

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BAH BAI MAKENTA	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 98-3376
	:	
UNIVERSITY OF PENNSYLVANIA	:	
	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J.

January 11, 2002

Plaintiff Bah Bai Makenta ("Plaintiff" or "Makenta") moves to dismiss the counterclaim filed by Defendant University of Pennsylvania, ("Defendant" or "Penn") for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1367. In the alternative, Makenta moves to dismiss Defendant's counterclaim for failure to state a claim upon which relief can be granted. In addition, Makenta moves to strike the counterclaim pursuant to Fed. R. Civ. P. 12(f). For the reasons stated below, Plaintiff's motion is denied.

I. BACKGROUND

Makenta brought this action alleging ERISA claims against Penn. Penn filed a counterclaim against Makenta alleging breach of contract.

The parties entered into a settlement agreement on March 17, 1998, as a result of the dismissal of a previous and separate cause of action that Plaintiff brought against Defendant, which alleged that Penn discriminated against Makenta on the basis of race in violation of Title VII of the Civil Rights Act (hereinafter referred to as the "discrimination case," see Makenta v. University of Pennsylvania, Civil Action No. 97-cv-5424 (E.D. Pa., Brody, J.)). According to Defendant, the terms of the settlement agreement included, inter alia, that Plaintiff enter into a general release of all claims related to his employment with Penn. However, because a written settlement agreement was never signed, only an oral agreement exists between the parties, and hence, the terms of the settlement agreement are in dispute.

Penn asserts that, pursuant to the settlement agreement, the instant ERISA action, a cause of action which arises from Makenta's employment with Penn, is barred. Therefore, prosecution of the instant cause of action is a breach of the contract of settlement. Makenta claims that, while the parties agreed to settle and dismiss the discrimination case, Plaintiff in no way agreed to a covenant not to sue Penn for any other reason related to his employment.

Penn first raised the validity of the settlement agreement by motion after Makenta filed a motion for relief from

the order of dismissal in the discrimination case before Judge Brody because, according to Plaintiff, the terms of the settlement agreement submitted by Penn went beyond the parties' oral agreement to settle Plaintiff's discrimination case. At that time, both parties apparently agreed that a finding that the settlement agreement included a general release of all claims related to Makenta's employment with Penn had the potential to bar the instant ERISA action. Furthermore, both parties were willing to await this determination by Judge Brody before proceeding with the instant ERISA suit and entered into a Stipulation and Order to stay the ERISA action.

However, Judge Brody declined to reopen the discrimination case and consequently denied both motions. Thus, whether the settlement agreement in the discrimination case acts a bar to the instant ERISA suit is an issue which remains undetermined.

Penn wishes to litigate the enforceability and scope of the settlement agreement in the instant ERISA action. Makenta asserts that the validity of the settlement agreement is not properly before this Court.

II. DISCUSSION

A. Subject Matter Jurisdiction

A federal court has supplemental jurisdiction "of the subject matter of a counterclaim if it arises out of the

transaction or occurrence that is the subject matter of an opposing party's claim of which the court has jurisdiction." Great Lakes Rubber Corp. v. Herbert Cooper Co., 286 F.2d 631, 633 (3d Cir. 1961); 3 Moore's Federal Practice, § 13.110[1][a] (Matthew Bender 3d ed.). "'Transaction or occurrence' should be interpreted broadly; it is unnecessary that the facts be from the same time or that exactly the same facts will resolve the issues in the complaint and the counterclaim." Centennial Sch. Dist. v. Independence Blue Cross, 885 F. Supp. 683, 685 (E.D. Pa. 1994) (citing Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure: Civil § 1410(2d ed. 1990).

"[A] counterclaim that arises out of the transaction or occurrence that is the subject matter of an opposing party's claim is [also] a 'compulsory counterclaim' within the meaning of Rule 13(a) of the Federal Rules of Civil Procedure." Great Lakes Rubber, 286 F.2d at 633. Thus, the test for compulsoriness under Rule 13(a) is the same as the test for the existence of supplemental jurisdiction. See 16 Moore's Federal Practice, § 106.25[1] (Matthew Bender 3d ed.). Therefore, if Defendant's counterclaim is found to be compulsory, then the court will have supplement jurisdiction over Penn's breach of contract claim.

"[T]he operative question in determining if a claim is a compulsory counterclaim is whether it bears a logical relationship to an opposing party's claim." Xerox Corp. v. SCM

Corp., 576 F.2d 1057, 1059 (3d Cir. 1978) (citing Great Lakes Rubber, 286 F.2d at 634). Defendant argues that its counterclaim is compulsory, i.e., that its breach of contract claim bears a logical relationship to Plaintiff's ERISA claim, and demonstrates this by pointing to the Stipulation and Order, signed by Plaintiff's counsel, agreeing to stay the instant ERISA action until a determination was made by Judge Brody on the enforceability and scope of the settlement agreement. As noted above, because Judge Brody declined to reopen the discrimination case, the validity of the settlement agreement remains undetermined.

