

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

SUSAN ANDERSON,

Plaintiff,

vs.

MAYTAG CORPORATION,

Defendant.

No. 4:07-cv-00468-JAJ

ORDER

This matter comes before the court pursuant to plaintiff Susan Anderson's October 16, 2007 motion to remand (docket number 2). Defendant Maytag Corporation resisted plaintiff's motion on November 2, 2007 (docket number 5). For the following reasons, the plaintiff's motion to remand is denied.

I. INTRODUCTION

Factual and Procedural Background

Plaintiff Susan Anderson ("Anderson") filed this matter initially in the Iowa District Court in Jasper County on September 14, 2007. Defendant Maytag Corporation ("Maytag") removed the lawsuit to this court on October 9, 2007, alleging that this court has both federal question and diversity jurisdiction. Maytag argues that diversity jurisdiction is present because Anderson is a resident of Iowa and it is a Delaware corporation with its principle place of business in Michigan. Maytag claims that federal question jurisdiction exists because Anderson's breach of contract claim is preempted by §513 of ERISA because her allegations clearly relate to an employee welfare benefit plan providing pension benefits.

On July 14, 1999, Anderson was presented a letter from Maytag regarding “Maytag Corporation Separation of Employment Plan.” See Exhibit 1 to Maytag’s resistance to Anderson’s motion to remand (Anderson’s Exhibit A). According Anderson, the letter was an effort to entice her to contract with Maytag to continue her employment in the event of a takeover or change of control of Maytag. Maytag characterizes the July 14, 1999 letter as a summary of the Maytag Separation of Employment Plan that was applicable to the recipients of the letters, i.e., summarizing the pertinent terms of the Maytag Separation of Employment Plan in existence at the time and explaining that in the event of a change in control and the subsequent involuntary termination of an eligible employee, the employee would be eligible for certain cash payments, depending on the employee’s tenure and in the discretion of Maytag. Anderson signed and accepted the letter.

Maytag sent Anderson another letter on October 23, 2006, informing her that “[a]s a result of the merger of Whirlpool and Maytag Corporation and the decision to reorganize and eliminate positions,” her employment “will be terminated effective the end of your normally scheduled workday, December 31, 2006.” See Exhibit 2 to Maytag’s resistance to Anderson’s motion to remand. The letter further stated: “Provided you sign the attached Separation Agreement and Release and return it to Human Resources by the date designed in the Release . . . Maytag offers you the following benefits: . . . “Imputed Pension Benefit” for the continuation period under the plan in which you participate prior to your termination.” Attached to the October 23, 2006 letter was the Separation Agreement and Release and the Maytag Corporation Separation of Employment Plan, amended and restated effective January 1, 2006 (“the Plan”). See Exhibit 4 to Maytag’s resistance to Anderson’s motion to remand. The Plan states in pertinent part:

This Separation of Employment Plan, as amended and restated in this document, shall be effective as of the date of its adoption by the Board of Directors of Maytag Corporation,

shall supersede any prior version fo the Plan and any agreement or letter summarizing benefits under the prior version fo the Plan and shall exclusively govern the rights and obligations of Eligible Employees.

See Exhibit 4, p. 1 (docket number 8, p. 1).

The Plan further provides:

Subject to Sections 5, 6, and 7, an Eligible Employee shall, upon the occurrence of a Change of Control followed by an Involuntary Termination within twenty-four (24) months thereafter, be entitled to receive the following

- (d) Eligible Employees shall be entitled to a lump sum payment within thirty (30) days of the effective date of the termination of employment equal to the Eligible Employee's "imputed pension benefit" determined as follows . . .

Exhibit 4, p. 7 (docket number 8, p. 7).

