Malagoli v. AXA Equitable Life Insurance Company

2016 | Cited 0 times | D. New Jersey | March 24, 2016

STATES DISTRICT COURT SOUTHERN DISTRICT OF YORK

Paul

Plaintiff,

ALISON

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ORDER

Plaintiff Paul ("Malagoli")

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("AXA") U.S.C.

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("the Plan") Plan "be States Jersey." Plan UNITED

NEW

John Malagoli,

-v- AXA Equitable Life Insurance Company et al.,

Defendants.

Malagoli v. AXA Equitable Life Insurance Company

2016 | Cited 0 times | D. New Jersey | March 24, 2016

J. NATHAN, District Judge:

FILED DATE 2 4

14-CV-7180 (AJN) MEMORANDUM AND

Malagoli filed this action under the Employee Retirement Income and Act of 1974 on 5, 2014. Dkt. No. 2. October 2015, Malagoli filed a Amended Complaint adding new defendants. Dkt. No. 56. November 23, 2015, Defendant AXA Equitable Life Insurance Company moved to transfer the case to the District of New Jersey pursuant to 28 § 1404 and a forum selection clause. Dkt. No. 63. For the reasons articulated below, that motion is GRANTED. I. BACKGROUND

Malagoli contracted with AXA in to [him] to receive retirement benefits while ... [continuing] to receive commissions, fees ... , and additional Am. Comp. 2. Alleging that AXA breached that agreement in October 2012, Malagoli filed suit in the District of New York in 2014. Dkt No. 2. AXA moved to transfer venue to the District of New Jersey based on a forum selection clause in its retirement plan requiring that any action challenging the brought in the United District Court of New Dkt. No. 65 Ex. A§ 8.12(b). This provision was added to the in October 2011. Id. Malagoli argues that this provision is not enforceable against him.

1 DISCUSSION "[A] 1404(a)."

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cases." Stewart U.S.

ERISA's ERISA "may

found." U.S.C. Plan's "as 2012, Plan] United States Jersey."

W. U.S. "when

contract." Opp. "[a]

decision." MIS Off Shore 407 U.S. U.S. II.

forum-selection clause may be enforced by a motion to transfer under§ Atl. Marine Constr. Co. v. Dist. Court/or Dist. ofTexas, 134 Ct. 568, 575 (2013). When enforcing a forum selection clause, the Court should not conduct the typical§ 1404(a) analysis. Id. at 581. Instead, valid forum-selection

clause [should be] given controlling weight in all but the most exceptional Id. (quoting Org., Inc. v. Ricoh Corp., 487

22, 33 (1988) (Kennedy, J., concurring)). Malagoli advances three arguments as to why the forum selection clause at issue is invalid and should thus not be enforced.

A. Conflict with ERISA Malagoli first argues that the forum selection clause is invalid because it conflicts with

special venue provision. That statute provides that an action be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be 29 § 1132(e)(2). The forum selection clause, however, requires that of January 1, an Action [related to the ... may only be brought in the District Court of New Dkt. No. 65 Ex. A § 8.12(b). Relying on Boyd v. Grand Trunk R.R. Co., 338 263 (1949), Malagoli argues that a federal law specifically grants a plaintiff the right to choose venue from a set of options, the plaintiff has a 'substantial right' in his choice of forum that a defendant may not defeat by relying on a more restrictive forum-selection clause in a Br. at 3.

Malagoli correctly notes that contractual choice-of-forum clause should be held unenforceable if enforcement would contravene a strong public policy of the forum in which suit is brought, whether declared by statute or by judicial Bremen v. Zapata

Co., 1, 15 (1972) (citing Boyd, 338 263). In essence, he argues that forum

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See Cos. Pension Plan, S.

Corp., 430, 2007)

See U.S.

"would Act." "nothing

statute." Price PBG Pension Plan, 2013

("Congress

venues.").

"one by"§ selection clauses in the ERISA context are per se invalid because they contradict the public policy evinced by ERISA's special venue provision. The vast majority of courts to consider this

argument, including at least one court in this district, have rejected it. Smith v. Aegon

769 F.3d 922, 931 & n.8 (6th Cir. 2014) (collecting cases), cert. denied, 136 Ct. 791 (2016); Klotz v. Xerox 519 F. Supp. 2d 435-36 (S.D.N.Y. (Lynch, J.) (same).

