

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

Central States, Southeast & Southwest Areas Pension Fund v.
Skyland Leasing Co.

691 F. Supp. 6 (W.D. Mich. 1987) · No. G84-232 CA1 · Decided November 23, 1987

SUMMARY

The court granted summary judgment to the pension and health funds in an action seeking ERISA/MPPAA withdrawal liability. It held that a partnership formed and controlled by the same individuals who controlled the withdrawing trucking company was an employer within a commonly controlled group, and that the partners were jointly and severally liable. The court further held that defendants' failure to timely invoke review and arbitration procedures foreclosed factual challenges to the amount and calculation of liability, while preserving consideration of certain statutory-interpretation and constitutional issues.

CASE DETAILS

COURT	United States District Court for the Western District of Michigan, Southern Division
WRITING FOR THE COURT	Benjamin F. Gibson
JURISDICTION	Michigan
DECIDED	November 23, 1987
DOCKET	G84-232 CA1
DISPOSITION	other
PROCEDURAL POSTURE	The parties filed cross-motions for summary judgment in an action seeking collection of ERISA and MPPAA withdrawal liability. The defendants also appealed an order of a magistrate.
STANDARD OF REVIEW	Summary judgment is proper when each party establishes that no genuine issue of material fact exists and it is entitled to judgment as a matter of law. In evaluating factual disputes, inferences are viewed in the light most favorable to the nonmoving party. Statutory-interpretation issues are particularly suited to summary disposition.
PRECEDENTIAL VALUE	Published federal district court opinion; persuasive authority within the jurisdiction and not binding circuit precedent.

PARTIES

Skyland Leasing Company, Kenneth Keller, Stephen Van Dyke v.
Central States, Southeast and Southwest Areas Pension Fund, Central
States, Southeast and Southwest Areas Health and Welfare Fund,
Howard McDougall

TOPICS

erisa summary judgment statutory interpretation constitutional law civil procedure

PRACTICE AREAS

ERISA pension and benefits law labor and employment law federal civil procedure constitutional law

QUESTIONS PRESENTED

1. Whether Skyland Leasing was an employer subject to MPPAA withdrawal liability because it was a trade or business under common control with Skyland.
2. Whether Kenneth Keller and Stephen Van Dyke were personally and jointly and severally liable for Leasing's withdrawal liability as its partners.
3. Whether notice to Skyland and actual notice received by defendants satisfied the MPPAA's notice and due-process requirements.
4. Whether defendants waived or forfeited factual challenges to the amount and calculation of withdrawal liability by failing to timely seek review and arbitration.
5. Whether defendants could invoke the insolvency-related mitigation provisions of 29 U.S.C. § 1405 after failing to arbitrate.
6. Whether the MPPAA's controlled-group liability, arbitration, presumption-of-correctness, and withdrawal-liability provisions violated the Fifth or Seventh Amendments.

HOLDINGS

1. A partnership with no employees of its own may nevertheless qualify as an employer under 29 U.S.C. § 1301(b)(1) when it is a trade or business under common control with the withdrawing employer. Skyland Leasing was an employer subject to liability for Skyland's withdrawal liability.
2. Keller and Van Dyke were jointly and severally liable for Leasing's withdrawal-liability obligations because they were its partners; their liability was based on partnership status, not on their status as corporate officers or shareholders.
3. Notice and demand to one member of a controlled group may constitute notice and demand to all members, and the defendants' actual receipt of notice independently satisfied the applicable notice and due-process requirements.
4. Defendants' failure to timely invoke the MPPAA's review and arbitration procedures conclusively established the withdrawal-liability assessment and barred later factual challenges to liability, the amount assessed, and the calculation method.

5. Defendants could not seek reduction of withdrawal liability under 29 U.S.C. § 1405(b) or (d) after failing to timely arbitrate the amount or calculation of liability.
6. The MPPAA's controlled-group liability, partnership liability, arbitration procedures, presumption of correctness, and related withdrawal-liability provisions did not violate the Fifth or Seventh Amendments as applied here.

