” see [Ferguson v. Corinthian Colleges, Inc.](#), 733 F.3d 928, 932 (9th Cir. 2013). Consequently, a decision by the highest state court as to whether a state statute is preempted is not binding on federal courts, see, e.g., [Sears, Roebuck & Co. v. San Diego County District Council](#), 436 U.S. 180, 183-84, 207 (1978) (reviewing California Supreme Court's decision that state trespass law, as applied to particular type of picketing activity, was preempted by National Labor Relations Act), whereas a decision by the Ninth Circuit that a state statute is preempted by federal law is binding on district courts even where the highest court of the state has held to

the contrary, see, e.g., [Moore v. Dollar Tree Stores Inc.](#), 85 F. Supp. 2d 1176, 1193 (E.D. Cal. 2015) (holding, where Ninth Circuit and California Supreme Court had reached different conclusions as to whether state statute was preempted by federal law, district court was “bound by the Ninth Circuit's decision”). Indeed, the Supreme Court made the distinction clear in [Erie v. R. Co. v. Tompkins](#), 304 U.S. 64 (1938), in which it held that district courts sitting in diversity must apply state law “[e]xcept in matters governed by the Federal Constitution or by acts of Congress.” See [id.](#) at 78 (emphasis added).³

*4 Accordingly, in light of the Ninth Circuit's decision in [Sherwood Partners](#), the Court finds [§ 1800\(b\) of the California Code of Civil Procedure](#) is preempted, and, consequently, will grant Windmill's motion for summary judgment and deny the Assignee's cross-motion for summary judgment.

CONCLUSION

For the reasons stated above:

1. Windmill's motion for summary judgment is hereby GRANTED; the Assignee's cross-motion for summary judgment is hereby DENIED; and
2. Windmill is not obligated to return to the Assignee either the August 22, 2014, payment by Sensa in the amount of \$200,000 or the September 1, 2014, payment by Sensa in the amount of \$200,000.

IT IS SO ORDERED.

Dated: October 27, 2015

MAXINE M. CHESNEY

United States District Judge

All Citations

Slip Copy, 2015 WL 6471180

Footnotes

- 1 Although the document the Assignee filed on September 22, 2015, is titled “Opposition to Plaintiff Windmill Health Products, LLC's Motion for Summary Judgment,” the filing also includes what is in essence a cross-motion for summary judgment in favor of the Assignee (see Def.'s Opp. at 2:24), as was contemplated by the parties and the Court at the

Further Case Management Conference conducted August 7, 2015 (see Minutes, filed August 7, 2015 (setting forth deadlines of September 8, 2015, for Windmill to file “motion for summary judgment” and September 22, 2015, for the Assignee to file “Opposition/Cross Motion for Summary Judgment”)).

2 The following facts are undisputed.

3 The Court has diversity jurisdiction over Windmill's complaint.

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