Entered on Docket
EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
Docket #0034 Date Filed: 4/4/2025

The following constitutes the order of the Court.
Signed: April 4, 2025

William J. Lafferty, III
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re The Roman Catholic Bishop of Oakland, Debtor.	Case No. 23-40523 WJL Chapter 11
The Official Committee of Unsecured Creditors of the Roman Catholic Bishop of Oakland, Plaintiff, v. The Roman Catholic Bishop of Oakland AND The Oakland Parochial Fund, Inc. Defendants.	AP Case No. 24-04051 WJL **Hearing Held** Date: March 4, 2025 Time: 1:30 p.m. Location: 1300 Clay St, Ctrm 220/Zoom, Oakland, CA 94612

ORDER AFTER HEARING ON MOTIONS TO DISMISS

On March 4, 2025, the Court heard oral arguments on two Motions to Dismiss the above-captioned Adversary Proceeding, brought by The Roman Catholic Bishop of Oakland (the "Debtor" or the "RCBO" as the context requires) and The Oakland Parochial Fund, Inc.

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("OPF"). Shane Moses, Geoffrey Goodman, and Matthew Lee of Foley and Lardner LLP appeared on behalf of RCBO, and Ryan Manns and Jason Blanchard of Norton Rose Fulbright LLP appeared on behalf of The Oakland Parochial Fund, Inc. ("OPF"). Gabrielle Albert of Keller Benvenutti Kim LLP and Michael Kaplan and Jeffrey Prol of Lowenstein Sandler LLP appeared on behalf of the Official Committee of Unsecured Creditors (the "Committee"). For the reasons stated below, the Debtor's Motion to Dismiss is granted with respect to Counts 1 through 3, with leave to amend. OPF and Debtor's Motions to Dismiss are similarly granted with respect to Counts 4 and 6, with leave to amend. As acknowledged by the Committee, Count 5 seeks relief against the wrong party (OPF); the Committee offered to amend this count to name the correct party (RCBO). Accordingly, Count 5 is also dismissed, with leave to amend.

I. BACKGROUND

On November 20, 2024, the Official Committee of Unsecured Creditors (the "Committee") filed an Adversary Complaint against RCBO, OPF, and the John Doe Churches 1-82 (as referred to in the complaint) (the "Churches"). In its complaint, the Committee alleges that the Diocese, OPF, and the Churches are, in effect, one entity and that distinctions between these parties in property ownership work to shelter assets from the estate and its creditors. (*Adversary Complaint for Declaratory Relief*, ECF No. 1, at 3:4).

Counts 1 through 3 of the complaint seek declaratory judgment to establish that (1) the Churches are, at best, unincorporated divisions of the "Diocese" (that is: the Diocese and Churches are not separately incorporated under California law), (2) the Diocese thus owns all legal and equitable interests in property purportedly owned by the Churches (in the words of the Committee), and (3) that no valid trust exists with respect to such property. *Id.* at 16:96-

18:116. Were the Court to determine that the Churches are, in fact, incorporated entities capable of owning property, Count 4 seeks substantively to consolidate the Churches with the Diocese due to their "entangled business dealings" and the Diocese's "high degree of domination and control" of the Churches. *Id*. at 18:117-19:123 and 20:130-21:136.

Count 5 seeks declaratory relief to determine that the proceeds of the Term Loan Agreement between the Diocese and OPF—under which OPF purportedly loaned the Diocese $35 million and deposited the funds into restricted bank accounts—are, in fact, unrestricted property of the Estate pursuant to §541. *Id*. at 19:124-9. Count 6 seeks substantively to consolidate OPF with the Diocese, *nunc pro tunc* to the Petition Date, because of the Diocese's degree of control of and entanglement with OPF. *Id.* at 20:131-21:136.

On January 24, 2025, OPF filed a Motion to Dismiss Adversary Proceeding (*The Oakland Parochial Fund, Inc.'s Motion to Dismiss*, ECF No. 6), and the Debtor filed a Motion to Dismiss the Adversary Complaint (the "Motions to Dismiss"). (*Debtors Motion to Dismiss Adversary Complaint for Declaratory Relief*, ECF No. 11).

