

ERISA NOT A SHIELD TO PLAN'S ILLEGAL ACTS

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Employee Benefits

In a rather unusual setting, the application of ERISA to enforcement of a judgement against a retirement plan has come to issue. Two individuals borrowed money from a pension plan in 2000 and in 2002. The parties borrowing the money were not participants in the plan and therefore these were not participant loans. The individuals defaulted on payment of the promissory notes. The retirement plan sued to collect. The individuals raised the defense to payment of the loans based on the claim that the promissory notes contained a usurious interest rate. The original trial court concluded that the interest rate charged violated the State of Washington's usury statute and entered a judgement against the pension plan for over \$535,000. The individuals then went on to enforce the judgement and garnished slightly over \$1,500 from the pension plan's bank account. The pension plan filed a claim that the bank account money was exempt from garnishment because it represented retirement funds that were due to be paid to the plan participants. The trial court denied the claim of ERISA exemption and ordered judgement for the individuals. On appeal, the Court of Appeals in the State of Washington, upheld the judgement in favor of the individuals. The court found that a pension plan may be sued for its tortious acts, including the charging of interest on the loan that is usurious. The pension plan also made claims of preemption under ERISA and other ERISA related defenses; however, the court dismissed those actions finding that the pension plan was and remained liable for the judgement that was entered against it by the original trial court. *Johnson v. Carlson* (Wash. Ct. App., 2017)