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

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| WILLIAM ADAMS, et al.,<br>Plaintiffs,<br><br>v.<br><br>ALAN SILVERSTEIN, et al.,<br>Defendants. | Civil Action No. 05-1849 |

**MEMORANDUM / ORDER**

March 6, 2006

Defendants Alan Silverstein and Antoinette Martin move to dismiss plaintiffs' amended complaint, which asserts several claims (one on behalf of each plaintiff) under the Pennsylvania Wage Payment and Collection Law of 1961 ("WPCL"). For the reasons discussed below, I cannot decide the motion, but rather must remand this case to the Court of Common Pleas of Northampton County of the Commonwealth of Pennsylvania.

This body of litigation began in the Court of Common Pleas of Northampton County when plaintiffs sued defendants, as well as Bethlehem Corporation (the company that employed plaintiffs and defendants; hereafter referred to as the "company"), claiming that pension benefits owed to plaintiffs under the company's pension plan were several months delinquent, in violation of WPCL. Plaintiffs later amended their complaint to

assert claims against the company arising under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 101 *et seq.* Plaintiffs eventually won summary judgment on those claims, and the parties subsequently settled the case. Defendants requested that plaintiffs execute a release that, among other things, would have released the defendants from any future pension benefit claims. Plaintiffs refused to sign the release.

Plaintiffs later instituted another suit against defendants, again in the Court of Common Pleas of Northampton County, again asserting WPCL claims arising out of defendants' failure to pay pension benefits. The difference between the first and second lawsuits was that they sought recovery of pension benefits allegedly due during different time periods. Defendants filed a notice of removal to transfer the second lawsuit to this court, contending plaintiffs' claims are preempted by ERISA, which confers federal question jurisdiction on federal district courts.

While neither party has suggested this court lacks jurisdiction over this case, I am nevertheless required to determine whether subject matter jurisdiction properly lies in this court. *See* 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded"). A defendant may remove a case from state court to federal court only when the case is one over which "district courts of the United States have original jurisdiction." 28 U.S.C. § 1441. The party seeking removal bears the burden of showing that federal jurisdiction is proper.

*Pascack Valley Hospital, Inc. v. Local 464A UFCW Welfare Reimbursement Plan*, 388 F.3d 393, 401 (3d Cir. 2004). In this case, because the parties are not of diverse citizenship, the only potential basis for federal jurisdiction is the presence of a federal question. Generally, "a cause of action 'arises under' federal law, and removal is proper, only if a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Dukes v. U.S. Healthcare, Inc*., 57 F.3d 350, 353 (3d Cir. 1995). Indeed, "a case may not be removed to federal court on the basis of a federal defense, including the defense of preemption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case." *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 14 (1983). This doctrine is known as the well-pleaded complaint rule. *See id.* at 9-12. However, the Supreme Court has recognized a "complete preemption" exception to the well-pleaded complaint rule in ERISA cases: when a state cause of action that is preempted by ERISA is asserted in state court, the case may be removed even when ERISA preemption is raised only as a defense. *See Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-67 (1987).

Plaintiffs' original complaint[1] in this case pleads only state-law causes of action, and therefore, under the well-pleaded complaint rule, removal would be improper.

[1] Because the original complaint was the live pleading at the time defendants filed their notice of removal, that is the pleading I will analyze for purposes of determining whether removal was proper.

However, as defendants contend plaintiffs' WPCL claims are preempted by ERISA, removal is proper pursuant to the complete preemption exception if defendants can show that ERISA applies to this case.

Plaintiffs' original complaint contains the following statement:

"19. Neither Bethlehem Corporation nor any person or entity on its behalf has established nor maintained the Plan as one covered by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 101 *et seq.* Specifically, neither Bethlehem Corporation nor any entity or person on its behalf has complied with or intended to comply with any of the following provisions of ERISA: General Provisions, Reporting and Disclosure, Participation and Vesting, Funding, Fiduciary Responsibility, and Administration and Enforcement.

20. Based upon both the establishment and maintenance of the Plan by the Company, the Plan is not an employee benefit plan as that term is defined by ERISA."

The parties both recognize that, in order for ERISA to apply to this case, there must be an "employee benefit plan" within the meaning of ERISA, and they recognize that such a plan "is established if from the surrounding circumstances a reasonable person can ascertain the intended benefits, a class of beneficiaries, the source of financing and procedures for receiving benefits." *See Deibler v. United Food & Commercial Workers' Local Union 23*, 973 F.2d 206, 209 (3d Cir. 1992).

Under this standard, the allegations in plaintiffs' original complaint are sufficient to suggest there was no "employee benefit plan" within the meaning of ERISA. Defendants must establish the opposite in order to sustain jurisdiction in this court. They fail to do so. Defendants urge that a reasonable person could discern the relevant plan characteristics from the company's plan documents. At this stage of the litigation,

however, I am not authorized to make fact-intensive determinations such as what a reasonable person would or would not know under the totality of the circumstances. Rather, I must accept the allegations in plaintiffs' complaint as true and draw all reasonable inferences therefrom. *See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc.*, 140 F.3d 478, 483 (3d Cir. 1998). I find the allegations in plaintiffs' complaint adequate to support a reasonable inference that the company's plan was not covered by ERISA.

The only other argument defendants offer in support of their contention that ERISA applies to this case is that plaintiffs made a "judicial admission" in their first state-court action that conclusively establishes ERISA's applicability to this case. The "judicial admission" to which defendants refer comes from paragraph 7 of plaintiffs' complaint in the first state action, which states: "This action is maintained pursuant to [ERISA] by the Plaintiffs for the payment of the benefits due them under the Plan . . . ." Defendants misunderstand the concept of judicial admissions. "The scope of judicial admissions is restricted to matters of fact which otherwise would require evidentiary proof . . . ." *Glick v. White Motor Co.*, 458 F.2d 1287, 1291 (3d Cir. 1972). A party's statement of the legal theory of a case is not a judicial admission. *See id.* The statement in plaintiffs' complaint in the first state action to which defendants refer is a statement of the legal theory of the case, not a matter of fact which would otherwise require evidentiary proof. It is therefore not a judicial admission binding on this court.

Defendant provides this court with nothing more to show that ERISA applies to this case, and I therefore cannot so conclude at this stage of the litigation. Because defendant has failed to establish ERISA's applicability to this case, it cannot be said that the case presents a federal question, and thus removal was improper.

For the foregoing reasons, it is hereby ORDERED that this case is REMANDED to the Court of Common Pleas of Northampton County of the Commonwealth of Pennsylvania. The clerk of court is directed to transfer this case to that court.

BY THE COURT:

/s/ Louis H. Pollak

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Pollak, J.