

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

UNITED STEEL WORKERS OF AMERICA,	:	
AFL-CIO/CLC	:	
and	:	
LEWIS GRIFFIN, GEORGE HEMMERT,	:	
GEORGE KEDDIE and JANICE SCOTT	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
vs.	:	NO. 05-CV-0039
	:	
ROHM AND HAAS COMPANY,	:	
and	:	
ROHM AND HAAS COMPANY HEALTH	:	
AND WELFARE PLAN	:	
	:	
Defendants	:	

MEMORANDUM AND ORDER

JOYNER, J.

June 29, 2005

Defendant has filed a Motion to Dismiss Plaintiffs' Complaint in its entirety pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief may be granted. For the reasons which follow, the Motion shall be denied.

Factual Background

On January 5, 2005, Plaintiffs, United Steelworkers of America, AFL-CIO/CLC ("Union"), and Lewis Griffin, George Hemmert, George Keddie, and Janice Scott ("Individual Plaintiffs"), filed a Complaint against Defendants Rohm and Haas Company ("Company") and the Rohm and Haas Company Health and Welfare Plan ("Plan"). According to the allegations set forth in the Complaint, Defendant Company denied Individual Plaintiffs'

rights to disability benefits under the Plan. (Compl., ¶ 4).

Plaintiffs allege that the disability benefits included in the Plan were part of a collectively bargained package of benefits which the Union negotiated over many years. (Id. at ¶¶ 4, 11). Under the collective bargaining agreements for both the Production Unit and Mechanical Unit, disputes concerning disability benefits are subject to grievance and arbitration procedures. (Id. at ¶¶ 7, 15). The Plan states that Rohm and Haas employees who become disabled are eligible for benefits, including Short-Term Disability benefits during the first six months of a disability and then an extended Disability Allowance during the next six months of disability. (Id. at ¶ 5). Thereafter, disabled employees are eligible for Long-Term Disability Benefits and/or Disability Retirement Allowance ("DRA"). Id.

In 2003 and 2004, Plaintiffs Griffin, Hemmert, and Keddie applied for disability retirement benefits. (Id. at ¶¶ 7, 14). During the same time period, Plaintiff Scott applied for disability income benefits. (Id. at ¶ 14). In November 2004, Plaintiff Griffin was denied DRA benefits. Id. In October 2004, Plaintiff Hemmert was denied DRA benefits, but was instructed to reapply in six months. Id. Plaintiff Keddie also was denied DRA benefits. Id. Similarly, Plaintiff Scott was denied Long-Term Disability Benefits. Id. Individual Plaintiffs have either

exhausted all administrative remedies under the Plan, or allege that further attempts would have been futile. (Id. at ¶ 8). Defendant Company has refused to take Plaintiffs' grievances to arbitration. (Id. at ¶ 17).

Count I of Plaintiffs' Complaint alleges that Defendant Company's refusal to arbitrate violates Section 301 of the Labor Management Relations Act of 1947, as amended ("LMRA"), 29 U.S.C. § 185. (Id. at ¶ 18). Count II alleges that by acting in violation of the terms of the Plan, Defendant Company has engaged in conduct actionable under Section 502 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1132 (a)(1)(B) and (a)(3).

Defendants now move to dismiss both Counts raised in Plaintiffs' Complaint. First, Defendants argue that the disability program of the Rohm and Haas Health and Welfare Plan is not part of the collective bargaining agreement. (Mot. to Dismiss, p.8). On that ground, Defendants argue that Plaintiffs' grievances are not arbitrable, and therefore Count I should be dismissed as a matter of law. Id. Second, Defendants contend that Count II, as pertaining to Plaintiffs Griffin and Hemmert, should be dismissed because Griffin and Hemmert failed to exhaust all administrative remedies before filing ERISA claims. Id. at 12. Finally, Defendants argue that Plaintiffs Keddie and Scott's ERISA claims should be dismissed, because Keddie and Scott failed

to file a Complaint within the limitations period set forth in the Plan. Id. at 13.

