

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

EDWARD J. WORCESTER,)
)
 Plaintiff)
)
v.) Civil No. 98-155-B
)
ANSEWN SHOE COMPANY)
LIMITED PARTNERSHIP,)
)
 Defendant)

FINDINGS OF FACT AND CONCLUSIONS OF LAW¹

In this action, Plaintiff alleges that Defendant violated the Employment Retirement Income Security Act (ERISA) by terminating his employment with the intent to interfere with his right to health insurance. 29 U.S.C. § 1140.² The Court conducted a trial on the matter on July 19-22, 1999. For the Plaintiff George McKay, Ralph Cammack, Christel Martis, Chester Pelletier, Richard Herlihy, and Edward Worcester testified.³ The Court has before it exhibits stipulated by the parties and entered into evidence. At the close of Plaintiff's case, the Court

¹ Pursuant to 28 U.S.C. 636(c) (1993), the parties have consented to proceed before the United States Magistrate Judge.

² Plaintiff's other claims were resolved in Defendant's favor by summary judgment entered June 30, 1999 (Docket No. 36).

³ Because of scheduling difficulties Whitman Browne, a human resources consultant hired by Ansewn, testified for Defendant before the close of Plaintiff's case.

granted Defendant's motion for judgment as a matter of law on Plaintiff's ERISA claim pursuant to Fed. R. Civ. P. 52(c).

Rule 52(c) Standard

Fed. R. Civ. P. Rule 52(c) reads:

If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.

Under the rule the Court is not required to consider the evidence in a light most favorable to the nonmovant. *See Winning Ways, Inc. v. Holloway Sportswear, Inc.*, 913 F. Supp. 1454, 1460 (D. Kan. 1996). "Instead, in determining whether the motion should be granted, the court independently evaluates and weighs the evidence." *United States v. Davis*, 20 F. Supp. 2d 326, 331-32 (D.R.I. 1998).

Pursuant to Fed. R. Civ. P. 52, the Court makes the following findings of fact and conclusions of law in support of its decision to grant Defendant's motion for judgment as a matter of law.

Findings of Fact

Defendant Ansewn Shoe, located in Bangor, Maine, hired Plaintiff, Edward

Worcester, in 1980 to work as a handsewer. Plaintiff later progressed through a number of promotions until he became handsewing supervisor in 1987 and remained at that position until he was terminated on October 18, 1996. Plaintiff contends that Defendant terminated his employment with the intent to interfere with his insurance. Accordingly, the Court limits its findings to the relevant time frame, namely 1996, in its findings below.

In the spring of 1996, Ron Anson, the owner of Ansewn Shoe, fired Ansewn's president, Perry Harrison, because of the company's poor financial performance. Soon afterward, Ron Anson assembled all of Ansewn's employees, including Plaintiff, to notify them that the company was performing poorly, and that if the company's performance did not improve the company would close its doors. Later that spring the company laid off a number of workers because of the company's poor performance.

In mid-August 1996 Ron Anson hired Jim Tucker to replace Ralph Cammack as plant manager. Cammack remained at the company as a supervisor of one of the departments. Tucker's primary goal was to increase the efficiency and production of the facility in a short period of time. In pursuit of that goal he instituted weekly meetings and set production goals for various departments.

Tucker further considered replacing the management team, or supervisors,

with new personnel, and consolidating other management positions. By early September Tucker gave a document to Richard Herlihy, Senior Vice President of Operations at Ansewn, dated September 6, 1996, that contained proposed changes in management including replacing Plaintiff as handsewing supervisor.

During this time, in early September, Plaintiff was scheduled to have surgery for treatment of prostate cancer. Plaintiff's doctor notified Plaintiff that he had prostate cancer in August and Plaintiff notified his supervisors and other employees at Ansewn of his condition. He left work to receive surgery on September 13, 1996.

By mid-September Tucker still intended to replace a number of supervisors. However, he decided to delay terminating Plaintiff until sometime after his surgery was completed and chose to give one of the supervisors another chance. Tucker also instituted a severance plan for those supervisors he intended to terminate. On September 20, 1996, Tucker did, in fact, terminate three supervisors, Bill Hyde, Steve Klimas and Ralph Cammack.

Plaintiff had successful surgery and was cleared to return to work with restrictions in late October. Plaintiff's doctor lifted all restrictions after October 30, 1996.

On October 18, 1996 Plaintiff had a meeting with Tucker in which Tucker

told him that he was terminated in his position as handsewing supervisor. Tucker then offered three options. First, Tucker stated that Plaintiff could work as a handsewer. Second, Tucker offered to have Plaintiff trained as an uppercutter. Third, Tucker told Plaintiff that he could leave the company and receive a severance package.

Plaintiff told Tucker he could not be an uppercutter or a handsewer because of his recent surgery. However, Plaintiff never met with his doctor regarding his inability to be a handsewer or uppercutter and never provided anything other than his own opinion to Ansewn regarding his ability to perform those jobs. Tucker told him that the three options were the only ones offered. After thinking about it for a day Plaintiff chose to accept the severance package. Ansewn paid Plaintiff under its disability plan until October 30th because Plaintiff gave Tucker a doctor's note which restricted him to light duty work until that date.

Christel Martis's testimony

The Court recites the testimony of Christel Martis separately from the other facts. It does so because it became apparent during the course of the trial that Martis was the only witness that offered testimony supporting Plaintiff's ERISA claim. The following are those statements which the Court accepts as fact.

During the time Tucker was plant manager Martis was employed as safety

director and assisted Tucker with administrative duties. While Martis has an “enormous problem” with dates she remembers more than one conversation with Tucker regarding the health insurance offered by Ansewn. The first occurred in mid-August shortly after Tucker arrived at Ansewn. Tucker asked Martis if she understood how the company acquired health insurance. Martis told him that the company purchased insurance through a third party administrator Morse, Payson & Noyes.

