

08-1866-cv  
Hallingby v.  
Hallingby

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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August Term, 2008

(Argued: April 21, 2009  
Final briefs submitted:  
April 28, 2009 Decided: July 24, 2009)

Docket No. 08-1866-cv

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JO DAVIS HALLINGBY, as Executrix of the Estate of  
Paul Hallingby, Jr.,

Plaintiff-Appellant,

- v. -

MAI V. HALLINGBY, now known as Mai V. Harrison,

Defendant-Appellee,

METROPOLITAN LIFE INSURANCE COMPANY,

Defendant.

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Before: KEARSE, SACK, and HALL, Circuit Judges.

Appeal from a judgment of the United States District Court  
for the Southern District of New York, Victor Marrero, Judge,  
dismissing action to enforce divorce settlement provision for  
waiver of spouse-survivor benefits, ruling that the waiver was  
forbidden by the Employee Retirement Income Security Act,  
29 U.S.C. § 1001 et seq. See 541 F.Supp.2d 591 (2008).

Vacated and remanded for adjudication under state law.

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RICHARD H. DOLAN, New York, New York  
(Schlam Stone & Dolan, New York, New  
York, on the brief), for Plaintiff-  
Appellant.

JAMES G. McCARNEY, New York, New York  
(Thomas E. Engel, Katherine B.  
Thornburgh, Howrey, New York, New  
York, on the brief), for Defendant-  
Appellee.

10 KEARSE, Circuit Judge:

11 Plaintiff Jo Davis Hallingby ("plaintiff"), as executrix  
12 of the estate ("Estate") of her late husband Paul Hallingby, Jr.  
13 ("Hallingby"), appeals from a final judgment of the United States  
14 District Court for the Southern District of New York, Victor  
15 Marrero, Judge, dismissing her complaint against defendant Mai V.  
16 Hallingby, Hallingby's former wife who is now known as Mai V.  
17 Harrison ("Harrison"), for enforcement of a provision of the  
18 divorce settlement between Hallingby and Harrison by which  
19 Harrison is alleged to have waived her entitlement to survivor  
20 benefits under Hallingby's annuities. The district court granted  
21 summary judgment dismissing the complaint on the ground that  
22 plaintiff's claims are foreclosed by the Employee Retirement  
23 Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq. On  
24 appeal, plaintiff contends that New York State law, rather than  
25 ERISA, governs and that under state law Harrison's waiver is  
26 enforceable. For the reasons that follow, we conclude that  
27 plaintiff's claims are not governed by ERISA, and we remand for  
28 adjudication of her claims under state law.

1 I. BACKGROUND

2 A. Hallingby's Marriages, Divorce, and Pension Benefits

3 The events are largely undisputed. Harrison and Hallingby  
4 were married in 1983. At that time, Hallingby was a participant  
5 in the pension plan ("Plan") for employees of Merrill Lynch &  
6 Co., Inc. and Affiliates ("Merrill Lynch"). Under the Plan,  
7 Hallingby was to receive a monthly pension following his  
8 retirement; after his death, the pension would continue to be  
9 paid to his survivor beneficiary at a reduced rate. In 1984 and  
10 1986, Hallingby named Harrison as his beneficiary. Hallingby  
11 retired from Merrill Lynch on October 1, 1986, at which time his  
12 benefits, and those of his beneficiary, vested.

13 In December 1988, the Plan was terminated. In order to  
14 satisfy its obligations to its employees, as required by ERISA,  
15 see 29 U.S.C. § 1341(b)(3)(A)(i); 29 C.F.R. § 4001.2, Merrill  
16 Lynch purchased group annuity ("Annuity") contracts from defendant  
17 Metropolitan Life Insurance Company ("MetLife"). These contracts  
18 provided that "[i]n the case of any annuity that has provision for  
19 payment to a beneficiary, the designation of beneficiary may be  
20 changed by filing written notice of the change with Metropolitan  
21 on an appropriate form" (Annuity ¶ 4.5); that "[i]f both the  
22 Annuitant and the survivor annuitant are alive on the Annuity  
23 Commencement Date, the Annuitant will not have the right to change  
24 the survivor annuitant for any reason" (id. ¶ 3.3(B)); but that  
25 MetLife "will honor any valid court order relating to . . .

