2020 WL 7643134
Only the Westlaw citation is currently available.
United States District Court, W.D. Tennessee, Western Division.

Donald A. WALLACE, Plaintiff,
v.
INTERNATIONAL PAPER COMPANY, a New York Corporation; Fiduciary Review Committee of the Retirement Plan of International Paper Company; Plan Administrator of the Retirement Plan of International Paper Company and Alight Solutions, LLC (Formerly Known as Hewitt Associates, LLC), Defendants.

No. 2:20-cv-02478-SHL
|
Signed 12/23/2020

Attorneys and Law Firms

Elizabeth Hopkins, Pro Hac Vice, Susan L. Meter, Kantor & Kantor LLP, Northridge, CA, for Plaintiff.

David L. Cheng, Ford and Harrison LLP, Los Angeles, CA, Russell W. Jackson, Fordharrison, LLP, Memphis, TN, Tiffany Downs, Pro Hac Vice, Ford & Harrison LLP, Atlanta, GA, for Defendants International Paper Company, Fiduciary Review Committee of the Retirement Plan of International Paper Company, Plan Administrator of the Retirement Plan of International Paper Company.

Christopher C. Scheithauer, Pro Hac Vice, Call and Jensen APC, Chris C. Scheithauer, Pro Hac Vice, Nilab Rahyar Tolton, Pro Hac Vice, Call & Jensen, Newport Beach, CA, Kirk A. Caraway, Allen Summers Simpson Lillie & Gresham, PLLC, Memphis, TN, for Defendant Alight Solutions LLC.

ORDER DENYING DEFENDANTS' MOTIONS TO DISMISS

SHERYL H. LIPMAN, UNITED STATES DISTRICT JUDGE

***1** Before the Court are Defendant Alight Solutions, LLC's Motion to Dismiss for Failure to State a Claim, filed August 7, 2020, (ECF No. 84), and Defendants International Paper Company, Fiduciary Review Committee of the Retirement Plan of International Paper Company, and Plan Administrator of the Retirement Plan of International Paper Company's ("IP Defendants") Motion to Dismiss, filed August 7, 2020, (ECF No. 88). Plaintiff filed Responses in Opposition to both Alight's Motion and IP Defendants' Motion on August 28, 2020. (ECF Nos. 94, 95.) For the reasons stated below, both Motions to Dismiss are **DENIED**.

BACKGROUND

The following facts are taken from the Complaint and assumed to be true in evaluating these Motions. See DirecTV, Inc. v. Treesh, 487 F.3d 471, 476 (6th Cir. 2007).

Plaintiff Donald Wallace worked for IP-acquired companies from 1981 to 2017. (ECF No. 1, ¶ 16.) He worked for Crown Zellerbach, then Gaylord Container Company, then Temple-Inland, and finally for International Paper itself. (ECF No. 1, ¶¶ 16–20.) Mr. Wallace's employment was continuous, as each company was acquired by the next. Thus, he was able to maintain the same pension plan throughout his employment. He received annual pension benefit statements and frequently reviewed his pension plan online. (ECF No. 1, ¶¶ 22–23.)

In 2016, an International Paper vice president offered Mr. Wallace a severance package. (ECF No. 1, ¶ 26.) Mr. Wallace consulted with "Alan Carpenter," [1] who advised him to use the online portal to obtain a pension estimate. (ECF No. 1, ¶ 28.) Mr. Wallace was not planning to retire at the time he received this offer, so he only would have accepted a severance package that would allow him to live comfortably in California. (ECF No. 1, ¶ 30.) All the paperwork he received from International Paper indicated that he would receive a monthly joint and survivor annuity of $7,448.03 per month. (ECF No. 1, ¶ 38–40.) This amount was also consistent with the estimates that he had received throughout his career. (ECF No. 1, ¶ 59.) In reliance on these calculations, Mr. Wallace accepted the severance package and agreed to retire. He also signed a severance agreement, in which he released all claims against IP Defendants. (ECF No. 88-1 at PageID 243.)

After he retired, Mr. Wallace received monthly payments of $7,448.03 for two months. (ECF No. 1, ¶ 40–43.) The third month, Mr. Wallace received a phone call from the employee service center informing him that his benefits would be reduced to $2,800 per month due to an "audit." (ECF No.1,

¶ 44.) Mr. Wallace appealed the reduction of his retirement benefit, but the Retirement Plan denied his appeal. (ECF No. 1, ¶ 46.)