In mid-September 1996, another conversation took place with Tucker in which Tucker asked her which employees had large health claims or missed work due to illnesses. Martis stated that Cammack had been out for an extended period of time and also mentioned Bill Hyde and two other people who worked in the factory. Martis does not know if she mentioned Plaintiff’s name to Tucker.

Later, Tucker told Martis that he thought the company could save money if it changed health insurance companies. Tucker asked Martis to obtain loss run information from Ansewn’s present insurance provider because he needed the information to receive a quote from a friend who was an insurance agent. In November 1996, Martis overheard Tucker speaking with the agent. During the conversation, she heard Tucker tell the agent that he thought the quote would be lower and that the losses were gone or would be gone. Martis never heard Tucker

mention any names during the conversation and assumed that the losses Tucker referred to were employees who had large claims.

Discussion

Plaintiff brings his claim under section 510 of ERISA. That section reads:

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan . . . for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan

29 U.S.C. § 1140. Under this section, the primary inquiry “is whether the employment action was taken with the specific intent of interfering with the employee’s ERISA benefits.” *Barbour v. Dynamics Research Corporation*, 63 F.3d 32, 37 (1st Cir. 1995) (citing *Clark v. Coats & Clark, Inc.*, 990 F.2d 1217, 1222 (11th Cir. 1993)). To demonstrate that the defendant specifically intended to interfere with the employee’s ERISA benefits the plaintiff does not need to demonstrate that interfering with ERISA benefits was the sole reason for terminating his employment. Instead, to sustain the ERISA claim, the plaintiff need only prove that a motivating factor behind the termination was to interfere with the employee’s ERISA benefits. *Barbour*, 63 F.3d at 37 (citing *Dister v. Continental Group, Inc.*, 859 F.2d 1108, 1111 (2d Cir. 1988)).

A. Plaintiff's case

At this stage the Court sees no need to proceed through the familiar burden shifting framework in McDonnell Douglas. As one Court has written:

The McDonnell Douglas framework is designed to help plaintiffs raise an inference of discrimination during pretrial proceedings. After the trial on the merits, the burden-shifting apparatus has served its purpose and the required preliminary showings fall away. At this point, we need ask only whether the plaintiff was a victim of intentional discrimination

Diettrich v. Northwest Airlines, Inc., 168 F.3d 961, 965 (7th Cir. 1999) (citations omitted). Likewise, here, the Court need only ask whether a motivating factor behind Ansewn's decision to terminate Plaintiff's employment was an intent to interfere with Plaintiff's insurance benefits.

The Court is satisfied that the testimony offered at trial clearly demonstrated that Ansewn's decision to terminate Plaintiff was part of a restructuring process. Almost every witness called by Plaintiff testified that Ansewn had undergone a series of reductions in its workforce until, by early 1997, the workforce was about half it was ten years earlier.

With respect to the particular termination at issue in this case the Court finds as follows. Ron Anson hired Jim Tucker to begin as plant manager in August 1996. Almost immediately after starting his position Tucker told Herlihy

that he intended to make changes in management. By September 6, 1996 Tucker circulated a document among his superiors indicating that he intended to replace five supervisors including Plaintiff. Tucker terminated the employment of three supervisors on September 20, 1996, and delayed terminating Plaintiff's employment as handsewing supervisor until October 18, 1996 because Plaintiff received surgery on September 13, 1996.

As stated above, Christel Martis's testimony is the only testimony that possibly supports Plaintiff's claim. Understandably, Plaintiff places great weight on her testimony. However, for several reasons, her testimony is insufficient to sustain Plaintiff's claim. First, although Martis initially testified that she did mention Plaintiff's name when Tucker asked her who had large insurance claims, she later testified under cross-examination that she did not know if she mentioned Plaintiff's name to Tucker thereby undermining the reliability of her testimony. Second, even assuming that she did mention Plaintiff's name, she testified that she had that conversation with Tucker after Plaintiff had left for surgery. That would place the conversation sometime after September 13, 1996, a week after Tucker circulated a document that suggested that Plaintiff and some others named by Martis as having large health claims be removed as supervisors, thereby directly contradicting the assertion that Ansewn was motivated to terminate the

supervisor's employment because Martis identified them as having large health insurance claims.⁴ In fact, the only conversation Martis testified she had with Tucker prior to mid-September was a conversation in which Tucker merely asked her how Ansewn purchased its health insurance.⁵

The testimony offered by Plaintiff's own witnesses paints a picture of a company in financial turmoil that was forced to reduce its workforce by half and to make changes in management, first by firing its president in the Spring of 1996, and later by firing several members of management in the fall of 1996. The evidence presented by Plaintiff at trial simply failed to prove that there were other sinister reasons, namely a motivation by his employer to save money on the health insurance premiums it paid, behind his termination as handsewing supervisor.

⁴ To support his claim Plaintiff points out that Martis also identified Ralph Cammack and Bill Hyde as employees who had large health insurance claims, and that they like Plaintiff were terminated. However, this argument is unpersuasive in light of the fact that Tucker also identified Cammack and Hyde in the September 6, 1996 document as supervisors he intended to replace.

⁵ Plaintiff also points to a conversation recounted by Martis that occurred between Tucker and the agent in late November 1996. Apparently, Tucker told the agent after he received a quote higher than he expected that the losses are gone or would be gone. However, during cross-examination Martis testified that she only heard what Tucker said during the conversation and *assumed* that they were referring to the fired supervisors. Assumptions of what may have been said are insufficient to sustain Plaintiff's burden of proof in this matter.

Conclusion

For reasons stated above, Judgment is issued in Defendant's favor on Plaintiff's ERISA claim.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated on: