I.B.E.W. LOCAL NO. 241 PENSION PLAN v. FIRST ALLMERICA

354 F.Supp.2d 203 (2005) | Cited 0 times | N.D. New York | February 7, 2005

MEMORANDUM DECISION AND ORDER

BACKGROUND

Plaintiff I.B.E.W. Local No. 241 Pension Plan ("the Plan or Fund") is amultiemployer, defined pension fund within the meaning of the EmploymentRetirement Income and Security Act ("ERISA"). The individual plaintiffsare the Plan's current Trustees and fiduciaries. The Plan generally paysan eligible participant monthly retirement benefits, or an annuity, basedupon the participants credited service earned while working for certainemployers signatory to collective bargaining agreement with theInternational Brotherhood of Electrical Workers Union No. 241.("Union").

Plaintiff retained defendant First Allmerica Financial Life InsuranceCo. ("Allmerica") in 1976, to render actuarial and record keepingservices to the Plan, including mathematical determinations, based onapproved actuarial cost methods and appropriate funding assumptions.Following the terms of the Plan as adopted by the Trustees, Allmericadisbursed and distributed assets from the Fund to participants andbeneficiaries pursuant thereto. Allmerica had no discretion in performingits duties, but was directed to follow thePage 3directives of the Plan and the Trustees. In any situation in whichAllmerica thought that the Plan was not clear, it would seek aninterpretation from a Plan fiduciary to clear up the ambiguity.

The Plan relied upon Allmerica's expertise, skill and knowledge tocalculate and distribute the lump sum benefits. Allmerica's technicalproficiency was not probed proceeding any payments being made to planparticipants. Plaintiff did check for obvious errors without recalculatingthe lump sum benefits or questioning the methods used by Allmerica inmaking its calculations.

In the mid 1980's, the Plan added a lump sum payment distributionoption as an alternative to its annuity benefits. The dispute in this casecenters on the correct method used in calculating the correct amount tobe paid to employees opting to retire with the lump sum benefit.

Allmerica contends that at the time the lump sum retirement benefitbecame available to retiring employees, the Plan did not contain arestated document setting forth the method for computing the amount ofthe lump sum benefit payable to the retiring employee. In the absence ofthis document, Allmerica calculated the retirement amount based onAllmerica's standard procedures and rates for the purpose of reviewingthe calculations with the Plan's Trustees and obtaining their approvalthereof. Allmerica states that Walter Wolslegel, of Allmerica definedbenefit group pension

unit, spoke with Charles French, the Plan'sAdministrator, on two occasions in 1986 concerning the calculations, andFrench specifically agreed to the use of the early retirement factor andan immediate rate, and then authorized distribution of all pensionfunds. Allmerica then used the same method toPage 4compute the actual equivalent of the lump sum value of early retirementbenefits for some other retiring employees because no new instructionswere presented by Charles French.

Plaintiffs assert, however, that Allmerica wrongly computed the earlylump sum retirement benefits to be made to six retiring Planparticipants. The Plan required that lump sum distributions be computed asthe actuarial equivalent of the normal retirement benefit. For the sixearly retirees it serviced, Allmerica computed the lump sum distributionas the actuarial equivalent of the early retirement benefit. Thismisapplication creates an inaccurate benefit amount because the earlyretirement benefits are subsidized to encourage the election of earlyretirement benefits. The Plan has early retirement annuities underactuarially more generous terms then the normal retirement annuities.Allmerica's use of the early retirement instead of the normal retirementaccounts in its computations caused the six retiring participants toreceive $268, 264.44 more in pension payments than permitted by thePlan.

As a result of Allmerica's conduct, the Plan has instituted thislawsuit alleging that Allmerica is a fiduciary under ERISA29 U.S.C. § 1132, and that it breached its fiduciary duties by digressingfrom the terms of the Plan in its calculations of the lump sum value ofthe six individuals' early retirement benefits and disbursingoverpayments to them totaling $268,264.44. The complaint also containsstate law causes of action for breach of contract, actuarial malpracticeand negligence. Recompense sought is compensatory and punitive damages,equitable relief attorney's fees and costs.

Allmerica is the Third Party Plaintiff in an action it commencedagainst the six recipients of the alleged $264,264.44 for indemnificationand/or contribution for the fullPage 5amount of any and all sums that may be adjudged against Allmericaresulting from the case at bar.

Currently before the court a motion by the Defendant and Third PartyPlaintiff for summary judgment pursuant to Rule 56 of the Federal Rulesof Civil Procedure. Plaintiff has entered opposition to this motion.

DISCUSSION

Rule 56 of the Federal Rules of Civil Procedure permits summaryjudgment where the evidence demonstrates that "there is no genuine issueof any material fact and the moving party is entitled to judgment as amatter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247,106 S. Ct. 2505, 2509, 91 L.Ed.2d 202 (1986). Summary judgment is properlyregarded as an integral part of the Federal Rules as a whole, which aredesigned "to secure the just, speedy and inexpensive determination ofevery action." Celotex Corp. v. Catreet, 477 U.S. 317, 326, 106 S. Ct. 2548,2554, 91 Ed.2d 265 (1991) (quoting Federal Rule of Civil Procedure 1). Indetermining whether there is a genuine issue of material fact a

courtmust resolve all ambiguities and draw inferences against the movingparty. United States v. Diebold, 369 U.S. 654, 655, 82 S. Ct. 993, 994,8 L. Ed.2d 176 (1962) (per curiam). An issue of credibility isinsufficient to preclude the granting of summary judgment. Neither sidecan rely on conclusory allegations or statements in affidavits. Thedisputed issue of fact must be supported by evidence that would allow a"rational trier of fact to find for the nonmoving party." MashusitaElec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587,Page 6106 S. Ct. 1348, 1356, 89 L. Ed.2d 538 (1986). Unsupported allegationswill not suffice to create a triable issue of fact. Goenga v. March ofDimes Birth Defects Foundation, 51 F.3d 14, 18 (2d Cir. 1995). Nor willfactual disputes that are irrelevant to the disposition of the suit undergoverning law preclude the entry of summary judgment. Anderson,477 U.S. at 247, 106 S. Ct. at 2509.

