

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

HARRY LESZCZUK,)
WILLIAM T. REYNOLDS, and) Civil Action
HAROLD S. WEAVER,) No. 03-CV-05766
)
Plaintiffs)
)
vs.)
)
LUCENT TECHNOLOGIES, INC.,)
)
Defendant)

* * *

APPEARANCES:

KEVIN A. MOORE, ESQUIRE
On behalf of Plaintiffs

ROBERT W. CAMERON, ESQUIRE
THEODORE A. SCHROEDER, ESQUIRE
SHANNON H. PALIOTTA, ESQUIRE
On behalf of Defendant

* * *

M E M O R A N D U M

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on Defendant's Motion for Summary Judgment filed March 31, 2005. Plaintiffs' Response to Defendant's Motion for Summary Judgment was filed April 22, 2005.¹ For the reasons expressed below, we deny Defendant's Motion for Summary Judgment.

¹ By Order of the undersigned dated April 26, 2005, we granted defendant leave to file a reply memorandum in support of its motion for summary judgment. The Reply to Plaintiffs' Response to Defendant's Motion for Summary Judgment was filed April 29, 2005.

Specifically, we reject defendant's arguments that plaintiffs lack standing and that they must fail on the merits of their claim.

Procedural History

Plaintiffs filed their Complaint commencing this civil action on October 17, 2003. The action is before the court on federal question jurisdiction. 28 U.S.C. § 1331. Venue is appropriate because the events occurred in this district in Berks County, Pennsylvania. 28 U.S.C. §§ 118, 1391.

Plaintiffs' Contentions

In their Complaint, plaintiffs assert claims for employment discrimination under Section 510 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1461. Plaintiffs specifically contend that their "for cause" terminations were pretextual and intentionally designed to prevent them from exercising their rights in an ERISA-qualified employee welfare benefit plan. 29 U.S.C. § 1140.

Facts

Based upon the pleadings, depositions, affidavits, and admissions, the pertinent facts are as follows. Plaintiffs Harry Leszczuk, William T. Reynolds and Harold S. Weaver were each employed by defendant Lucent Technologies, Inc. at defendant's facility in Reading, Berks County, Pennsylvania.

Plaintiff Harry Leszczuk was employed as a Technical Manager; plaintiffs Reynolds and Weaver were both employed as Technical Staff-I Management employees. Plaintiff Leszczuk had been employed by defendant and its predecessor companies for over 20 years; plaintiff Reynolds, for over 17 years; and plaintiff Weaver, for over 18 years.

In July 2001 Lucent amended its Force Management Plan ("FMP") which provided benefits to employees who were terminated under certain circumstances, such as a reduction in force. The FMP is an ERISA-qualified employee welfare benefit plan. The FMP requires employees to meet four qualifications to be considered a plan participant:

- A. your employment ends as a result of being notified on or after February 15, 2001;
- B. you are a regular full or regular part-time management or [Lucent Business Assistant] employee on the active roll of the Company....[;]
- C. you are not designated as a "Retained" Employee under the Guidelines, or the Resignation Program[;] and
- D. during a time period specified by the Company you either (i) voluntarily elect to terminate your employment in accordance with the Guidelines or the Resignation Program or (ii) your employment is involuntarily terminated by the Company in accordance with the Guidelines.²

In August 2001 plaintiff Leszczuk was notified by his

² U.S. Force Management Plan, Exhibit A to Defendant's Exhibit 1 (Deposition of Harry Leszczuk taken January 24 and 25, 2005) of the Appendix of Record Evidence in Support of Defendant's Motion for Summary Judgment.

boss, George Kostick, a director at the Reading facility, that the Reading facility was closing. Mr. Kostick asked Mr. Leszczuk to inform the other employees in Mr. Leszczuk's department that they should consider themselves "FMP'd at some future date."³ Mr. Leszczuk then communicated this information to the employees in his department, including plaintiffs Reynolds and Weaver.

On October 17, 2001 Lucent notified plaintiffs that they were under investigation for failing to work 40 hours per week at the Reading facility. On October 25, 2001 plaintiffs received letters terminating their employment "for cause."

Plaintiffs contend that their "for cause" terminations were "pretextual and intentionally designed to prevent them from exercising their rights in the benefits of the Plan."⁴ Plaintiffs base their claim on Section 510 of ERISA. 29 U.S.C. § 1140. This section provides, in part, that "It shall be unlawful for any person to discharge ... a participant or beneficiary ... for the purpose of interfering with the attainment of any right to which participant may become entitled under the plan" 29 U.S.C. § 1140.

Standard of Review

Rule 56(c) of the Federal Rules of Civil Procedure provides that judgment shall be rendered where there is "no

³ Leszczuk Deposition at page 88.

⁴ Complaint, paragraph 29.

genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). Where a moving defendant does not bear the burden of persuasion at trial, he need only point out that "there is an absence of evidence to support the nonmoving party's case."

Celotex Corporation v. Catrett, 477 U.S. 317, 325, 106 S.Ct. 2548, 2554, 91 L.Ed.2d 265, 275 (1986).

Moreover, a non-moving party cannot establish that there exist genuine issues of material fact on mere allegations. The non-movant with a burden of proof must produce a sufficient evidentiary basis from which a reasonable jury could find in favor of the non-movant. Anderson v. Liberty Lobby, Incorporated, 477 U.S. 242,- 249-250, 106 S.Ct. 2505, 2510-2511, 91 L.Ed.2d 202, 212 (1986).

In establishing a prima facie case under § 510 of ERISA:

a plaintiff must show (1) that an employer took specific actions (2) for the purpose of interfering (3) with an employee's attainment of pension benefit rights.... [O]nce a plaintiff makes a prima facie showing, the employer has the burden of articulating a legitimate non-discriminatory reason for his conduct. Then the burden shifts back to the plaintiff to show that the employer's rationale was pre-textual and that the cancellation of benefits was the "determinative influence" on the employer's actions.

Eichorn v. AT&T Corp., 248 F.3d 131, 149 (3d Cir. 2001)(Citations omitted.)

Discussion

Defendant makes two primary arguments in support of its motion for summary judgment: (1) plaintiffs were not participants under the FMP and therefore lack standing to bring this claim; and (2) plaintiffs claim must fail on the merits. Plaintiffs challenge each of these arguments.

Defendant's standing argument is the same argument it made in Defendant's Motion to Dismiss Plaintiffs' Complaint, which motion was granted in part and denied in part in our Order and Opinion dated September 29, 2004. Lucent argues that for plaintiffs to have standing under ERISA they must be plan "participants". "Participant" is defined as "any employee or former employee of an employer ... who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer...." 29 U.S.C. § 1002(7).

Defendant argues that for plaintiffs, as former employees, to establish that they are participants, they must either show a colorable claim to vested benefits or have a reasonable expectation of returning to work with the Company. Defendant also argues that plaintiffs are claiming to be plan participants because, had they not been terminated for cause, plaintiffs would have continued in their employment. In that

event, plaintiffs argue, they would have been terminated as part of the plant closing, and might have qualified for FMP benefits.

Defendant argues that Miller v. Rite Aid Corporation, 334 F.3d 335, 342 (3d Cir. 2003), stands for the proposition that participants as defined by ERISA does not include individuals who "might have" become eligible to receive a benefit upon continued employment.

In rejecting defendant's argument in our Opinion of September 29, 2004, we reasoned:

We are not persuaded by defendant's argument that, pursuant to Miller, supra, ERISA does not define "participant" to include former employees who "might have" become eligible to receive a benefit. In Miller, the employee was designated to be laid off, but his employment period was temporarily extended. During this extension, the employee voluntarily resigned his position.

The United States Court of Appeals for the Third Circuit noted that under the applicable plan provisions, the employee might have been eligible for benefits had he continued his employment to the conclusion of the extension period. However, because he voluntarily resigned his employment, he was not eligible for benefits. The Third Circuit noted that section "1002(7) does not define a former employee who 'might have' become eligible for benefits as a participant under ERISA." Miller, 334 F.3d at 342.

We find Miller distinguishable from the case before this court. Plaintiffs correctly note that in this case, unlike Miller, the employees did not voluntarily leave employment prior to the time they would have become eligible for benefits. Additionally, unlike this case, there were no allegations in Miller of employer wrongdoing related to frustrating employees "attainment of any right to which such participant may become entitled under the plan...." 29 U.S.C. § 1140.

The prohibition of Section 510 was to prevent employers from engaging in the type of conduct averred by plaintiffs in their Complaint. This same rationale is not implicated in Miller. Accordingly, we find Miller distinguishable and not controlling of this case.

Opinion of September 29, 2004, pages 8-9.

In our September 29, 2004 Opinion, we noted that plaintiffs attached the FMP to its complaint and averred that but for their termination under the pretext of cause, their positions would have been terminated in a manner provided for in section A of the FMP. We concluded that factual issues remained as to the reason for plaintiffs' terminations. Therefore, we declined to grant defendant's motion to dismiss for lack of standing.

