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

THOMAS J. CROSLEY	:	CIVIL ACTION
	:	
v.	:	
	:	
COMPOSITION ROOFERS' UNION LOCAL 30 EMPLOYEES' PENSION PLAN et al.	:	NO. 04-5954

MEMORANDUM

Dalzell, J. September 29, 2005

Thomas J. Crosley sues for service credit in an employee pension plan that Composition Roofers Union Local 30 ("Local 30") created for its employees. Because Crosley worked for Local 30 for only about three years, not long enough to warrant pension benefits, he claims that we should credit him with more time so that he can receive them. Crosley asserts claims against Local 30's Employees' Pension Plan (the "Plan" or "Employees' Pension Plan") and the Plan's Board of Trustees (the "Board") for breaching the Plan (Count One), breach of fiduciary duty (Count Two), and equitable estoppel (Count Three). Before us are the parties' cross-motions for summary judgment.

Because Crosley falls outside the Plan's plain terms, we shall grant defendants' motion for summary judgment as to Count One. Because Crosley does not allege that the Plan breached a fiduciary duty to him, and because the Board and Crosley dispute whether the Board (1) misrepresented facts (2) of a material nature (3) upon which Crosley relied detrimentally, we shall grant the Plan's motion and deny Crosley's and the Board's motions as to Count Two. And, because Crosley's case lacks

circumstances sufficiently extraordinary to justify equitable estoppel, we shall grant defendants' motion as to Count Three.

A. Factual and Procedural Background

We first discuss the relationship between Local 30 and its apprenticeship fund, four multi-employer benefit funds, and employees' pension plan. Starting with the union itself, Local 30 collectively bargains for about 1,400 roofers in Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia. Joint Stipulation of Facts ("Joint Stip.") ¶ 6; Mem. of Law in Support of Def.s' Mot. for Summ. Judg. ("Def.s' Mem."), at 2 & Ex. 1. On behalf of these roofers, Local 30 -- along with area employers represented by the Roofing Contractors Association (the "RCA") -- created five multi-employer training and employee benefit funds, each designed to serve a different purpose. Def.s' Mem., at 3-4.

Local 30 set up one of these funds, the Local 30 Joint Apprenticeship Training Fund (the "Apprenticeship Fund"), to train commercial roofing apprentices. Id. at 4 & Ex. 6. The Apprenticeship Fund is regulated by the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 832 (1974) (codified as amended at 29 U.S.C. § 1001 et seq.) ("ERISA") and has a separate legal existence from Local 30. Id.; Joint Stip. ¶ 8. Under an agreement and trust declaration ("Trust Document") Local 30 and the RCA executed, a joint labor/management board of trustees runs the Apprenticeship Fund.

Def.s' Mem., at 4 & Ex. 6.

Local 30 and the RCA also established four other multi-employer, ERISA-regulated funds. Like the Apprenticeship Fund, each exists separately from Local 30, and a joint labor/management board of trustees runs each pursuant to a Trust Document. Id. at Ex. 7, 8, 9, 10. The first fund provides medical, disability, and other health-related benefits to Local 30 members. Id. at Ex. 7. The second provides pension and retirement benefits; the third, vacation benefits; and the fourth, defined contribution (i.e., annuity) benefits. Id. at Ex. 8, 9, 10. These latter four funds, hereinafter referred to as the "Benefit Funds," all exist under separate Trust Documents. Id. at Ex. 7, 8, 9, 10.

Local 30 employs Business Agents and other personnel to serve its membership. Def.s' Mem., at 6. In addition to receiving a salary and participating in each of the Benefit Funds, Local 30 employees also receive an additional pension from Local 30's Employees' Pension Plan. Joint Stip. ¶¶ 9, 11. On July 31, 1986, in an Agreement and Declaration of Trust (the "Trust Declaration"), Local 30 formed a trust to safeguard the assets of its soon-to-be-established Plan. Joint Stip., Ex. A. The next day, it established the Plan, see Def.s' Mem. of Law in Response to the Sept. 12, 2005 Order of this Court ("Def.s' Supp. Mem."), Ex. A, and since then the Board has amended the Plan only once, on July 2, 1998. Joint Stip., Ex. B.

Local 30 administers the Plan through a Board of

Trustees it appoints, and, unlike the Benefit Funds, the Plan is a single-employer pension program limited to Local 30 employees. Joint Stip. ¶¶ 2, 3, 11, 18; Joint Stip., Ex. B ¶ 1.09; Def.s' Supp. Mem., Ex. A ¶ 1.06. To receive a monthly pension under the Plan, in both its original and current form, one must reach the age of fifty and have worked as a Local 30 employee for at least five years. Joint Stip., Ex. B ¶¶ 1.09; 1.10; 2.02; 2.04; 2.06; 2.07; 2.08; 2.10; 3.01; Def.s' Supp. Mem., Ex. A ¶¶ 1.06; 1.07; 2.01; 2.02; 2.03; 2.04; 2.05; 2.06; 3.01. To calculate an employee's monthly pension benefit, one must multiply the employee's years of Continuous Service (i.e., years working for Local 30) by $140.00. Joint Stip. ¶ 34; Joint Stip., Ex. B ¶ 2.01; Def.s' Supp. Mem., Ex. A ¶ 2.08.

We now turn to plaintiff Thomas Crosley. For seventeen years, Crosley worked as a journeyman roofer. Def.s' Mem., Ex. 11, 6/3/05 Dep. of Thomas J. Crosley ("Crosley Dep."), at 10. As a roofer, Crosley participated in each of the four Benefit Funds. Id. at 11. In 1988, Crosley abandoned field work and accepted a job with the Apprenticeship Fund as an Apprentice Coordinator/Instructor. Id. at 14-15. During his three-year tenure, Crosley received the same fringe benefits he received as a journeyman, i.e., participation in the Benefit Funds. Id. at 17-19.

On March 20, 1992, at a Board of Trustees meeting, the Benefit Funds hired Crosley as their full-time Collector. Joint

Stip. ¶ 14; Pl.'s Dep., at 21.[1] As a Collector, Crosley's job was to secure contributions owed to each benefit fund. Pl.'s Dep., at 21-22. In his deposition, Crosley testified that, before the March 20, 1992 meeting, his father, Joe Crosley, who served as a Plan as well as a Benefit Fund Trustee, advised him that becoming a Benefit Fund Collector would entitle him to participate in Local 30's Employees' Pension Plan.[2] Pl.'s Dep., at 43, 45-46; see also Pl. Thomas J. Crosley's Mem. of Law in Supp. of his Mot. for Summ. Judg. ("Pl.'s Mem."), Ex. A ¶ 2. Crosley also testified that he would not have become a Collector had the Board not offered him Plan participation. Pl.'s Mem., Ex. A ¶ 3. Crosley points out that the minutes of the March 20,

---

[1] At that time, William Hamada, Richard Harvey, and John Serke served as Management Trustees of the Benefit Funds, and Tom Pedrick, Joe Crosley (plaintiff's father), and Jack Conway served as Union Trustees. Joint Stip. ¶ 19. Tom Pedrick, Joe Crosley, and Jack Conway comprised the Plan's Board. Joint Stip. ¶ 18.

[2] We reject defendants' claim that we must "disregard all hearsay statements plaintiff offers in support of his claims of breach of fiduciary duty," i.e., the alleged out-of-court statements of his father and Jack Conway. Def.s' Mem. of Law in Resp. to Pl. Thomas J. Crosley's Mot. for Summ. Judg. ("Def.s' Resp."), at 10. While we agree that hearsay statements used to support a motion for summary judgment carry no weight unless conceivably admissible, see, e.g., Petruzzi's IGA Supermarkets, Inc. v. Darling-Delaware Co., 998 F.2d 1224, 1234 n.9 (3d Cir. 1993), cert. denied, 510 U.S. 994 (1993), the statements Crosley offers are not hearsay. Instead, Crosley offers the out-of-court statements of his father and Jack Conway as (1) words of independent legal significance and (2) circumstantial evidence of these Trustees' contemporaneous interpretations of the Trust Declaration. In any event, the out-of-court statements could be found to be admissions of a party opponent, as Crosley is suing the Board. See Fed. R. Evid. 801(d)(2)(D) (excluding from definition of hearsay a statement offered against a party by the party's agent concerning a matter within the scope of employment).

1992 meeting noted that his "salary would be comparable to the Union Business Agents package." Joint Stip. ¶ 16 & Ex. C (again, Local Business Agents received two pensions, one from the Benefit Funds and one from Local 30's Employees' Pension Plan).

On June 17, 1992, the Trustees of the Benefit Funds again met, and they amended the word "comparatable [sic]" in the March 20, 1992 minutes to "same as," thereby providing that Crosley's "salary would be the same as the Union Business Agents package." Joint Stip. ¶ 17 & Ex. D. After this meeting, Crosley testified, another Plan Trustee and Benefit Fund Trustee, Jack Conway, told him he would "get the other pension too."[3] Pl.'s

---

[3] Crosley also claims that Richard Harvey, RCA's Executive Director and the Employer Co-Chairman of the Boards of Trustees of the Benefit Funds, told him that his employment with the Benefit Funds would entitle him to service credit under Local 30's Employees' Pension Plan. Pl.'s Mem., at 4. The deposition testimony Crosley cites, however, shows only that Harvey drafted the portion of the meeting minutes that referred to Crosley's salary:

> Q: I just want to be clear. What, if anything, did Mr. Harvey ever discuss with you regarding what benefits you would receive if or when you became a collector?
>
> A: <u>They're stated in the minutes</u>. He stated that I would receive the same -- the package the same as the union business agents, salary and package.

Pl.'s Dep., at 53 (emphasis added). Minutes earlier in his deposition, Crosley himself confirmed that Harvey never said he would receive Plan benefits:

> Q: Is it fair to say Mr. Harvey never made any such comment [about Plan benefits] to you?
>
> A: I believe that's what Mr. Harvey was saying when he said same as.

Dep., at 46. Despite his father's and Jack Conway's alleged assurances, as a Collector Crosley received the same fringe package he received in his previous two jobs, to wit, participation in each of the Benefit Funds but no participation in Local 30's Employees' Pension Plan.

In January or February of 2000, Local 30's Board hired Crosley as a part-time Business Agent and Executive Board Member. Joint Stip. ¶ 27; Pl.'s Dep., at 37. Crosley split his work week between his duties as a Collector for the Benefit Funds, to which he would devote three days, and Business Agent and Executive Board Member of Local 30, to which he would devote two days. Pl.'s Dep., at 37. Because Crosley became an employee of Local 30, he qualified to earn service time under the Plan. Joint Stip. ¶ 29. About three years later, on March 21, 2003, Crosley was terminated as a Business Agent and Executive Board Member of Local 30.[4] Id. ¶ 30. Because he worked for Local 30 for only

---

> Q: You are interpreting [the meeting minutes]. But did Mr. Harvey ever say to you, congratulations, now you get that other pension too?
>
> A: No, he didn't.
>
> Q: In the same way that you say your father or Mr. Conway did?
>
> A: No, he didn't.

Pl.'s Dep., at 46-47. In any event, even if Harvey had told Crosley he would receive service credit in Local 30's Plan, it is undisputed that Harvey, unlike Crosley's father and Jack Conway, never worked for Local 30 or the Plan.

