

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

ESTATE OF JEANNE GORE,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
CROZER CHESTER MEDICAL	:	
CENTER,	:	
Defendant.	:	NO. 96-8192
	:	
Newcomer, J.	:	September , 1997

M E M O R A N D U M

Presently before the Court is Defendant Crozer Chester Medical Center's Motion for Summary Judgment and plaintiff's response thereto. For the reasons that follow, said Motion will be denied.

A. Background

Plaintiff in this case is the Estate of Jeanne Gore. Ms. Gore was a psychiatric nurse employed by defendant from 1974 until her death in 1994. Plaintiff brings this suit under the Employee Retirement Income Security Act ("ERISA") arguing that defendant, an ERISA plan administrator, breached its fiduciary duty to Ms. Gore by failing to inform her of material facts regarding her pension plan. Plaintiff seeks to collect \$100,000 worth of pension benefits which Ms. Gore did not receive because she elected not to retire before her death.

Defendant, like other employers, offers various benefits to its employees including a pension plan (the "Plan"). Employees do not contribute to the Plan; the pension level to which an employee is entitled is based on the employee's salary, length of service, age at retirement, and the form in which the

benefits are to be paid. The normal retirement age as set forth in the Plan is sixty-five, but employees can choose to retire earlier starting at age fifty-five. Benefits would be commensurately decreased.

Under the Plan unmarried eligible retirees typically receive a life annuity consisting of full pension payments starting at retirement and ending at death. Ms. Gore was under this standard plan for unmarried employees. On the other hand, married retirees typically receive fifty per cent of benefits until death, and thereafter their surviving spouse continue to receive fifty per cent of the pension payments. If an eligible married employee dies prior to retirement, the spouse will still receive fifty per cent of the pension. However, unmarried employees who die prior to retirement lose their benefits.

Employees can elect other payment options which are laid out in the Summary Plan Description ("SPD") provided to all employees. Defendant made two versions of the SPD available to its employees. Ms. Gore possessed both. As Ms. Gore was unmarried at all relevant times, the only other option available to her in addition to the standard plan was the Ten Year Certain and Continuous Annuity plan. Under the Ten Year plan a retiree is guaranteed reduced pension payments for ten years upon retirement. If she dies prior to receiving ten years' worth of payments, a beneficiary of her choice receives the remaining payments. Under both the standard plan and the Ten Year plan, however, death prior to retirement precludes retirement benefits

for the unmarried employee and her beneficiary.

Ms. Gore was diagnosed with large-cell lymphoma in January 1994 and died ten months later. She was fifty-seven years old. Ms. Gore was eligible to receive pension benefits upon retirement under the Plan. Her pension rights were "vested." However, Ms. Gore did not retire when she learned of her cancer. Instead she applied for and received Defendant's long term disability benefits and as an unretired employee of defendant, continued to receive medical benefits up to the time of her death. She died while still an employee of the defendant, never having retired, and thus did not receive any of her vested pension benefits.

Her estate now brings this suit to collect her forfeited pension benefits. Plaintiff argues that defendant, an ERISA plan administrator, breached its fiduciary duty by failing to inform Ms. Gore about the forfeiture consequences of not retiring, both in the SPD and individually; and that had Ms. Gore been informed of the risk of forfeiture, she would have elected to retire early under the Ten Year Certain and Continuous Annuity option and would have named one of her children as the beneficiary of any post-mortem payments. Presently before the Court is Defendant's Motion for Summary Judgment.

B. Summary Judgment Standard

A reviewing court may enter summary judgment where there are no genuine issues as to any material fact and one party is entitled to judgment as a matter of law. White v.

Westinghouse Elec. Co., 862 F.2d 56, 59 (3d Cir. 1988). The evidence presented must be viewed in the light most favorable to the non-moving party. Id. "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). In deciding the motion for summary judgment, it is not the function of the Court to decide disputed questions of fact, but only to determine whether genuine issues of fact exist. Id. at 248-49.

The moving party has the initial burden of identifying evidence which it believes shows an absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Childers v. Joseph, 842 F.2d 689, 694 (3d Cir. 1988). The moving party's burden may be discharged by demonstrating that there is an absence of evidence to support the nonmoving party's case. Celotex, 477 U.S. at 325. Once the moving party satisfies its burden, the burden shifts to the nonmoving party, who must go beyond its pleadings and designate specific facts, by use of affidavits, depositions, admissions, or answers to interrogatories, showing that there is a genuine issue for trial. Id. at 324. Moreover, when the nonmoving party bears the burden of proof, it must "make a showing sufficient to establish the existence of [every] element essential to that party's case." Equimark Commercial Fin. Co. v. C.I.T. Fin. Servs. Corp., 812 F.2d 141, 144 (3d Cir. 1987) (quoting Celotex, 477 U.S. at 322).

Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." White, 862 F.2d at 59 (quoting Celotex, 477 U.S. at 322).

C. Discussion

As recently as this past year, the Third Circuit has affirmed that § 502(a)(3) of ERISA "provides plan participants an equitable cause of action for an administrator's breach of fiduciary duty." Jordan v. Federal Express Corp., 116 F.3d 1005, 1012 (3d Cir. 1997). Plaintiff claims that defendant breached its fiduciary duty to Ms. Gore in two respects--in failing to provide a clear SPD under ERISA standards and in failing to advise Ms. Gore about her pension options once defendant allegedly learned of Ms. Gore's terminal illness--and that this breach caused her not to retire and thus to forfeit all her accrued pension benefits. Defendant argues that plaintiff has failed to produce any evidence showing a genuine issue of material fact in regard to these claims. Because this Court finds that genuine issues of material fact exist as to plaintiff's claims, defendant's motion will be denied.

1. Defendant's Fiduciary Duty to Provide an Adequate SPD

Plaintiff avers that defendant breached its fiduciary duty to Ms. Gore in failing to provide a SPD that meets ERISA standards. An ERISA plan administrator's disclosure obligations

are set forth in 29 U.S.C. §§ 1102, 1021, and 1022. Section 1022 (a)(1) requires that SPDs be "written in a manner sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. . . . [and] in a manner calculated to be understood by the average plan participant." 29 U.S.C. § 1022(a)(1). Accompanying regulations require, in pertinent part, that SPDs clearly identify circumstances in which a participant might be disqualified or lose benefits that he might otherwise reasonably expect the plan to provide. See 29 C.F.R. § 2520.102-3(k)(1) (1997). Plaintiff's claim is that in violation of the above standards, defendant's SPD does not clearly state that for an unmarried employee, death prior to retirement results in a total forfeiture of all vested pension benefits.

The relevant portions of defendant's SPD are as follows:

Normal Method of Payment

The Plan establishes a normal form of payment for you, depending on whether you are single or married at the time you retire. However, other optional forms of payment are also available, and you have the right to waive your normal form and select an optional method, if you prefer. . . .

For Single Employees

If you are single at the time of your retirement, your normal form of payment under the Plan is a Life Annuity. Under this form, you will receive the full amount of your normal or early retirement benefit beginning on your retirement date and continuing for as long as you live. At your death, all payments cease.

. . .

Life Annuity

Payments are made to you for your life only, with no payments remaining after your death. This is the maximum payment which you can receive from the Plan.

(Def.'s Mem. at Exh. B, 8-9.) The SPD also includes an explanation of pre-retirement death benefits for spouses of married employees under the heading "Pre-Retirement Spouse's Benefit." (See Def.'s Mem. at Exh. B, 11.) There is no equivalent section for unmarried employees.

Defendant argues that the above language meets ERISA standards of accuracy and comprehensiveness while plaintiff argues to the contrary. Defendant relies on the deposition testimony of plaintiff's own witnesses to demonstrate that its SPD was reasonably clear. David Gore, Ms. Gore's son, testified that the relevant portion of the SPD was "sticking out like a sore thumb." (Def.'s Mem. at 27-28 quoting David Gore Dep. at 37-38.) William Gore, another son, testified that he underlined the portion of the SPD describing the Ten Year option because it "may have been a viable option." (Def.'s Mem. at 28 quoting William Gore Dep. at 56-57.) Defendant points out that given the testimony of its own witnesses, plaintiff is hard-pressed to argue that the SPD was incomprehensible or misleading. Plaintiff on the other hand points to the deposition testimony of defendant's benefits manager who testified that the SPD implies rather than explicitly states that an unmarried person who does not retire will not receive her pension benefits. (See Pl.'s Mem. at 10.) The evidence produced by the parties shows a

factual dispute as to whether the language of the SPD is sufficiently clear under ERISA guidelines. As such, the Court finds that plaintiff has articulated a genuine issue of material fact that precludes summary judgment on this claim.

2. Fiduciary Duty to Inform Ms. Gore Individually

Plaintiff also asserts that defendant owed Ms. Gore a fiduciary duty above and beyond providing her with the SPD in that it should have informed her individually of her pension options when it learned of her illness, even though she never made inquiry. Under Third Circuit precedent, a fiduciary is not only under a "negative duty not to misinform, but also [under] an affirmative duty to inform when the trustee knows that silence might be harmful." Bixler v. Central Pa. Teamsters Health and Welfare Fund, 12 F.3d 1292, 1300 (3d Cir. 1993). "[T]he fiduciary has an obligation to convey complete and accurate information material to the beneficiary's circumstance. This is so even if that information comprises elements about which the beneficiary has not specifically inquired." Id. The materiality of a misrepresentation hinges on whether "there is a substantial likelihood that it would mislead a reasonable employee in making an adequately informed retirement decision." In re Unisys Corp. Retiree Medical Benefit ERISA Litigation, 57 F.3d 1255, 1264 (3d Cir. 1995). Significant to this case, the Court recently held that an omission, as opposed to an affirmative misrepresentation, also rises to a material level for the same reason. See Jordan, 116 F.3d at 1015-16.

