UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Michael G. ZITO	:	
	:	
v.	:	**No. 3:02cv277 (JBA)**
	:	
SBC PENSION BENEFIT PLAN, et al.	:	

MEMORANDUM OF DECISION ON MOTIONS TO DISMISS [# 13, 15]

Plaintiff Michael G. Zito, a former employee of defendant Southern New England Telephone Company ("SNET"), a wholly-owned subsidiary of defendant SBC Communications, Inc. ("SBC"), filed this lawsuit after he was denied eligibility for an enhanced pension benefit program announced several months after his retirement. Plaintiff's Amended Complaint alleges that he was improperly denied inclusion in the enhanced benefit plan under the terms of the enhanced SBC Pension Benefit Plan in violation of ERISA, 29 U.S.C. § 1132(a)(1)(B). Plaintiff also alleges that defendant PricewaterhouseCoopers LLC ("PWC"), the plan administrator and fiduciary, failed to provide him with documents relating to the enhanced plan, in violation of ERISA , 29 U.S.C. § 1132(c). Finally, plaintiff alleges two common law claims against SNET and SBC: breach of the implied covenant of good faith and fair dealing based on his allegations that his employment with SNET/SBC continued after his effective retirement date and past the eligibility date for enhanced benefits, and negligent misrepresentation on the grounds that SNET and SBC

informed him that no retirement incentives would be offered and he relied on these misrepresentations in determining when to retire.

SNET has moved to dismiss the two common law counts as preempted by ERISA. PWC has moved to dismiss the claims against it for failure to state a claim upon which relief can be granted. For the reasons set forth below, both motions are GRANTED.

I. Factual background[1]

As an SNET/SBC employee, plaintiff was a participant in the SBC Pension Benefit Plan. Beginning in 1997, plaintiff inquired about the possibility of enhanced retirement benefits, as part of his retirement planning. Plaintiff was told repeatedly by both SNET and SBC that no pension plan enhancements were or would be available to him. Plaintiff claims to have retired on April 7, 2000 in reliance on these statements that no retirement incentive benefit was planned or forthcoming. Following plaintiff's retirement in April, however, he continued to work for SNET/SBC until January 2001.

In September 2000, SBC announced an enhanced retirement plan for active employees or employees who retired after August 17, 2000. In November 2000, plaintiff sought inclusion in the enhanced retirement plan, but was denied eligibility on the grounds that he had retired in April 2000. Plaintiff

[1]All facts are taken from plaintiff's amended complaint.

subsequently requested documentation from PWC, including minutes of meetings, that relate to the implementation of the enhanced benefit plan, and PWC is alleged to have failed to provide some of the requested documentation. Plaintiff pursued his administrative remedies under the provisions of the SBC Plan.

II. Standard

When deciding a motion to dismiss, the Court must accept all well-pleaded allegations as true and draw all reasonable inferences in favor of the pleader. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

III. Discussion

A. ERISA preemption

Section 514(a) of ERISA, 29 U.S.C. s 1144(a), provides that the provisions of subchapter I, concerning protection of employee benefit rights, "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . . ." Congress designed ERISA's preemption clause to be expansive to ensure that plans and plan sponsors are subject to a uniform body of benefits law free from state law

actions not contemplated by ERISA. Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 139 (1990). However, the Supreme Court has also observed "that if the 'relate to' language in § 514(a) were read literally, 'pre-emption would never run its course,' because '[r]eally, universally, relations stop nowhere.'" Plumbing Industry Bd., Plumbing Local Union No. 1 v. E.W. Howell Co., Inc., 126 F.3d 61, 66 (2d Cir. 1997) (quoting New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 655 (1995)). In determining whether preemption applies, the Court must "look ... to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive." Travelers, 514 U.S. at 656.

Alternatively, a state law may be "preempted even though it does not refer to ERISA or ERISA plans if it has a clear connection with a plan in the sense that it mandates employee benefit structures or their administration or provides alternative enforcement mechanisms." Plumbing Industry Bd., 126 F.3d at 68 (internal citations and quotations omitted). In determining whether this standard is met, the Second Circuit has noted that the essential factor is the original Congressional objective "to eliminate alternative state law remedies for benefit plan participants and beneficiaries, relegating such persons to the six well-integrated remedies specifically provided in the statute's civil enforcement provisions . . . ." Id.

Plaintiff's third Count alleges a violation of the implied

contractual duty of good faith and fair dealing. According to plaintiff, he continued to work through January 2001 even though his effective retirement date was April 2000, and therefore a contractual relationship existed between plaintiff and his employer that defendants SBC and SNET, by "failing to provide to Plaintiff a pension benefit to which he is rightfully entitled," have breached. Amended Compl. ¶¶ 36-37. As pleaded, Count Three is simply an alternative theory to hold defendants SNET and SBC liable for the benefits under the ERISA plan, and is therefore preempted. See Lopresti v. Terwilliger, 126 F.3d 34, 41 (2d Cir. 1997); Alston v. Atlantic Electric Co., 962 F. Supp. 616, 624 (D.N.J. 1997) (breach of contract claim preempted where plaintiff sought to enforce rights under an ERISA plan); cf. Smith v. Dunham-Bush, Inc., 959 F.2d 6, 10-11 (2d Cir. 1992) (negligent misrepresentation claim preempted where alleged misrepresentation was a promise to pay pension-related benefits).[2]