1 marital property rights to a Spouse . . . or other dependent of an  
2 Annuitant covered under this Contract if such order does not  
3 require payments under a form of benefit not otherwise available  
4 under this Contract nor increase the present value of the benefit  
5 payable" (*id.* ¶ 3.19).

6 In June 1994, Harrison and Hallingby were divorced. They  
7 had entered into a settlement agreement that provided, inter alia,  
8 that "the parties acknowledge that they have no right, title or  
9 interest in any of the bank accounts, securities, pension plans,  
10 retirement plans, profit sharing plans, annuities or IRAs now in  
11 the name of the other, whether in the other's sole name or jointly  
12 or in trust for another." (Settlement Agreement between Paul  
13 Hallingby, Jr., and Mai V. Hallingby dated May 5, 1994  
14 ("Settlement Agreement"), art. II., ¶ 2 (emphases added).) The  
15 judgment granting Hallingby the divorce incorporated the parties'  
16 Settlement Agreement and provided that the court "retains  
17 jurisdiction in this matter concurrently with the Family Court,  
18 for the purpose of specifically enforcing such of the provisions  
19 of that agreement as are capable of specific performance."  
20 Hallingby v. Hallingby, No. 300913/93 (Sup. Ct. N.Y. Co. June 7,  
21 1994), Judgment of Divorce at 3.

22 In November 1994, Hallingby married plaintiff and  
23 submitted forms to MetLife designating plaintiff as his new  
24 survivor beneficiary and revoking all previous beneficiary  
25 designations. Hallingby died in June 2005. Thereafter, despite  
26 requests by plaintiff that MetLife pay Hallingby's survivor

1 benefits to his Estate, MetLife made the Annuity payments to  
2 Harrison. MetLife took the position that ERISA and the terms of  
3 the Annuities required it to make the payments to Harrison.

4 B. Proceedings in the State and District Courts

5 After unsuccessful requests to Harrison that she cease  
6 claiming the right to receive survivor benefits under Hallingby's  
7 Annuities and that she pay over to the Estate the benefits she had  
8 received, plaintiff, by order to show cause, commenced the  
9 present action in New York State Supreme Court in May 2006. She  
10 sought enforcement of Harrison's Settlement Agreement waiver of  
11 any interest in Hallingby's pension benefits, as well as  
12 disgorgement of the Annuity payments Harrison had received from  
13 MetLife since Hallingby's death. Plaintiff also sought an order  
14 bringing MetLife into the action and requiring it to make all  
15 further payments of survivor benefits to Hallingby's Estate.

16 After MetLife was made a defendant, it removed the action  
17 to federal court, contending that the issue of entitlement to the  
18 Annuity benefits was governed by ERISA. Plaintiff filed a  
19 complaint alleging causes of action against Harrison for breach  
20 of contract and unjust enrichment and requesting, inter alia,  
21 declaratory and monetary relief against Harrison and an  
22 injunction directing MetLife to make the Annuity payments to  
23 Hallingby's Estate. Both defendants, in their answers to the  
24 complaint, asserted, inter alia, that plaintiff's claims were  
25 preempted by ERISA.

1           At pretrial conferences in 2007, MetLife informed the  
2 court that MetLife has no interest in the outcome of the dispute  
3 between plaintiff and Harrison and that MetLife will make the  
4 payments under the Annuities to whichever party the court  
5 determines should receive them. Following those representations,  
6 the action against MetLife was dismissed with prejudice.

7           Thereafter, both plaintiff and Harrison moved for summary  
8 judgment. Plaintiff contended principally that ERISA is  
9 inapplicable, arguing that the Annuities are private contracts  
10 between MetLife and the former participants in the Merrill Lynch  
11 Plan and that, like other typical annuity contracts, they are  
12 governed by state law. Harrison argued principally that because  
13 the beneficiary interests under the Plan vested on the date of  
14 Hallingby's retirement, and Harrison was then his spouse-survivor  
15 beneficiary, her interest had become non-assignable under the  
16 terms of the Annuities and irrevocable under the provisions of  
17 ERISA.

