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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

PEARL B. ARTHUR et al.,	)	
Plaintiffs,	)	
v.	)	No. 3:92CV854
BELL ATLANTIC CORPORATION et al.,	)	
Defendants.	)	

MEMORANDUM OPINION

This matter is before the Court on the defendants' motion to dismiss, or in the alternative, for summary judgment. Fourth Circuit precedent makes it clear that defendants are entitled to judgment as a matter of law. Thus, even construing the allegations in the plaintiffs' Complaint in the light most favorable to them, as the Court is required to do, Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), the law mandates that the defendants' motion to dismiss be granted.

I. Count One: Breach of Fiduciary Duties under ERISA

Count One fails to state a claim upon which relief can be granted. The Fourth Circuit explicitly rejected the plaintiffs' proposed theory of recovery in Stanton v. Gulf Oil Corp., 792 F.2d 432 (4th Cir. 1986). The Stanton court held that the fiduciary duties which arise under ERISA are owed only to "participants" in an ERISA plan, and that an employee is not a "participant" in an ERISA plan enhancement until the terms of the enhancement are actually adopted in the Plan. Plaintiffs do not allege that the

enhanced benefit package announced to employees on or about August 14, 1991 had been adopted as part of Bell's management pension plan before plaintiffs accepted the severance pay retirement incentive offered through the FMP. Thus, plaintiffs were not "participants" in the enhancement and cannot state a claim for breach of fiduciary duty relating to any information contained therein.

The Fourth Circuit in Stanton affirmed the district court's award of summary judgment in favor of the defendants because plaintiff was not a "participant" in the pension enhancement and thus had no claim for a breach of fiduciary duty. The Stanton court observed that only a plan "participant," "beneficiary," "fiduciary" or the Secretary of Labor can bring a civil action under ERISA. 792 F.2d at 434, citing 29 U.S.C. § 1132(a)(2). The Court of Appeals held that an employee cannot be a "participant" in pension plan amendments increasing benefits before those amendments are put into effect:

> It is not a violation of ERISA to fail to furnish information regarding amendments before those amendments are put into effect. . . . This is so because the legislative intent of ERISA was not to assure the sanctity of early retirement expectation, but to safeguard accrued retirement benefits.
> . . . .
>
> Although ERISA does mandate fiduciary duties with respect to employee benefits plans, such duties are solely with respect to participants. The duties do not begin until the terms at issue are incorporated into a plan.

Stanton, 792 F.2d at 435 (emphasis supplied).

The essence of the claim in this case is that defendants breached a fiduciary duty before the plaintiffs retired by failing to inform them about pension plan amendments which were not adopted

until after the plaintiffs already had retired and accepted benefits under a previous version of the plan. This claim is not cognizable under ERISA.

Plaintiffs' attempts to distinguish Stanton are of no moment. The factual differences between this case and that one are trivial and of no legal significance. The Stanton court's recognition of an alternative factual basis for affirming the entry of summary judgment in no way diminished its definitive legal conclusion that "[t]he district court correctly granted Gulf Oil's motion for summary judgment on the basis that Stanton was not a participant in the [plan] and could not . . . bring this action under ERISA." 792 F.2d at 435. Furthermore, plaintiffs' attempts to characterize their suit as one to "enforce the SPD of the FMP" do not alter the Court's analysis. The gravamen of plaintiffs' Complaint is that they were not told about increased pension benefits which had not yet been adopted. Stanton dictates that such a cause of action cannot withstand defendants' motion to dismiss.

II. Count Two: Breach of Contract/Promissory Estoppel

Plaintiffs assert a separate breach of contract claim in their Complaint which they now characterize as a "breach of fiduciary duty and promissory estoppel" claim. Were these claims based on state law, they clearly would be preempted. Powell v. Chesapeake & Potomac Telephone Co. of Virginia, 780 F.2d 419, 422 (4th Cir. 1985). In an attempt to avoid preemption, plaintiffs couch their claims in "the federal common law of ERISA." The Court is well aware of its responsibility to help develop "a federal common law

of rights and obligations under ERISA-regulated plans." Singer v. Black & Decker, 964 F.2d 1449, 1452 (4th Cir. 1992). Of course, such law is not to be created willy-nilly, as the Fourth Circuit recognized:

> [C]ourts must be conscientious to fashion federal common law only when it is necessary to effectuate the purposes of ERISA. Thus, resort to federal common law is generally inappropriate when its application would conflict with the statutory provisions of ERISA, discourage employers from implementing plans governed by ERISA, or threaten to override the explicit terms of an established ERISA benefit plan.

Id. (citations omitted).

With these principles in mind, the Court is left with no choice but to dismiss plaintiffs' contract claim. This is clearly an instance where the asserted common law cause of action is unwarranted. The Court cannot legitimize a promissory estoppel or breach of fiduciary claim under ERISA common law when the alleged fiduciary duty, which is the basis of the claim, never even existed under ERISA. The plaintiffs were not plan participants; thus, they were not owed a fiduciary duty, no matter how their claim is dressed up. The Court cannot hold a party liable for failing to provide "complete information" where, as a matter of law, there was no duty to disclose any information regarding a subsequent plan enhancement until that enhancement was incorporated into the pension plan. No case cited by plaintiffs decides a truly analogous fact pattern in any other fashion.

Singer counsels that the creation of federal common law under ERISA is generally inappropriate under certain circumstances, two of which exist here. First, plaintiffs' common law cause of action

"conflict[s] with the statutory provisions of ERISA," Singer, 964 F.2d at 1452, which explicitly provide that only plan "participants," "beneficiaries," "fiduciaries" or the Secretary of Labor can bring a civil action under ERISA. 29 U.S.C. § 1132(a)(2). Stanton leaves no doubt that plaintiffs are none of the above; to permit them to maintain their common law cause of action would contradict the statute. Second, the common law theory plainly would "discourage employers from implementing plans governed by ERISA." Singer, 964 F.2d at 1452. Employees undoubtedly benefit when their employers upgrade severance packages and implement more generous pension benefit plans for their workers. Recognition of plaintiffs' cause of action would have a chilling effect on such activity, as employers would be frightened even to put proposed new packages on the drawing board for fear that they might get sued for failing to disclose plans that are not yet, and may never be, formally adopted. As the Stanton court noted, the purpose of ERISA is "to safeguard accrued benefits." 792 F.2d at 435 (emphasis supplied). This purpose clearly is not served by recognizing the common law theory advanced by plaintiffs here.

Plaintiffs in Count Two essentially ask the Court to toss a common law life preserver to a claim that is dead in the ERISA waters. This it will not do.

III. Conclusion

For the reasons stated above, defendants are entitled to judgment as a matter of law. Even construing the facts of this

case in the light most favorable to plaintiffs, their Complaint is fatally deficient under Fed. R. Civ. P. 12(b)(6).

Let the Clerk send a copy of this Memorandum Opinion and the accompanying Final Order to all counsel of record.

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DATE	SENIOR UNITED STATES DISTRICT JUDGE