IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

GLADYS D. W. MOTLEY, PH.D.,	)	
	)	C. A. No. 01C-12-021 WLW
Plaintiff,	)	
	)	
v.	)	
	)	
DELAWARE STATE UNIVERSITY,	)	
	)	
Defendant.	)	
	)	

Submitted: May 24, 2002
Decided: August 28, 2002

ORDER

Upon Defendant's Motion to Dismiss. Denied.

Roy S. Shiels, Esquire, of Brown, Shiels, Beauregard & Chasanov, Dover, Delaware, for the Plaintiff.

John D. Balaguer, Esquire, and Marc S. Casarino, Esquire, of White and Williams, LLP, Wilmington, Delaware, for the Defendant.

WITHAM, J.

Motley v. Delaware State University
C.A. No. 01C-12-021
August 28, 2002

This 28th day of August, 2002, after consideration of the motion to dismiss submitted by Delaware State University (the "defendant"), the answering brief of Gladys D.W. Motley, PH.D. (the "plaintiff) in opposition to the motion to dismiss (with affidavit of the plaintiff attached), as well as the defendant's reply brief, it appears to the Court that further inquiry into the nature and extent of the promise allegedly made by Dr. DeLauder is necessary; therefore, defendant's motion to dismiss must be denied.

Background

1. The plaintiff was employed as a Vice President for Student Affairs at the Delaware State University in early 1997 when plaintiff alleges that the then-President, Dr. DeLauder, became dissatisfied with her work and sought to terminate her employment. Plaintiff alleges that she sought a hearing before the Board of Trustees to contest the employment disagreement.

2. She alleges that once she exercised her right to a Board hearing, Dr. DeLauder requested a meeting to resolve the matter amicably. According to the plaintiff, a meeting was held in March 1998, and an agreement was reached between the plaintiff and Dr. DeLauder whereby the plaintiff would leave employment voluntarily, and amicably, without any further exercise of her administrative right to a hearing.

3. In exchange for giving up the right to a Board hearing and for agreeing to leave voluntarily, it is alleged that certain promises were made to the plaintiff by Dr. DeLauder. Specifically, the plaintiff states that Dr. DeLauder promised that the plaintiff would receive full payment of accrued leave in accordance with the by-laws of the University, and that plaintiff would leave voluntarily at a time of her choosing.

4. On the basis of this agreement, the plaintiff maintains that she voluntarily left employment with the University in October of 1998, and did not pursue any further hearing before the Board of Trustees. In December of 1998, it is alleged that the University then deposited $6,303.01 for accrued leave into the plaintiff's account. Plaintiff maintains that under the promise made by Dr. DeLauder, the plaintiff should have received $45,000 in leave accrual. Apparently, the difference in the two calculations arises from two different sources authorizing leave accrual. The plaintiff argues that the University broke the promise made by Dr. DeLauder to calculate her payoff under the University by-laws for accrued leave. Instead, her accrued leave was calculated under the University Professional Employees Handbook. Plaintiff alleges that the utilization of the Professional Employees handbook to calculate her leave accrual is a breach of the buyout contract she made with Dr. DeLauder in exchange for her agreement to leave voluntarily.

Claims of the Parties

5. It is the defendant's position that the plaintiff's claims are barred by a one-year statute of limitation set forth in 10 *Del. C.* § 8111[1] (rather than the three-year

[1] § 8111 states that:

> No action for recovery upon a claim for wages, salary, or overtime for work, labor or personal services performed, or for damages (actual, compensatory or punitive, liquidated or otherwise), or for interest or penalties resulting from the failure to pay any such claim, or for any other benefits arising from such work, labor or personal services performed or in connection with any such action, shall be brought after the expiration of one year from the accruing of the cause of action on which such action is based.

statute of limitations set forth in 10 *Del. C.* § 8106[2]), and is pre-empted by the federal Employee Retirement Income Security Act (ERISA); therefore, under Superior Court Civil Rule 12(b), the plaintiff has not pled a cause of action under which she can recover, and this Court does not have personal or subject matter jurisdiction.

6. The plaintiff necessarily responds that this employment litigation involves the three-year statute of limitations under § 8106. Moreover, it is the plaintiff's position that ERISA cannot be implicated in the present matter for two reasons. First, she states that she does not seek the enforcement of any particular benefit plan. Rather, she seeks the enforcement of a promise for which she gave new consideration, not past performance. Further, to the extent that the allegedly enforceable contract benefits here are "related to" a welfare benefit plan, they are exempt from ERISA under the "governmental plan" exemption of 29 *U.S.C.* § 1003(b)(i), as defined in 29 U.S.C. § 1002(32).

Standard of Review

7. Superior Court Civil Rule 12(b) controls the determination of a motion to dismiss. For purposes of deciding a motion to dismiss, all of the allegations in the complaint must be accepted as true.[3] A complaint will not be dismissed unless the plaintiff would not be entitled to recover under any reasonably conceivable set of

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[2] § 8106 states in pertinent part that:

> No action . . . based on a promise . . . . shall be brought after the expiration of 3 years from the accruing of the cause of such action . . . .

