

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT J. BOWMAN,

Plaintiff-Appellee,

v

KNAPE & VOGT MANUFACTURING
COMPANY,

Defendant-Appellant.

UNPUBLISHED

June 14, 2002

No. 227190

Kent Circuit Court

LC No. 97-001692-CK

Before: Griffin, P.J., and Holbrook, Jr. and Hoekstra, JJ.

PER CURIAM.

Defendant Knap & Vogt Manufacturing Company appeals by right a judgment rendered in favor of plaintiff Robert J. Bowman following a two-day bench trial. We reverse.

This case involves plaintiff's right to receive benefits under a retirement plan adopted by defendant company. Plaintiff's relationship with defendant began in 1969, when he became a member of its board of directors. At that time, plaintiff was employed as a bank officer, but he subsequently retired from that job and started his own financial consulting firm that, in 1982, merged with another company.

In 1985, plaintiff accepted the salaried position of vice president of corporate development with defendant, in addition to his seat on its board of directors. Plaintiff testified that when he was offered the position of vice president, he was reluctant to close his own consulting business, which was "growing very aggressively," but did so based on an alleged oral representation by defendant's president that he [plaintiff] "would be entitled right away to a full benefit" under defendant's Supplemental Executive Retirement Plan (SERP),¹ provided that he

¹ The SERP, an unfunded single-employer plan adopted by defendant company in 1981, provides additional retirement benefits for "[o]fficers and other key employees" designated as participants by the board of directors. The amount of the benefit is a function of each participant's "credited service," with ten years of such service resulting in the maximum benefit. Article II, § H of the SERP defines "credited service" as "years and completed months of service with the Company, including any approved leaves of absence and including any other periods as may be designated as Credited Service by the [Administrative] Committee."

agreed to stay at least five years. Plaintiff understood this representation to be a promise of immediate vesting of maximum benefits under the SERP, compatible with the SERP he would receive if credited for his many years on the board of directors. Plaintiff testified that he orally agreed to the alleged offer and accepted the position; in 1988, he also was appointed vice chairman of defendant's board of directors.²

On July 4, 1992, plaintiff suffered a serious heart attack and, as a consequence, resigned from his position as vice president of corporate development. Shortly thereafter, plaintiff was involuntarily terminated from his remaining positions with defendant. Defendant's board of directors calculated plaintiff's SERP benefits based on seven years of "credited service," starting from 1985 when he became the vice president for corporate development. Specifically, the board of directors chose to define plaintiff's "credited service" as only plaintiff's years of service as "a regular employee" and did not include plaintiff's years that he served on the board of directors in the calculation. As a result, plaintiff received only forty-two percent of his annual average total compensation, rather than the full sixty percent he would have received if he had been given credit for ten years of service. The total difference in benefits between the forty-two percent rate and the sixty-percent rate was subsequently determined by the trial court to be \$192,254.25.

Plaintiff filed his complaint in February 1997. As the trial court noted, by the time of trial, plaintiff had withdrawn all claims in his complaint and opted "to pursue only a claim that the Administrative Committee [of defendant company] misinterpreted to his detriment the term "credited service" which determines the amount of his benefit[.]" Plaintiff alleged that he was fully vested in the SERP when his employment with defendant ended in 1992 because he had more than ten years of service required under the plan; he had served defendant for twenty-three years both in his capacity as a director and as an employee. Additionally, as of 1992, plaintiff had completed eleven years of service, in both capacities, since the SERP was adopted in 1981.

Following a two-day bench trial, the trial court issued an opinion and order of judgment in favor of plaintiff. In so doing, the trial court held as a preliminary matter that plaintiff's claim was one for benefits under the terms of the SERP and thus, the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 USC 1001 *et seq.*, governed the claim.³ The court further held that it had subject-matter jurisdiction over the case pursuant to ERISA, 29 USC 1132(a)(1)(B).

With regard to the merits of the case, the trial court concluded that pursuant to the express terms of the SERP, plaintiff was entitled to benefits for only his seven years of service "as a regular employee," as originally determined by defendant. However, the trial court awarded plaintiff his sought-after benefits based on an estoppel theory, stating in pertinent part:

² In addition, plaintiff held the position of corporate secretary and was appointed to the board of directors of one of defendant's wholly-owned subsidiaries.

³ Both parties conceded during the litigation that the SERP is a retirement plan governed by the terms of ERISA.

He closed his own business to take a position with defendant, and he promised to stay in that position for five years, based on a promise by defendant's president that he "would be entitled right away to a full benefit under the [SERP] plan." As a result, plaintiff cannot now be denied that benefit on the ground that he lacks enough credited service.

The trial court thus awarded plaintiff the sum of \$192,254.25, and future benefits based on ten years of "credited service."⁴ Defendant now appeals.

On appeal, defendant, noting that the trial court found that plaintiff's only cognizable claim was that of equitable estoppel, argues that the trial court did not have subject-matter jurisdiction to decide the estoppel claim under ERISA; rather, federal courts have exclusive jurisdiction over such claims. We agree.