[4] On March 21, 2003, Judge Van Antwerpen imposed a Trusteeship on Local 30 because of gross financial malpractice

about three years (i.e., from January or February, 2000 to March 21, 2003), he never qualified to receive a monthly pension benefit from the Plan.[5] Id. ¶¶ 32, 33.

By working as a journeyman, Apprenticeship Coordinator/Instructor, and Collector, Crosley received service credit in all of the Benefit Funds, and his pension through the Benefit Funds is not disputed here. Instead, Crosley sues for a second pension, on top of his existing one.

On April 2, 2003 and May 4, 2003, Crosley wrote the Benefit Funds a letter claiming he was due a Plan pension. Joint Stip. ¶ 35 & Ex. E. The Benefit Funds never responded. Joint Stip. ¶ 36. On December 21, 2004, Crosley filed a complaint

---

and alleged criminal activity by its then-incumbent officials. See United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO v. Composition Roofers Union, Local 30, United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO, Civ. No. 03-1699, 2003 WL 21250627, at *1 (E.D. Pa. Mar. 28, 2003) (Def.s' Mem., Ex. 4). When Judge Van Antwerpen imposed the Trusteeship, Local 30's parent, the International Union, the United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO, removed all of Local 30's incumbent Business Agents and officers, one of whom was Thomas Crosley. Id. at *3; Def.s' Mem., at 3.

Incidentally, Local 30's relationship with the federal courts is ongoing. On December 20, 2004, Judge Stengel extended the Trusteeship for an additional eighteen months. See McCann v. United Union of Roofers, Waterproofers, and Allied Workers, Civ. No. 04-3328, 2004 WL 2958434, at *1 (E.D. Pa. Dec. 20, 2004) (Def.s' Mem., Ex. 5). In deciding to extend the Trusteeship, Judge Stengel -- who succeeded Judge Van Antwerpen after his appointment to our Court of Appeals -- primarily cited the continuing need to correct years of mismanagement and financial malpractice. Id. at *7-11.

[5] He stopped working as a Collector for the Benefit Funds on November 20, 2003. Joint Stip. ¶ 31.

against the Plan and its Board of Trustees.[6] Compl. ¶¶ 6-7. After defendants answered, we convened a scheduling conference, permitted the parties to engage in discovery,[7] and ordered them to file the cross-motions for summary judgment before us.[8]

---

[6] At present, the only Trustee is Thomas Pedrick. See Def.s' Supp. Mem., at 2; Mem. in Resp. to Pl. Thomas J. Crosley's Mot. for Summ. Judg. ("Def.s' Resp."), Ex. 2 ¶ 1. While Pedrick did happen to be a Plan Trustee in 1992, Crosley claims that Pedrick never said anything to him then about Plan benefits. Pl.'s Dep., at 46; see also Def.s' Resp., Ex. 2 ¶¶ 6-15 (declaring that neither Pedrick nor anyone else told Crosley that he would receive benefits under the Plan).

[7] On May 5, 2005, Crosley filed a motion for leave to file an amended complaint. Crosley hoped to join the Benefit Funds and their Trustees as well as add a breach-of-contract claim against the preexisting defendants. On May 24, 2005, we denied Crosley's motion.

In his summary judgment memorandum, Crosley appears to question that part of our May 24, 2005 ruling denying him leave to sue the Plan and Board for breach of contract. See Pl.'s Mem., at 2-3. Specifically, Crosley seems to take issue with our conclusion that "ERISA preempts any state tort or contract claim that relates to an employee benefit plan." May 24, 2005 Order ¶ (e).

Lest Crosley hold any misapprehension on this fundamental point, it is well-settled that ERISA preempts state-law breach-of-contract claims. See, e.g., ERISA: A Comprehensive Guide § 8.07, at 8-44 (Paul J. Schneider & Barbara W. Freedman, eds., Aspen Publishers 2d ed. 2003) ("The law is now quite clear that in a simple and straightforward action against an employee benefit plan or plan fiduciary for failure to pay promised benefits, the participants' sole remedy is a lawsuit under ERISA. State-law causes of action for breach of contract . . . are completely preempted."); Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47-48, 57 (1987) (holding that ERISA preempted state-law breach of contract and tort claims alleging that the defendants improperly processed the plaintiff's claim for benefits under an ERISA-regulated plan); Aetna Health, Inc. v. Davila, 124 S. Ct. 2488, 2495 (2004) ("[A]ny state-law cause of action that duplicates, supplements or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore preempted.").

[8] Because the parties failed to produce the original version of the Plan, i.e., the version in effect in 1992, on

B. Legal Analysis

On Labor Day of 1974, President Gerald Ford signed ERISA into law, enacting the first federal legislation that protected the rights of workers who earn pension benefits.[9] See ERISA: A Comprehensive Guide § 1.01, at 1-3 (Paul J. Schneider & Barbara W. Freedman, eds., Aspen Publishers 2d ed. 2003). In passing ERISA, Congress's goal was to replace the patchwork of state laws regulating employee benefits with a uniform body of federal law. See N.Y. State Conference of Blue Cross v. Travelers Ins. Co., 514 U.S. 645, 656-57 (1995); Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 9 (1987). To accomplish this goal, Congress gave aggrieved employees an array

---

September 12, 2005, we ordered them to submit additional evidence about it. Perhaps with a shake of good luck, defense counsel discovered that a former Plan actuary still had a copy of the original version, and defendants submitted it two days later. See Def.s' Supp. Mem., at 3 n.2 & Ex. A.