In reviewing this argument in the context of defendant's present motion for summary judgment, we reach a similar conclusion. Plaintiffs note in their response to the summary judgment motion that an ex-employee may still be considered a "participant" for purposes of asserting an ERISA claim if he establishes that he has "a colorable claim" to vested benefits. Firestone Tire & Rubber Company v. Bruch, 489 U.S. 101, 117-118, 109 S.Ct. 948, 958, 103 L.Ed.2d 80, 97 (1989). We conclude that plaintiffs have established a colorable claim.

Plaintiffs aver in their depositions that they were told that their positions were likely to be terminated because of the closing of the Reading facility. Plaintiffs also rely on the

deposition testimony of Diane Beslanovits, Lucent's Human Resources Representative, who indicated that advance notice of upcoming terminations was given. It can be inferred from this advance notice that each of the plaintiffs would be vested under the FMP, but for their purported for cause terminations.

We agree with the persuasive reasoning of the United States Court of Appeals for the Fifth Circuit in Christopher v. Mobil Oil Corporation, 950 F.2d 1209, 1221 (5th Cir. 1992). There the Court concluded concerning a section 510 claim that "an employer should not be able through its own malfeasance to defeat the employee's standing." Whether defendant was guilty of malfeasance remains to be determined at trial. At this stage, however, plaintiffs have established a sufficient basis for standing to proceed to trial with their claims.

Accordingly, we deny defendant's standing argument.

Defendant's second argument is that plaintiffs' claims fail on their merits. Initially defendant argues that plaintiffs have failed to establish a prima facie case. In particular, defendant contends that plaintiffs have failed to establish that defendant took specific actions for the purpose of interfering with ERISA benefits. Defendant relies on Dewitt v. Penn-Del

Directory Corporation, 106 F.3d 514, 523 (3d Cir. 1997) to argue that

Where the only evidence that an employer specifically intends to violate ERISA is the employee's lost opportunity to accrue additional benefits, the employee has not put forth evidence sufficient to separate that intent from the myriad of other possible reasons for which an employer might have discharged him.

106 F.3d at 523.

Defendant argues that plaintiffs' only evidence other than their termination is that they were informed prior to their termination that most of the jobs in their department were to be transferred overseas. Defendant argues that, under Dewitt, these allegations alone are insufficient to establish plaintiffs' case.

Plaintiffs argue that among the prohibited conduct proscribed by ERISA is any employer attempt to "discharge, fine, suspend, expel, discipline or discriminate" against a vesting employee. McLendon v. Continental Can Company, Incorporated, 908 F.2d 1171, 1177 n.11 (3d Cir. 1990). Plaintiffs argue that circumstantial evidence may be used to establish a prohibited employer intent. Gavalik v. Continental Can Company, 812 F.2d 834, 851 (3d Cir. 1987).

Plaintiffs point to the following factors as being sufficient to draw a circumstantial inference of specific intent by the employer to interfere with plaintiffs' receipt of benefits. First, plaintiffs were on advance notice of FMP

status. Second, slightly more than two months after receiving advance notice, the defendants were terminated for cause relating to the number of hours per week which plaintiffs worked on the job site. Third, the fact that plaintiffs performed some of their work hours off site was well known to defendant for some time. Fourth, despite this long-standing knowledge, defendant did not act on this purported violation until after plaintiffs were identified as subject to the FMP. Fifth, defendants engaged in no discussion with any of plaintiffs, prior to their termination, concerning their alleged violations. Sixth, defendant saved \$196,280.14 in FMP benefits by terminating plaintiffs.

Defendant correctly notes that plaintiffs fail to cite any record evidence to support this figure nor explain how this amount was derived. Nonetheless, we find plaintiffs remaining arguments persuasive. From the sequence of events, it could be reasonably inferred by the factfinder that defendant, after identifying FMP employees, began a process of finding ways to discharge FMP employees for the purpose of denying FMP benefits in order to reduce costs.

We find the DeWitt case distinguishable. In DeWitt, plaintiff was terminated from employment on December 12, 1990. On December 14, 1990, she requested a distribution of benefits from an employee pension plan in which she had been a

participant. On December 28, 1990, she was issued a check in the amount of \$75,520.88. Plaintiff advanced a Section 510 argument, claiming that her employer intentionally expedited the distribution of her plan proceeds so as to not have to pay additional amounts that plaintiff claims would have accrued to the account had the distribution occurred after December 31, 1990.

The United States Court of Appeals for the Third Circuit rejected plaintiff's argument. The Court concluded that there was nothing in the record to suggest that early distribution was made to benefit the employer. In doing so it reasoned that when the only evidence in support of the claim is of lost opportunity to accrue additional benefits, plaintiff has failed to meet her burden. Additionally, the Court noted that the total savings to the employer was minimal, which the Court estimated at between \$1,400 and \$2,200.

