Entered on Docket
EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
Docket #0030 Date Filed: 4/22/2025

The following constitutes the order of the Court.
Signed: April 22, 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, The Roman Catholic Welfare Corporation of Oakland, The Roman Catholic Cemeteries of the Diocese of Oakland, AND Adventus Defendants.	AP Case No. 24-04053 WJL **Hearing Held** Date: March 4, 2025 Time: 1:30 p.m. Location: 1300 Clay St, Ctrm 220/Zoom, Oakland, CA 94612

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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 Defendants Adventus, The Roman Catholic Cemeteries of Oakland ("RCC"), and The Roman Catholic Welfare Corporation of Oakland ("RCWC"). 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 Adventus, RCC, and RCWC. 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"). Extensive oral arguments on this matter were heard in conjunction with two motions to dismiss an associated adversary proceeding (*AP No*. 24-04051). Arguments in this case raised substantially similar issues as those in the associated case and are accordingly discussed in similar terms below. For the reasons stated below, the Motions to Dismiss are granted with respect to all Counts, with leave to amend.

I. BACKGROUND

On December 11, 2024, the Official Committee of Unsecured Creditors (the "Committee") filed an Adversary Complaint against RCBO and the non-debtor entities RCWC, RCC, and Adventus (collectively, the "Non-Debtor Entities"). In its complaint, the Committee alleges that the Diocese and Non-Debtor Entities 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 2:1 – 4:15).

Count 1 seeks declaratory judgment to establish that the Debtor owns all legal and equitable interests in the investments, cash, and real estate assets (the "Property") of the Non-Debtor Entities. *Id.* at 17:112-116. Count 2 seeks substantively to consolidate the Non-Debtor Entities with the Debtor, due to the Diocese's alleged degree of control over the operations and affairs of the Non-Debtor Entities. *Id.* at 17:117-18:126.

On January 24, 2025, the Debtor and the Non-Debtor Entities (the "Defendants") separately filed two Motions to Dismiss the Adversary Complaint (the "Motions to Dismiss"). (*Motion of The Roman Catholic Welfare Corporation of Oakland, The Roman Catholic Cemeteries of the Diocese of Oakland, and Adventus to Dismiss Complaint*, ECF No. 9 and *Debtor's Motion to Dismiss Adversary Complaint for Declaratory Relief*, ECF No. 14).

The Defendants move to dismiss all Counts of the Committee's Complaint under Fed. R. Civ. P. 12(b)(6), arguing both that the Court lacks the authority to grant the requested relief of substantive consolidation 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 either directly through Count 2 or, indirectly through Count 1 which the Debtor and Non-Debtor Entities characterize as a "back-door" attempt at substantive consolidation through a finding that the Diocese owns all legal and equitable interest in the Property. (*ECF No. 14,* at 1:15-2:10).

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), incorporated by Federal Rule of Bankruptcy Procedure 7012, 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

With respect to Count 2, the arguments presented here in favor of and in opposition to substantive consolidation are practically identical to those raised in the associated adversary proceeding's Count 6. *See* AP No. 24-04051, ECF No. 1, at 3.

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).

The Defendants argue that substantive consolidation, like all equitable remedies, may not be used to override explicit mandates of the Bankruptcy Code. (*ECF No. 9*, at 14 and *ECF No. 14*, at 11). As not-for-profit entities, the Debtor and the RCC, RCWC, and Adventus assert

that their consolidation would run afoul of Section 303(a)'s prohibition on forcing non-profits into involuntary bankruptcy. *Id*., at 14:2-5 (citing *Law v. Siegel*, 571 U.S. 415 (2014)).

In addition, the Defendants point 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. 9,* at 11-14). Even if the Committee were capable of overriding the prohibitions of Section 303(a), the Defendants argue that 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). (*ECF No. 14*, at 11:19-28 and *ECF No. 9*, at 14:13-20)

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 Non-Debtor Entities. 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. 19*, at 16:22 – 17:1-17).

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. 19*, at 17:5-12). 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. 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 18:8 – 19:19. They argue that the facts offered, taken as true with inferences drawn in the Committee's favor, suggest unity of interest and ownership between the Non-Debtor Entities and Debtor and thus make it plausible that the Non-Debtor Entities are merely an alter ego of the Diocese. *Id.* at 19:24-20:25.

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 the Bankruptcy Code does not directly prohibit it. 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 the basis for its 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 alter ego status and effective consolidation.

Accordingly, the Court HEREBY GRANTS the Debtor's and Non-Debtor Entities' Motions to Dismiss Count 2, 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).

In Count 1, the Committee seeks a judicial determination that the Property held by the Non-Debtor Entities is, in fact, owned by the Debtor, making it available to the Estate and Creditors as of the petition date. (*ECF No. 19,* at 12:10-13).

The Debtor and Non-Debtor Entities characterize this claim as a backdoor attempt at substantive consolidation (*ECF No.* 9, at 20:4-17 and *ECF No. 14,* at 1:15-2:10) and move to dismiss Count 1, arguing that, no matter how a claim is packaged, this Court lacks the authority to substantively consolidate the Non-Debtor Entities with the Diocese under the restrictions of §303(a). In its Opposition, the Committee asserts that it does not seek to "merge" the estates of

the Debtor and Non-Debtor entities, as would be the case with explicit substantive consolidation, but aims to find that the property held by the Non-Debtor Entities belongs to the Diocese in order to make said property subject to distribution to creditors. (*ECF No. 19*, at 12:10-13 and *ECF No. 1*, at 4:16). The Defendants emphasize that the Committee's claim seeks a declaration that *all* property owned by the Non-Debtor Entities is, in fact, property of the Diocese---the same effect and aim of the Committee's request for substantive consolidation. (*ECF No.* 9, at 20:4-6 and *ECF No. 14*, at 16:11-13).

The Court agrees that certain remedies may be available under state law that do not run afoul of 303(a) and yet may still accomplish what seems to be a similar effect. To that end, the Court has no issue with approaching this question from a different doctrinal perspective. The Court is willing to consider arguments that substantially all the assets of the Non-Debtor Entities should be deemed to be owned by the Debtor. If the committee's thesis, however, is that all property owned by the Non-Debtor Entities is *per se* property of the Debtor's Estate, requests for such declaratory relief would be an impermissible attempt to effect substantive consolidation. If, on the other hand, rather than focusing on the remedy, the Committee can articulate particular reasons why particular assets, including possibly, in the aggregate, all assets, are or should be deemed property of the Debtor, they are free to articulate that thesis more specifically to allow a more precise evaluation of the claim. A finding that *all* property owned by the Non-Debtor Entities is, in fact, property of the Diocese due to the purported level of control over aspects of the Non-Debtor Entities remains too broad a claim to be sufficiently supported by the facts provided. Accordingly, the Court HEREBY GRANTS the Debtor's motion to dismiss Count 1, with leave to amend.

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

COURT SERVICE LIST

All parties ECF