18           In an opinion dated March 26, 2008, reported at 541  
19 F.Supp.2d 591, the district court denied plaintiff's motion for  
20 summary judgment and granted the motion of Harrison. The court  
21 found that "the Annuity contracts at issue . . . constitute the  
22 pension plan, and the dispute . . . involve[s] benefits due to  
23 plan participants." 541 F.Supp.2d at 596. Pointing out that  
24 ERISA preempts state-law causes of action to enforce rights under  
25 employee benefit plans that are covered by ERISA, the court  
26 concluded that it "must look to ERISA, rather than to New York

1 State law, to determine the proper recipient of the beneficiary  
2 annuity at issue here." Id. The court noted that "ERISA  
3 requires that a pension plan prohibit the assignment or alienation  
4 of benefits (the 'anti-alienation provision')," id. at 598 (citing  
5 29 U.S.C. § 1056(d)(1)); and it therefore concluded that "the  
6 anti-alienation provision of ERISA precludes enforcement of a  
7 waiver of a vested interest by a non-participant beneficiary," id.  
8 at 599.

9 Judgment was entered dismissing the complaint, and this  
10 appeal followed.

## 11 II. DISCUSSION

12 In their initial briefs on appeal, the parties have  
13 adhered to the positions they took in the district court.  
14 Harrison maintains that plaintiff's claims are preempted by  
15 ERISA's prohibition against alienation of her rights as a Plan  
16 beneficiary; plaintiff pursues her contention that the Estate's  
17 dispute with Harrison is governed solely by state law. Prior to  
18 oral argument, this Court instructed the parties to be prepared to  
19 address the applicability of ERISA, citing Beck v. Pace  
20 International Union, 127 S. Ct. 2310 (2007). At oral argument, we  
21 instructed the parties to submit supplemental briefs addressing  
22 the question of whether, if ERISA is inapplicable, federal  
23 subject matter jurisdiction existed.

1           Having reviewed all of the parties' submissions and  
2 arguments, we conclude that ERISA does not apply to the present  
3 dispute; that because MetLife had previously been dismissed from  
4 the case, diversity of citizenship existed at the time the final  
5 judgment was entered, and the district court then had  
6 jurisdiction; and that because ERISA is inapplicable, the matter  
7 should be remanded to the district court for adjudication of  
8 plaintiff's claims under state law.

9       A. The Inapplicability of ERISA

10           ERISA generally applies to "any employee benefit plan if  
11 it is established or maintained" by an employer engaged in  
12 commerce and/or an employee organization representing employees  
13 engaged in commerce. 29 U.S.C. § 1003(a). ERISA allows an  
14 employee benefit plan to be terminated, under stated conditions.  
15 See generally id. § 1341. One method of plan termination is the  
16 "purchase [of] irrevocable commitments from an insurer to provide  
17 all benefit liabilities under the plan," id. § 1341(b)(3)(A)(i),  
18 i.e., the purchase of annuities. See generally Beck, 127 S. Ct.  
19 at 2316-17.

20           When an employer terminates an employee benefit plan and  
21 provides for the payment of benefits by purchasing annuities in  
22 accordance with 29 U.S.C. § 1341(b)(3)(A)(i), the annuities and  
23 the benefits they provide are no longer covered by ERISA:

24           [T]erminating a plan through purchase of annuities  
25 (like terminating through distribution of lump-sum  
26 payments) formally severs the applicability of ERISA  
27 to plan assets and employer obligations. Upon



1 purchasing annuities, the employer is no longer  
2 subject to ERISA's multitudinous requirements, such  
3 as (to name just one) payment of insurance premiums  
4 to the [Pension Benefit Guaranty Corporation  
5 ("PBGC")], § 1307(a). And the PBGC is likewise no  
6 longer liable for the deficiency in the event that  
7 the plan becomes insolvent; there are no more  
8 benefits for it to guarantee. The assets of the plan  
9 are wholly removed from the ERISA system, and plan  
10 participants and beneficiaries must rely primarily  
11 (if not exclusively) on state-contract remedies if  
12 they do not receive proper payments or are otherwise  
13 denied access to their funds.