The Debtor moves to dismiss Counts 1 through 4 under Fed. R. Civ. P. 12(b)(6), arguing that Count 1 does not state an actual justiciable controversy and that Counts 2 through 4 are accordingly moot, and similarly fail to state an actual controversy or allege sufficient facts. OPF and the Debtor move to dismiss Count 6 under Fed. R. Civ. P. 12(b)(6), arguing both that the Court lacks the authority to grant the requested relief under §105 of the Bankruptcy Code and, even if the Court had such authority, that the Committee has not pled sufficient facts to support a claim for substantive consolidation. (*ECF No. 6,* at 7:16-25).

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), incorporated by Federal Rule of Bankruptcy Procedure 7002, a complaint must be dismissed if it fails to state a claim upon which relief can be granted. In order to avoid dismissal, a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), and the complaint must contain sufficient facts that state a claim to relief that is facially plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). This requires a plaintiff to allege facts that are "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Id*. at 678. In determining whether a plaintiff has met this standard and sufficiently stated a claim upon which relief can be granted, the Court must assume the plaintiff's allegations are true and must draw all reasonable inferences in favor of the nonmoving party. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).

III. ANALYSIS

For the reasons discussed in greater detail below, each Count (1-6) must be dismissed. The Committee is granted leave to amend each count, as possible.

A. The Court will dismiss, with leave to amend, Counts 1 through 3 as either not describing a justiciable controversy or as moot.

In Counts 1 through 3, the Committee seeks a judicial determination that the Churches are unincorporated divisions of the Diocese and, therefore, incapable of separately owning property. (*ECF No. 1,* at 16:99-101). To the extent that certain, not precisely identified, property and funds are "restricted" from the reach of creditors because allegedly held by the Bishop and Diocese in trust for the benefit of the applicable Churches, the Committee seeks a declaration that such a trust is invalid. *Id*. at 17:110-18:116.

The Debtor moves to dismiss Counts 1 through 3, arguing that no actual justiciable controversy exists, that Counts 2 and 3 are moot, and that each claim lacks sufficient factual support. Debtor asserts that it has already acknowledged that the Churches are not separately incorporated legal entities and do not own or hold legal or equitable title interest in real property separate from the Debtor. (*ECF No. 11,* at 10: 9-14). [1] Debtor further maintains that "unrestricted Church Funds have been and remain available to Creditors," while restricted funds are properly withheld under California state law as part of a charitable trust. *Id*. at 10:19 - 11:11. Debtor thus appears to agree and acknowledge that there is no legally significant distinction between itself and the Churches that would, by itself, have the effect of removing assets from the estate or otherwise shielding those assets from the reach of creditors.

In its Complaint and in its Opposition to the Motion to Dismiss, the Committee appears concerned that the Debtor is, through the Churches' putative corporate status or the Debtor's own inconsistent statements thereon, attempting to exclude certain property from the estate. The Committee notes a distinction between unincorporated associations which, under relevant non-bankruptcy law, may be akin to a deemed partnership (i.e., a separate legal entity), and unincorporated divisions of a business organization, which are merely parts of a larger corporation, and are not to be treated as independent legal entities. The Committee emphasizes that it seeks a declaration that the Churches are *divisions* of the Diocese, incapable of owning property, arguing that such a distinction determines that "without reservation or condition," all Church Property is property of the debtor's estate available to creditors, and must be included in the Debtor's schedules, liquidation analysis and plan of reorganization. (*Omnibus*

[1] While reserving all rights to argue that not all Church property is property of the estate or available for liquidation.

Brief/Memorandum in Opposition to (I) Debtors Motion to Dismiss Adversary Complaint for Declaratory Relief, and (II) the Oakland Parochial Fund, Inc.'s Motion to Dismiss, ECF No. 16, at 4:14-6:25).