[3] *Spence v. Funk*, 396 A.2d 967 (Del. 1978); *State ex. rel. Certain-Teed Prods. Corp. v. United Pacific Ins. Co.*, 389 A.2d 777 (Del. Super. Ct. 1978).

circumstances susceptible of proof.[4] A complaint may not be dismissed unless it is clearly without merit, which may be a matter of law or fact.[5]

8. Under Delaware Superior Court Rule 12(b):

> If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleadings to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

9. In the present case, matters outside of the pleadings have been submitted to this Court in the form of the affidavit of the plaintiff. Thus the Court will consider the submissions of the parties under Superior Court Civil Rule 56 standards. This provides that judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."[6] The burden is on the moving party to show, with reasonable certainty, that no genuine issue of material fact exists and judgment as

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[4] *Id. citing Diamond State Tel. Co. v. University of Del.*, 269 A.2d 52 (Del. 1970).

[5] *Diamond State Tel Co.* at 58.

[6] Super. Ct. Civ. R. 56.

a matter of law is permitted.[7] When considering a motion for summary judgment, the facts must be construed in the light most favorable to the non-moving party.[8]

Discussion

10. The record indicates that material facts regarding the statute of limitations and the application of ERISA are disputed.

Statute of Limitations

11. The Court believes that further inquiry into the nature and extent of the promise allegedly made by Dr. DeLauder, as well as the nature of the consideration provided by the plaintiff, is necessary in order to determine the applicable statute of limitations; therefore, summary judgment is not appropriate. The one-year statute of limitations that would bar plaintiff's cause of action

> should not be read as being so comprehensive as to bar all claims arising out of the employer-employee relationship. Rather 10 *Del. C.* § 8111 is directed to claims alleging a breach of a duty to pay wages, salary or overtime for work performed. Where, as here, a plaintiff alleges that a defendant has breached a different duty arising out of the employer-employee relationship, another statute of limitations may apply to the plaintiff's claim.[9]

12. It is apparent from the alleged facts of this case that there is a material

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[7] *See Celotex Corp. v. Cattret,* 477 U.S. 317 (1986); *Martin v. Nealis Motors, Inc.*, 247 A.2d 831 (Del. 1968).

[8] *McCall v. Villa Pizza, Inc.*, 636 A.2d 912 (Del. 1994).

[9] *Rich v. Zeneca, Inc.*, 845 F. Supp. 162, 166 (D.Del. 1994).

dispute as to whether or not the University simply owed the plaintiff accrued leave for work already performed (and thus the plaintiff had one year to object to the University's calculation of the same), or whether the University took on a new duty to more or less settle with the plaintiff, so that she would give up her rights to protest the attempted termination.

13. If the latter is true, the situation here may be more analogous to *Goldman v. Braunstein's, Inc.*,[10] where the damages were measured in the form of salary and bonuses (which had never been paid because of the wrongful termination). There, damages were compensation for breach of a contract (i.e. what would have been earned but for the breach), not compensation for prior work performed. In the case *sub judice*, viewing the facts in the light most favorable to the plaintiff, the damages sought can be seen as compensation to the plaintiff for giving up rights in the future. If that is the case, if this plaintiff has "any recoverable loss, it arose upon or after termination of the employer-employee relationship."[11] Under the facts the plaintiff alleges, the breach occurred after the plaintiff voluntarily left employment. Then the University's duty to pay arose.

14. Until the nature and extent of the alleged agreement between Dr. DeLauder and the plaintiff are fully known, the Court cannot determine the applicable statute of limitations, and cannot dismiss the complaint for the reason that it is time-barred under 10 *Del. C.* § 8111.

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[10] 240 A.2d 577 (Del. 1968).

[11] *Id.* at 578.

ERISA Claims

15. The defendant argues that the plaintiff's complaint can be analogized to a claim for benefits under 19 *Del. C.* § 1109,[12] which statute is preempted by ERISA. The Court has not been provided sufficient factual information on the nature of the particular plan at issue here to determine its legal status under ERISA. The plaintiff notes that an employer should not be permitted to raise a claim of preemption without some showing of the summary plan description, necessary filings, etc., to show an ERISA-regulated plan is in some way existing and implicated by the litigation. The Court is persuaded on this point, and believes that the factual nature of the particular ERISA plan, if it becomes implicated here, needs to be developed on the record before this Court can decide whether or not it falls under ERISA rules. Moreover, the plaintiff maintains that to the extent that any contract benefits here are "related to" a welfare benefit plan, they are exempt from ERISA under the "governmental plan" exemption of 29 *U.S.C.* § 1003(b)(i), and defined by 29 U.S.C. § 1002(32). The defendant has not

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[12] 19 *Del. C.* § 1109 states:

(a) Any employer who is a party to an agreement to pay or provide benefits or wage supplements to any employee shall pay the amount or amounts necessary to provide such benefits or furnish such supplements within 30 days after such payments are required to be made; provided, however, that this section shall not apply to employers subject to Part I of the Interstate Commerce Act [49 *U.S.C.* § 10101 et seq.].

(b) As used herein, "benefits or wage supplements" means compensation for employment other than wages, including, but not limited to, reimbursement for expenses, health, welfare or retirement benefits, and vacation, separation or holiday pay, but not including disputed amounts of such compensation subject to handling under dispute procedures established by collective bargaining agreements.

shown why the governmental plan exemption does not apply in the present case.

16. For the reasons outlined above, the Court cannot say that the complaint must be dismissed because the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof. In addition, upon the limited record before it, the Court finds that there are disputes regarding material facts; therefore, the Court is unable to find that the defendant is entitled to judgment as a matter of law.

Wherefore, defendant's motion to dismiss is ***denied.***

IT IS SO ORDERED.

/s/ Hon. William L. Witham, Jr.
J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution