

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

LAUREEN PENDLETON	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	No. 97 CV-4327
	:	
REGENT NATIONAL BANK, Individually	:	
and Trading as REGENT PREMIUM FINANCE	:	
Defendant,	:	

ORDER-MEMORANDUM

Presently before this Court is Defendant Regent National Bank's Motion to Dismiss Plaintiff Laureen Pendleton's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

I. Factual and Procedural Background

On or about September 20, 1996, Defendant hired Plaintiff as a clerical supervisor. Plaintiff remained in Defendant's employ until on or about April 20, 1997, at which time Plaintiff was laid off for a "lack of work." (Pendleton Compl. ¶ 4) Plaintiff alleges that on or about September 20, 1996, the Defendant engaged in a scheme to defraud the Plaintiff of employment benefits, including a medical plan, life insurance, various other types of insurance, disability coverage, overtime, and other similar benefits. Plaintiff alleges that Defendant was obligated to offer such "employment benefits pursuant to [the Employee Retirement Income Security Act, 29 U.S.C.A. § 1001 et seq. ("ERISA")] and/or other lawful requirements." (Pendleton Compl. ¶ 5)

Plaintiff alleges that while she was employed by Defendant, at least three of her paychecks were drawn on third party accounts, rather than on Defendant's payroll accounts. For example, although Plaintiff worked for Defendant Regent National Bank, at least two of her paychecks were purportedly issued by K C Insurance Premium Finance Co., Inc. and at least one of her paychecks was purportedly issued by Regent Realty, Inc. Plaintiff alleges that Defendant paid Plaintiff with payroll checks drawn on third party accounts in an effort to circumvent the ERISA requirement that Defendant provide Plaintiff with certain employee benefits. That is, Defendant avoided providing Plaintiff with required employee benefits by creating the illusion that Plaintiff was actually employed by one or more third parties. Plaintiff seeks relief on three grounds: 1) fraud; 2) unjust enrichment; and 3) a violation of the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1 et seq. ("PWPCCL"). None of Plaintiff's claims are expressly brought pursuant to ERISA.

Plaintiff's state law fraud claim states that "[t]he actions and omissions of [D]efendant . . . were intentional, malicious, and done with a view to deprive the [P]laintiff of benefits and entitlements to which she was entitled as an employee of [D]efendant" (Pendleton Compl. ¶ 11) Plaintiff also makes a state law claim that Defendant was unjustly enriched as a result of this alleged scheme. Finally, Plaintiff makes a general allegation that Defendant violated the PWPCCL by not paying "fringe benefits or wage supplements" and

"wages" due the Plaintiff and that Defendant never had a "good faith dispute or contest or good faith assertion of right not to pay . . . Plaintiff." (Pendleton Compl. ¶ 18) Although not specifically stated by Plaintiff, section 260.9a(b) of the PWPCL provides the foundation for Plaintiff's PWPCL claim. Section 260.9a(b) of the PWPCL states that "[a]ctions by an employee . . . to whom any type of wages¹ is payable to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction, by such . . . party to whom any type of wages is payable. 43 P.S. § 260.9a(b).

Plaintiff originally filed her Complaint in the Court of Common Pleas of Philadelphia County on or about May 8, 1997. (Regent Mot. to Dismiss ¶ 1). Pursuant to 28 U.S.C.A. § 1441, Defendant removed this action to the United States District Court for the Eastern District of Pennsylvania. (Regent Mot. to Dismiss ¶ 3) Defendant filed a Motion to Dismiss in this court.

II. Discussion

A motion to dismiss should be denied unless it appears beyond doubt that the plaintiff can prove no set of facts in support of her claim which would entitle her to relief. Conley v. Gibson, 335 U.S. 41, 45-46, 78 S. Ct. 99, 102 (1957). All allegations in the complaint and all reasonable inferences must be accepted as true and viewed in the light most favorable to the non-moving party. Id.; Rocks v. City of Philadelphia, 868 F.2d

. "'Wages' includes all earnings of an employee . . . fringe benefits or wage supplements whether payable by the employer from his funds or from amounts withheld from the employes' pay by the employer." 43 P.S. § 260.2a.

644, 645 (3d Cir. 1989); Wassil v. Advanced Tech. Lab., No. CIV. A. 95-6777, 1996 WL 238688 at *1 (E.D. Pa. 1996).

Plaintiff avers that "defendant engaged in a scheme to defraud plaintiff of employment benefits, which it was obligated to offer all of its employees pursuant to ERISA and/or other lawful requirements" (Pendleton Compl. ¶ 5) Hence, the instant case necessarily involves consideration of ERISA. ERISA, however, broadly preempts "any and all state laws insofar as they may . . . relate to any employee benefit plan." 29 U.S.C.A. § 1144(a).

A state law "relates to" ERISA and, therefore, is preempted under section 1144(a) if it has a connection with or reference to such a plan, Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 48, 107 S. Ct. 1549, 1553 (1987), even if it was not designed to affect such plans or does so only indirectly. Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 139, 111 S. Ct. 478, 483 (1990); Wassil, 1996 WL 238688 at *2. Moreover, ERISA's preemption clause is not limited to "state laws specifically designed to affect employee benefit plans." Shaw v. Delta Air Lines, 463 U.S. 85, 98, 103 S. Ct. 2890, 2899 (1983).

The United States Supreme Court, in Alessi v. Raybestos-Manhattan Inc., 451 U.S. 504, 101 S. Ct. 1895 (1981), determined that ERISA's express preemption provisions are deliberately expansive and designed to "establish pension plan regulation as exclusively a federal concern." Alessi, 451 U.S. at 523, 101 S. Ct. at 1906. See also Pilot Life Ins. Co., 481 U.S. at 45-46, 101 S. Ct. at 1552 (preemption provisions are

expansive so as to make pension plan regulation solely a federal concern). The Supreme Court also recognized that in enacting ERISA, Congress set out to "protect . . . participants in employee benefit plans and their beneficiaries." Pilot Life Ins. Co., 481 U.S. at 44, 101 S. Ct. at 1551 (quoting 29 U.S.C.A. § 1001(b)). Courts have devoted much attention to whether particular claims are preempted by ERISA.

For example, the Third Circuit, in 1975 Salaried Retirement Plan for Eligible Employees of Crucible, Inc. v. Nobers, 968 F.2d 401, 406 (3d Cir. 1992), determined that a state law claim is preempted by section 1144(a) where the existence of an ERISA plan is a critical factor in establishing liability and where the court's inquiry is directed to an ERISA plan. Id. at 406. In the instant case, each of Plaintiff's state law claims, as stated in her complaint, is explicitly or implicitly made in reference to Defendant's alleged attempt to defraud Plaintiff of employee benefits which may be governed by ERISA. As a consequence, the existence of an ERISA plan may be a critical factor in establishing Defendant's liability and if this court's inquiry is directed to an ERISA plan, Plaintiff's claims are "related to" and, hence, preempted by ERISA. See id.

District court case law in the Third Circuit supports this conclusion. See e.g., Ruth v. UNUM Life In. Co. of Am., No. CIV. A, 94-3969, 1994 WL 481246 at *6 (E.D. Pa. 1994)(holding that plaintiff's fraud claim was preempted by ERISA); Nationwide Mut. Ins. Co. v. Teamsters Health & Welfare Fund of Philadelphia & Vicinity, 695 F. Supp. 181, 185 (E.D. Pa.

1988)(holding ERISA preempted plaintiff's unjust enrichment claim); Asprino v. Blue Cross & Blue Shield Ass'n, No. CIV. A. 96-7788, 1997 WL 255675 at *1 (E.D. Pa. 1996)(rejecting plaintiff's claim for wages under PWPCCL because adjudication of claim required examination of defendant's ERISA plan). An adjudication of Plaintiff's three state law claims would necessarily entail an examination of ERISA. Accordingly, Plaintiff's state law claims are "related to" and, therefore, preempted by ERISA.

I realize that Plaintiff did not intend to bring an ERISA action against Defendant. However, on its face, Plaintiff's Complaint relates to ERISA. Accordingly, I grant Defendant's Motion to Dismiss without prejudice. Additionally, leave is granted to Plaintiff to file an Amended Complaint which sets forth claims that are clearly unrelated to ERISA or, in the alternative, claims that are brought pursuant to ERISA.

An appropriate order follows.

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REGENT NATIONAL BANK, Individually	:	
and Trading as REGENT PREMIUM FINANCE	:	
Defendant,	:	

O R D E R

AND NOW, this _____ day of _____,
1998, upon careful consideration of Defendant Regent National
Bank's Motion to Dismiss and memorandum in support thereof, and
Plaintiff Laureen Pendleton's response thereto, IT IS HEREBY
ORDERED THAT:

1. Defendant's Motion is GRANTED without prejudice.

2. Plaintiff shall have 30 days from the above date to
file an Amended Complaint consistent with the accompanying
Memorandum.

BY THE COURT:

Clifford Scott Green, S.J.