UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Central States, Southeast & Southwest Areas Pension Fund v. Bay

684 F. Supp. 483 (E.D. Mich. 1988) · No. Civ. A. No. 88-70392 · Decided May 6, 1988

SUMMARY

The court addressed cross-motions for summary judgment in an action seeking interim withdrawal-liability payments under ERISA and the Multiemployer Pension Plan Amendments Act. It held that entities in a commonly controlled group were jointly liable for interim payments and that notice and demand served on the contributing employer and other group members constituted sufficient notice to the defendants. The plaintiffs' motion for summary judgment was granted, and the defendants' motion was denied.

CASE DETAILS

COURT	United States District Court for the Eastern District of Michigan, Southern Division
WRITING FOR THE COURT	John Feikens
JURISDICTION	Michigan
DECIDED	May 6, 1988
DOCKET	Civ. A. No. 88-70392
DISPOSITION	other
PROCEDURAL POSTURE	The parties filed cross-motions for summary judgment in an action by a multiemployer pension fund and its trustee to collect interim withdrawal-liability payments from entities and individuals alleged to be members of a controlled group with the withdrawing employer.
STANDARD OF REVIEW	Summary judgment is appropriate when the material facts are undisputed and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published federal district court memorandum opinion

TOPICS

erisa · employee benefits · summary judgment · statutory interpretation · commercial litigation

PRACTICE AREAS

ERISA employee benefits employment law commercial litigation civil procedure

QUESTIONS PRESENTED

1. Whether Lakeshore Properties was a trade or business under common control with St. Louis Freight Lines and therefore part of the controlled group for ERISA withdrawal-liability purposes.
2. Whether the Bays' sole-proprietorship leasing arrangement was part of the controlled group for ERISA withdrawal-liability purposes.
3. Whether members of a controlled group that did not individually receive the notice and demand for withdrawal liability are nevertheless jointly and severally liable for interim withdrawal-liability payments.
4. Whether interim withdrawal-liability payments must be made while the amount or liability determination is pending arbitration.

HOLDINGS

1. Lakeshore Properties was properly included in the controlled group because Walter Bay owned and controlled at least ninety percent of its profit and capital interests as of the withdrawal date.
2. The sole-proprietorship leasing arrangement operated by Walter and Carolyn Bay was properly included in the controlled group because Walter Bay was deemed to completely own and control it through ERISA attribution rules.
3. Notice and demand for withdrawal liability served on the contributing employer and other members of the controlled group constituted notice and demand to the defendants; separate service on every controlled-group member was not required.
4. Defendants were liable for interim withdrawal-liability payments pending arbitration.

KEY QUOTATIONS

> *"It is clear that notice and demand to one is notice and demand to all."* (487)

> *"The Notice and Demand for Payment served upon the contributing employer, St. Louis Freight Lines, Inc., and other members of the controlled group on September 25, 1985 constitutes notice and demand on defendants as well."* (488)

FACTUAL BACKGROUND

St. Louis Freight Lines, Inc., a contributing employer to the pension fund, withdrew on December 31, 1984 and became subject to withdrawal liability. Walter Bay owned and controlled the entities in the existing controlled group and, by the withdrawal date, owned at least ninety percent of the profits and capital interests in Lakeshore Properties. Walter and Carolyn Bay also operated a sole-proprietorship leasing arrangement involving property leased to or for the benefit of other controlled-group entities. The fund sent notice and demand for withdrawal-liability payments to St. Louis Freight Lines and other group members, but not separately to the defendants.

PROCEDURAL HISTORY

St. Louis Freight Lines, Inc. withdrew from the pension fund on December 31, 1984. The fund sent notice and demand for payment to St. Louis Freight Lines and seven other controlled-group members, but not separately to defendants Walter Bay, Carolyn Bay, or Lakeshore Properties. The fund later brought this action after discovering the defendants' relationship to the controlled group. The court considered the parties' cross-motions for summary judgment after oral argument and granted plaintiffs' motion while denying defendants' motion.

DISPOSITION

other

CASES CITED

- Connors v. Calvert Development Co., 622 F. Supp. 877 (D.D.C. 1985)
- PBGC v. Ouimet Corp., 630 F.2d 4 (1st Cir. 1980), cert. denied, 450 U.S. 914 (1981), and cert. denied, 464 U.S. 961 (1983)
- PBGC v. Anthony Co., 537 F. Supp. 1048 (N.D. Ill. 1982)
- Board of Trustees of the Western Conference of Teamsters Pension Trust Fund v. LaFrenz, 837 F.2d 892 (9th Cir. 1988)
- Board of Trustees of the Western Conference of Teamsters Pension Trust Fund v. H.F. Johnson, Inc., 830 F.2d 1009 (9th Cir. 1987)
- United Food and Commercial Workers Union v. Progressive Supermarkets, 644 F. Supp. 633 (D.N.J. 1986)
- Pension Benefit Guaranty Corporation v. Center City Motors, Inc., 609 F. Supp. 409 (S.D. Cal. 1984)
- Central States Pension Fund v. Skyland Leasing Co., Slip op., Case No. G-84-232 CA1 (W.D. Mich. Nov. 23, 1987)
- Central States Pension Fund v. Wayne E. Long, Slip op., Case No. 86-73226 (E.D. Mich. Jan. 20, 1987)
- IUE AFL-CIO Pension Fund v. Barker & Williamson, Inc., 788 F.2d 118 (3d Cir. 1986)
- Tri-State Rubber & Equipment, Inc. v. Central States Southeast & Southwest Areas Pension Fund, Case No. 86-70091