

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHER DISTRICT OF TEXAS
DALLAS DIVISION

SUPERMEDIA, INC., ET AL.,)	
)	
Plaintiffs,)	CIVIL ACTION NO.
)	
VS.)	3:12-CV-2034-G
)	
LINTON BELL, ET AL.,)	

**ANSWER AND COUNTERCLAIM BY
DEFENDANTS MENTZER, NOE, OHNSTAD, PALMER and ZENUS**

Defendants Robert Mentzer, Sandra Noe, Carl Ohnstad, Claire Palmer, and Bernard (collectively “Defendants”) file this Answer to the First Amended Complaint, docket entry 23, and make the following Counterclaim against all of the Plaintiffs, and state as follows:

SUMMARY OF CLAIMS

1. Defendants admit that the SuperMedia Plaintiff have attempted to bring a declaratory judgment action and deny they have stated any cognizable claim under the Employee Retirement Income Security Act (“ERISA”). To the extent a further response is required, the Defendants deny the allegations of paragraph 1 of the First Amended Complaint.

PARTIES

2-34. Defendants admit the allegations of paragraphs 1 through 34 of the First Amended Complaint.

VENUE and JURISDICTION

35-37. Defendants deny the allegations of paragraphs 35 through 37 of the First Amended Complaint, and the Defendants further state the Court does not personal jurisdiction over Defendants with respect to the SuperMedia Plaintiffs’ purported claim, and Defendants further state that the SuperMedia Plaintiffs fail to state a claim upon which relief can be granted.

FACTS AND APPLICABLE LEGAL STANDARDS

38-65. Defendants admit the allegations of paragraphs 38-65 of the First Amended Complaint.

66. Defendants deny the allegations of paragraph 66 of the First Amended Complaint and further state the SuperMedia Plaintiffs fail to state a cognizable claim under ERISA and they have no controversy ripe for the Court's determination.

67. Defendants deny the allegations of paragraph 67 of the First Amended Complaint and further state the Court has already dismissed some of the named defendants whom the SuperMedia Plaintiffs allege to be suitable class representatives.

68. Defendants deny the allegations of paragraph 68 of the First Amended Complaint.

69. Defendants deny the allegations of paragraph 69 of the First Amended Complaint.

COUNT 1: DECLARATORY JUDGMENT

70. Defendants incorporate and restate by reference the foregoing responses to paragraphs 1 through 69 of the First Amended Complaint, inclusive, as if they were fully set forth herein.

71. Defendants deny the allegations of paragraph 71 of the First Amended Complaint and further state that the SuperMedia Plaintiffs fail to state a cognizable claim under ERISA.

72. Defendants admit the allegations of paragraph 72 of the First Amended Complaint.

73. Defendants deny the allegations of paragraph 73 of the First Amended Complaint.

74. Defendants admit the allegations of paragraph 74 of the First Amended Complaint.

75. Defendants deny the allegations of paragraph 75 of the First Amended Complaint and further state that the SuperMedia Plaintiffs fail to state a cognizable claim under ERISA.

76. Defendants deny the allegations of paragraph 76 of the First Amended Complaint and further state that the SuperMedia Plaintiffs fail to state a cognizable claim under ERISA and the SuperMedia Plaintiffs have needlessly pursued this litigation.

77. Defendants deny the allegations of paragraph 77 of the First Amended Complaint and further state that the SuperMedia Plaintiffs fail to state a cognizable claim under ERISA and the SuperMedia Plaintiffs have needlessly pursued this frivolous civil action filed against Defendants.

78. Defendants deny the allegations of paragraph 78 of the First Amended Complaint and further state that the SuperMedia Plaintiffs fail to state a cognizable claim under ERISA and the SuperMedia Plaintiffs have needlessly pursued this litigation.

The Defendants deny each and every allegation of the First Amended Complaint not heretofore specifically admitted.

PRAYER FOR RELIEF

With respect to the SuperMedia Plaintiffs' prayer for relief, the Defendants deny that the SuperMedia Plaintiffs are entitled to the relief requested, or any other relief. The Defendants request that the Court:

- A. dismiss this action with prejudice;
- B. award the Defendants their costs and attorneys' fees; and
- C. grant the Defendants such other relief as the Court deems appropriate.