Whether a trial court has subject-matter jurisdiction over a particular claim is a question of law that this Court reviews de novo. *Genesis Center, PLC v Commissioner of Financial and Ins Services*, 246 Mich App 531, 540; 633 NW2d 834 (2001).

ERISA expressly preempts state law that "relates to" an employee benefit plan. 29 USC 1144(a). Therefore, as a general rule, federal courts have exclusive subject-matter jurisdiction over ERISA claims. See *Teper v Park West Galleries, Inc.*, 153 Mich App 520, 522; 396 NW2d 210 (1986). However, ERISA contains a jurisdictional provision that does carve out exceptions to this general rule, providing concurrent jurisdiction for state and federal courts over certain types of ERISA claims. 29 USC 1132(e)(1). The one exception pertinent to the present appeal is where the action is brought pursuant to 29 USC 1132(a)(1)(B)

to recover benefits due to him [a participant or beneficiary] 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.

Defendant concedes that plaintiff's complaint contained an allegation of a claim for benefits "under the terms of the plan" because plaintiff argued at trial that the term "credited service" should be interpreted to include his service as a board member. Defendant concedes that to the extent this dispute related to an interpretation of the plan itself, this claim clearly fell within the provisions of subsection (a)(1)(B). However, on appeal, defendant argues that because the unpled theory of equitable estoppel provided the sole basis for the judgment in favor of plaintiff, such a claim does not fall within subsection (a)(1)(B), but rather falls within the provisions of 29 USC 1132(a)(3) which governs equitable claims and, pursuant to subsection (e)(1), grants exclusive jurisdiction over such claims to the federal courts. Subsection (a)(3) provides:

(a) Persons empowered to bring a civil action. A civil action may be brought –

⁴ Plaintiff's wife was likewise awarded a survivor's benefit based on ten years of "credited service" under the SERP.

* * *

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, *or (B) to obtain other appropriate equitable relief* (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan. [Emphasis added.]

Plaintiff, on the other hand, argues that subsection (a)(1)(B) applies because, although estoppel is an equitable claim, it nevertheless remains a claim for benefits “under the terms of the plan.” Although subsection (a)(3) pertains to equitable relief, plaintiff contends that this subsection of ERISA simply permits equitable remedies; it does not require that all equitable claims be asserted exclusively under subsection (a)(3). Accordingly, plaintiff argues that the trial court had proper jurisdiction over his estoppel claim.

In the absence of federal authority that addresses the precise issue presented herein,⁵ see *Etefia v Credit Technologies, Inc.*, 245 Mich App 466, 470; 628 NW2d 577 (2001), we turn to our own state jurisprudence for guidance. In fact, this Court has decided two cases that are closely on point.

In *McMartin v Central States, Southeast and Southwest Areas Pension Fund*, 159 Mich App 1; 406 NW2d 219 (1987), the plaintiff brought both an estoppel claim and a claim for benefits under the terms of a benefit plan. The trial court dismissed all of the plaintiff’s claims. On appeal, the plaintiff only raised issues concerning his claim that the defendant was estopped from denying benefits. This Court, *supra* at 3, held that

claims of estoppel, when brought to collect benefits from a pension plan governed by [ERISA], fall within the exclusive jurisdiction of the federal courts and may not be entertained in state courts. Accordingly, the circuit court erred in considering the merits of plaintiff’s claim of estoppel.

In so doing, the *McMartin* Court noted that the plaintiff’s other claim in the trial court – that he was entitled to benefits under the express terms of the plan – was the type of claim that may be brought under ERISA’s concurrent jurisdiction provision. Distinguishing that type of claim from an estoppel claim, this court explained:

In the instant case, the trial court held that plaintiff was not entitled to pension benefits under the express terms of the plan. Such a claim is an example of the type of action which may be brought pursuant to the state concurrent jurisdiction provision. However, as previously noted, plaintiff has not appealed that portion of the lower court’s ruling. Rather, on appeal, plaintiff argues that he is entitled to benefits under principles of equitable estoppel and that the trial court erred when it denied him benefits on these grounds. *While ERISA authorizes a beneficiary to bring an action based on equitable grounds, the authorization for*

⁵ Both parties cite numerous federal cases in support of their respective positions that purportedly address the jurisdictional issue; however, upon review, we find such case authorities to be inapposite.

such an action is found at 29 USC 1132, subsection (a)(3), not subsection (a)(1)(B). As indicated previously, state courts have concurrent jurisdiction only for actions brought under the latter subsection. Thus, the trial court did not have jurisdiction to entertain plaintiff's claims of estoppel. [Id. at 4-5 (emphasis added).]

Plaintiff attempts to distinguish *McMartin* by arguing that unlike the present case, the plaintiff in *McMartin* was never qualified as a beneficiary; thus, the *McMartin* plaintiff needed to assert his claim under subsection (a)(3) because there was no other remedy available to him as he was on the outside of the plan, seeking an equitable remedy inside the plan. However, the *McMartin* Court, citing public policy considerations, clearly implied that its holding was not so limited:

Public policies and concerns, which gave rise to the enactment of ERISA, support our decision. Theories of estoppel present potential dangers to the solvency of pension plans. If employees are permitted to collect benefits from a fund to which insufficient contributions have been made on their behalf, the actuarial soundness of the plan could be threatened. *Phillips v Kennedy*, 542 F2d 52, 58 (CA 8, 1976). Such claims may not be considered alone: the rights and interests of the other pensioners must also be taken into account. *Aitken v IP & GCU Employer's Retirement Fund*, 604 F2d 1261 (CA 9, 1979). While we express no opinion as to whether claims of estoppel should be permitted in such cases, the fact that such theories present potential dangers is evidence that such claims belong in the federal courts. Congress included a broad preemption clause and created exclusive jurisdiction with few exceptions in part because it wanted to eliminate the threat of conflicting and inconsistent state and local regulation. *Shaw v Delta Air Lines*, *supra*, [463 US 85; 103 S Ct 2890; 77 L Ed 2d 490 (1983)], 463 US 99. Reading 29 USC 1132(e)(1) narrowly advances that goal. [*Id.* at 5.]

The *McMartin* Court, noting that the plaintiff's theory of equitable estoppel was based on an allegation that the defendant either failed to inform or misinformed the plaintiff's union bargaining agent regarding the benefit class necessary to provide disability benefits, held that this fact further reinforced its determination that the federal, not state, court had exclusive jurisdiction over the estoppel claim:

This theory is closely akin to a claim of breach of fiduciary duty. Actions based on breach of fiduciary duty are subject to the exclusive jurisdiction of the federal courts. 29 USC 1109 and 1132(e)(1); House Conference Report No. 93-1280, 1974 US Code Cong & Ad News, 4639, 5106-5107; *Retail Shoe Health Comm v Reminick*, 62 NY2d 173; 476 NYS2d 276; 464 NE2d 974 (1984). If estoppel claims could be entertained in state courts, the rule of exclusive federal jurisdiction for fiduciary duty claims could be too easily circumvented.

Our decision also finds support in *Young v Sheet Metal Workers' International Ass'n*, 112 Misc 2d 692; 447 NYS2d 798 (1981). In *Young*, the court found that the phrase in 29 USC 1132(a)(1)(B) "under the terms of the plan" must be read restrictively and that an equitable action which calls into question

fiduciary conduct raises issues beyond the scope of the plan itself and removes the action from state court jurisdiction. 447 NYS2d 803. To vest state courts with such jurisdiction, the court found, “would substantially undermine a carefully structured legislative scheme.” 447 NYS2d 804.

Accordingly, the trial court’s determination of the merits of plaintiff’s estoppel claim is hereby reversed. [*Id.* at 6-7 (footnote omitted).]

In a subsequent case involving a plaintiff’s claim for benefits under the terms of an ERISA plan, this Court reaffirmed the principles set forth in *McMartin*, *supra*. In *Townsend v Brown Corporation of Ionia, Inc.*, 206 Mich App 257; 521 NW2d 16 (1994), we stated:

Plaintiff’s complaint falls within the provisions of 29 USC 1132(a)(1)(B) insofar as it seeks recovery of benefits under the terms of an ERISA plan. Because state and federal courts have concurrent jurisdiction over actions pursuant to subsection a(1)(B), the circuit court properly exercised jurisdiction over plaintiff’s complaint. 29 USC 1132(e)(1); *McMartin v Central States, Southeast & Southwest Areas Pension Fund*, 159 Mich App 1,4; 406 NW2d 219 (1987); *Bradwell v Silk Greenhouse, Inc.*, 828 F Supp 940, 944 (MD Fla, 1993). Plaintiff’s additional claims of violation of fiduciary duties and equitable estoppel are the exclusive province of the federal courts.

. . . 29 USC 1132(e)(1) grants exclusive jurisdiction over all ERISA claims, except those brought under 29 USC 1132(a)(1)(B), to federal district courts. *McMartin*, *supra*.

* * *

Plaintiff also argues that the trial court erred in refusing to apply principles of equitable estoppel. We disagree. Once again, state courts lack jurisdiction to entertain claims of equitable estoppel in the context of the ERISA. *McMartin*, *supra* at 6; 29 USC 1132(e)(1) Moreover, plaintiff failed to preserve this issue. Our failure to review it will not result in manifest injustice, inasmuch as the record does not support plaintiff’s claim. [*Id.* at 260, 263.]

In light of this Court’s decisions in *McMartin* and *Townsend*, we reverse the trial court’s judgment in favor of plaintiff, which was based solely on estoppel principles. As clearly pronounced in the above cases, for our purposes, ERISA’s jurisdiction provision, subsection (e)(1), allows state courts to hear only claims arising under subsection (a)(1)(B). Equitable relief in the form of benefits not specifically provided for by the terms of an ERISA plan cannot be recovered under subsection (a)(1)(B). *McMartin*, *supra*; *Townsend*, *supra*. Consequently, because a plaintiff may pursue an equitable estoppel claim only in the federal courts, the trial court lacked subject-matter jurisdiction to render the estoppel-based judgment.

In light of our disposition, it is not necessary for us to address defendant’s remaining appellate issue.

Reversed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ Joel P. Hoekstra