UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Neil Silverman v. Unum Group, Unum & The Paul Revere Life Insurance Company

No. 14-CV-6439 (DLI) (SMG), United States District Court for the Eastern District of New York

SUMMARY

The court held that a long-term disability insurance plan covering only three shareholder co-owners of a corporation is an ERISA employee welfare benefit plan, because the regulatory exemption for owner-only plans applies only to sole owners or owners and their spouses. Consequently, the plaintiff's state law claims for breach of contract and breach of the implied covenant of good faith and fair dealing were preempted by ERISA, and the safe harbor provision did not apply because the employer paid the entire cost and endorsed the plan. The court granted the defendants' motion to dismiss but allowed the plaintiff leave to amend the complaint to assert claims under ERISA.

CASE DETAILS

COURT	United States District Court for the Eastern District of New York
WRITING FOR THE COURT	Dora L. Irizarry
JURISDICTION	Federal
DOCKET	14-CV-6439 (DLI) (SMG)
DISPOSITION	other
PROCEDURAL POSTURE	Motion to dismiss for failure to state a claim under Rule 12(b)(6)
STANDARD OF REVIEW	Rule 12(b)(6) standard: accept all factual allegations as true, draw all reasonable inferences in plaintiff's favor, and determine whether the complaint states a plausible claim for relief.
PRECEDENTIAL VALUE	unpublished

TOPICS

civil procedure · motions to dismiss · insurance · employment law · contracts

PRACTICE AREAS

Insurance · Employment Benefits · Litigation

QUESTIONS PRESENTED

1. Whether the long-term disability insurance policy is an ERISA plan, specifically whether Plaintiff is an 'employee' under ERISA when the plan covers only shareholder co-owners.
2. Whether Plaintiff's state law claims are preempted by ERISA.
3. Whether the plan qualifies for the 'safe harbor' exclusion from ERISA coverage.

HOLDINGS

1. The plan is an ERISA plan because Plaintiff is an employee under ERISA. The ERISA regulation 29 C.F.R. § 2510.3-3 excludes from employee status only owners of corporations wholly owned by one individual or that individual and spouse; it does not exclude shareholder co-owners.
2. Plaintiff's state law claims are preempted by ERISA because they relate to an ERISA employee welfare benefit plan.
3. The plan does not qualify for the safe harbor exclusion because the employer paid the entire cost of the plan (failing the first criterion) and the employer endorsed the plan (failing the third criterion).

KEY QUOTATIONS

> *"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"* (at 3)

> *"Plans that cover only sole owners or partners and their spouses . . . fall outside Title I [of ERISA]'s domain. Plans covering working owners and their nonowner employees, on the other hand, fall entirely within ERISA's compass."* (at 5)

> *"ERISA broadly preempts 'any and all State laws insofar as they may now or hereafter relate to any employee benefit plan' as defined under the statute."* (at 6)

> *"An employer will be said to have endorsed a [plan] . . . if, in light of all the surrounding facts and circumstances, an objectively reasonable employee would conclude . . . that the employer had not merely facilitated the program's availability but had exercised control over it or made it appear to be part and parcel of the company's own benefit package."* (at 8)

FACTUAL BACKGROUND

Plaintiff Neil Silverman was a part owner (15%) and employee of Chip-Tech Ltd. The company obtained a long-term disability insurance policy from Defendants that covered only the three owners. Plaintiff became disabled in 2009, received benefits from 2011, but Defendants miscalculated payments and then ceased payments in 2013. Plaintiff sued for breach of contract, breach of implied covenant of good faith and fair dealing.

PROCEDURAL HISTORY

Plaintiff commenced action in New York state court; Defendants removed to federal court based on diversity jurisdiction. Defendants moved to dismiss, arguing ERISA preemption. Plaintiff opposed, arguing ERISA does not apply.

DISPOSITION

other

REMAND INSTRUCTIONS

Plaintiff may file an amended complaint asserting any claims under ERISA no later than August 30, 2015. The Clerk of Court is directed not to close the case.

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)
- Faulkner v. Beer, 463 F.3d 130 (2d Cir. 2006)
- Cortec Indus., Inc. v. Sum Holding L.P., 949 F.2d 42 (2d Cir. 1991)
- Int'l Audiotext Network, Inc. v. Am. Tel. & Tel. Co., 62 F.3d 69 (2d Cir. 1995)
- Chambers v. Time Warner, Inc., 282 F.3d 147 (2d Cir. 2002)
- Rand v. Equitable Life Assur. Soc. of U.S., 49 F. Supp. 2d 111 (E.D.N.Y. 1999)
- Private Capital Investments, LLC v. Schollard, 2014 WL 2587721 (W.D.N.Y. June 10, 2014)
- Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon, 541 U.S. 1 (2004)
- Provident Life & Acc. Ins. Co. v. Sharpless, 364 F.3d 634 (5th Cir. 2004)
- Constas v. Highland Hosp., 2015 WL 1432592 (W.D.N.Y. Mar. 27, 2015)
- Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1987)
- Smith v. Dunham-Bush, Inc., 959 F.2d 6 (2d Cir. 1992)
- Lanahan v. Mutual Life Ins. Co. of New York, 15 F.Supp.2d 381 (S.D.N.Y. 1998)
- Weiss v. CIGNA Health Care, Inc., 972 F.Supp. 748 (S.D.N.Y. 1997)
- Paneccasio v. Unisource Worldwide, Inc., 532 F.3d 101 (2d Cir. 2008)
- Grimo v. Blue Cross/Blue Shield of Vermont, 34 F.3d 148 (2d Cir. 1994)
- Sanfilippo v. Provident Life and Cas. Ins. Co., 178 F.Supp.2d 450 (S.D.N.Y. 2002)
- Johnson v. Watts Regulator Co., 63 F.3d 1129 (1st Cir. 1995)
- Harris v. Provident Life and Acc. Ins. Co., 310 F.3d 73 (2d Cir. 2002)