[9] Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In resolving a motion for summary judgment, the Court must draw all reasonable inferences in the nonmovant's favor, Bartnicki v. Vopper, 200 F.3d 109, 114 (3d Cir. 1999), and determine whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Where, as here, the nonmoving party bears the burden of proof at trial, the party moving for summary judgment may meet its burden by showing that the evidentiary materials of record, if admissible, would be insufficient to carry the nonmovant's burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Once the moving party satisfies its burden, the nonmoving party must go beyond its pleadings and designate specific facts by the use of affidavits, depositions, admissions or answers to interrogatories showing that there is a genuine issue for trial. Id. at 324.

of rights to secure their benefits.

Most notable for purposes of this case, 29 U.S.C. § 1132(a)(1)(B) permits one to recover benefits due under the terms of an employee benefit plan, and 29 U.S.C. § 1132(a)(3)(B) permits one to enforce ERISA rights. As noted earlier, Crosley asserts three counts. In Count One he claims that, under Section 1132(a)(1)(B), he is entitled to pension benefits. He anchors his remaining counts on Section 1132(a)(3)(B), claiming breach of fiduciary duty (Count Two) and equitable estoppel (Count Three). We shall grant defendants' motion for summary judgment as to the first and third counts, and while we shall grant the Plan's motion, we shall deny both the Board's and Crosley's motion as to Count Two.[10]

---

[10] Because it had not escaped our attention that Crosley failed to exhaust the Plan's administrative remedies (let alone even formally apply for benefits), on September 23, 2005, we ordered the parties to discuss whether we should dismiss Crosley's case without prejudice. See Def.s' Supp. Mem., Ex. A ¶ 5.02; Joint Stip., Ex. B ¶ 5.02;

Generally, one must exhaust his or her administrative remedies before bringing an ERISA claim to federal court. Harrow v. Prudential ins. Co. of Am., 279 F.3d 244, 249 (3d Cir. 2002) (describing ERISA's exhaustion requirement). We may excuse exhaustion, however, when it would be futile. Id. at 250. Here, it is uncontested that remanding this case would be pointless because the Board would unquestionably deny Crosley benefits. See Pl.'s Second Supplemental Brief ("Pl.'s Second Supp. Mem."), at 4-6; Def.s' Mem. of Law in Resp. to the Sept. 23, 2005 Order of this Court ("Def.s' Second Supp. Mem."), at 1-4, 6. Further, of the five factors courts examine to decide whether exhaustion would be futile, see Harrow, 279 F.3d at 250, three heavily favor resolving this dispute now. First, Crosley diligently (albeit not too intelligently -- to this day he still never formally applied for benefits) pursued administrative relief by writing two letters to the Benefit Funds, one to the Employee Benefits Security Administration, and even one to his local Congressman. See Pl.'s Second Supp. Mem., Ex. A-D. Second, the Board has a

1. Count I: Entitlement to Pension Benefits

In Count One Crosley claims that "he was, and is, a participant and a beneficiary in the Plan, he has been wrongfully denied the right to recover benefits under the Plan, and by denying plaintiff benefits, defendants have violated 29 U.S.C. Section 1132(a)(1)(B)." Pl.'s Mem., at 7-8. Under 29 U.S.C. § 1132(a)(1)(B), a beneficiary may sue "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." Here, because Crosley falls outside the plain language of both the current and former versions of the Plan, we shall grant defendants' motion as to Count One.

A claim for benefits under Section 1132(a)(1)(B) is an assertion of a contractual right under the Plan's terms. Burnstein v. Ret. Account Plan for Employees of Allegheny Health Educ. & Research Found., 334 F.3d 365, 381 (3d Cir. 2003). The Plan's written terms govern. In re Unisys Corp. Retiree Med. Benefit "ERISA" Litig., 58 F.3d 896, 902 (3d Cir. 1995). When considering a claim under Section 1132(a)(1)(B), we must interpret the Plan under principles of contract law. Kemmerer v. ICI Ams., 70 F.3d 281, 288 (3d Cir. 1995), cert. denied, 517 U.S.

---

fixed policy to deny benefits to people who are ineligible under the Plan's terms. Def.s' Second Supp. Mem., at 3. Last, from the deposition testimony of the Plan's only current Trustee, Thomas Pedrick, one may only infer that he (as well as his legal advisors) definitively decided Crosley is ineligible for benefits. See Pl.'s Second Supp. Mem., Ex. E, at 31-44.

1209 (1996). Those principles mandate that we first look to the plain language of the document and, if that language is clear, look no further. Bill Gray Enters. v. Gourley, 248 F.3d 206, 218 (3d Cir. 2001). Only if language is ambiguous may we resort to extrinsic evidence, which we must not use in the first instance "to create an ambiguity where none exists." Gritzer v. CBS, Inc., 275 F.3d 291, 298 (3d Cir. 2002) (quoting Int'l Union v. Skinner Engine Co., 188 F.3d 130, 145 (1999)).

Both the current and former versions of the Plan covered only Local 30 employees over the age of fifty who have completed five years of Continuous Service, i.e., worked for Local 30 for five years. Joint Stip., Ex. B ¶¶ 1.09; 1.10; 2.02; 2.04; 2.06; 2.07; 2.08; 2.10; 3.01; Def.s' Supp. Mem., Ex. A ¶¶ 1.06; 1.07; 2.01; 2.02; 2.03; 2.04; 2.05; 2.06; 3.01. It is undisputed that Crosley did not work as a Local 30 employee for the requisite five years, see Joint Stip. ¶¶ 25; 32; therefore, he falls outside the Plan's plain terms.

