

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

LOUIS DONATO, in his capacity)
as Administrator of the Estate))
of GLORIA ZINNI, and as)
Natural Guardian of the Heir-)
at-Law, and under certain Will))
and Trust Documents, DANA)
ZINNI DONATO, and as Trustee)
of the Estate of DOMENIC A.)
ZINNI)

Plaintiff,)

v.)

C.A. No. 97-283L)

RHODE ISLAND HOSPITAL TRUST)
NATIONAL BANK and JAMES)
WINOKER, in their capacity as)
Co-Executors and Co-Trustees)
for the Trust of Domenic A.)
Zinni, Deceased, and RICHARD)
H. PIERCE, ESQ., as Partner of)
the Law Firm of HINCKLEY,)
ALLEN & SNYDER, and JOHN DOE)
and JANE DOE, partners in said)
Firm)

Defendants)

MEMORANDUM AND ORDER

Ronald R. Lagueux, Chief Judge.

Plaintiff Louis Donato ("plaintiff") is the executor of the estate of Gloria Zinni and the guardian of Gloria's daughter and heir Dana Zinni Donato. This case began in state court in 1992 with allegations of nonfeasance against the Rhode Island Hospital Trust Bank, James Winoker, the law firm of Hinkley Allen & Snyder, and Richard Pierce, a partner in that firm (together "defendants"). After the third amended complaint was filed in 1997, defendants removed the case to this Court asserting that

one of the new claims implicated the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et. seq. ("ERISA").

Plaintiff filed an objection to removal, and Magistrate Judge Robert W. Lovegreen, treating it as a motion to remand, ruled that the suit had been properly removed to this Court and should not be remanded to state court. Relying on Supreme Court and First Circuit precedents, he reasoned that ERISA preempted at least part of the claims made in plaintiff's complaint.

This case is before this Court on plaintiff's objection to Magistrate Judge Lovegreen's decision.

I. Standard of Review

Magistrate Judge Lovegreen styled his decision a "Report and Recommendation," but a motion to remand is non-dispositive and is better-characterized as a final order. See Delta Dental of Rhode Island v. Blue Cross & Blue Shield of Rhode Island, 942 F. Supp. 740, 746 (D.R.I. 1996). Thus, this case is really an appeal of a final order, rather than an objection to a report and recommendation. The appropriate standard of review is whether this Court finds the magistrate judge's conclusions to be "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); D.R.I.R. 32(b).

II Discussion

In this case, Magistrate Judge Lovegreen's decision is not clearly erroneous or contrary to law. In fact, it is the correct decision based on the precedents in Ingersoll-Rand Co. v. McClendon, 498 U.S. 133 (1990), Carlo v. Reed Rolled Thread Die

Co., 49 F.3d 790 (1st Cir. 1995), and Vartanian v. Monsanto Co., 14 F.3d 697 (1st Cir. 1994). As such, there is no utility in completely rehashing the arguments.

Briefly, this complaint "relates to" an ERISA plan under the first prong of the Ingersoll-Rand test because "the court's inquiry must be directed to the plan." Ingersoll-Rand, 498 U.S. at 140.

Plaintiff correctly notes that the cause of action is based on the actions and inactions of defendants and not on the machinations of a retirement plan. (See Memo. Of Law in Supp. of Pl.'s Objection to Report and Recommendation, at 4.) But plaintiff does not recognize the breadth of ERISA preemption. As plaintiff notes, there would be no federal jurisdiction for a state law claim merely because the alleged misdeeds involved an FDIC-insured bank account. (See id.) However, ERISA is different. Its preemption provision cuts a wide swath, reaching state laws that "relate to" employee benefit plans in a broad sense. See Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 99 (1983) (noting "breadth" of intended preemption in legislative history).

In Carlo, the First Circuit rejected an argument that is nearly identical to the one made here by plaintiff. Carlo sued his former employer for misrepresentation and argued that although the misrepresentation concerned a retirement plan, the claim did not relate to the plan itself. See Carlo, 49 F.3d at 793. Carlo emphasized that he did not seek greater benefits or damages from the plan. See id. The First Circuit recognized

that some courts have found against preemption in similar cases, in part because ERISA preemption often leaves a plaintiff without a remedy. See id. at 793-94. But it held that Carlo's claims were preempted because the court would have to analyze the ERISA-covered plan to calculate damages. See id. at 794.

As Magistrate Judge Lovegreen noted, the court in this case would have to analyze ERISA to calculate damages and to decide whether defendants failed to protect Domenic A. Zinni's intentions regarding the distribution of his estate. (See Report and Recommendation, at 10-11.) Defendants' alleged duties are inexorably intertwined with ERISA, and Congress has explicitly placed those issues in the hands of federal law deciders.

For the preceding reasons, this Court affirms Magistrate Lovegreen's decision. Because plaintiff's claims are preempted, removal was proper and plaintiff's motion to remand was appropriately denied.

It is so Ordered.

Ronald R. Lagueux
Chief Judge
September , 1998