

09-1681-cv
Stevenson v. The Bank of New York Co., Inc.

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3 August Term 2009

4 (Argued: December 2, 2009 Decided: June, 15, 2010)

5 Docket No. 09-1681-cv

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7 MATTHEW MILLS STEVENSON, on behalf of himself and as
8 representative of the Stevenson Retirement Plan and the
9 Stevenson SERP,

10
11 Plaintiff-Appellant,

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13 -- v. --

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15 THE BANK OF NEW YORK COMPANY, INC., J. CARTER BACOT, THE
16 ESTATE OF DENO D. PAPAGEORGE, administrator of the
17 Stevenson Retirement Plan and the Stevenson SERP, THOMAS
18 A. RENYI, MICHAEL SHEPERD, THE TAX-QUALIFIED PENSION
19 PLAN, THE RETIREMENT PLAN COMMITTEE, THE SUPPLEMENTAL
20 EXECUTIVE RETIREMENT PLAN, THE STEVENSON RETIREMENT
21 PLAN, THE STEVENSON SERP, THE EXCESS BENEFIT PLAN, BNY
22 PROFIT SHARING PLAN and its administrator, PHANTOM
23 PENSION STOCK PLAN and its administrator, EMPLOYEE
24 SAVINGS INVESTMENT PLAN and its administrator, EMPLOYEE
25 STOCK OWNERSHIP PLAN and its administrator, ANY OTHER
26 PLAN and its administrator,

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28 Defendants-Appellees.

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31 B e f o r e : WALKER, RAGGI, Circuit Judges, and
32 RAKOFF, District Judge.*

* The Honorable Jed S. Rakoff, of the United States District Court for the Southern District of New York, sitting by designation.

1 Matthew Mills Stevenson filed a complaint in New York state
2 court based on an alleged agreement by BNY and its employees to
3 maintain his pension benefits. The defendants removed that
4 complaint to federal court on the theory that Stevenson's state
5 law claims were preempted under ERISA, 29 U.S.C. § 1001 et seq.
6 The defendants moved to dismiss the complaint for failure to
7 state a claim, and Stevenson moved to remand to state court.
8 Stevenson now appeals the following: 1) the March 30, 2007 order
9 of the District Court for the Southern District of New York
10 (Daniels, Judge) denying Stevenson's motion to remand his case to
11 state court and granting the defendants' motion to dismiss his
12 original complaint; and 2) the district court's March 26, 2009
13 order granting the defendants' motion to dismiss Stevenson's
14 amended complaint for failure to state a claim under ERISA, 29
15 U.S.C. § 1001, or under New York law. On appeal, we hold that
16 Stevenson's state law claims, as originally pleaded, are not
17 preempted by ERISA. We therefore VACATE the district court's
18 order denying Stevenson's motion to remand to state court and
19 REMAND to the district court with instructions that the case be
20 returned to state court.

21 VACATED and REMANDED.

22 THOMAS E.L. DEWEY, Dewey
23 Pegno & Kramarsky LLP,
24 New York, New York;
25 Jerome M. Marcus, Marcus
26 & Auerbach LLC, Wyncot,
27 Pennsylvania, on the

1 brief, Jacob A. Goldberg,
2 Faruqi & Faruqi, LLP,
3 Elkins Park,
4 Pennsylvania, on the
5 brief, for Plaintiff-
6 Appellant.

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8 MICHAEL L. BANKS, Morgan,
9 Lewis & Bockius LLP,
10 Philadelphia,
11 Pennsylvania, for
12 Defendants-Appellees.
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16 JOHN M. WALKER, JR., Circuit Judge:
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18 This appeal involves an alleged promise made by appellant
19 Matthew Mills Stevenson's former employer, the Bank of New York
20 Company ("BNY"), that it would maintain Stevenson's pension and
21 benefits during Stevenson's tenure as General Manager of the Bank
22 of New York-Inter Maritime Bank ("BNY-IMB"), a Swiss bank
23 affiliate of BNY. Stevenson filed this suit against BNY and
24 certain of its executives in the New York Supreme Court. The
25 complaint brought claims of breach of contract, promissory
26 estoppel, unjust enrichment, negligent misrepresentation, fraud,
27 and tortious inference with contract, based on Stevenson's
28 allegation that BNY and BNY employees reneged on their promise to
29 maintain certain benefits and pension plans on his behalf during
30 his absence from the bank and then unlawfully terminated his
31 employment from BNY-IMB. The complaint also claimed defamation
32 based on an allegation that the defendants published a letter to
33 the legal and banking community in Geneva, Switzerland, maligning

1 Stevenson's professionalism.

2 The defendants removed the state action to the District
3 Court for the Southern District of New York (Daniels, Judge),
4 claiming that, under the federal Employee Retirement Security Act
5 ("ERISA"), federal subject matter jurisdiction existed pursuant
6 to ERISA § 502, 29 U.S.C. § 1132, and that dismissal was required
7 because ERISA preempted Stevenson's claims, ERISA § 514(a), 29
8 U.S.C. § 1144(a). The defendants also moved, pursuant to Rule
9 12(b)(6), to dismiss Stevenson's defamation claim for failure to
10 state a claim. Stevenson cross-moved to remand the entire case
11 to state court. The district court concluded that each of
12 Stevenson's claims, except the defamation claim, was related to a
13 benefit plan and therefore preempted by ERISA. The district
14 court dismissed each of these claims, but granted Stevenson leave
15 to replead them as ERISA claims. The district court dismissed
16 the defamation claim for failure to state a claim, while granting
17 Stevenson leave to replead that claim with greater particularity,
18 and denied Stevenson's cross-motion.

19 Stevenson then filed an amended complaint containing
20 allegations largely identical to those in his original complaint,
21 but now cast as ERISA violations, in addition to his state law
22 claims. The amended complaint named as additional defendants
23 several BNY-related pension, retirement, and benefit plans and
24 contained counts under various provisions of ERISA as well as

1 state law claims for breach of contract, unjust enrichment, and
2 defamation.¹ The district court then dismissed the amended
3 complaint in its entirety for failure to state a claim,
4 concluding that Stevenson had failed to exhaust his
5 administrative remedies with respect to claims under certain
6 plans and had failed to allege sufficient facts to support his
7 claims of entitlement to benefits with respect to other plans.
8 The district court also dismissed Stevenson's ERISA unlawful
9 termination claim for failure to allege that he was terminated in
10 order to prevent the vesting or exercise of his benefits; the
11 district court dismissed an ERISA estoppel claim as redundant of
12 his earlier claims for benefits and, therefore, for failure to
13 exhaust his administrative remedies as to that claim. The
14 district court again dismissed Stevenson's breach of contract and
15 unjust enrichment claims as preempted by ERISA, and his
16 defamation claim on the basis of insufficient factual

¹ Of the various pension plans named in Stevenson's amended complaint, several are regularly administered plans available to BNY employees generally. These include the Tax-Qualified Pension Plan, the Retirement Plan, the Supplemental Executive Retirement Plan ("SERP"), and the Excess Benefit Plan. Stevenson also names as defendants several "plans" that were allegedly applicable solely to him as a result of promises made by individual defendants at BNY. Those plans include the Stevenson Retirement Plan and the Stevenson SERP. Stevenson also names several "non-pension plans" as defendants, including the BNY Profit Sharing Plan, the Phantom Pension Stock Plan, the Employee Stock Ownership Plan, the Employee Savings Investment Plan, and "any other plan under which Mr. Stevenson was a participant. Appellant Br. at 37. The record is unclear as to whether these are regularly constituted BNY plans.

1 allegations. The district court denied leave to amend.

2 Stevenson appealed from the district court's denial of his
3 cross-motion to remand, and its dismissals of the original and
4 amended complaints.

6 DISCUSSION

7 "Whether ERISA preempts a state law or portion thereof is a
8 question of law", which we review de novo. Devlin v. Transp.
9 Commc'ns Int'l Union, 173 F.3d 94, 98 (2d Cir. 1999); cf. Drake
10 v. Lab. Corp. of Am. Holdings, 458 F.3d 48, 56 (2d Cir. 2006)
11 ("The district court's determination regarding preemption is a
12 conclusion of law, and we therefore review it de novo.").

13 In determining the scope of ERISA's preemption provision,
14 our touchstone is congressional intent, primarily as evidenced by
15 statutory language. Gerosa v. Savasta & Co., 329 F.3d 317, 323
16 (2d Cir. 2003). ERISA provides that it "shall supersede any and
17 all State laws insofar as they may now or hereafter relate to any
18 employee benefit plan." 29 U.S.C. § 1144(a). The "relate to"
19 language, however, is so expansive as a textual matter as to
20 afford no meaningful limitation on the scope of ERISA preemption.
21 Therefore, we look to the structure and objectives of the statute
22 as a means of determining the scope of preemption. N.Y. State
23 Conference of Blue Cross & Blue Shield Plans v. Travelers Ins.
24 Co., 514 U.S. 645, 655-56 (1995). This circuit has previously

1 held that the analysis of ERISA preemption must start with the
2 presumption that "Congress does not intend to supplant state
3 law." Gerosa, 329 F.3d at 323 (quoting Travelers, 514 U.S. at
4 654-55) (internal quotation marks omitted). We have also noted a
5 reluctance to find ERISA preemption where state laws do not
6 affect the relationships among "the core ERISA entities:
7 beneficiaries, participants, administrators, employers, trustees
8 and other fiduciaries." Id. at 324. On the other hand, "state
9 laws that would tend to control or supersede central ERISA
10 functions - such as state laws affecting the determination of
11 eligibility for benefits, amounts of benefits, or means of
12 securing unpaid benefits - have typically been found to be
13 preempted." Id.

14 Stevenson's original complaint alleged that he was asked to
15 accept the position of General Manager of BNY-IMB and move from
16 New York to Geneva for a term of two to three years. Compl. ¶
17 29. Stevenson specifically asked the defendants about the status
18 of his BNY pension benefits if he agreed to leave BNY for BNY-
19 IMB, to which defendants responded that they would "maintain
20 [those benefits]." Id. Stevenson then held a series of
21 discussions with BNY's personnel department in which BNY
22 allegedly promised to "maintain [Stevenson's] benefits and to
23 care for his Brooklyn residence" during his absence. Id. ¶ 30.
24 On the basis of these promises, Stevenson terminated his

1 employment with BNY, accepted the position of General Manager of
2 BNY-IMB, and moved his family to Geneva in June of 1991.

3 The complaint then alleges a series of correspondence and
4 other writings concerning Stevenson's pension status:

- 5 • On November 19, 1991, Stevenson corresponded with Douglas
6 Tantillo, BNY's Vice President of Employee Relations, and
7 learned that he had been put on inactive pay status but that
8 his "medical and dental insurance, travel accident
9 insurance, GUL insurance, profit sharing accounts and
10 automatic investment accounts . . . 'remain[ed] in effect .
11 . . .'" Compl. ¶ 36.
- 12 • On December 10, 1991, Stevenson received a memorandum
13 stating that BNY would maintain a "notional salary . . . to
14 facilitate his eventual return to [BNY]." Compl. ¶ 37
15 (internal quotation marks omitted).
- 16 • On February 7, 1995, Tantillo informed Stevenson that "[a]s
17 an inactive employee of the Bank of New York (from June 2,
18 1991), participation in both the BNY Pension Plan and BNY
19 Profit Sharing plan are maintained, but benefit accruals
20 ceased on that date. Your pension accrual is frozen at that
21 date (as a vested participant), and cannot begin again until
22 you again become an active employee. My only notes on this
23 topic indicate that we discussed that the Bank could take
24 administrative action upon your return to New York to give

1 you credit [for] (i.e., bridge) the break-in-service while
2 you were in Switzerland. As prospects for your return are
3 either indefinite or fading, the issue of pension coverage
4 increases in importance." Compl. ¶ 46 (emphasis omitted).

- 5 • And finally, on April 7, 1999, defendant Deno Papageorge,
6 BNY's Senior Executive Vice President and later a Board
7 Member of BNY-IMB, sent a memorandum to BNY's personnel
8 department, memorializing a series of conversations held by
9 Papageorge with members of that department, stating that
10 Papageorge had previously "agreed that BNY would provide
11 [Stevenson] with a pension benefit according to the BNY
12 Plan." Compl. ¶ 50. The memo stated further that "[t]he
13 benefit was to be calculated on [Stevenson's] base salary at
14 the time he left BNY and assumed normal annual salary
15 adjustments. In effect, there would be no break in service
16 for the purpose of calculating retirement benefits.
17 [Stevenson's] current position is equivalent to Senior Vice-
18 President level at BNY, and, therefore, he would qualify for
19 the SERP as well." Id.

20 The complaint's allegations and the writings identified by
21 Stevenson, whatever their contractual significance, do not
22 support a finding of ERISA preemption. First, the defendants'
23 asserted liability under the original complaint does not
24 "derive[]" from "the particular rights and obligations

1 established by [any] benefit plan[]," Aetna Health Inc. v.
2 Davila, 542 U.S. 200, 213 (2004), but rather from a separate
3 promise that references various benefit plans, none of which
4 directly applies to Stevenson by its terms, as a means of
5 establishing the value of that promise. Because Stevenson's
6 state law claims derive from this promise rather than from an
7 ERISA benefits plan, their resolution does not require a court to
8 review the propriety of an administrator's or employer's
9 determination of benefits under such a plan. The BNY benefits
10 plans may provide a benchmark for determining claimed damages,
11 but such damages would be payable from BNY's own assets, not from
12 the plans themselves. Further, Stevenson's state law claims do
13 not allege that any plan administrator or employer breached a
14 fiduciary duty or plan provision relating to the BNY plans.
15 Thus, those claims do not affect the relationships among the
16 "core ERISA entities" with respect to those entities' roles under
17 ERISA. See Gerosa, 329 F.3d at 324.

18 Second, none of Stevenson's state law causes of action
19 purport to require a plan administrator, employer, or beneficiary
20 to follow a standard inconsistent with those provided by ERISA.
21 Should Stevenson ultimately succeed in his state court action,
22 the operation of BNY's benefit plans would need to be referenced
23 in order to establish the extent of his damages, but the actual
24 administration and funding of those plans would be unaffected.

1 Because Stevenson's suit neither interferes with the
2 relationships among core ERISA entities nor tends to control or
3 supersede their functions, it poses no danger of undermining the
4 uniformity of the administration of benefits that is ERISA's key
5 concern. Davila, 542 U.S. at 208 ("The purpose of ERISA is to
6 provide a uniform regulatory regime over employee benefit
7 plans."). On the basis of the allegations in this case,
8 permitting Stevenson to pursue his suit in state court under
9 broadly applicable, common law causes of action would not
10 necessitate "the tailoring of plans and employer conduct to the
11 peculiarities of the law of each [state]." Ingersoll-Rand Co. v.
12 McClendon, 498 U.S. 133, 142 (1990).

13 The defendants argue that Stevenson's claims necessarily
14 "relate to" ERISA benefits because his original and amended
15 complaints allege the same underlying facts, which are "expressly
16 designat[ed] . . . as ERISA claims" in the amended complaint.
17 Appellees' Br. at 43. Stevenson's amended complaint, however,
18 was filed in response to the district court's dismissal of all
19 original state law claims, which allowed Stevenson to replead the
20 underlying facts under the terms of ERISA. In this context, in
21 which Stevenson's ERISA claims were effectively forced upon him,
22 the labels attached to Stevenson's claims are not dispositive of
23 whether those claims in fact "relate to" an ERISA benefit plan
24 for preemption purposes.

1 The defendants go on to argue, relying on Smith v.
2 Dunham-Bush, Inc., 959 F.2d 6 (2d Cir. 1992), that Stevenson's
3 claims "relate to" ERISA employee benefit plans because they
4 "make specific reference to and, indeed, are premised on, the
5 existence of a pension plan." Appellees' Br. at 44. Smith
6 involved a state law complaint, similar to that filed by
7 Stevenson, based on an alleged oral promise to pay pension
8 benefits to the plaintiff employee who left the company in
9 exchange for that promise. Smith, 959 F.2d at 7. This court
10 gave the ERISA "relate to" language a "broad common-sense"
11 reading and noted that a "state law may relate to a benefit plan
12 . . . even if the law is not specifically designed to affect such
13 plans or the effect is only indirect." Id. at 9 (internal
14 quotation marks omitted). In the wake of the Supreme Court's
15 opinion in Travelers (decided after our decision in Smith),
16 however, we suggested that Smith's broad view of ERISA preemption
17 was misguided. Gerosa, 329 F.3d at 327 n.8 ("[O]ur earlier
18 pronouncements in [Smith] suggest that in fact we simply took a
19 very broad view of preemption."). In light of Travelers, and
20 following our approach in Gerosa, we hold in this case that §
21 502(a) of ERISA does not preempt Stevenson's state law claims,
22 which are in themselves neutral toward ERISA plans. These claims
23 make reference to ERISA plans solely as a means of describing the
24 consideration underlying an alleged contract that itself is

1 separate from the terms of any plan; they will not affect the
2 referenced plans, particularly not in a way that threatens
3 ERISA's goal of uniformity. See id. at 325 (noting "general
4 principle that preemption depends on whether state remedies are
5 consistent with ERISA's core purposes"); see also Aetna Life Ins.
6 Co. v. Borges, 869 F.2d 142, 146 (2d Cir. 1989) (noting that
7 "laws that have been ruled preempted are those that provide an
8 alternative cause of action to employees to collect benefits
9 protected by ERISA, refer specifically to ERISA plans and apply
10 solely to them, or interfere with the calculation of benefits
11 owed to an employee").

12 Because Stevenson's original complaint contained no
13 questions arising under federal law, the district court was
14 without jurisdiction to assess the sufficiency of Stevenson's
15 original claim for defamation. Thus, we do not consider that
16 claim on appeal and instead vacate the dismissal of that claim so
17 that the state court may consider its sufficiency along with the
18 rest of Stevenson's original complaint.

19 **CONCLUSION**

20 Accordingly, we VACATE the order of the district court
21 denying Stevenson's motion to remand and dismissing his original
22 complaint and REMAND the case to the district court with
23 instructions to remand the case to New York state court.