

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

DOLORES KAMINSKI, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
CORESTATES FINANCIAL CORP., :
et al. :
Defendants. : NO. 98-CV-1623

MEMORANDUM & ORDER

J.M. KELLY, J.

NOVEMBER , 1998

Presently before the Court are Defendants' Motion to Dismiss Plaintiff's Complaint or, in the Alternative, For a More Definite Statement and the Motion to Dismiss Defendants' Counterclaim of Plaintiff, Delores Kaminski ("Kaminski"). Defendants are CoreStates Financial Corp.¹ and the fiduciaries of the CoreStates Severance Plan and the BEST Enhancement to the Plan ("CoreStates").

Plaintiff filed a six count complaint alleging: violations of the Age Discrimination and Employment Act, 29 U.S.C. § 621, et seq. (1994)("ADEA"); interference with the attainment of benefits in violation of the Employee Retirement Income Security Act, id. § 1140 ("ERISA"); and breach of a fiduciary duty under ERISA, id. § 1002(16)(A)(I). Plaintiff also seeks a declaratory judgment that the BEST Release is invalid to ADEA claims; to estop

¹First Union Corporation is the successor to CoreStates Financial Corp. For clarity, the Court shall refer to the entity that employed Kaminski, CoreStates.

Defendants from asserting a timeliness defense; and to estop Defendants from asserting the release as a defense. Kaminski further wishes to serve as a class representative for all former CoreStates employees similarly injured. CoreStates filed a Counterclaim seeking a return of Kaminski's enhanced severance benefits as a result of her breach of the Release's prohibition against suing CoreStates.

CoreStates requests to have Kaminski's Complaint dismissed in its entirety for failing to plead fraud with the particularity required by Fed. R. Civ. P. 9(b). CoreStates also seeks to dismiss Kaminski's ERISA claims as barred by a release. Even if Kaminski's ERISA claims are not barred by a release, CoreStates urges that her § 510 claim must be dismissed as time barred and her breach of fiduciary duty claim must be dismissed as it fails to state a claim. CoreStates has moved to dismiss Kaminski's declaratory judgment claim for lack of subject matter jurisdiction. Finally, CoreStates requests to have Kaminski's estoppel claims dismissed because she failed to return the proceeds of her enhanced severance package and waited more than three years from learning of CoreStates' fraud before filing this action. Kaminski has moved to dismiss CoreStates' Counterclaim for failure to state a claim.

FACTUAL BACKGROUND

The following factual allegations, taken in the light most

favorable to Kaminski, are derived from the Complaint in this matter and documents attached as part of the Complaint.

Pittsburgh v. West Penn Power Co., 147 F.3d 256, 259 (3d Cir. 1998). Kaminski was employed by CoreStates from 1960 until June 30, 1995. She was then 53 years old. Kaminski was a Senior Collateral Technician in CoreStates' commercial loan department at the time her employment was terminated. Kaminski was informed by a letter from Sharon Barnes-Hornick, CoreStates' Staffing Services Manager, that her employment would be terminated on June 30, 1995. Kaminski also met with Ron Bacon and a Human Resources representative on March 27, 1995, when she was told that her job would be eliminated. Kaminski's termination took place as part of CoreStates' BEST Program. BEST is an acronym for "Building Exceptional Service Together," which CoreStates referred in its termination letter to Kaminski as a "comprehensive process redesign project." As part of the BEST Program, Kaminski received an additional sixty weeks of severance pay, contingent upon her signing a "Release and Waiver of Claims" ("Release"). The Release provides that Kaminski releases and waives "any claims that I may have against CoreStates." The Release specifically included any claims that Kaminski may have had under the Americans with Disabilities Act, ERISA, Title VII of the Civil Rights Act of 1964, the Pennsylvania Human Relations Act and the New Jersey Law Against Discrimination. The Release also waived claims under "any other law or right created by statute or court decision, of any nature whatsoever." Finally, Kaminski

acknowledged that by signing the release, she was giving up her "right to sue the company for any reason whatsoever," unless CoreStates failed to make required payments under its severance plan and the BEST enhancements to its severance plan. It is undisputed that the Release is ineffective as an ADEA release under the Older Workers Benefits Protection Act, 29 U.S.C. § 626 ("OWBPA"). Kaminski claims that she was unaware until January 14, 1998, that the Release did not bar her from suing CoreStates under the ADEA.

DISCUSSION

Kaminski has not alleged fraud as a direct cause of action in this matter. It is, however, an essential element of her case in two respects. First, in order to clear the hurdle of Kaminski having waited for almost three years to file her ADEA claim, she relies upon the alleged fraud of CoreStates to equitably toll the 300 day statute of limitations. Second, Kaminski argues that because the Release was fraudulent in its misleading her as to the status of her ADEA claim, it is also not effective as to her ERISA claims.

