

L.Ed.2d 142 (1970). If the movant does not meet this burden, summary judgment will be denied. *See Smith v. Goord*, 2008 WL 902184, at *4 (N.D.N.Y. Mar. 31, 2008) (citing *Anderson*, 477 U.S. at 250 n.4, 106 S.Ct. 2505), *aff'd*, 375 Fed.Appx. 73 (2d Cir. 2010) (holding that summary judgment should be denied where the moving party does not show that there is no genuine dispute of material fact with respect to each essential element of the claim).

In his motion the Trustee argues, among other things, that the LXEng Retirement Plan (“the Plan”) was not in substantial compliance with the Internal Revenue Code pursuant to 11 U.S.C. § 522(b)(4)(B)(ii). The Court finds that a genuine dispute of material fact remains as to whether the Debtor is materially responsible for the Plan’s alleged noncompliance. The Trustee relies on *In re Daniels*, 452 B.R. 334, 347 (Bankr. D.Mass. 2011) which found a debtor who actively managed the affairs of a profit sharing plan to be materially responsible for the plan’s noncompliance. However, that case may be distinguished where as here, the Debtor retained a third party administrator to oversee the plan. Further, while the Trustee’s expert (Trustee’s Reply, Exhibit B at 5) opined that the Plan administrator would not have prepared amendments that contravene key provisions of the Internal Revenue Code without direction from the Debtor, that proffer is insufficient to establish the absence of a genuine issue of material fact.¹

Accordingly, the Motion for Summary Judgment is denied. A status conference addressing the terms of a Final Pretrial Order and trial dates will be set by the Court forthwith. Counsel for the Debtor is directed to confer with counsel for the Trustee with regard to trial dates for August 25 through September 30, 2017, excluding Thursdays, and to so advise the Courtroom Deputy before May 31, 2017.

¹ The Court reserves judgment on whether there are additional facts not in genuine dispute, and whether it will issue a supplemental ruling thereon. *See* Fed. R. Civ. P. 56(g).

IT IS SO ORDERED at Hartford, Connecticut this 25th day of May 2017.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut

The seal of the United States Bankruptcy Court for the District of Connecticut is partially visible behind the text. It features a circular design with a central figure and text around the perimeter.