AFFIRMATIVE AND OTHER DEFENSES

The Defendants, in the alternative and without prejudice to the denials and other statements made in their Answer to the First Amended Complaint, for their Affirmative and Other Defenses, state as follows

FIRST DEFENSE

The First Amended Complaint fails to state a claim upon which any relief can be granted.

SECOND DEFENSE

The SuperMedia Plaintiffs' claim is barred in whole or in part by the failure to first provide Defendants and all other retirees a full and fair review of the administrative claims.

THIRD DEFENSE

The SuperMedia Plaintiffs' claim is barred in whole or in part to the extent that the SuperMedia Plaintiffs seek relief that is not authorized by ERISA.

COUNTERCLAIMS UNDER ERISA

Jurisdiction and Venue

1. The Court has jurisdiction of the counterclaims for relief based upon the civil enforcement provisions of ERISA, 29 U.S.C. §§ 1132(a)(1)(A), (a)(2), (a)(3), 1132(e)(1) and 1132(f), and upon 28 U.S.C. §§ 1331.

2. Relief is also sought under 28 U.S.C. §§ 2201 and 2202, granting any district court of the United States, in a case of actual controversy within its jurisdiction, the power to declare the rights and other legal relations of any interested party seeking such declaration and to grant further necessary or proper relief based upon a declaratory judgment or decree.

3. Venue of this action lies in the Northern District of Texas, pursuant to 28 U.S.C.

§ 1391(b) and 29 U.S.C. § 1132(e)(2), in that acts complained of herein occurred within this District and the subject pension benefit plans are administered in this District.

The Parties

4. Defendants incorporate and restate by reference the SuperMedia Plaintiffs allegations about the parties set forth in paragraphs 2 through 7, 23, 24, 25, 26 and 30 of the First Amended Complaint, inclusive, as if those allegations and Defendants' admissions thereto were fully set forth herein.

Facts

5. During November 2006, each Defendant was involuntarily transferred from employee benefit plans sponsored by Verizon Communications Inc. and made participants in retiree benefit plans sponsored by SuperMedia Inc., previously known as Idearc Inc.

6. On June 25, 2012, the Employee Benefits Committee of the SuperMedia Board of Directors voted to amend three of its retiree welfare benefits plans to the substantial detriment of the retirees, including Defendants. For example, SuperMedia has declared it will reduce or eliminate contributions to retirees' health insurance premiums and that it will increase co-pays and deductibles.

7. On June 26, 2012, SuperMedia sent notice of the plan amendments to those retirees who are potentially affected, including each of the Defendants. With its notice, SuperMedia included a "Claim Form" that allowed Defendants to "make a claim for benefits, raise questions, voice concerns, or make objections regarding the Amendments and SuperMedia's legal right to amend, modify, revoke, or terminate the Plans at any time."

SuperMedia's Claim Form states that the "purpose ... is to provide you with a procedure to object to SuperMedia's right to amend" the plans.

8. SuperMedia intentionally solicited each of the Defendants to complete a Claim Form and send it back to SuperMedia. Defendants and about 900 other retirees did exactly that.

9. Numerous retirees, including some of the Defendants sent SuperMedia a written claim form that states:

I was surreptitiously and involuntarily transferred from Verizon's sponsored retiree benefit plans. I have never consented to being enrolled in Idearc/SuperMedia's sponsored retiree benefit plans. I expressly object to each and every negative detrimental change that has been proposed and announced by SuperMedia. SuperMedia has no right to amend, modify, revoke or terminate any of my retiree benefits. I submit this as a written claim for continued retiree benefits, and for all of the reasons stated and established in the legal arguments and supporting documentation submitted by attorneys for the Plaintiffs/Class Representatives in the pending *Murphy* lawsuit, I expressly demand that, immediately, I be transferred out of SuperMedia's retiree benefit plans and reinstated into Verizon's retiree benefit plans and restored all lost benefits.

(see docket entry 23-46, Exs. W-AM, sample collection of claim forms, including those submitted by Defendants).

10. The Defendants' protests and submissions of claim forms do not rise to the level of being acts of clear repudiation of the terms of any of the employee benefit plans. In all fairness, before filing this lawsuit, SuperMedia should have first responded to the retirees' written claims and administratively processed the claims. No Defendant could have pursued a declaratory judgment claim under ERISA without having first exhausted internal plan procedures.