To bolster the need for a judicial declaration on this point, the Committee highlights apparent inconsistencies between the Debtor's admissions in this proceeding and its Schedules and Statements of Financial Affairs (SOFAs), claiming that the Debtor has not clarified this important distinction and has "admitted that the Churches are not separate legal entities while simultaneously asserting that the Churches can somehow own a beneficial interest in property separate from the Debtor." *Id*. at 8:12-17.

In light of the facts presented regarding the Diocese's corporate structure and the Debtor's admissions that the Churches are not separately organized or distinct legal entities, the Court finds that the Committee has not sufficiently pled facts in Counts 1 and 2 that describe an actual factual or legal dispute concerning the Churches' separate organization or deemed legal status that would allow them separately to own property distinct from the Diocese, and that would indicate an actual dispute concerning the ownership of property.

The Committee provides ample factual evidence of the Diocese's corporate structure and its degree of management and control of the Churches, but this showing appears to be aimed at a non-existent dispute: the Debtor is not claiming a right to shield assets from creditors based on the legal relations between the Diocese and the Churches, or any alleged or deemed "separateness" between them. Rather, the Committee's concern appears to lie with the Debtor's assertions that certain assets are held by the Diocese in a restricted manner and are unavailable to creditors.

Given that the Debtor admits that the Churches are not separate from the Diocese and do not and cannot hold property separately from it—the Court finds that there is no justiciable controversy with respect to Counts 1 and 2. The Court will thus grant the Debtor's Motion to Dismiss as to those Counts, provided, however, that the Court will permit the Committee to amend the complaint to set forth, if possible, a dispute concerning the Diocese's and the Churches' ownership of Property distinct from the uncontested grounds asserted in Counts 1 and 2 of the complaint.

The Committee argues in its pleadings that the consequence of the designation of the Churches as a division of the Diocese makes available to Creditors funds that the Debtor maintains are restricted by a charitable trust, in effect overriding the effect of a trust. As will be described in greater detail below, this argument conflates two distinct concepts: whether the Churches have a discrete legal status or separation from the Diocese that would allow them separately to own property, and whether the Debtor can argue that some assets or property held by the Diocese are not available to creditors because they are held in some restricted manner. The answer to the second question does not depend on the existence of separation between the Diocese and the Churches; rather, it depends on the application of non-bankruptcy law to the question of what that law requires in order to create a restriction on the use of property or its availability to creditors. Such restrictions may include, for example, the existence of a trust valid under non-bankruptcy law.

While there is no dispute as to the corporate distinctions between the Churches and the Diocese, there does appear to be a genuine dispute as to whether the Diocese, in fact, holds assets in trust or under an enforceable restriction making certain property unavailable to Creditors.

Generally, property that a debtor holds in trust for another is not the property of the estate upon a bankruptcy filing. 11 U.S.C. § 541(d). The Committee appears to argue that the validity of the Debtor's trust would be impugned with a finding that the Churches and the Debtor are not separately incorporated. While the Debtor admits that the entities are not separately incorporated, it declines to agree that this distinction, or lack thereof, makes the assets held in trust for the Churches available to creditors.

While the Committee has generally challenged the existence of a valid trust, or other vehicle, that would remove assets from the Debtor's estate, the facts put forth by the Committee and the Debtor on this issue, both for or against the existence of a trust or similar protective vehicle, or what sort of vehicle would be sufficient under applicable non-bankruptcy law to protect assets, or even what assets in particular are held in such restriction, and why, are presently unclear. Thus, while it does appear to the Court that there is an actual controversy between the Debtor and the Committee on the issue of putatively restricted assets, the basis and scope of that dispute are not articulated with sufficient precision. Claims seeking clarity as to which funds are held in trust or otherwise restricted, or the basis therefor, can be articulated in a number of ways. The Court, therefore, believes an additional status conference to further illuminate the details of this dispute would be beneficial to all parties before putting the Committee to the task of identifying the assets allegedly held in trust on a restricted basis.[2]

Accordingly, the Court HEREBY GRANTS the Debtor's motion to dismiss Counts 1 through 3, with leave to amend.

B. The Court will dismiss Count 4 with leave to amend dependent upon the Committee's amendments to Counts 1 through 3

[2] At the status conference, the Court will discuss the best means of clarifying the dispute and the timing of the corresponding amendments.