Crosley contends that the July 31, 1986 Trust Declaration qualifies him for benefits. See Pl.'s Mem., at 9-10. Specifically, Crosley notes that, while the Trust Declaration provided pension benefits for "Employees," the Declaration did not define "Employees" and authorized the Board of Trustees to interpret that term. See id.; see also Joint Stip., Ex. A. ¶¶ 4.01, 5.01. Crosley claims that under the Trust, two Trustees, Jack Conway and his father, construed Crosley as an "Employee[]." Pl.'s Mem., at 4, 9-10. In his deposition, Crosley testified

that his father advised him that becoming a Collector would qualify him to participate in the Plan. Pl.'s Dep., at 43-46. He also testified that, after the June 17, 1992 meeting, Jack Conway told him that he could enroll in the Plan. Id. at 46. Crosley further claims that, because the March 20, 1992 and June 17, 1992 meeting minutes described his salary as the "same as" that of Union Business Agents (who receive pensions from both the Benefit Funds and the Plan), those minutes confirm that Crosley also qualified for both. See Pl.'s Mem., at 9; see also Joint Stip. ¶¶ 16-17.

Crosley's argument fails because he cites the wrong document. In 1992, the 1986 Employees' Pension Plan, not the Trust Declaration, governed employee-benefit claims. The Trust Declaration merely established a trust to safeguard the Plan's assets. It is the Plan's terms that detailed how to determine one's eligibility. Thus, it is that document, not the Trust Declaration, that governs whether Crosley should receive benefits.

Even if we were to view the Trust Declaration as operative, it would defeat Crosley's argument. As noted earlier, we must first look to the plain language of a document and, only if that language is unclear, consider extrinsic evidence. Bill Gray Enters., 248 F.3d at 218. Here, while at first glance it could appear anomalous that the drafters of the Trust Declaration never defined "Employees," closer scrutiny reveals that they did so indirectly by defining "Employer." Under the

Trust Declaration, "Employer" means Local 30:

> "Employer" shall mean Composition Roofers Union Local 30 of the United Slate, Tile and Composition Roofers, Damp and Waterproof Workers' Association, AFL-CIO, and any successor to it as a result of dissolution, consolidation or merger which shall adopt the Plan and any subsidiary or affiliate thereof which, with the consent of the Executive Board of the Composition Roofers Union Local 30, shall adopt the Plan.

Joint Stip., Ex. A ¶ 1.01. By defining "Employer," the drafters circumscribed the pool of eligible participants to Local 30 employees. Other parts fortify this interpretation. The Preamble, for example, noted that "WHEREAS, the Employer wishes to establish a defined benefit pension plan for its employees to be called the Composition Roofers Union Local 30 Employees' Pension Plan, . . ." Joint Stip., Ex. A, PREAMBLE (emphasis added). By limiting pension benefits to its employees, Local 30 excluded other (e.g., the Benefit Funds') employees. Even the Plan's name, the "Composition Roofers Union Local 30 Employees' Pension Fund," confirms this construction. Because Crosley falls outside the plain terms of not only the Plan but even the Trust Declaration, his extrinsic evidence is offered to produce ambiguity ex ante, not to resolve it ex post.

2. Count II: Breach of Fiduciary Duty

Crosley's most resonant claim is Count Two. Under 29 U.S.C. § 1132(a)(3)(B) he asserts that, by misleading him to believe he could get benefits under the Plan, the Board, acting through its Trustees, breached its fiduciary duty: "[D]efendants

breached their fiduciary duty to plaintiff by making oral representations regarding entitlement to beginning [sic] earning credit for service under the Employees' Pension Plan at the time of plaintiff Crosley's hiring as a Collector for the funds and then years later disavowing those representations." Pl.'s Mem., at 11.

Under Section 1132(a)(3)(B), a beneficiary may sue "to obtain other appropriate equitable relief (i) to redress [ERISA violations] or (ii) to enforce any provisions of this subchapter or the terms of the plan."

Construing this language, courts have held that one may prove breach of fiduciary duty by showing (1) the defendant's status as an ERISA fiduciary acting as a fiduciary; (2) a misrepresentation on the part of the defendant; (3) the materiality of that misrepresentation; and (4) detrimental reliance by the plaintiff on the misrepresentation.[11] Daniels v.

---

[11] In Varity Corp. v. Howe, 516 U.S. 489, 515 (1996), the Supreme Court held that a group of beneficiaries who were denied benefits under an ERISA plan could bring an individual action for breach of fiduciary duty under Section 1132(a)(3)(B). Courts of Appeals, as well as district courts in our Circuit, have split over whether Varity permits a plaintiff who has been denied benefits to bring a simultaneous Section 1132(a)(1)(B) action for benefits and a Section 1132(a)(3)(B) action for breach of fiduciary duty. Compare, e.g., Katz v. Comprehensive Plan of Group Ins., 197 F.3d 1084, 1088-89 (11th Cir. 1999) (holding that one cannot bring both actions simultaneously); Rhorer v. Raytheon Eng'rs & Constructors, Inc., 181 F.3d 634, 639 (5th Cir. 1999) (same); Wald v. Southwestern Bell Corp. Customcare Med. Plan, 83 F.3d 1002, 1006 (8th Cir. 1996) (same), and Emil v. UNUM Life Ins. Co. of Am., Civ. No. 02-2019, 2003 WL 256781, at *2 (M.D. Pa. Feb. 5, 2003) (same), with Larocca v. Borden, Inc., 276 F.3d 22, 28 (1st Cir. 2002) (holding that one may assert both actions simultaneously); Devlin v. Empire Blue Cross & Blue Shield, 274

Thomas & Betts Corp., 263 F.3d 66, 73 (3d Cir. 2001); see also In re Unisys Corp. Retiree Med. Benefit "ERISA" Litig., 57 F.3d 1255, 1264 (3d Cir. 1995) ("[W]hen a plan administrator affirmatively misrepresents the terms of a plan . . . the plan administrator has breached its fiduciary duty to individual plan participants and beneficiaries."). Here, material issues of fact prevent us from deciding all four elements; consequently, we shall deny both motions as to Count Two.