"In all averments of fraud . . . , the circumstances constituting fraud . . . must be stated with particularity." Fed. R. Civ. P. 9(b). Where fraud is plead as a defense, the particularity requirement of Rule 9(b) applies. FDIC v. Fireman's Fund Ins. Co., 271 F. Supp. 689, 690 (S.D. Fla. 1967). While fraud is injected into Kaminski's Complaint in anticipation of responding to statute of limitations and release defenses, the

Court believes that it is appropriate to require her to meet the requirements of Rule 9 at this stage of the litigation.

Kaminski alleges that CoreStates intended to mislead her regarding the extent of the rights that she would surrender by claiming she had to sign the Release, as written, to receive the BEST enhancements to her severance package. While the Release purports to waive any claim that Kaminski may have had, arising under any statute, it fails to meet the requirements of the OWBPA in order to serve as a valid ADEA release. CoreStates' fraud therefore, as alleged by Kaminski, is that she was made to believe that by signing the BEST Release, she was waiving any ADEA claim that she might have.

Rule 9(b) requires a plaintiff alleging fraud to describe the nature and the subject of a defendant's misrepresentations. Seville Indus. Mach. Corp. v. Southmost Mach. Corp., 742 F.2d 786, 791 (3d Cir. 1984). Kaminski was introduced to the BEST Release in a letter from Sharon Barnes-Hornick and the availability of the BEST enhancements was reinforced in a meeting with Ron Bacon. Ultimately, Kaminski was presented with the Release that she was required to sign in order to receive an enhanced severance package. These facts are evident from Kaminski's Complaint and are sufficient to fulfill Rule 9(b)'s purpose of placing Defendants on notice of the circumstances of the alleged fraud and safeguarding defendants against spurious charges of immoral and fraudulent behavior. Id. Of course, the factual inquiry into when Kaminski knew or should have known that

the BEST Release did not foreclose her ADEA claim still remains.

Kaminski argues that because the Release was ineffective as to her ADEA claims, it is also ineffective as to her ERISA claims. Kaminski relies upon Long v. Sears Roebuck & Co., 105 F.3d 1529 (3d Cir. 1997), cert. denied, 118 S.Ct. 1033 (1998), for this proposition. In Long, the plaintiff signed a release of OWBPA claims that lacked required disclosures. Sears, his former employer, argued that, under the common law, Long had ratified the release by not tendering back his severance benefits. The Third Circuit held that OWBPA abrogated this common law requirement as a condition precedent to Long's suit. Id. at 1539-40. Because the district court held that Long's other claims, including an ERISA claim, could be implicated by its decision, the Third Circuit reversed summary judgment on those other claims as well. Id. at 1544.

Congress enacted the additional protections of OWBPA in derogation of the common law. While, as Kaminski argues, ERISA and ADEA are both intended to protect older workers, there are no parallel release requirements in ERISA. The Court will not read the OWBPA requirements into the settlement of Kaminski's ERISA claims. In fact, the BEST Release specifically releases ERISA claims and Kaminski has cited to no ERISA-related fraud by CoreStates. While Kaminski has alleged sufficient fraud related to the Release to support that she was deceived as to her ADEA rights, there is no allegation of any similar deception as to her ERISA rights. Kaminski has not shown any way in which the ADEA

fraud would be material to her ERISA waiver. Accordingly, the Release was effective as to Kaminski's ERISA claims.

As the parties agree that the BEST Release is ineffective as a bar to Kaminski's ADEA claim, the declaratory judgment claim is moot and it shall be dismissed from the Complaint. The substance of Kaminski's estoppel claims have already been addressed in this Memorandum. The Court does believe that CoreStates has stated a claim for breach of the Release.

CONCLUSION

Kaminski has adequately plead fraud, pursuant to Fed. R. Civ. P. 9(b), related to her ADEA claim, therefore CoreStates' Motion to Dismiss or for a more definite statement as to the ADEA claim is denied. Kaminski has not alleged any fraud related to her ERISA claims, therefore those claims are barred by the BEST Release and are dismissed. The declaratory judgment claim is dismissed as moot. The Motion to Dismiss the estoppel claims is denied. Kaminski's Motion to Dismiss CoreStates' Counterclaim is denied.

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O R D E R

AND NOW, this day of November, 1998, upon consideration of Defendants' Motion to Dismiss Plaintiff's Complaint or, in the Alternative, for a More Definite Statement, Plaintiff's Motion to Dismiss Defendants' Counterclaim, and the various Responses, Replies and Sur-replies thereto, it is ORDERED:

1. Defendants' Motion to Dismiss is GRANTED IN PART. Counts II and III of Plaintiff's Complaint are DISMISSED.

2. Defendants' Motion to Dismiss Counts I, V and VI of Plaintiff's Complaint is DENIED.

3. Count IV of Plaintiff's Complaint is DISMISSED AS MOOT.

4. Defendants' Motion for a More Definite Statement is

DENIED.

5. Plaintiff's Motion to Dismiss Defendants' Counterclaim is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.