KEY QUOTATIONS

*“Consequently, liability became conclusively established and the defendants are foreclosed from challenging the amount of liability assessed or the factual basis for imposing such liability.” (*14)*

*“To allow such dilatory tactics would be contrary to the congressional goals of expeditious handling of pension fund disputes.” (*14)*

*“Defendant Leasing is a “trade or business” under common control with Skyland and therefore is an “employer” subject to liability under the MPPAA.” (*17)*

FACTUAL BACKGROUND

Skyland was a Michigan trucking company obligated under collective bargaining and participation agreements to make pension-fund contributions for bargaining-unit work. Keller and Van Dyke owned and controlled Skyland and formed Skyland Leasing, a Michigan partnership that held tractors and trailers and leased them to Skyland. Skyland later entered bankruptcy, and the Funds assessed withdrawal liability against Skyland and Leasing. Although Leasing challenged the assessment in correspondence, neither Leasing nor Skyland invoked the formal review and arbitration procedures required by the MPPAA.

PROCEDURAL HISTORY

The Funds sued Skyland Leasing Company and its partners, Kenneth Keller and Stephen Van Dyke, to collect withdrawal liability allegedly owed under ERISA and the MPPAA. The action was consolidated with a related action concerning unpaid contributions. The district court granted the Funds' motion for summary judgment, denied defendants' motion, and held that defendants' appeal of the magistrate's order was moot.

DISPOSITION

other

CASES CITED

- Adickes v. S.H. Kress & Co., 398 U.S. 144, 147 (1970)
- United States v. Diebold, Inc., 369 U.S. 654, 655 (1962)
- Bohn Aluminum & Brass Corp. v. Storm King Corp., 303 F.2d 425 (6th Cir. 1962)
- United States v. Articles of Device ... Diapulse, 527 F.2d 1008, 1011 (6th Cir. 1976)
- Board of Trustees of the Western Conference of Teamsters Pension Trust v. H.F. Johnson, Inc., 830 F.2d 1009, 1014-15 (9th Cir. 1987)

- Pension Benefit Guaranty Corp. v. Ouimet Corp., 470 F. Supp. 945 (D. Mass. 1979), aff'd, 630 F.2d 4 (1st Cir. 1980), cert. denied, 450 U.S. 914 (1981)
- Pension Benefit Guaranty Corp. v. Center City Motors, Inc., 609 F. Supp. 409 (S.D. Cal. 1984)
- In re Challenge Stamping and Porcelain Co., 719 F.2d 146, 151 (6th Cir. 1983)
- Pension Benefit Guaranty Corp. v. R.A. Gray & Co., 467 U.S. 717 (1984)
- Robbins v. Pepsi-Cola Metropolitan Bottling Co., 636 F. Supp. 641, 658-660 (N.D. Ill. 1986)
- Central States, Southeast and Southwest Area Pension Fund v. Bellmont Trucking Co., Inc., 788 F.2d 428, 433 (7th Cir. 1986)
- United Food & Commercial Workers Union v. Progressive Supermarkets, 644 F. Supp. 633, 642 (D.N.J. 1986)
- Connors v. Calvert Development Co., 622 F. Supp. 877, 881 (D.D.C. 1985)
- IUE AFL-CIO Pension Fund v. Barker & Williamson, 788 F.2d 118, 127-29 (3d Cir. 1986)
- Central States, Southeast and Southwest Areas Pension Fund v. 888 Corporation, 813 F.2d 760, 764 (6th Cir. 1987)
- Republic Industries v. Teamsters Joint Council No. 83 of Virginia Pension Fund, 718 F.2d 628 (4th Cir. 1983)
- I.A.M. National Pension Fund v. Clinton Engines Corp., 825 F.2d 415, 428 n. 23 (D.C. Cir. 1987)
- United Retail & Wholesale Employees Teamsters Union Local No. 115 Pension Plan v. Yahn & McDonnell, Inc., 787 F.2d 128 (3d Cir. 1986), aff'd per curiam by an equally divided Court sub nom. Pension Benefit Guaranty Corp. v. Yahn & McDonnell, Inc., 475 U.S. 717 (1987)
- Connolly v. Pension Benefit Guaranty Corp., 475 U.S. 211 (1986)
- Board of Trustees v. Eberhard Foods, Inc., 831 F.2d 1258 (6th Cir. 1987)
- Peick v. Pension Benefit Guaranty Corp., 724 F.2d 1247, 1277 (7th Cir. 1983), cert. denied, 467 U.S. 1259 (1984)
- Commonwealth Capital Investment Corp. v. McElmurry, 102 Mich. App. 536, 302 N.W.2d 222 (1981)
- Harrison Combs v. Bowling & Hildebrand Trucking Co., No. 84-1451 (D.D.C. Feb. 22, 1985)