At the threshold, Crosley has pointed to no evidence suggesting, let alone even attempted to argue, that the Plan itself breached a fiduciary duty to him. See Pl.'s Mem., at 11-13, 14 ("Here, there is no question that the Board of Trustees of the Employees Pension Plan is the named fiduciary and the Trustees have an ongoing continuing fiduciary duty to plaintiff."). This warrants summary judgment in the Plan's favor as to Count Two.

Moving to Crosley's claim against the Board and beginning with the first element -- fiduciary status -- the Board contends that it was not acting as a plan fiduciary when Joe Crosley and Jack Conway told Crosley he would receive benefits. A reasonable fact-finder could conclude otherwise. 29 U.S.C. § 1002(21)(A)(iii) defines "fiduciary" to include one who "has any

---

F.3d 76, 89-90 (2d Cir. 2001) (same); and Doyle v. Nationwide Ins. Cos. & Affiliates Employee Health Care Plan, 240 F. Supp. 2d 328, 349-50 (E.D. Pa. 2003) (same). Because we have granted summary judgment as to Count One, in which Crosley claims benefits under Section 1132(a)(1)(B), this issue is beyond the scope of this Memorandum.

discretionary authority or discretionary responsibility in the administration of a[n employee benefit] plan." Here, the Plan conferred on "The Board . . . [the] authority to control and manage the operation and administration of the Plan and . . . [to] be the named fiduciary of the Plan. . . ." Def.s' Supp. Mem., Ex. A ¶ 5.01. The Board, an artificial entity, acts through human agents, i.e., Trustees. By authorizing the Board to administer the Plan, Local 30 functionally empowered the Trustees to do just that. A reasonable fact-finder could thus infer that Joe Crosley and Jack Conway exercised the discretion attendant to their administrative powers when they, according to Crosley, construed the Plan so that it would cover him and then advised him about their interpretation -- knowing he would rely on their words. See Pl.'s Dep., at 43-46.

Turning to the remaining elements of breach of fiduciary duty -- misrepresentation, materiality, and detrimental reliance -- material issues of fact preclude summary judgment. First, while Crosley testified that his father and Jack Conway misrepresented that he would qualify for the Plan, see Pl.'s Dep., at 43-46, defendants contest this account. See Def.s' Resp., at 15 & Ex. 2 ¶¶ 6-15. If, as Crosley alleges, his father and Conway really predicted he could enroll in the Plan, they conspicuously failed to enroll him over the next eight years. Despite having the power to enroll Crosley, neither did, and on this basis alone a reasonable fact-finder could conclude that Crosley misperceived what happened. Further, Thomas Pedrick

averred that the Board never told Crosley he could qualify, which tends to confirm defendants' account. See Def.s' Resp., Ex. 2 ¶¶ 6-15.

Two other fiduciary-breach elements -- materiality and detrimental reliance -- hinge on whether Crosley would have taken the Collector job irrespective of his father's and Conway's alleged misrepresentations. Crosley claims that had his father and Conway not told him he would qualify for the Plan, he would not have taken the job. See Pl.'s Mem., Ex. A ¶ 3. Defendants claim otherwise and point to deposition testimony suggesting that Crosley would have taken the job no matter what. See Pl.'s Dep., at 44, 50.

Before turning to equitable estoppel, we must address two final issues regarding Count Two. First, defendants argue that Crosley may not assert Count Two against the Board of Trustees. Instead, they claim, he may assert it just against Joe Crosley and Jack Conway, the only individuals the evidence suggests misled Crosley. This argument is faulty because the Plan, as it existed in 1992, listed the "Board" as the only "Named Fiduciary." Def.s' Supp. Mem., Ex. A ¶ 5.01. Thus, a reasonable fact-finder could conclude that Joe Crosley and Jack Conway directly acted as the "Board" when they told Crosley he would receive benefits. See Hamilton v. Carell, 243 F.3d 992, 1001-02 (6th Cir. 2001) (distinguishing direct liability from derivative liability). Alternatively, respondeat superior liability attaches in the ERISA context when an agent breaches

his fiduciary duty while acting in the course and scope of employment. Id. at 1002; see also Kling v. Fidelity Mgmt. Trust Co., 323 F. Supp. 2d 132, 146-47 (D. Mass. 2004) (collecting federal cases that applied respondeat superior to ERISA breach-of-fiduciary-duty claims and then itself endorsing the theory). Because the Plan gave Joe Crosley and Jack Conway the "authority to control and manage the operation and administration of the Plan," Def.s' Supp. Mem., Ex. A ¶ 5.01, and because Crosley testified that, in this capacity, they interpreted the Plan and advised him he would receive benefits, a reasonable fact-finder could infer they were acting in the scope of their employment.

Moving to the other issue, defendants claim that Count Two is time-barred. 29 U.S.C. § 1113 sets the limitations period for breach of fiduciary duty claims under ERISA:

> No action may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of--
>
> (1) six years after
>
> (A) the date of the last action which constituted a part of the breach or violation, or
>
> (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation, or
>
> (2) **three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation**. . . .

Id. (emphasis added). Defendants, who carry the burden of proof, see Richard B. Roush, Inc. Profit Sharing Plan v. New Eng. Mut.