11. The Defendants and all other retirees were entitled under ERISA and, in accordance with the terms of SuperMedia's employee benefit plans, to submit their written claim forms.

12. In bad faith, prior to filing this lawsuit and harassing unsuspecting retirees from

the far corners of this nation, there was no effort by SuperMedia to comply with the plans' internal claims process and give either the Defendants or any other retiree a full and fair review of their written claims.

13. By instantly filing this lawsuit against the Defendants whom were randomly selected out of a group of over 900 retirees that sent in the same or similar claim forms, the SuperMedia Plaintiffs violated ERISA Section 510, 29 U.S.C. § 1140, which statutory provision reads, in pertinent part: "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 to under the provisions of an employee benefit plan [or ERISA]." (emphasis added).

14. Defendants were named as defendant parties in this most unnecessary and frivolous lawsuit in retaliation for exercising their rights under ERISA and under the employee benefit plans. The SuperMedia Plaintiffs had the specific intent to violate ERISA, to discipline Defendants, to retaliate against Defendants and discriminate against Defendants. The SuperMedia Plaintiffs actions have caused Defendants to incur significant legal fees and expenses with this unnecessary lawsuit.

FIRST COUNTERCLAIM FOR RELIEF
(Against SuperMedia Employee Benefits Committee
For Breach of Fiduciary Duty)

15. Defendants incorporate and reallege by reference the foregoing paragraphs 1 through 14 of their counterclaims, inclusive, as if they were fully set forth herein.

16. Plaintiff SuperMedia Employees Benefit Committee, the named fiduciary and administrator of the SuperMedia retiree benefit plans, by acting in concert with the other

Plaintiffs and ambushing Defendants and filing this civil action against them after soliciting them to complete and return a claim form, severely failed to discharge duties to act solely in the interests of the participants and beneficiaries, as required by ERISA Section 404(a)(1), 29 U.S.C. § 1104(a)(1).

SECOND COUNTERCLAIM FOR RELIEF
(Against all SuperMedia Plaintiffs for Violating ERISA Section 510)

17. Defendants incorporate and reallege by reference the foregoing paragraphs 1 through 16 of their counterclaims, inclusive, as if they were fully set forth herein.

18. The SuperMedia Plaintiffs had the specific intent to violate ERISA, to discipline Defendants, to retaliate against Defendants and discriminate against Defendants. The SuperMedia Plaintiffs violated ERISA Section 510, 29 U.S.C. § 1140, and their actions have caused Defendants to incur significant legal fees and expenses with this unnecessary lawsuit.

PRAYER FOR RELIEF

WHEREFORE, Defendants Robert Mentzer, Sandra Noe, Carl B. Ohnstad, Claire Palmer and Bernard Zenus, seek orders and judgments against the SuperMedia Plaintiffs as follows:

A. Declare that Plaintiff SuperMedia Employee Benefits Committee failed to discharge duties to act solely in the interests of the participants and beneficiaries of SuperMedia's retiree benefit plans, as required by ERISA Section 404(a)(1), 29 U.S.C. § 1104(a)(1);

B. Declare that the SuperMedia Plaintiffs violated ERISA Section 510, 29 U.S.C. § 1140;

C. Order Plaintiffs' officers, employees and agents not to retaliate against

Defendants and any other retirees on the basis of the filing or prosecution of their counterclaims;
and

D. Grant Defendants appropriate equitable relief allowable under ERISA Sections 502(a)(2) and (a)(3), 29 U.S.C. § 502(a)(2) and (a)(3), as the Court deems just and proper;

E. Pursuant to ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1), order the Plaintiffs to pay the reasonable value of Defendants' attorney's fees for services performed, expert witness fees, necessary expenses of litigation and costs of this action.

with an award of costs and attorney's fees.

DATED this 15th day of October, 2012.

Respectfully submitted,

s/ Curtis L. Kennedy

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CERTIFICATE OF SERVICE

I hereby certify that on the 15TH day of October, 2012, a true and correct copy of the above and foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system causing a copy to be emailed to all counsel of record.

Also, copy of the same was delivered via Internet email to Defendants Bell, Foy, Harvey, Ketzer, Kraft, Lane, Leynes, Mentzer, Noe, Ohnstad, Palmer, Russo, Shapses, Sullivan and Zenus.

s/ Curtis L. Kennedy

Curtis L. Kennedy