Malagoli's argument relies heavily on Boyd, which held that the venue provision in the Federal Employers' Liability Act prohibited forum selection clauses. 338 at 266. The decision in Boyd rested on the Court's conclusion that forum selection clauses thwart the express purpose of the Federal Employers' Liability Id. However, in ERISA's statutory text or legislative history evinces any intent by Congress to preclude private parties from limiting venue to one of the three forums permitted by the Klotz, 519 F. Supp. 2d at 436 (Lynch, J.); see also v. Hourly No. 12-15028 (TLL), WL 1563573, at *2 (E.D. Mich. Apr. 15, 2013) provided that an action may be brought in several venues. Congress did not provide that private parties cannot narrow the options to one of these Malagoli has not directed the Court's attention to any evidence to the contrary. As a result, the Court rejects Malagoli's argument that all forum selection clauses in the ERISA context are per se invalid.

This conclusion, however, does not fully resolve the question of the enforceability of this particular forum selection clause, which designates the District of New Jersey as the mandatory forum. Dkt. No. 65 Ex. A § 8.12(b). Neither party addresses whether or not New Jersey is of the three forums [otherwise] permitted 1132(e)(2). Klotz, 519 F. Supp. 2d at 436. The question of whether an ERISA forum selection clause may designate a forum other than those

3 2004. Opp. 2011

Opp. "substantial right"

"becomes it." Opp.

306 1202, 2002)).

See 10.6 ("Equitable

Plan."); ("Equitable

Sixth "even

control." Smith, Sixth

ERISA Id. ("It ERISA, court."). ERISA "federal

agreements." 602 2010)

500 U.S. 20, State Plan 10-CV-0255 2012 (S.D.N.Y. 2012) ("[T]he

"). permitted by§ 1132(e)(2) is a more difficult question than whether all forum selection clauses in the ERISA context are per se invalid. 1

Because Malagoli did not raise this particular argument in his opposition to AXA's motion to transfer venue, however, the Court deems it waived and assumes without deciding that such a forum selection clause is enforceable. As a result, the Court concludes that the forum selection clause requiring Malagoli to bring suit in the District of New Jersey is not invalid in the face ofERISA's special venue provision.

B. Vested Right Malagoli next argues that his interest in choosing a venue is a right that vested upon his retirement in January Br. at 5. As a result, Malagoli argues, the October amendment adding the forum selection clause is not effective against him. Br. at 5-6. Insofar as this argument is predicated on a in one's choice of forum, it overlaps considerably with Malagoli's previous argument. To extent that this argument is distinct, it fails for reasons articulated by Malagoli himself. A benefit under an employee benefit plan only 'vested' ifthe employer has promised not to amend or terminate Br. at 6 (quoting Feifer v. Prudential Ins. Co. of Am., F.3d 1211 (2d Cir. AXA made no such promise with respect to the forum selection provision. Dkt. No. 65 Ex. A § reserves the right in its discretion to make from time to time any amendment or amendments to this art. XI hereby reserves the right to

1 The Circuit noted that ifthe venue selection clause laid venue outside of the three options provided by § 1132, the venue selection clause would still 769 F.3d at 932. In doing so, the Circuit analogized to enforcing mandatory arbitration clauses in cases. is illogical to say that, under a plan may preclude venue in federal court entirely, but a plan may not channel venue to one particular federal

This Court is wary of the analogy to arbitration in cases given the clear policy favoring arbitration Harrington v. At!. Sounding Co., F.3d 113, 121 (2d Cir. (quoting Gilmer v. Interstate/Johnson Lane Corp., 35 (1991)); see also Trustees of Wash. Plumbing & Pipefitting Indus. Pension v. Tremont Partners, Inc., No. (TPG), WL 3537792, at *3 Aug. 16, enforcement of an arbitration agreement, in view of the very favorable attitude of the federal judiciary toward arbitration, involves something different from carrying out a forum selection clause ....

4 Plan Article."). Plan, 2004

October 2011 ERISA. Under ERISA, Plan ("SPD") "every year," U.S.C.