The facts of the above cases are relevant to the case at bar. In Bixler, the widow of an ERISA plan participant sued, inter alia, her deceased husband's employer to collect medical and death benefits. 12 F.3d at 1296. The Court focused on a telephone conversation between the employer and Mrs. Bixler to determine whether the employer had breached its fiduciary duty by making material misrepresentations to her. Id. at 1302. The Court found that in one instance there was sufficient evidence to preclude summary judgment because "there is evidence from which a trier of fact could infer that [the general manager] knew the Bixlers and their situation well enough to be aware of Mr. Bixler's hospitalization and the attendant medical expenses." Id. The Court further found that if the employer had known of the Bixlers' situation and knew that Mrs. Bixler could receive reimbursements through the company's benefits plan by simply signing a notice form, then the failure to advise her of her available rights might be found to be a breach of fiduciary duty. Id.

In the present case, several facts are in dispute. Defendant argues that it had no reason to know of Ms. Gore's illness and that it had no duty to advise her of her pension rights as she never initiated an inquiry about her benefits after learning of her illness. (See Def.'s Mem. at 11-12.) Plaintiff, on the other hand, produces evidence showing that defendant's employees in the benefits department did know of Ms. Gore's illness. (See Pl.'s Mem. at Exh. F, 24.) This Court finds that

a genuine issue of material fact exists as to whether defendant knew of Ms. Gore terminal illness and if so, whether its silence in the face of this knowledge constituted a breach of fiduciary duty.

Defendant argues that in Bixler, the plaintiff initiated the inquiry, and that a fiduciary's duty only comes into play when there has been a request for information. However, in Jordan, the plaintiff plan participant did not make inquiry about his benefits either. Nevertheless the Court found that an issue of fact existed as to whether the employer's failure to inform the plaintiff of the irrevocability of his retirement selection constituted a material omission and a breach of its fiduciary duty. 116 F.3d at 1017. Defendant argues in rebuttal that in Jordan the plaintiff never received a SPD. But since the clarity of defendant's SPD is at issue in the present case, defendant's argument fails. This Court finds that the evidence before it is sufficient to preclude summary judgment on plaintiff's second fiduciary duty claim because a factual dispute exists as to whether defendant knew of Ms. Gore's situation and if so, whether silence in the face of such knowledge would constitute a breach of its fiduciary duty.

3. Whether Defendant's Alleged Breach Caused Ms. Gore Harm

Regarding the element of causation, Defendant points to the absence of any evidence showing that had Defendant acted differently, Ms. Gore would have retired. Plaintiff's own

witnesses, Ms. Gore's children and brother, unanimously testified in their depositions that they never discussed retirement with Ms. Gore and did not know what pension option their mother would have elected had she decided to retire. (See Def.'s Mem. at 5.)

As circumstantial evidence of causation, Plaintiff relies on the fact that Ms. Gore knew she was going to die and that she put all her other affairs in order. (See Pl.'s Mem. at 14, 16.) Plaintiff points out that Ms. Gore's beneficiary designations in her will, insurance policies, and other assets were basically identical across the boards--seventy-five per cent to her daughter Carol and twenty-five per cent to her son David. Id. The inference to be drawn is that Ms. Gore would have chosen to treat her pension in the same manner as her other assets by choosing the Ten Year plan and designating one of her children as her beneficiary to receive her pension payments after her death had she been adequately informed of her options. (See Pl.'s Mem. at 16.). The crux of plaintiff's argument appears to be that it was not logical for Ms. Gore to forfeit all her vested pension benefits when she had the choice to elect otherwise.

This Court does not address the weight of the parties' evidence on this motion. And while it notes that proof of causation may be difficult for plaintiff as Ms. Gore is deceased, for purposes of this motion it finds that there is sufficient evidence from which a trier of fact could conclude that but for defendant's alleged breach, Ms. Gore would not have chosen to forfeit her vested pension benefits.

D. Conclusion

In conclusion, Defendant's Motion for Summary Judgment will be denied for the aforementioned reasons.

An appropriate Order follows.

Clarence C. Newcomer, J.

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O R D E R

AND NOW, this day of September, 1997, upon consideration of Defendant Crozer Chester Medical Center's Motion for Summary Judgment, and plaintiff's response thereto, and consistent with the foregoing Memorandum, it is hereby ORDERED that said Motion is DENIED.

AND IT IS SO ORDERED.

Clarence C. Newcomer, J.