The Plan also contains provisions instructing Eligible Employees on how to apply for benefits and appeal a determination (Exhibit 4, p. 9). Under a section titled "ERISA Rights" the plan states:

Eligible Employees, as participants in the Plan, which is a part of the Maytag Corporation Separation Pay and Benefits Plan, are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all Eligible Employees shall be entitled to:

- Receive Information, About the Eligible Employee's Plan and Benefits
- Prudent Actions by Plan Fiduciaries
- Enforce an Eligible Employee's Rights
- Assistance with Questions

Exhibit 4, pp. 14-15.

Under a section titled “General Information” the plan states:

Type of Plan	An ERISA welfare benefit plan that provides severance benefits in the event an Eligible Employee’s employment terminates under certain circumstances.
Source of Funds	Paid from general assets of the Company - no trust fund, insurance contract or other pool of assets is maintained to provide Plan benefits.

Exhibit 4, pp. 15-16.

II. CONCLUSIONS OF LAW

1. Federal Preemption

In her motion to remand, Anderson argues that this “action is one founded in contract law based on the principles of offer, consideration and acceptance. Plaintiff continued her employment as promised, but did not receive the consideration for which she bargained: imputed pension benefits.” Anderson further contends that this “action is not about the interpretation of an ERISA plan or the calculation of benefits” but rather, it is “about Defendant’s breach of contract, specifically the Defendant’s failure to give Plaintiff the additional 13 months of pension benefits.” Anderson claims that remand is warranted because she did not, on the face of her state court petition, affirmatively allege a claim under ERISA. Anderson finally notes that the Separation Agreement and Release she signed provided that “any action in regard to [the] Agreement arising out of its terms and conditions may be instituted and litigated in the Iowa District Court for Jasper County, Iowa.”

Maytag argues that Anderson’s claim, while not explicitly pleaded as an ERISA claim, falls within the scope of ERISA’s civil enforcement provision, and therefore, this

matter was properly removed pursuant to the “complete preemption” doctrine. According to Maytag, Anderson’s claim that Maytag underpaid her pension benefits arises under the Plan and relates to the Plan, which is a plan governed by ERISA.

ERISA is a remedial statute designed to protect the interests of employees in pension and welfare plans and to protect employers from conflicting and inconsistent state and local regulation of such plans. See Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 138 (1990). ERISA, in part, “empowers ‘a participant or beneficiary’ of an ERISA plan to bring a civil action ‘to recover benefits due to him under the terms of his plan.’” Emmenegger v. Bull Moose Tube Co., 197 F.3d 929, 931 (8th Cir. 1991) (quoting 29 U.S.C. § 1132(a)(1)(B)). “Congress enacted ERISA to ‘protect . . . the interests of participants in employee benefit plans and their beneficiaries’ by setting out substantive regulatory requirements for employee benefit plans and to ‘provid[e] for appropriate remedies, sanctions, and ready access to the Federal courts.’” Aetna Health Inc. v. Davila, 124 S. Ct. 2488, 2495 (2004) (citing 29 U.S.C. § 1001(b)). ERISA’s purpose is “to provide a uniform regulatory regime over employee benefit plans,” and to this end, “ERISA includes expansive preemption provisions . . . which are intended to ensure that employee benefit plan regulation would be ‘exclusively a federal concern.’” Aetna Health Inc. v. Davila, 124 S. Ct. at 2495 (quoting Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 523 (1981)).

ERISA’s preemption clause declares that it “shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan” 29 U.S.C. § 1144(a). Accordingly, “any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted.” Aetna Health Inc. v. Davila, 124 S. Ct. at 2495 (citing Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 54-56 (1987)); Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 143-45 (1990)).

Common law contract and tort claims which relate to the administration of an employee benefit plan covered by ERISA are preempted by ERISA. See Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 62 (1987) (citing Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1987)).