Defendant International Paper Company was Mr. Wallace's employer at the time of his retirement, and it oversaw and appointed members to its Fiduciary Review Committee, also a defendant here. (ECF No. 1, ¶ 5.) Defendant Fiduciary Review Committee is a named ERISA fiduciary, meaning it is designated in writing as a fiduciary for purposes of ERISA actions. (ECF No. 1, ¶ 6.) The Committee has the power to delegate fiduciary duties, as it did to Defendant Retirement Plan Administrator. (ECF No. 1, ¶ 6.) Defendant Retirement Plan Administrator is responsible for retirement planning at International Paper, including administering pension plans and deciding appeals, and it is also a named ERISA fiduciary. (ECF No. 1, ¶ 7.) It hired Defendant Alight, a business that provides record-keeping and administration services to the Committee—Defendant Alight allegedly provided Plaintiff's faulty pension estimates. (ECF No. 1, ¶ 8.) Defendant International Paper contracted with Defendant Alight's predecessor to delegate certain fiduciary duties to Alight, including the duty to provide pension benefit statements. (ECF No. 1, ¶ 10.)

***2** Plaintiff sued Defendants under ERISA and state law. Against all Defendants, he alleged breach of fiduciary duty under ERISA for failure to provide Plaintiff with complete and accurate information. Against Defendant Fiduciary Review Committee, he alleged failure to monitor Defendant Alight, which overstated Mr. Wallace's benefits for years. Against Defendant Alight, he alleged failure to apply the Retirement Plan provisions appropriately in calculating Plaintiff's Retirement Plan Benefits and the provision of inaccurate information. Plaintiff also argued in the alternative that all Defendants violated common law contract principles.

STANDARD OF REVIEW

Federal Rule of Civil Procedure ("FRCP") 8(a)(2) requires that a complaint include "a short and plain statement of the claim showing that the pleader is entitled to relief." The purpose of the rule is to "give the defendant fair notice of what the ... claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). A pleading must contain more than "an unadorned, the-defendant-unlawfully-harmed-me accusation," Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009), and should nudge a plaintiff's claims "across the line from conceivable to plausible." Twombly, 550 U.S. at 570, 127 S.Ct. 1955. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Iqbal, 556 U.S. at 678, 129 S.Ct. 1937.

In ruling on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a court must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." DirecTV, Inc. v. Treesh, 487 F.3d 471, 476 (6th Cir. 2007). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." Iqbal, 556 U.S. at 678, 129 S.Ct. 1937. Courts are "are not bound to accept as true a legal conclusion couched as a factual allegation." Papasan v. Allain, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986).

In considering whether a plaintiff has brought a plausible claim, the Court will not rely on extrinsic evidence. See Cunningham v. Osram Sylvania, Inc., 221 Fed. App'x 420, 422–23 (6th Cir. 2007). The Court will, however, "consider the complaint in its entirety," including "documents incorporated into the complaint by reference." Solo v. United Parcel Serv. Co., 819 F.3d 788, 794 (6th Cir. 2016) (quoting Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322, 127 S.Ct. 2499, 168 L.Ed.2d 179 (2007)).

ANALYSIS

I. IP Defendants' Motion to Dismiss

In their Motion to Dismiss, the IP Defendants argue that Plaintiff fails to state claims against any of them for five reasons. First, they argue that this suit is barred by the severance agreement Plaintiff signed at the time of his retirement. Plaintiff responds that an agreement signed in reliance on a misrepresentation cannot bar suit for that misrepresentation. Second, IP Defendants argue that they did not breach any fiduciary duty under ERISA. Plaintiff, on

the other hand, responds that there are sufficient allegations that Defendants' behavior fell below that of the average prudent man. Third, Defendants contend that the Court should not award damages for breach of the ERISA reporting requirement. Plaintiff responds that damages are appropriate, even based on reporting requirements, where a beneficiary suffered actual harm from breach of those requirements. Fourth, IP Defendants aver that they are not ERISA fiduciaries, while Plaintiff counters that they exercised discretionary authority regarding his pension plan, thus supporting his claim based on a fiduciary relationship. Finally, Defendants argue that Plaintiff does not state a claim for equitable estoppel, but Plaintiff contends that Defendants' behavior was sufficiently egregious to support such a claim. The Court will address each argument in turn.

***3** First, the severance agreement does not bar Plaintiff's suit at this stage. Although Plaintiff did sign a severance agreement that released all claims against IP Defendants, he did so in reliance on his pension statement, which is the crux of the issue before the Court. (ECF No. 88-1 at PageID 243.) Thus, while release provisions are generally effective in barring claims, including ERISA claims, see Taylor v. Visteon Corp., 149 Fed. App'x 422, 427 (6th Cir. 2005) (using Michigan law to determine scope of release in ERISA case), where a release was obtained based on a material misrepresentation, it cannot bar claims relating to the misrepresentation itself. Farley v. Clayton, 928 S.W.2d 931, 934 (Tenn. Ct. App. 1996) (repeating the "familiar rule" that release may be set aside due to misrepresentation). Here, Plaintiff alleges sufficient facts to support a claim that he relied on his pension benefits statement in signing the severance agreement, even if, as IP Defendants argue, that agreement also had separate consideration. (See ECF Nos. 1, 95.) The separate consideration does not negate the role that the alleged misrepresentation played. See, e.g., Glanton v. Beckley, No. 01-A-01-9606-CV00283, 1996 WL 709373, at *1 (Tenn. Ct. App. Dec. 11, 1996) (finding an agreement with separate consideration could still be void for misrepresentation).

Second, as for Defendants' argument that they breached no fiduciary duty, Plaintiff alleges with sufficient particularity that IP Defendants did in fact breach their fiduciary duty. See Fifth Third Bancorp v. Dudenhoeffer, 573 U.S. 409, 425, 134 S.Ct. 2459, 189 L.Ed.2d 457 (2014) (holding that a motion to dismiss in an ERISA case "requires careful judicial consideration of whether the complaint states a claim that the defendant has acted imprudently" and declining to adopt a defendant-friendly presumption). First, a fiduciary must "discharge his duties ... with the care, skill, prudence, and diligence" of a "prudent man." To state a claim for breach of fiduciary duty under ERISA based on a misrepresentation, Plaintiff must show: "(1) that the defendant was acting in a fiduciary capacity when it made the challenged representations; (2) that these constituted material misrepresentations; and (3) that the plaintiff relied on those misrepresentations to their detriment." James v. Pirelli Armstrong Tire Corp., 305 F.3d 439, 449 (6th Cir. 2002) (citing Ballone v. Eastman Kodak Co., 109 F.3d 117, 122, 126 (2d Cir. 1997)). A misrepresentation is material if there is a "substantial likelihood that it would mislead a reasonable employee in making an adequately informed decision about if and when to retire." James, 305 F.3d at 449 (quoting Fischer v. Phila. Elec. Co., 994 F.2d 130, 135 (3d Cir. 1993)).

Here, Plaintiff alleges that IP Defendants acted with authority over his pension plan and gave Plaintiff the wrong pension statement, which he relied on in retiring. As to the first element, the issue of whether Defendants were ERISA fiduciaries is addressed below in the discussion of IP Defendants' fourth argument. As to the second and third elements, the statement relied on indicated that Plaintiff would receive more than double his entitlement—this was material, as it would mislead a reasonable employee in deciding when to retire, thinking that the pension benefit was much larger than it actually was. Taking Plaintiff's allegations as true, the mistake in his pension estimates was a material misrepresentation and a breach of fiduciary duty under ERISA.

Third, as to Defendants' argument that damages cannot be granted for breach of a reporting requirement, the law indicates otherwise in certain situations. Twenty-nine U.S.C. § 1025(a) requires plan administrators to provide pension benefit statements containing a beneficiary's total benefits every three years or upon request of the beneficiary. Here, Plaintiff alleges that the failure to provide Mr. Wallace with an accurate statement caused him damages. Defendants argue that a breach of this section is not grounds for relief, which may be true where such a breach causes no actual damages. See, e.g., Christensen v. Qwest Pension Plan, 462 F.3d 913, 919 (8th Cir. 2006) (finding that district court did not abuse discretion in declining to impose a penalty where § 1025 violation was unclear). However, where a misstatement of pension benefits allegedly caused Plaintiff

to suffer financial harm, as is alleged here, a violation of the reporting requirements may give rise to an action for damages. See, e.g., Minadeo v. ICI Paints, 398 F.3d 751, 758 (6th Cir. 2005) (noting that a fiduciary who breaches a reporting requirement may be subject to damages "at the discretion of the district court").

***4** Fourth, although IP Defendants argue that none are ERISA fiduciaries, the Complaint includes allegations with sufficient particularity to survive a Motion to Dismiss. "Fiduciary status is 'a fact-intensive inquiry, making the resolution of that issue inappropriate for a motion to dismiss.' " In re Regions Morgan Keegan ERISA Litig., 692 F. Supp. 2d 944 (W.D. Tenn. 2010) (quoting In re AEP Litig., 327 F. Supp. 2d 812, 827 (S.D. Ohio 2004)); see also Rankin v. Rots, 278 F. Supp. 2d 853, 879 (E.D. Mich. 2003) ("[T]he manner in which each defendant ... operated is for now something of a black box. To expect a plaintiff to be able to turn on the light and point to particular individuals who exercised decision making authority is simply too much to require at this stage of the case."); In re Elec. Data Sys. Corp. ERISA Litig., 305 F. Supp. 2d 658, 665 (E.D. Tex. 2004) ("It is typically premature to determine a defendant's fiduciary status at a motion to dismiss stage of the proceedings."). Here, Plaintiff alleges that each Defendant had a degree of control over the pension estimate process, whether through appointing others to carry out fiduciary acts, supervising fiduciary acts or directly preparing the pension statements. Such allegations are sufficient at this stage.