Plaintiff's fourth Count alleges that SBC and SNET negligently misrepresented that no enhanced retirement benefits would be offered and that he relied on this information to his detriment in planning his retirement. As noted by the First Circuit in Vartanian v. Monsanto Co., 14 F.3d 697 (1st Cir. 1994), in an identical case, "the existence of [an ERISA plan] is

[2]While the Court does not disagree with plaintiff's position that employment contracts include a duty of good faith and fair dealing, the claim asserted in Count Three plainly relates to the denial of benefits.

inseparably connected to any determination of liability under state common law of misrepresentation. There is simply no cause of action if there is no plan." Id. at 700. Thus, the claim "relates to" an ERISA plan, and is preempted. See Ingersoll-Rand, Co., 498 U.S. at 140 (state law is preempted where plaintiff must plead and the court must find the existence of an ERISA plan for the plaintiff to prevail); accord Sanson v. General Motors Corp., 966 F.2d 618, 621 (11th Cir. 1992) (misrepresentation claim based on allegation that defendant misrepresented that no enhanced retirement benefits would be offered is preempted by ERISA).[3]

B. PWC's motion to dismiss

PWC argues that the ERISA claims against it must be dismissed because the Amended Complaint fails to allege that PWC committed any improper acts or performed any functions, other than ministerial and administrative tasks, with respect to the SBC Pension Benefit Plan. PWC further argues that notwithstanding plaintiff's allegations that upon information and belief, PWC is a plan administrator and fiduciary, the Summary

[3]In addition, the Court notes that because ERISA's remedial framework expressly encompasses claims for breach of fiduciary duty, see 29 U.S.C. §§ 502(a)(2) and (a)(3), permitting plaintiff to pursue this common law claim would provide an alternative enforcement mechanism. Cf. Ballone v. Eastman Kodak, 109 F.3d 117, 125-26 (2d Cir. 1997); Mullins v. Pfizer, 23 F.3d 663, 669 (2d Cir. 1994).

Plan Description ("SPD") and the Administrative Services Agreement between PWC and SBC demonstrate that PWC is neither a plan administrator nor a fiduciary.

Plaintiff asserts claims against PWC under 29 U.S.C. §§ 1132(a)(1)(B) and 1132(c), alleging upon information and belief that PWC is a plan administrator or fiduciary. In a claim for recovery of benefits under § 1132(a)(1)(B), "'only the plan and the administrators and trustees of the plan in their capacity as such may be held liable.'" Crocco v. Xerox Corp., 137 F.3d 105, 107 (2d Cir. 1998) (quoting Leonelli v. Pennwalt Corp., 887 F.2d 1195, 1199 (2d Cir. 1989)). Similarly, § 1132(c) expressly provides for liability only for plan administrators who fail to provide requested information. Under ERISA, "[t]he term 'administrator' means--(i) the person specifically so designated by the terms of the instrument under which the plan is operated; (ii) if an administrator is not so designated, the plan sponsor; or (iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe." 29 U.S.C. § 1002(16)(a). The SPD unequivocally states that "SBC Communications, Inc. is the Plan Sponsor and Plan Administrator (as defined by ERISA)." Def. Ex. B.

In Crocco, the Second Circuit rejected the argument advanced by plaintiff that where there is a named administrator, another entity may also be liable under § 1132(a)(1)(B) as a "de facto"

or unnamed administrator based on the performance of ministerial functions. Id. (citing Lee v. Burkhart, 991 F.2d 1004 (2d Cir. 1993)). Here, as in Crocco, the underlying plan documents make clear that SBC is the designated plan administrator, and plaintiff has identified no facts or necessary discovery that could suggest that PWC is also a designated administrator.[4] Thus, both ERISA claims against PWC must be dismissed.[5]

[4]Although this motion is before the Court as a motion to dismiss, the SPD for the SBC Pension Benefit Plan is properly considered here because it is a document incorporated into the complaint by reference, and plaintiff does not object to the Court's consideration of this document. Rothman v. Gregor, 220 F.3d 81, 88 (2d Cir. 2000) ("For purposes of a motion to dismiss, we have deemed a complaint to include any written instrument attached to it as an exhibit or any statements or documents incorporated in it by reference.").

[5]Plaintiff makes no claim that PWC is a plan trustee. Although there appears to be some dispute as to whether PWC acted as a fiduciary to the SBC Plan, plaintiff does not assert a claim of breach of fiduciary duty by PWC. As discussed above, under § 502(a)(1)(B) and § 502(c), only an administrator (or the plan or plan trustee, with respect to the claim under § (a)(1)(B)) is a proper defendant. Accordingly, the dispute over PWC's fiduciary status is immaterial. See Crocco, 137 F.3d at 106 n.2 (noting that where a plaintiff seeks the payment of benefits, does not seek damages on behalf of the plan itself under § 1132(a)(2), and does not request injunctive or other equitable relief under § 1132(a)(3), fiduciary status is irrelevant).

IV. Conclusion

Defendant SNET's motion to dismiss Counts Three and Four [# 13] is GRANTED. Defendant PWC's motion to dismiss [# 15] is also GRANTED.

IT IS SO ORDERED.

/s/

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Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut, this _18th__ day of July, 2002.