First Cause of Action — ERISA — Breach of Fiduciary Duty

Although professional service providers are not normally considered tobe fiduciaries when they render only routine professional services, theirstatus may change if they "exercise discretionary authority or controlover the plan's management or authority or control over its assets.Mertens v. Hewitt Associates, 948 F.2d 607, 610 (9th Cir. 1991), aff'd,508 U.S. 248, 113 S. Ct. 2063, 2066, 128 L. Ed.2d 161 (1993).

Enrolled actuaries are considered "professionals" under federal andstate law. Concrete Pipe and Products of California, Inc. v. ConstructionLaborers Pension Trust for Southern California, 508 U.S. 602, 632-35,113 S.Ct. 2264, 124 L. Ed.2d 539 (1993) ("actuaries are trainedprofessionals" who take part in a "recognized professional discipline"),Gereosa v. Savasta & Company, 329 F.2d 317, 319 (2d Cir. 2003) ("ERISArequires the administrator of each plan annually to obtain an `actuarialstatement,' which is in essence an analysis of the plan's financialcondition by a professional actuary").

The definition of a "fiduciary" 29 U.S.C. § 1002(21)(A), states inrelevant part: "[A] person is a fiduciary with respect to a plan to theextent (i) he exercises any discretionary authority or discretionarycontrol respecting management of such plan or exercises any authority orcontrol respecting management or disposition of its assets (ii) herendersPage 7investment advice for a fee or other compensation, direct or indirect,with respect to any moneys or other property of such plan, or has anyauthority or responsibility to do so or (iii) he has any discretionaryauthority or discretionary responsibility in the administration of suchplan." Determining fiduciary status requires examination of the functionperformed, "fiduciary status exists with an activity enumerated in thestatute over which the entity exercises discretion or control." Blatt v.Marshall & Lassman, 812 F.2d 810, 812 (2d Cir. 1987). Whether aprofessional service provider has or has not exercised such an unusualdegree of influence over a plan as to become a fiduciary involves factualdeterminations. Landry v. Air Line Pilots Association, 901 F.2d 404, 418(5th Cir.), cert. denied, 489 U.S. 895, 111 S. Ct. 244, 112 L. Ed.2d 203(1990).

In the instant case, Allmerica maintains that the use of its standardprocedures and rates in making

the calculation that caused the overpaymentto six lump sum retirees, was justified because this procedure was agreedto by the Fund Administrator, Charles French. when he spoke on twooccasions with Allmerica's Walter Wolslegel in October 1986, regardingthese calculations. Therefore, its action cannot be considered the act ofa fiduciary. (Letter dated Oct. 18, 2001, from Allmerica's counsel MeganA. McCabe, Esq. to Union's counsel).

In Charles French's affidavit concerning this same incident, he statesthat he was the Fund Administrator at the time in question, that he hadno authority to make decisions about the amount, type, or nature ofbenefits payable from the Fund; only the Fund's Board of Trustees couldauthorize or approve the use of early retirement factors or immediaterates in calculating lump sum and they did not do so; no representativefrom Allmerica or relatedPage 8entities request authorization from anyone at the Fund to use earlyretirement factors or immediate rates in calculating lump sum benefits;he did not talk to Walter Wolsegel on two occasions in October 1986,regarding the calculations of lump sum benefits, and did not agree withhim about any proposed use of other methodologies for the calculation oflump sum benefits. (French Aff. p. 2).

Allmerica further claims that if their calculations were incorrect, itdoes not make it a fiduciary because the Trustees should have discoveredthis as part of the mandatory review of Allmerica' figures that isrequired under the ERISA "prudent man" statute 29 U.S.C. 1104(a)(1)(B).The Fund states that the Trustees were without expertise in actuarialtechniques and, thus, unable to estimate the cumulative effect ofactuarial methods. They relied on Allmerica's expertise in calculatingand distributing lump sum retirement benefits, and checked Allmerica'sfor obvious errors. The miscalculations were only discovered when theAllmerica's actuarial successor brought it to the Trustee's attention.

It can readily be seen that the facts pertaining to these two criticalissues are in sharp dispute, and the first cause of action cannot beresolved in a summary judgment motion.

Material issues of fact are also contained in the Fund's state lawcauses of action for Breach of Contract, Actuarial Malpractice andNegligence. The trial will necessarily include presentation of evidencebearing directly upon the state as well as the federal claims and bothwill be considered at that time.

The Plan's remaining cause of action, a federal law claim forattorney's fees under ERISA 29 U.S.C. § 1132(g)(1), will not beconsidered by the court at this time because it is premature, no decisionon the merits of the case having yet been made.Page 9

Accordingly, Defendant and Third Party Plaintiff First Allmerica'smotion for summary judgment is DENIED, and Plaintiff the Fund's motionfor attorney's fees is DISMISSED, without prejudice.

IT IS SO ORDEREDPage 1