Standards Governing A Rule 12(b)(6) Motion to Dismiss

It has long been the rule that in considering motions to dismiss pursuant to Fed.R.Civ.P. 12(b)(6), the district courts must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000) (internal quotations omitted); See, also, Ford v. Schering-Plough Corp., 145 F.3d 601, 604 (3d Cir. 1998). A motion to dismiss may be granted only where the allegations fail to state any claim upon which relief may be granted. See, Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). The inquiry is not whether plaintiff will ultimately prevail in a trial on the merits, but whether they should be afforded an opportunity to offer evidence in support of their claims. In re Rockefeller Ctr. Props., Inc., 311 F.3d 198, 215 (3d Cir. 2002). Dismissal is warranted only "if it is certain that no relief can be granted under any set of facts which could be proved." Klein v. General Nutrition Cos., 186 F.3d 338, 342 (3d Cir. 1999) (internal quotations omitted). It should be noted that courts are not required to credit bald assertions or legal conclusions improperly alleged in the complaint, and legal conclusions draped in the guise of factual allegations may not benefit from the presumption of truthfulness.

In re Rockefeller, 311 F.3d at 236; In re Burlington Coat Factory Secs. Litig., 114 F.3d 1410, 1426 (1997); See, also, Angstadt v. Midd-West Sch. Dist., 377 F.3d 338, 342 (3d Cir. 2004).

Discussion

A. Arbitrability of Plaintiffs' Grievances

Defendants argue that the Rohm and Haas Health and Welfare Plan is not part of the collective bargaining agreement, and thus Plaintiffs' grievances are not arbitrable. (Mot. to Dismiss, p.8). Arbitration is a "matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582 (1960). However, if the contract contains an arbitration clause, there is a presumption of arbitrability. Id. at 582-83. Specifically, "arbitration should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." Id. Moreover, any doubts concerning the arbitrability of a grievance "should be resolved in favor of coverage." Id. at 583. Courts usually find a grievance arbitrable where the scope of the arbitration clause is broad and the parties did not specifically exclude such a grievance from the arbitration process. See, e.g., E.M. Diagnostic Sys., Inc. v. Local 169, Int'l Bhd. of Teamsters, 812 F.2d 91, 92 (3d Cir. 1987).

When evaluating whether an issue should be presumed arbitrable, the Third Circuit Court of Appeals applies a three-part test: "(1) Does the present dispute come within the scope of the arbitration clause? (2) Does any other provision of the contract expressly exclude this kind of dispute from arbitration? (3) [Is] there any other "forceful evidence" indicating that the parties intended such an exclusion?" Id. at 95. Accordingly, an issue is arbitrable if it falls within the "zone of interests" that have received protection in the collective bargaining agreement. Id.

Accepting as true all facts alleged in the Complaint, Plaintiffs set forth a claim that supports a presumption of arbitrability. Specifically, Plaintiffs satisfy the E.M. Diagnostic three-part test. The collective bargaining agreements referenced in Plaintiffs' Complaint provide that "questions arising under this Agreement" will be "subject to adjustment" through the grievance and arbitration procedures. (Compl., ¶ 15). Moreover, the arbitration clauses are broad, including "wages (other than general adjustments), individual base rates, hours of employment and working conditions." Id. In addition, the Sickness and Accident Plan of the Disability Income Program is explicitly mentioned in the collective bargaining agreements. (Id. at ¶ 12). Finally, these disability benefits were collectively bargained by the parties. (Id. at ¶¶ 4, 11).

Therefore, when taking the facts as set forth in Plaintiffs' Complaint as true, it cannot be held as a matter of law that disputes under the disability plan are not subject to arbitration.

Applying the second element of the E.M. Diagnostic test to this action, Plaintiffs allege that no provision of the contract expressly excludes a disability dispute from arbitration. (Plaintiffs' Response, p.6). Furthermore, the collective bargaining agreements explicitly exclude certain matters from arbitration, such as general wage adjustments, but do not exclude disability disputes. (Compl., ¶ 15). Similarly, the third prong of the E.M. Diagnostic test is satisfied, as the pleadings do not provide "forceful evidence" that disability benefits were not intended to be arbitrable. Therefore, taking Plaintiffs' alleged facts as true, Plaintiffs' claim that Defendants unlawfully refused to arbitrate cannot be dismissed as a matter of law.

B. Exhaustion of Administrative Remedies

Defendants next assert that Plaintiffs Griffin and Hemmert's ERISA claims should be dismissed for failing to exhaust all administrative remedies before filing a lawsuit. (Mot. to Dismiss, p.12). Federal Rule of Civil Procedure 9(c) states that "[i]n pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred." Courts sitting

in the Eastern District of Pennsylvania have found that a dispute regarding the plaintiff's failure to meet a condition precedent to filing suit usually cannot be properly decided on a motion to dismiss. See, e.g., Center for Concept Dev. v. Godfrey, 1998 U.S. Dist. LEXIS 17975 at *5 (E.D. Pa. 1998). In denying the defendant's Motion to Dismiss, the Godfrey court held:

The failure of this condition is an issue of fact not properly resolved on a motion to dismiss. At present, the Court must accept as true all of Plaintiff's allegations, including the allegation that all obligations in their recovery under the agreements have occurred. Defendants will have the opportunity to prove, through supporting evidentiary materials, the failure or non-existence of a condition precedent. However, that issue is more appropriately addressed by way of a motion for summary judgment. Id.