ERISA preempts state laws insofar as those laws relate to an “employee benefit plan.” ERISA distinguishes between employee benefits and employee benefit plans; ERISA governs only benefit plans. See Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 11 (1987). An “employee welfare benefit plan” is described as “any plan, fund or program . . . established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries [specified benefits].” 29 U.S.C. § 1002(1). “To qualify as a ‘plan, fund, or program’ under ERISA, a reasonable person must be able to ‘ascertain the intended benefits, a class of beneficiaries, source of financing, and procedures for receiving benefits.’” Northwest Airlines, Inc. v. Federal Ins. Co., 32 F.3d 349, 354 (8th Cir. 1994) (quoting Donovan v. Dillingham, 688 F.2d 1367, 1373 (11th Cir. 1982)). Further, ERISA regulates only those “benefits whose provision by nature requires an ongoing administrative program to meet the employer’s obligation.” Fort Halifax Packing Co., 482 U.S. at 11. See also Kulinski v. Medtronic Bio-Medicus, Inc., 21 F.3d 254, 257 (8th Cir. 1994) (noting that the “pivotal inquiry” in determining whether a benefit plan in an ERISA plan is “whether the plan requires the establishment of a separate, ongoing administrative scheme to administer the plan’s benefits”). “Simple or mechanical determinations do not necessarily require the establishment of such and administrative scheme; rather, an employer’s need to create an administrative scheme may arise where the employer, to determine the employees’ eligibility for and level of benefits, must analyze each employee’s particular circumstances in light of the appropriate criteria.” Id.

The court finds that Anderson's breach of contract claim is preempted by ERISA because it relates to the administration of severance benefits according to a plan that is covered by ERISA. See Emmenegger v. Bull Moose Tube Co., 197 F.3d 929, 934 (8th Cir. 1997) ("An 'employee welfare benefit plan' is 'any plan, fund, or program . . . to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants,' *inter alia*, severance benefits.) (quoting 29 U.S.C. §1102(1)(B)). See also Fort Halifax Packaging Co., 482 U.S. at 8 ("We have held that the words 'relate to' should be construed expansively: '[a] law relates to an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan.'") (quoting Shaw v. Delta Airlines, Inc., 463 U.S. 86, 96-97 (1983)). Anderson has not refuted Maytag's contention that the Plan satisfies the Donovan factors, i.e., the intended benefits are ascertainable, a class of beneficiaries are identified, the source of financing is identified, and it outlines the procedures for receiving benefits. Moreover, the court finds that the Plan requires an ongoing administration scheme to identify eligible employees, provide benefits over a 24-month period, determine the amount of severance due under competing formulas, and to determine whether the employee was terminated for cause. Thus, the Plan at issue is an ERISA plan and Anderson's cause of action relates to the Plan. Accordingly, Anderson's state law claims are preempted and this court has federal question jurisdiction. Anderson's motion to remand is denied.

2. Diversity Jurisdiction

Title 28 United States Code §1332(a)(1) provides:

The district court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.

Alternatively, Maytag argues that removal of this matter was proper because diversity jurisdiction exists, i.e. Anderson is a resident of Iowa and Maytag is a Delaware corporation with its principle place of business in Michigan. In her motion to remand, Anderson does not address Maytag's argument that diversity jurisdiction exists, and filed no reply brief disputing Maytag's diversity jurisdiction argument.

While the plaintiff pleaded residence, and not citizenship, the record appears to be sufficient to find that diversity jurisdiction exists under 28 U.S.C. §1332. Linsley v. Dillard's, Inc., 306 F.3d 596, 599 (8th Cir. 2002) (finding the pleadings sufficient to allege diversity of citizenship where the plaintiff was a resident of Missouri and the defendant was a Delaware corporation with its principle place of business in Arkansas). Further, as Anderson has asserted a claim for punitive damages, the amount in controversy meets the requisite amount. Alternatively, the court would deny Anderson's motion to remand due to the existence of diversity jurisdiction.

Upon the foregoing,

IT IS ORDERED that plaintiff's October 16, 2007 motion to remand (docket number 2) is denied.

DATED this 16th day of November, 2007.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA