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Using The Intricacies Of ERISA For Litigation Success

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Speaking of the Employee Retirement Income Security Act of 1974, Senator Orrin Hatch once remarked, "I have to say it is a real pain every time we get into ERISA ... problems in the Labor Committee; they are almost impossible to fathom, they are complex, they are boring, they are detailed, [and] they are difficult."[1] Similarly, several circuit courts have remarked that "any court forced to enter the ERISA preemption thicket sets out on a treacherous path."[2]

The Tenth Circuit recently addressed two related cases that demonstrate the complexity and detailed nature of ERISA and its conspicuously broad preemption clause.[3] At first glance, it appears that the court has held that ERISA both applied and did not apply to the same factual allegations. While the two opinions may seem contradictory on their face, a careful review of the decisions shows the importance of recognizing the intricacies of ERISA litigation and using those intricacies as tools for success.

The Facts As Plead By the Plaintiffs[4]

In 2012, Trent Lebahn considered early retirement from his sales manager position with the National Farmers Union Insurance Company.[5] In contemplation of his retirement, Lebahn reached out to a pension consultant for the Nation Farmers Uniform Pension Plan, seeking a calculation of his retirement benefits.[6] The consultant notified Lebahn that her calculation showed that Lebahn would receive $8,444.18 per month if Lebahn retired.[7] Sensing the figure was substantially greater than his estimate, Lebahn questioned the consultant's calculation.[8] The consultant and others in the pension department confirmed that Lebahn's monthly retirement benefits were correctly computed.[9]

Deciding that the monthly benefits would support his family during retirement, Lebahn chose to retire.[10] Shortly after retiring, a representative of the plan contacted Lebahn and notified him that he should have only been receiving $3,653.78 per month.[11] The overpayments resulted in Lebahn owing the Plan $43,113.60.[12] Lebahn attempted to return to work, but his position with the company was no longer available and the positions available would require Lebahn to move across the state or involved significant travel.[13]

Lebahn's First Lawsuit

Lebahn filed his first lawsuit against the pension consultant. He did not name the plan. In the first

lawsuit, he alleged that the consultant violated Kansas common law prohibiting negligent misrepresentations by miscalculating his retirement benefits, which induced Lebahn to retire.[14] The consultant moved to dismiss the action on the grounds that ERISA preempted the state law claims.[15] Lebahn responded to the consultant's motion to dismiss claiming that ERISA did not preempt his claims because he only sought recovery from the consultant, not the plan.[16]

The Kansas district court ruled that the claim related to the plan and therefore ERISA preempted the claims.[17] Lebahn then filed a motion asking the court to reconsider its decision. In that motion, Lebahn, for the first time, argued that ERISA did not preempt the action because the consultant was a third-party consultant and not a plan fiduciary.[18] The court denied Lebahn's motion, noting that these arguments should have been raised in response to the motion to dismiss.[19]

Lebahn appealed the district court's denial of the motion for reconsideration.[20] In his appeal, Lebahn alleged that the district court erred by holding that the consultant was a fiduciary of the plan.[21] The Tenth Circuit upheld the district court's ruling on the motion for reconsideration.[22] The court noted that the district court's analysis did not indicate that it held the consultant as a fiduciary of the plan.[23] Lebahn's failure to show that his fiduciary argument could not be raised in response to the motion to dismiss constituted proper grounds for the district court's decision that the argument was not timely raised.[24]

Lebahn's Second Lawsuit

After the first decision, Lebahn soon returned to the courtroom with a new lawsuit.[25] Lebahn's new suit brought new allegations, breach of fiduciary duty and equitable estoppel, made under ERISA against the plan.[26] Lebahn premised his new argument on the basis that the consultant was a functional fiduciary under 29 U.S.C. § 1102(a).[27] As a fiduciary, the consultant miscalculation constituted a breach of her duties.[28] The plan moved to dismiss the action for failure to state a cause of action.[29]

The district court again granted the motion to dismiss Lebahn's claims.[30] The court reasoned that the consultant did not constitute a fiduciary because she lacked discretionary authority.[31] The court also dismissed the equitable estoppel claim on the grounds that Lebahn failed to plead facts for two of the five elements, justifiable reliance and awareness of the true facts.[32] Lebahn appealed the district court's decision, once more, on the ground that the consultant did constitute a plan fiduciary.[33]

The Tenth Circuit again affirmed the decision of the district court.[34] Relying on U.S. Department of Labor interpretation, the court agreed that the consultant lacked discretionary authority.[35] The DOL regulations explicitly state that merely computing benefits for a plan, standing alone, does not constitute discretionary authority, a requirement to qualify as a fiduciary.[36]

While some courts have held that computation of benefits creates a fiduciary duty, the Tenth Circuit declined to adopt such reasoning because it would overly stretch the definition of fiduciary.[37] Because Lebahn failed to allege that the consultant possessed discretionary authority, the district court was correct in dismissing the claim.[38] The Tenth Circuit noted, in regards to Lebahn's equitable estoppel claim, that Lebahn failed to even address one of the elements that the district court noted was not pleaded with facts.[39]

Lessons for Litigators

The decisions in Lebahn I and Lebahn II highlight the significance of ERISA. When the first lawsuit was

filed, Lebahn did not pursue it as an ERISA action. By seeking a ruling that ERISA preempted any state law claim, the consultant was able to invoke the protections of ERISA, which has a very limited remedial scheme. Invoking ERISA can create significant barriers for plaintiffs attempting to recover any monetary damages. The Lebahn decisions provide an example of how the vast preemption clause of ERISA can limit the remedies available not only under ERISA, but under any state law claims as well. An understanding of ERISA's nuances and preemptory power can give a litigator an upper hand in the court room.

Conclusion

The seemingly daunting nature of ERISA sometimes dissuades litigators from using its protections as a tool. But a grasp over the smaller details of ERISA claims is often necessary to successfully defend a claim that relates to an employee benefits plan. And failure to account for the detailed landscape of ERISA claims can just as easily impede success. Plan sponsors and administrators, recognizing the intricacies of ERISA, are better suited trusting their dilemmas to well versed ERISA litigators when problems arise. Instead of fretting the complexity of ERISA, clients are better served by the litigator that embraces the complexity.

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[1]Senator Orrin Hatch; Congressional Record, S. 13289, September 18, 1990 (Remarks made in connection with the passage of the Older Workers Benefit Protection Act in 1990).

[2] Kidneigh v. UNUM Life Ins. Co. of Am., 345 F.3d 1182, 1184 (10th Cir. 2003), cert. denied, 540 U.S. 1184; Gonzales v. Prudential Ins. Co., 901 F.2d 446, 451-52 (5th Cir. 1990).

[3] Lebahn v. Owens, 813 F.3d 1300 (10th Cir. 2016); Lebahn v. Nat'l Farmers Union Unif. Pension Plan, No. 15-3201, 2016 U.S. App. LEXIS 12708 (10th Cir. July 11, 2016).

[4] Because these matters were both resolved on motions to dismiss, the Tenth Circuit decided both cases based solely on the facts alleged in the complaints. Neither complaint was tested by discovery.

[5] Owens, 813 F.3d at 1302-03.

[6] Id. at 1303.

[7] Id.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] Id.

[14] Id.

[15] Id.

[16] Id.

[17] Id.

[18] Id.

[19] Id.

[20] Id. at 1304.

[21] Id. at 1307.

[22] Id. at 1308.

[23] Id. at 1307.

[24] Id. at 1308.

[25] Lebahn v. Nat'l Farmers Union Unif. Pension Plan, No. 15-3201, 2016 U.S. App. LEXIS 12708 (10th Cir. July 11, 2016).

[26] Id. at *3.

[27] Id. at *6-7.

[28] See id. at *3.

[29] Id.

[30] Id.

[31] Id. at *4.

[32] Id.

[33] Id. at *3.

[34] Id. at *5.

[35] Id. at *8.

[36] Id. at *12.

[37] Id.

[38] Id.

[39] Id. at *15.