Individual Plaintiffs in this action have properly pled that all conditions necessary to pursuing an ERISA claim have been met. (Compl., ¶ 8). Specifically, Individual Plaintiffs allege that they have exhausted all of their administrative remedies. Id. Accordingly, following the Godfrey standard, Plaintiffs have properly pled that all conditions precedent have been met. As this Court must accept as true Plaintiffs' allegations for the purposes of this Motion, Plaintiffs Griffin and Hemmert's ERISA claims cannot be dismissed as a matter of law.

C. Limitations Period for Filing an ERISA Claim

Finally, Defendants argue that Plaintiffs Keddie and Scott's ERISA claims should be dismissed for failing to file a Complaint within the 90-day limitations period set forth in the Plan.

(Mot. to Dismiss, p.13). Although the Third Circuit has not set forth a standard for determining what constitutes a reasonable limitations deadline for filing an ERISA claim, other circuits have addressed the issue. See, e.g., Northlake Regional Medical Center v. Waffle House Employee Benefit Plan, 160 F.3d 1301 (11th Cir. 1998). Although some courts have found 90-day limitations periods reasonable, courts must first investigate the totality of the circumstances surrounding the plaintiff's filing.¹ Id. at 1304. Courts have found that where a defendant's activities contributed to the plaintiff missing the contract's deadline for filing suit, then the defendant should not be allowed to litigate over whether the plaintiff could have filed sooner. See, e.g., Doe v. Blue Cross & Blue Shield United of Wisconsin, 112 F.3d 869 (7th Cir. 1997).

Plaintiffs in this action allege that Defendant Company's "misleading disclosures" led to Plaintiffs' delayed filing. (Plaintiffs' Response, pp.11-12). Specifically, the letter Plaintiff Keddie received notifying him of Defendant Company's denial of DRA benefits did not explicitly state that a failure to file within ninety days would permanently bar Keddie from suing in federal court. Id. at 11. Moreover, the denial letter

¹ Noting this standard, it is clear that a determination concerning the timeliness of Plaintiffs' filing an ERISA claim is better suited to a motion for summary judgment where additional evidence can be considered, rather than a motion to dismiss where the inquiry is limited to the pleadings.

informed Keddie that “[o]ther dispute resolution options may be available, such a mediation.” Id. Finally, the letter stated that “since [Keddie’s] medical condition can change at any time in the future, [he] may reapply for the disability retirement allowance at a later date.” Id. at 12. Similarly, the denial letter Plaintiff Scott received also contained confusing language and conflicting signals as to whether it constituted a “final denial” of Scott’s grievance. Id. As further discovery may reveal that these misleading disclosures operated to cause the delay in the filing of this suit, it would be premature for this Court to dismiss Plaintiffs’ Complaint at this time.

An order follows.

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UNITED STEEL WORKERS OF AMERICA,	:	
AFL-CIO/CLC	:	
and	:	
LEWIS GRIFFIN, GEORGE HEMMERT,	:	
GEORGE KEDDIE and JANICE SCOTT	:	
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Plaintiffs,	:	CIVIL ACTION
	:	
vs.	:	NO. 05-CV-0039
	:	
ROHM AND HAAS COMPANY,	:	
and	:	
ROHM AND HAAS COMPANY HEALTH	:	
AND WELFARE PLAN	:	
	:	
Defendants	:	

ORDER

AND NOW, this 29th day of June, 2005, upon consideration of Defendants Rohm and Haas Company and Rohm and Haas Company Health and Welfare Plan's Motion to Dismiss Plaintiffs' Complaint (Document No. 6), and Plaintiffs' response thereto (Document No. 10), it is hereby ORDERED that the Motion is DENIED, and Defendants are DIRECTED to file their answer to Plaintiffs' Complaint within twenty (20) days of the entry date of this Order.

BY THE COURT:

s/J. Curtis Joyner _____
J. CURTIS JOYNER, J.