Where the Court might determine that the Churches are, in fact, incorporated entities capable of owning property, Count 4 seeks substantively to consolidate the Churches with the Diocese due to their "entangled business dealings" and the Diocese's "high degree of domination and control" over the Churches activities. *Id*. at 18:117-19:123 and 20:130-21:136.

The Court finds that Count 4 is predicated on an alternative scenario wherein it holds that the Churches are incorporated entities capable of owning property. Given that the Debtor has explicitly denied the characterization of the Churches as separately incorporated entities, the Court agrees that, as it stands, there is no separate entity to consolidate. Accordingly, the Court HEREBY GRANTS Debtor's Motion to Dismiss Count 4. Count 4 may be amended to the extent that the Committee, in its amended complaint, articulates a basis for a cognizable dispute in its newly pled Counts 1 through 3.

C. The Court will dismiss Count 5 with leave to amend to name the correct party

Count 5 seeks declaratory relief to determine that the proceeds of the Term Loan Agreement that were transferred into purportedly restricted bank accounts are unrestricted property of the estate pursuant to §541. *Id.* at 19:124-9.

In a footnote to its Opposition to Debtor's and OPF's Motions to Dismiss, the Committee requests permission from this Court to amend Count 5 to be pled against Debtor rather than OPF, in response to concessions Debtor made in its motion. (*ECF No. 16*, at 10). Accordingly, Count 5 is dismissed, with leave to amend.

D. The Court will dismiss Count 6 with leave to amend

In Count 6, the Committee seeks to consolidate OPF with the Diocese, *nunc pro tunc* to the Petition Date, based on facts that the Committee asserts demonstrate an entanglement between the entities that make accurate asset identification impossible and justify

consolidation. Substantive consolidation is a remedy generally within a bankruptcy court's equitable powers under §105 of the Bankruptcy Code. Substantive consolidation is not provided for specifically in the Bankruptcy Code; rather it is a creation of case law. While there are accordingly no express statutory requirements for the imposition of substantive consolidation, case law has generally stated that courts should consider whether (1) there is a disregard for corporate formalities and comingling of assets between the subject entities, and whether (2) the benefits of substantive consolidation outweigh its costs. Courts are to make this determination on a case-by-case basis with the overarching goal of ensuring fairness to all creditors. *In re Bonham*, 229 F.3d 750, 765. (9th Cir. 2000).

Both OPF and the Debtor argue that substantive consolidation, like all equitable remedies, may not be used to override explicit mandates of the Bankruptcy Code. (*ECF No. 6*, at 10-11 and *ECF No. 11*, at 13-15). As two not-for-profit entities, both the Debtor and OPF assert that their consolidation would run afoul of Section 303(a)'s prohibition on forcing non-profits into involuntary bankruptcy. *Id*. (citing *Law v. Siegel*, 571 U.S. 415 (2014)).

In addition, OPF points to the court's ruling in *In re Archdiocese of St. Paul & Minneapolis*, 888 F.3d 944 (8th Cir. 2018) in which the Eighth Circuit declined to consolidate the Debtor, a Catholic diocese, with numerous affiliated non-profit entities, finding that such consolidation would be equivalent to forcing those entities involuntarily into bankruptcy. (*ECF No. 6,* at 9:9-18). OPF further argues that, even if the Committee could override the prohibitions of Section 303(a), the Committee has failed to allege sufficient facts to show: (1) a disregard for corporate formalities or comingling of assets and (2) that the benefits of substantive consolidation would outweigh the harms caused, justifying substantive consolidation in this instance. *In re Bonham*, 229 F.3d 750, 764 (9th Cir. 2000). The Debtor

makes substantially similar arguments in its motion to dismiss Count 6, emphasizing that consolidation under the entanglement factor is not justified when some control "without more" is alleged. (*ECF No. 11,* at 13:9-18:18).