Clearly, whether or not Plaintiff is in breach of the parties settlement agreement by maintaining his instant ERISA suit bears a logical relationship with the instant cause of action itself. Makenta's complaint initiates the ERISA action, but it is not the totality of the controversy. It is merely a portion of the controversy which dictates whether and to what extent Plaintiff is entitled to relief. The substance of the controversy, in fact a threshold matter, extends to whether Makenta's claim is barred by the settlement agreement allegedly entered into by the parties. Thus, Defendant's counterclaim is compulsory, and pursuant to 28 U.S.C. § 1367, the Court has the power to hear Penn's breach of contract claim.

Therefore, Plaintiff's motion to dismiss Defendant's counterclaim for lack of subject matter jurisdiction is denied.

B. Failure to State a Claim

Plaintiff also asserts that Defendant's counterclaim fails to state a claim upon which relief can be granted. In determining a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), "all assertions in the pleading are assumed to be true; all reasonable inferences are drawn from the pleading in favor of the [nonmovant]; and the counterclaim only may be dismissed if the [nonmovant] has alleged no set of facts under which they could state a claim." Centennial Sch. Dist., 885 F. Supp. at 686.

In order to state a breach of contract claim upon which relief may be granted under Pennsylvania law, Penn must allege: (1) the existence of a valid and binding contract to which Penn and Makenta were parties; (2) the contract's essential terms; (3) that Penn complied with the contract's terms; (4) that Makenta breached a duty imposed by the contract; and (5) damages resulting from the breach. See Cottman Transmission Sys. v. Melody, 851 F. Supp. 660, 672 (E.D. Pa. 1994) (citing Electron Energy Corp. v. Short, 408 Pa. Super. 563, 597 A.2d 175 (1991), aff'd without op., 533 Pa. 66, 618 A.2d 395 (1992)).

In its counterclaim, Penn alleges:

4. On March 17, 1998, plaintiff entered into a settlement agreement with Penn, the terms of

which include, inter alia, that plaintiff enter into a general release of all claims related to his employment with Penn.

. . . .

9. Notwithstanding the fact that plaintiff entered into an express contract with Penn to release all claims arising out of his employment relationship with Penn, plaintiff commenced this lawsuit in breach of its contract with Penn.

10. Plaintiff's continued prosecution of this lawsuit against Penn is a breach of his contract with Penn and is the direct and proximate cause of damages to Penn.

The Court finds Penn has adequately alleged the elements, which if proven, state a claim for breach of contract. Therefore, Plaintiff's motion to dismiss Defendant's counterclaim pursuant to Fed. R. Civ. P. 12(b)(6) is denied.

C. Redundancy Pursuant to Fed. R. Civ. P. 12(f)

Plaintiff also seeks to strike Defendant's counterclaim. Under Rule 12(f), the Court may order deleted from a pleading any "redundant, immaterial, impertinent, or scandalous matter." "Such motions to strike are, however, 'disfavored, especially in the absence of prejudice.'" Centennial Sch. Dist., 885 F. Supp. at 690 (citing In re One Meridian Plaza Fire Litig., 820 F. Supp. 1460, 1488 (E.D. Pa. 1993)). Defendant's counterclaim contends that Plaintiff entered into an express contract with Penn to release all claims arising out of his employment relationship with Penn and Plaintiff commenced this

lawsuit in breach of its contract with Penn. Defendant's seventh affirmative defense asserts that Plaintiff's claims are barred in whole or in part by the doctrine of release. As Defendant correctly points out, Penn's seventh affirmative defense, based upon the doctrine of release, if successful, would only serve to bar Makenta's recovery from Penn. On the other hand, Penn's counterclaim, if effective, would allow Penn to recover damages from Makenta stemming from his alleged breach of the settlement agreement and release.

Therefore, Penn's counterclaim is not redundant and Plaintiff's motion to dismiss Defendant's counterclaim pursuant to Fed. R. Civ. P. 12(f) is denied.

Accordingly, Plaintiff's motion to dismiss Defendant's counterclaim is denied in its entirety.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BAH BAI MAKENTA	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 98-3376
	:	
UNIVERSITY OF PENNSYLVANIA	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 11th day of January, 2002, upon consideration of Plaintiff's F.R.C.P. 12 Motion in Response to Defendant's Counterclaim (Docket No. 20), and Defendant's Response thereto (Docket No. 24), it is hereby **ORDERED** that Plaintiff's Motion is **DENIED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.