UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

Toni Clem v. Ovare Group, Inc.

Clem v. Ovare Group, Inc., Civil Action No. 3:25-CV-00614-GNS (W.D. Ky. Mar. 16, 2026) · No. 3:25-CV-00614-GNS · Decided March 16, 2026

SUMMARY

The United States District Court for the Western District of Kentucky considered Ovare Group, Inc.'s motion to dismiss Toni Clem's claims concerning unpaid stock appreciation rights under a long-term incentive plan. The court declined to determine at the pleading stage whether the plan was an ERISA top-hat plan or a bonus plan, but dismissed Clem's unjust enrichment claim without prejudice because she did not oppose dismissal of that claim.

CASE DETAILS

COURT	United States District Court for the Western District of Kentucky
WRITING FOR THE COURT	Greg N. Stivers
JURISDICTION	United States District Court for the Western District of Kentucky
DECIDED	March 16, 2026
DOCKET	3:25-CV-00614-GNS
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6), arguing that the state-law claims were preempted by ERISA, that the ERISA claim was barred for failure to exhaust administrative remedies, and that Plaintiff's unjust-enrichment claim should be dismissed.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court presumed factual allegations true, drew reasonable inferences in favor of the nonmoving party, disregarded bare legal conclusions, and determined whether the complaint stated a facially plausible claim for relief.
PRECEDENTIAL VALUE	Unknown; federal district court memorandum opinion and order
PARTIES	Toni Clem v. Ovare Group, Inc.

TOPICS

motions to dismiss | erisa | breach of contract | unjust enrichment | civil procedure

PRACTICE AREAS

civil procedure | contracts | employment law | commercial litigation | ERISA

QUESTIONS PRESENTED

1. Whether the long-term incentive plan was sufficiently established on the pleadings to determine that it was an ERISA top-hat plan and that Clem's state-law claims were preempted.
2. Whether Clem's ERISA claim should be dismissed for failure to exhaust administrative remedies before the plan's ERISA status had been determined.
3. Whether Clem's unjust-enrichment claim should be dismissed because she failed to respond to Ovare's dismissal argument.

HOLDINGS

1. The court declined to determine at the motion-to-dismiss stage whether the long-term incentive plan was an ERISA top-hat plan rather than a bonus plan because the relevant facts and plan characteristics had not been sufficiently developed. Ovare's preemption-based dismissal argument was therefore denied.
2. The court declined to dismiss Clem's ERISA claim for failure to exhaust administrative remedies because exhaustion could not be assessed until it was determined that the plan was subject to ERISA and required exhaustion.
3. The unjust-enrichment claim was dismissed without prejudice because Clem did not respond to Ovare's argument seeking dismissal of that claim, thereby conceding the argument.

KEY QUOTATIONS

> *"To survive dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.""* (Section III)

> *"Accordingly, "the Court finds that it is not appropriate to make a determination of the nature of the [LTIP] before the facts are developed and properly before the Court for consideration.""* (Section IV.A)

FACTUAL BACKGROUND

Clem held several senior positions at Ovare and entered into a long-term incentive plan in 2009 that granted her stock appreciation rights. She exercised some rights and received payment before resigning in 2021, but the remaining rights were deemed exercised after her resignation and remained unpaid. Clem alleged that Ovare improperly claimed it had not made sufficient earnings to fund the remaining payments and asserted contract, declaratory, unjust-enrichment, and ERISA claims.

PROCEDURAL HISTORY

Clem filed suit seeking executive compensation allegedly due under a long-term incentive plan and asserted breach-of-contract, declaratory-judgment, unjust-enrichment, and ERISA claims. Ovare moved to dismiss. The district court granted the motion in part as to unjust enrichment, dismissed that claim without prejudice, and denied the motion in all other respects because the record did not permit resolution of the plan's ERISA status or exhaustion issues at the pleading stage.

DISPOSITION

other

CASES CITED

- Total Benefits Plan. Agency, Inc. v. Anthem Blue Cross & Blue Shield, 552 F.3d 430, 434 (6th Cir. 2008)
- Tackett v. M & G Polymers, USA, LLC, 561 F.3d 478, 488 (6th Cir. 2009)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Southfield Educ. Ass'n v. Southfield Bd. of Educ., 570 F. App'x 485, 487 (6th Cir. 2014)
- Thompson v. Am. Home Assurance Co., 95 F.3d 429, 434 (6th Cir. 1996)
- Tate v. Chiquita Brands Int'l Inc., No. 1:09-CV-00006, 2009 WL 2431283, at *6-7 (S.D. Ohio Aug. 6, 2009)
- Kolkowski v. Goodrich Corp., 448 F.3d 843, 850 (6th Cir. 2006)
- Callahan v. Rouge Steel Co., 941 F.2d 456, 460 (6th Cir. 1991)
- Cassidy v. Akzo Nobel Salt, Inc., 308 F.3d 613, 616 (6th Cir. 2002)
- Swinney v. Gen. Motors Corp., 46 F.3d 512, 517 (6th Cir. 1995)
- Hester v. Whatever It Takes, No. 3:21-CV-578-RGJ, 2022 WL 89176, at *4-5 (W.D. Ky. Jan. 7, 2022)
- Haviland v. Metro. Life Ins. Co., 876 F. Supp. 2d 946, 966 (E.D. Mich. 2012), aff'd, 730 F.3d 563 (6th Cir. 2013)
- Simpson v. Mead Corp., 187 F. App'x 481, 483-84 (6th Cir. 2006)
- Bakri v. Venture Mfg. Co., 473 F.3d 677, 678 (6th Cir. 2007)
- Wilson v. Safelite Grp., Inc., 930 F.3d 429, 435-38 (6th Cir. 2019)
- Emmenegger v. Bull Moose Tube Co., 197 F.3d 929, 933 (8th Cir. 1999)
- Deal v. Kegler Brown Hill & Ritter Co. L.P.A., 551 F. Supp. 2d 694, 700-01 (S.D. Ohio 2008)
- Cramer v. Appalachian Reg'l Healthcare, Inc., No. 5:11-CV-49-KKC, 2012 WL 5332471, at *2 (E.D. Ky. Oct. 29, 2012)
- Simpson v. Ernst & Young, 879 F. Supp. 802, 816 (S.D. Ohio 1994), aff'd, 100 F.3d 436 (6th Cir. 1996)
- Vest v. The Nissan Supplemental Exec. Ret. Plan II, No. 3:19-CV-1021, 2020 WL 7695261, at *6 (M.D. Tenn. Dec. 28, 2020)
- Degolia v. Kenton Cty., 381 F. Supp. 3d 740, 759-60 (E.D. Ky. 2019)
- Rouse v. Caruso, No. 6-CV-10961-DT, 2011 WL 918327, at *18 (E.D. Mich. Feb. 18, 2011)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 561-64 (2007)