("SMM"), "not 210

adopted." SPD SMM

Opp. Under ERISA, "make

documents." 404 170 2005) 208

2003)). SPD SMM "must

distribution" "administrator

participants." 208. Under terminate, or to partially terminate, the at any time for any reason in accordance with the provisions of this Because AXA reserved the right to make certain amendments to the

Malagoli did not have any vested rights in a choice of forum as of January and the forum selection clause is thus not invalid on that ground.

C. Notice Finally, Malagoli argues that the forum selection clause is unenforceable against him because AXA did not notify him of the amendment as required by

administrators must send to each participant a summary plan description fifth 29 § 1024(b)(l), and must also send a summary of material modifications see id. § 1022(a), later than days after the end of the plan year in which the change is Id. § 1024(b)(1). Malagoli asserts that he received neither the required nor the required regarding the addition of the forum selection clause and that Defendants did not take adequate steps to ensure the delivery of those materials. As a result, Malagoli argues, the forum selection clause is not effective against him. Br. at 6-10.

an administrator must reasonable efforts to ensure each plan participant's receipt of the plan Weinreb v. Hosp. for Joint Diseases Orthopaedic Inst., F.3d 167, (2d Cir. (quoting Leyda v. AlliedSignal, Inc., 322 F.3d 199, (2d Cir. The relevant regulation clarifies that the and be sent by a method or methods of delivery likely to result in full and that the shall use measures reasonably calculated to ensure actual receipt of the material by plan

29 C.F.R. § 2520.104b-l(b)(l)); see also Leyda, 322 F.3d at these regulations, a defendant can meet its burden of showing reasonable efforts to send notice even if

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See Supp. (S.D.N.Y. 2009)

2011 Plan "use[[SMM] participants." 2520.104b-l(b)(l)).

SMM See

Plan ii

See SMM

2011. 2011 SMMs Plan

ii

SMM See 2520.104b-l(b)(l) ("Material

mail.").

ERISA. 2

"reasonably communicated" Second 2007),

ERISA. Opp. 6-10. "reasonably communicated" ERISA Plan "use[d] participants," C.F.R. a plaintiff credibly alleges that he did not actually receive such notice. Watson v. Consol. Edison of New York, 645 F. 2d 291, 298 (Rakoff, J.) (collecting cases).

Here, AXA concedes that the October amendment constituted a material modification of the but argues that it d] measures reasonably calculated to ensure actual receipt of the by plan 29 C.F.R. § The Court agrees. AXA has produced a checklist and several declarations detailing the steps that were taken in mailing the to participants. Dkt. No. 65 Ex. Cat 3-4; Dkt. No. 67; Dkt. No. 68. Those documents indicate that the mailing process started from an Excel spreadsheet listing all 29,125 participants. Dkt. No. 67 6; Dkt. No. 65 Ex. D. Malagoli's mailing address is included in the spreadsheet, Dkt. No. 65 Ex. D at 194, and Malagoli concedes that this information is accurate. Opp. Br. at 9. AXA then merged the letter with the Excel spreadsheet, printed the letters, and assembled the letters in printed envelopes. Dkt. No. 65 Ex. Cat 3-4. AXA's Certificate of Bulk Mailing confirms that 29,125 pieces of mail were sent via First Class Mail on December 27, Id. at 2. Employees have attested that the 29,125 pieces of mail sent on December 27, were the sent to the 29,125 participants listed in the Excel spreadsheet. Dkt. No. 67 6. From this information, the Court is satisfied that Defendants' sent Malagoli a copy of the via First Class Mail, a method of delivery specifically authorized by regulation. 29 C.F.R. § distributed through the mail may be sent by first, second, or third-class As a result, the Court concludes that the forum selection clause is not invalid due to improper notice under

2 Malagoli does not argue that the forum selection clause was not under the test set out by the Circuit in Phillips v. Audio Active Ltd., 494 F.3d 378, 383 (2d Cir. but instead argues only that he did not received the notice required by Br. at The Court thus need not determine whether a forum selection clause may be within the meaning of Phillips if an administrator measures reasonably

calculated to ensure actual receipt ... by plan 29 § 2520.104b-l(b)(l)), but a participant did not actually receive said notice.

6 CONCLUSION

SO ORDERED.

2016 III.

For the foregoing reasons, the Court concludes that the forum selection clause is enforceable against Malagoli and AXA's motion to transfer venue is GRANTED. The Clerk of Court is directed to transfer this case accordingly.

Dated:

New York, New York

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United States District Judge