Finally, Plaintiff states a claim for equitable estoppel. To state such a claim, Plaintiff must show "such gross negligence as to amount to constructive fraud, plus (1) a written representation; (2) plan provisions which, although unambiguous, did not allow for individual calculation of benefits; and (3) extraordinary circumstances in which the balance of equities strongly favors the application of estoppel." Bloemker v. Laborers' Loc. 265 Pension Fund, 605 F.3d 436, 444 (6th Cir. 2010). To be sure, this is a demanding standard. However, at this stage, Plaintiff need not prove these elements by a preponderance of the evidence. Instead, he is only required to show that such a claim is plausible. Plaintiff alleges decades of severely faulty pension statements that induced him to accept an early retirement, ending his career. Further, he alleges that due to IP's complicated history of acquisitions, the pension calculations were too complex for Plaintiff himself to calculate. These allegations are sufficient for the estoppel claim to survive a motion to dismiss.

Thus, the Court finds that Plaintiff states claims against the IP Defendants, and their Motion to Dismiss is **DENIED**.

II. Alight's Motion to Dismiss

Plaintiff alleges that Alight prepared the faulty pension statements, which Plaintiff relied on in deciding to retire. (ECF No. 1.) In its Motion, Alight first argues that it is not an ERISA fiduciary. Plaintiff responds that Alight is a fiduciary because it had discretionary decision-making authority over the pension calculations. Next, Alight contends that any state law claims relating to the pension statements are preempted by ERISA. Plaintiff responds that the question of preemption is premature and must await the Court's decision as to Alight's fiduciary status. The Court will address these arguments in turn.

First, Plaintiff alleges sufficient facts to make it plausible that Alight is an ERISA fiduciary. The standards for defining an ERISA fiduciary are intentionally liberal: "To help fulfill ERISA's broadly protective purposes, Congress commodiously imposed fiduciary standards on persons whose actions affect the amount of benefits retirement plan participants will receive." John Hancock Mut. Life Ins. Co. v. Harris Tr. & Sav. Bank, 510 U.S. 86, 96, 114 S.Ct. 517, 126 L.Ed.2d 524 (1993). Alight argues that its acts were "ministerial" rather than fiduciary in nature. (See ECF No. 84-1.) According to Alight, applying rules and calculating benefits allow for no discretion and thus are ministerial in nature. (ECF No. 84-1 at PageID 162.) Plaintiff, however, contends that Alight did more than just plug numbers into a pre-set formula—instead, Plaintiff alleges that Alight takes the complicated history of IP and its acquisitions into account and exercises discretion in creating an appropriate formula for calculating benefits. (ECF No. 94.) These allegations are sufficient to establish the plausibility of Alight's fiduciary status and fiduciary acts for the purpose of a motion to dismiss.

***5** Finally, it is premature to dismiss Plaintiff's state law claims as preempted by ERISA at this stage, even recognizing that ERISA preemption is exceptionally broad. See generally K.B. ex rel. Qassis v. Methodist Healthcare - Memphis Hosps., 929 F.3d 795, 800 (6th Cir. 2019) (noting ERISA's "broad preemptive reach"). Although the ERISA claim remains for now, the Court has not ruled as a matter of law on

the issue of whether Alight is an ERISA fiduciary: if it is, the claims are preempted, but if it is not, the claims may not be preempted. See Bafford v. Northrop Grumman Corp., No. 218CV10219ODWEX, 2020 WL 70834, at *7 (C.D. Cal. Jan. 7, 2020) ("[S]tate law claims are not preempted by ERISA when 'the duty giving rise to the negligence claim runs from ... a non-fiduciary service provider.' " (quoting Paulsen v. CNF, Inc., 559 F.3d 1061, 1083 (9th Cir. 2009))). Because it is not clear at this stage whether Plaintiff's state law claims will be preempted by ERISA, Alight's Motion to Dismiss these claims as preempted must fail.

CONCLUSION

Because Plaintiff alleges sufficient facts to support his claims for relief against the IP Defendants and Alight, both Motions to Dismiss are **DENIED**.

IT IS SO ORDERED, this 23rd day of December, 2020.

All Citations

--- F.Supp.3d ----, 2020 WL 7643134

Footnotes

1 The Complaint does not identify with which Defendant, if any, Alan Carpenter is associated.