Life Ins. Co., 311 F.3d 581, 585 (3d Cir. 2002), argue that, under Section 1113(a)(2), Crosley knew about the breach or violation in 1993. Defendants point out that Crosley testified that he knew ERISA plans must annually disseminate summary annual reports to all participants. See Pl.'s Dep., at 30-32. They also underscore that, from 1992 to 2003, Crosley received summary annual reports from the Benefit Funds, Joint Stip., at 37, but that, during this period, he never received one from the Plan. See Pl.'s Dep., at 30. Therefore, defendants argue, back in 1993 Crosley should have known he had a claim for breach of fiduciary duty.[12] See Def.s' Supp. Mem., at 8-10.

To trigger the three-year limitations period, one must prove "that the claimant knows that he has a cause of action under ERISA, which includes 'actual knowledge' of harm inflicted or harmful consequences." Richard B. Roush, 311 F.3d at 587. Here, issues of material fact preclude us from entering summary judgment on this ground. See, e.g., Buccino v. Continental Assurance Co., 578 F. Supp. 1518, 1524 (S.D.N.Y. 1983) (holding that factual dispute precluded entry of summary judgment on limitations grounds). As a preliminary matter, one could find

---

[12] A sounder argument would have been for defendants to argue that, under Section 1113(a)(1)(A) & (B), the thrust of Crosley's claim is that the Board affirmatively misled him (rather than omitted to enroll him). This, in turn, would trigger Section 1113(a)(1)(A), under which Crosley could have argued that the "date of the last action which constituted a part of the breach or violation" was June 17, 1992, when, after the Benefit Funds meeting, Jack Conway allegedly assured Crosley he would receive Plan benefits. See Pl.'s Dep., at 46.

that Crosley's failure to sue for breach of fiduciary duty until 2004 undercuts defendants' claim that he knew he could sue back in 1993. Moreover, a reasonable fact-finder could conclude that Crosley did not actually know he could sue for breach of fiduciary duty until 2003 when, having just received the Plan's summary annual report, he first communicated to others that he believed he deserved benefits, i.e., he sent the April 2, 2003 and May 4, 2003 demand letters. See Joint Stip., Ex. E.

3. Count III: Equitable Estoppel

Under 29 U.S.C. § 1132(a)(3)(B), one may recover benefits under an equitable estoppel theory by establishing (1) a material misrepresentation, (2) reasonable and detrimental reliance on the misrepresentation, and (3) extraordinary circumstances. Int'l Union, United Automobile, Aerospace, & Agricultural Implement Workers of Am., U.A.W. v. Skinner Engine Comp., 188 F.3d 130, 151 (3d Cir. 1999).

Because Crosley's case lacks circumstances necessary to make them extraordinary, we shall grant defendants' motion as to this Count.[13] To show extraordinary circumstances, one must produce evidence of "'affirmative acts of fraud or similarly inequitable conduct by an employer, . . . misrepresentations that arise[] over an extended course of dealings between parties, . .

[13] Like Count Two, Crosley again points to no evidence and makes no attempt to press his equitable estoppel claim against the Plan; thus, even if extraordinary circumstances existed, we would nonetheless grant summary judgment in the Plan's favor as to Count Three.

. [or] the vulnerability of particular plaintiffs." Id. at 152 (quoting Kurz v. Philadelphia Elec. Co., 96 F.3d 1544, 1554 (3d Cir. 1996), cert. denied, 522 U.S. 913 (1997)).

Here, Crosley argues that the circumstances are extraordinary because "the Trustees made representations regarding the Employees Pension Plan, which induced plaintiff to act and accept employment, which he would not otherwise have accepted." Pl.'s Mem., at 17. At base, Crosley's claim for equitable estoppel adds nothing to his fiduciary breach claim. He points to no evidence that would support an inference of affirmative acts of fraud or similarly inequitable misconduct, misrepresentations that arose over an extended course of dealing between the parties, or particular vulnerabilities that reduced Crosley's bargaining power.

In fact, the two cases Crosley cites demonstrate just how far his case is from an extraordinary one. In Curcio v. John Hancock Mut. Life Ins. Co., 33 F.3d 226 (3d Cir. 1994), Mrs. Curcio, the widow of a deceased physician, sued her husband's employer, Capital Health, and his insurer to recover additional accidental death and dismemberment ("AD & D") benefits. Id. at 229. Before Dr. Curcio died, Capital Health (which owned the hospital in which he had worked) held group meetings for its employees in which it represented that employees could buy supplemental AD & D coverage. Id. Although Dr. Curcio bought the maximum amount of available coverage, after he died the insurer argued that employees in his position never had the

opportunity to buy the supplemental AD & D coverage. Id. at 230. Upon Dr. Curcio's death, Capital Health reassured Mrs. Curcio that she would receive the additional AD & D benefits, argued to the insurer that additional AD & D benefits were included in the plan, and even encouraged Mrs. Curcio to sue the insurer. Id. Once she commenced a lawsuit, Capital Health -- out of the blue -- had a change of heart. Id. n.4. It recanted its position and began arguing, like the insurer, that no one ever offered Dr. Curcio the supplemental insurance. Id. at 230 n.4.

On this record, our Court of Appeals held that Mrs. Curcio could prevail at trial on an equitable estoppel theory. Id. at 235-38. Key to its holding was the Court of Appeals's conclusion that a reasonable fact-finder could find extraordinary circumstances. Id. at 238. In so concluding, the Court of Appeals emphasized that, over and above the "hospital misrepresenting the type of coverage for which recipients could enroll," Capital Health added fuel to Mrs. Curcio's anguish by "first confirming the coverage [she] expected and then disclaiming that such protection would be forthcoming." Id. In the face of such a "tragic" loss, the panel reasoned, "there is a certain degree of solace in knowing that financial woes are not on the horizon." Id. Moreover, the roller coaster did not stop there. Capital Health supported Mrs. Curcio's claim to the point of repeatedly urging the insurer to pay and encouraging her to sue, even offering to pay her legal fees. Id. By "[s]omewhere along the way . . . [having] a change of heart," our Court of

Appeals reasoned, Capital Health added to Mrs. Curcio's suffering. Id. See also Kurz, 96 F.3d at 1553 (suggesting that the circumstances in Curcio were extraordinary because the record demonstrated a network of misrepresentations that arose over an extended course of dealing between the parties and because of Mrs. Curcio's vulnerabilities).