In opposition to the Motions to Dismiss, the Committee argues that it has sufficiently pled facts that would justify the imposition of substantive consolidation on the Debtor and OPF. The Committee also contends that *Archdiocese of St Paul & Minneapolis* is both non-binding, as an out-of-circuit decision, and factually distinguishable from this case, and that the court's ruling leaves open the possibility that a non-profit non-debtor could be appropriately consolidated under an alternative theory under applicable non-bankruptcy law. 888 F.3d 944, 953. (8th Cir. 2018). (*ECF No. 16*, at 10:9-12:3).

More precisely, the Committee points out that even in the *St. Paul* case, the court was willing to consider other non-bankruptcy law bases to effectively collapse any separation between the subject entities. (*ECF No.* 16, at 10). In *St. Paul*, the Court considered whether allegations that are sufficient under applicable non-bankruptcy law to justify the imposition of alter ego liability that would justify disregarding separation of the entities could support the combination of assets and liabilities between the debtor and a third party, under substantive consolidation or some other theory, and concluded that such non-bankruptcy based remedies would still be available. 888 F.3d 944, 953. The Committee thus argues that there is ample support for the proposition that *Law v. Siegel*, which restrains a Bankruptcy Court from imposing equitable remedies that contravene express provisions of the Bankruptcy Code, would not preclude actions that would otherwise be sanctioned under applicable non-bankruptcy law. (*ECF No. 16*, at 10:7-19:27). Per the Committee, in the Ninth Circuit, an alter ego theory would sufficiently satisfy the entanglement test and would permit the

Committee to reach its desired goal of substantial consolidation or a remedy with the same effect. *Id.* at 14:22-4. They argue that the facts offered, taken as true with inferences drawn in the Committee's favor, suggest unity of interest and ownership between OPF and Debtor, concluding that OPF cannot exist independently and is thus Debtor's alter ego. *Id.* at 15:1-16:27.

The Court agrees with the proposition that *Law v. Siegel* does not prohibit Bankruptcy Courts from granting relief that is otherwise appropriate under applicable non-bankruptcy law so long as it is not directly prohibited by the Bankruptcy Code. In this Court's view, the Supreme Court's opinion in *Law v. Siegel* limits only that which is *per se* prohibited under the Bankruptcy Code. 134 S.Ct. at 1196–97. While provisions of the Bankruptcy Code may not be ignored in order to accomplish the Court's equitable goals, *Law v. Siegel* does not, and could not, hold that Courts are prohibited from utilizing a mechanism acknowledged under state law to pursue and achieve the same result.

Here, although there was a discussion of the requirements for the imposition of the alter ego doctrine, and allegations that the standard was indeed satisfied *in responsive pleadings and at oral arguments*, the contents of the complaint do not fairly articulate a claim for alter ego, or any other applicable theory under non-bankruptcy law that would justify the equivalent of substantive consolidation. The Committee asserts that it has provided sufficient facts to plead a theory of alter ego as basis for their request for substantive consolidation. Respectfully, the Court declines to comment on the sufficiency of facts provided to support a theory not yet articulated. Stated differently, it is difficult for the Court fairly to assess this argument until the Committee more clearly frames its theory. Only once the appropriate framework is in place can

the Court determine if the facts alleged are sufficient to support a claim for substantive consolidation.

Accordingly, the Court HEREBY GRANTS the Debtor's and OPF's Motions to Dismiss Count 6, and the Committee is granted leave to amend to articulate any applicable non-bankruptcy law that would have the desired effect of substantive consolidation without overriding the explicit prohibitions of 303(a).

As set forth above with respect to Count 3, there is presently some uncertainty about precisely which assets the Debtor would argue are subject to restriction as well as the basis for any such restriction which the Court believes will complicate questions concerning the appropriate pleading of any putative disputes. In order to assist the parties in the expeditious articulation of these issues, and to discuss an appropriate timeline for further pleadings in this adversary proceeding, the Court believes it would be helpful to schedule a status conference to explore these issues. It is HEREBY ORDERED that a Status Conference is scheduled for **April 23, 2025, at 1:30 PM**.

*****END OF ORDER*****

COURT SERVICE LIST

All parties ECF