14 Beck, 127 S. Ct. at 2318 ("are" emphasized in original; other  
15 emphases added).

16 There is no contention here that Merrill Lynch failed to  
17 comply with the ERISA requirements for termination of the relevant  
18 Plan. Thus, the district court erred in ruling that "the Annuity  
19 contracts . . . constitute the pension plan," 541 F.Supp.2d at 596  
20 (emphasis added). The purchase of the Annuities instead  
21 terminated the Plan; and termination "formally sever[ed] the  
22 applicability of ERISA." Beck, 127 S. Ct. at 2318. Plaintiff's  
23 claims that MetLife should have been, and should be, paying the  
24 surviving spouse benefits to plaintiff or to Hallingby's Estate,  
25 rather than to Harrison, are claims under the Annuities. The  
26 Annuities are not governed by ERISA, and plaintiff's claims must  
27 be resolved on the basis of state-law principles.

28 B. Federal Subject Matter Jurisdiction

29 Plaintiff commenced this action in state court. When  
30 MetLife became a defendant, it removed the case to the district  
31 court on the basis that the dispute was governed by ERISA, giving

1 the district court federal question jurisdiction. Since we have  
2 concluded that the dispute is governed instead by state law, there  
3 is no federal question, and there is an issue as to whether the  
4 suit may be entertained in federal court on the basis of diversity  
5 jurisdiction. Diversity jurisdiction exists over "civil actions  
6 where the matter in controversy exceeds the sum or value of  
7 \$75,000, exclusive of interest and costs, and is between  
8 . . . citizens of different States." 28 U.S.C. § 1332(a)(1).  
9 "[C]itizens of different States" means that there must be complete  
10 diversity, i.e., that each plaintiff's citizenship must be  
11 different from the citizenship of each defendant. See, e.g.,  
12 Caterpillar Inc. v. Lewis, 519 U.S. 61, 68 (1996); Strawbridge v.  
13 Curtiss, 7 U.S. (3 Cranch) 267 (1806). When this case was removed  
14 to the district court, complete diversity did not exist: Harrison  
15 was a citizen of Florida; but both plaintiff and MetLife were  
16 citizens of New York. (In oral argument and in their supplemental  
17 submissions, the parties informed us that Harrison remains a  
18 citizen of Florida and that plaintiff remains a citizen of New  
19 York.)

20 Although the existence of federal subject matter  
21 jurisdiction over an action removed from state court to federal  
22 court is normally to be determined as of the time of removal, see,  
23 e.g., Caterpillar, 519 U.S. at 68, it is now established that if a  
24 case was erroneously removed to federal court and a judgment was  
25 subsequently entered on the merits, the jurisdictional flaw that  
26 existed at the time of removal "is not fatal to the ensuing

1 adjudication if federal jurisdictional requirements are met at the  
2 time judgment is entered," id. at 64. Thus, "we view the critical  
3 issue to be whether the district court had subject matter  
4 jurisdiction at any time before it rendered judgment." Briarpatch  
5 Ltd., L.P. v. Phoenix Pictures, Inc., 373 F.3d 296, 301 (2d Cir.  
6 2004).

7 In the present case, MetLife was dismissed from the case  
8 after it informed the parties and the court that it viewed itself  
9 as essentially only a stakeholder. Apparently having no interest  
10 in contending that Hallingby had no right under the Annuity  
11 contracts between himself and MetLife to change the designation of  
12 his survivor beneficiary as he did, MetLife represented that it  
13 will make the payments due under the Annuities to whichever party  
14 the court determines should receive them. Accordingly, prior to  
15 the district court's 2008 decision on the merits, MetLife was  
16 dismissed from the case, with prejudice. With MetLife gone, there  
17 was complete diversity. And as the complaint alleges that the  
18 estimated present value of the Annuities is \$150,000, the  
19 prerequisites for diversity jurisdiction were met when MetLife  
20 was dismissed in 2007. Accordingly, the case is now properly in  
21 federal court.

22 CONCLUSION

23 We have considered all of Harrison's arguments in support  
24 of the district court's resolution of the present case under ERISA

1 and have found them to be without merit. The judgment is vacated,  
2 and the matter is remanded to the district court for adjudication  
3 of plaintiff's claims in accordance with state law. Although  
4 plaintiff urges that this Court should rule that the Estate is  
5 entitled to judgment under state-law principles, we adhere to our  
6 normal practice of allowing the merits to be resolved by the  
7 district court in the first instance.

8 Costs to plaintiff.