In the second case Crosley cites, Smith v. Hartford Ins. Group, 6 F.3d 131 (3d Cir. 1993), Mrs. Smith, a nurse, who, like Dr. Curcio, worked in a hospital, suffered a cerebral hemorrhage that required continuous care in a skilled nursing facility. Id. at 133. The hospital's group health insurance policy covered all of Mrs. Smith's care. Id. When the hospital switched to a self-insured plan, however, Mr. Smith enrolled his wife in the plan based on (1) two presentations by the hospital personnel director in which she assured large groups that all benefits would remain intact under the new plan and (2) two conversations in which the same director personally assured Mr. Smith that his wife's coverage would continue in full force. Id. at 133-34. When the new plan refused to cover Mrs. Smith's costs, the Smiths sued, claiming that but for the hospital's misrepresentations, they could have retained the skilled nursing care coverage provided under the former policy. Id. at 137. The district court granted summary judgment on the Smiths' equitable estoppel claim. Id. at 135.

Our Court of Appeals reversed that part of the district

court's order. Id. at 142. In explaining why the Smiths could prevail on their equitable estoppel claim, the Court of Appeals emphasized that a reasonable fact-finder could find extraordinary circumstances. Id. at 142. Most notably, the hospital's misrepresentations were not isolated but repeated. Id. at 142. Not only did the hospital's personnel director twice tell large groups that all benefits would remain intact under the new plan, id. at 134, but she also twice assured Mr. Smith that his wife's full coverage would continue. Id. See also Kurz, 96 F.3d at 1553 (suggesting that extraordinary circumstances existed in Smith because of the "network of misrepresentations that ar[ose] over an extended course of dealing between parties"). Our Court of Appeals also found that one could find the circumstances extraordinary because Mr. Smith diligently pursued accurate answers regarding his wife's coverage and because of the immense coverage expenses at stake. 6 F.3d at 142. See also Kurz, 96 F.3d at 1553 (suggesting that extraordinary circumstances also existed in Smith because the Smiths were particularly vulnerable).

In both Curcio and Smith, our Court of Appeals emphasized that, over and above the misrepresentations about which they complained, the plaintiffs pointed to evidence showing that the hospitals acted egregiously. In Curcio, the hospital strung Mrs. Curcio along -- assuring her that everything would work out -- and then abruptly turned its back on her. In Smith, the hospital repeatedly misled Mr. Smith about an issue of great

significance, his wife's medical coverage. Unlike the plaintiffs in Curcio and Smith, Crosley points to nothing over and above two alleged misrepresentations.

Even more compelling, while Mrs. Curcio and Mr. Smith were naïfs in the ERISA world, Crosley was a seasoned veteran. During his eleven years as a Collector, Crosley attended Benefit Funds meetings in which Trustees would discuss (among other things) the legal requirements of employee benefit plans. Pl.'s Dep., at 31. A reasonable person in Crosley's shoes would deduce from those discussions that, (1) because all participants must receive a summary annual report for each benefit plan in which they are enrolled, and (2) because he hadn't been receiving one from the Plan, he must not have been enrolled in the Plan. In short, Crosley's hands-on experience with employee benefits enabled him to protect his interests more effectively than, say, Mrs. Curcio and Mr. Smith; hence, unlike them, Crosley was not vulnerable.

C. Conclusion

For the above reasons, we shall deny plaintiff's motion for summary judgment, grant the Plan's motion, and grant the Board's motion as to Count One and Count Three. An Order follows.

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

THOMAS J. CROSLEY	:	CIVIL ACTION
	:	
v.	:	
	:	
COMPOSITION ROOFERS UNION	:	
LOCAL 30 EMPLOYEES' PENSION	:	NO. 04-5954
PLAN et al.	:	

ORDER

AND NOW, this 29th day of September, 2005, upon consideration of the parties' joint stipulation of facts (docket entry # 12), defendants' motion for summary judgment (docket entry # 14), plaintiff's response (docket entry # 17), plaintiff's motion for summary judgment (docket entry # 15), defendants' response (docket entry # 18), plaintiff's reply (docket entry # 19), defendants' first supplemental memorandum (docket entry # 22), plaintiff's first supplemental memorandum (docket entry # 23), defendants' second supplemental memorandum (docket entry # 26), and plaintiff's second supplemental memorandum (docket entry # 25), and for the reasons enunciated in today's Memorandum, it is hereby ORDERED that:

1. Plaintiff's motion for summary judgment is DENIED;

2. Defendant Composition Roofers Union Local 30 Employees' Pension Plan's motion for summary judgment is GRANTED;

3. Defendant Board of Trustees of Composition Roofers Union Local 30 Employees' Pension Plan is GRANTED as to Count One

and Count Three of the complaint;

4. The remaining parties shall by October 7, 2005 SUBMIT their pretrial materials in accordance with the Court's Standing Order (attached) for nonjury trials; and

5. A nonjury trial, not to exceed two days' duration, shall COMMENCE after October 10, 2005 on twenty-four hours' telephonic notice in Courtroom 10B.

BY THE COURT:

_____

Stewart Dalzell, J.