The DeWitt case is distinguishable from the within case. In the within case, plaintiffs are arguing that their entire entitlement was denied them because of specific conduct the employer engaged in for that purpose. On the other hand, in DeWitt the Court was faced not with a situation where defendant acted in a manner to deny plaintiff her entire benefit, but rather, where the defendant acted too quickly in providing plaintiffs benefits, which had the effect of depriving plaintiff

of what amounted to only 2-to-3% of the monetary distribution she actually received.

We are guided by the Third Circuit's decision in Eichorn v. AT&T, 248 F.3d 131 (3d Cir. 2001). In that case, the Third Circuit reversed the district court's granting of summary judgment in favor of defendants, concluding that plaintiffs had presented sufficient circumstantial evidence of specific intent to interfere with plaintiffs' benefit plans to permit the case to go to trial. The case involved an agreement between Lucent Technologies, Incorporated, an AT&T affiliate, and Texas Pacific Group.

Texas Pacific Group had purchased Paradyne Corporation from Lucent. The agreement, entered after the purchase, provided that Lucent and other AT&T affiliates would not hire Paradyne employees for an eight-month period.

The case arose because the Paradyne employees had accrued pension rights under their former AT&T pension plans. The pension plan had a "bridging provision" which allowed them to keep their level of accrued benefits if they returned to employment with AT&T within six months. The effect of the eight-month agreement was to terminate the Paradyne employee's AT&T pension benefits. Plaintiffs brought a section 510 claim.

In support of their claim in Eichorn, plaintiffs argued that the six-month and eight-month periods were suspiciously

close in time. Plaintiffs also argued that a confidential, internal memorandum between Lucent officials acknowledged the effect of the eight-month agreement. Additionally, plaintiffs noted the economic benefits that AT&T and Lucent received from the no-hire agreement. The Third Circuit concluded that, although the evidence may not be sufficient for plaintiffs to prevail on their claims at trial, there was sufficient evidence to allow the case to proceed to trial.

In the within case, plaintiffs note the temporal proximity between the time plaintiffs were terminated and the time the FMP was going to go into effect. Plaintiffs had been told in August that they would be FMP'd by the end of the year, and their termination occurred with slightly more than two months remaining in the year. Although plaintiffs do not refer to any confidential memoranda in support of their position, plaintiffs present evidence that defendant initiated the investigations only after plaintiffs had been notified of the pending job eliminations.

That defendant was aware of plaintiffs' work practices for some time prior to this notice, but only took action after providing this notice, is sufficient to infer wrongdoing. Whether plaintiffs can establish and sustain their claim at trial remains to be seen, but sufficient evidence has been presented to afford plaintiffs the opportunity to make their case at trial.

Defendants also argue that plaintiffs cannot establish that defendant's actions were pretextual. To establish pretext, a plaintiff must either directly persuade the court that the discriminatory reason more likely motivated the employer or must indirectly show that the employer's proffered explanation is unworthy of credence. DiFederico v. Rolm Company, 201 F.3d 200, 206 (3d Cir. 2000).

As noted throughout this Opinion, factual issues remain as to the defendants' policies which plaintiffs purportedly violated. Although plaintiffs acknowledge the policy requiring a 40-hour work week, it is unclear if all of these hours had to be worked on site, or whether some of those hours could be worked off site as plaintiffs claim to have done. This issue requires further factual inquiry at trial, along with any necessary credibility determinations.

For these reasons, we reject defendants argument that plaintiff has failed to establish a prima facie case.

Conclusion

For the foregoing reasons, we deny Defendant's Motion for Summary Judgment.

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

HARRY LESZCZUK,)	
WILLIAM T. REYNOLDS, and)	Civil Action
HAROLD S. WEAVER,)	No. 03-CV-05766
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Plaintiffs)	
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LUCENT TECHNOLOGIES, INC.,)	
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Defendant)	

O R D E R

NOW, this 10th day of June, 2005, upon consideration of Defendant's Motion for Summary Judgment filed March 31, 2005; upon consideration of Plaintiffs' Response to Defendant's Motion for Summary Judgment, which response was filed April 22, 2005; upon consideration of the Reply to Plaintiffs' Response to Defendant's Motion for Summary Judgment, which reply was filed April 29, 2005; upon consideration of the briefs of the parties;

and for the reasons contained in the accompanying Memorandum,

IT IS ORDERED that Defendant's Motion for Summary Judgment is denied.

BY THE COURT:

/s/ James Knoll Gardner

James Knoll Gardner

United States District Judge