



STANLEY HOFFMAN, Individually, and on behalf of the Estate of PHYLLIS HOFFMAN, Plaintiff, vs. AMERICAN SOCIETY FOR TECHNION-ISRAEL INSTITUTE OF TECHNOLOGY, INC.; et al., Defendants.

CASE NO. 09-CV-2482 BEN (KSC)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

2012 U.S. Dist. LEXIS 119857

August 21, 2012, Decided

August 22, 2012, Filed

PRIOR HISTORY: *Hoffman v. Am. Soc'y for Technion-Israel Inst. of Tech., Inc.*, 2011 U.S. Dist. LEXIS 132207 (S.D. Cal., Nov. 16, 2011)

COUNSEL: [*1] For Stanley Hoffman, Individually and on behalf of the Estate of Phyllis Hoffman, Plaintiff: John P. Stennett, LEAD ATTORNEY, Stennett and Stennett, San Diego, CA.

For American Society for Technion-Israel Institute of Technology, Inc., a business entity or entities, form unknown, also known as American Technion Society, also known as ATS, Defendant: Jennifer Lynn Marks Ghozland, Ronald Keith Alberts, LEAD ATTORNEYS, Gordon & Rees LLP, Los Angeles, CA.

For Metropolitan Life Insurance Company, Defendant: Robert Kevin Renner, LEAD ATTORNEY, Barger and Wolen, Irvine, CA.

For Reliance Standard Life Insurance Company, a Corporation, Defendant: Russell H. Birner, LEAD ATTORNEY, Wilson Elser Moskowitz Edeman & Dicker, Los Angeles, CA.

For American Technion Society Employee Benefit Plan, Defendant: Jennifer Lynn Marks Ghozland, LEAD ATTORNEY, Gordon & Rees LLP, Los Angeles, CA.

For First Reliance Standard Life Insurance Company, Defendant: Russell H. Birner, Wilson Elser Moskowitz Edeman & Dicker, Los Angeles, CA.

JUDGES: HON. ROGER T. BENITEZ, United States District Judge.

OPINION BY: ROGER T. BENITEZ

OPINION

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS IN PART THE FIRST AMENDED COMPLAINT

[Doc. No. 34]

Presently before the Court [*2] is a Motion to Dismiss in Part the First Amended Complaint filed by Defendants American Society for Technion-Israel Institute of Technology, Inc., aka American Technion Society aka American Society for Technion-Israel Institute of Technology, Inc. Group Life Insurance Benefit Plan. (Doc. No. 34.) For the reasons stated below, the Motion is **GRANTED**.

BACKGROUND

Plaintiff Stanley Hoffman alleges that American Society for Technion-Israel Institute of Technology, Inc. ("ATS") had employed Plaintiff's late wife, Mrs. Phyllis Hoffman, from May 1, 1993 until November 17, 2007. (FAC ¶ 5.) Plaintiff alleges that on November 17, 2007, Mrs. Hoffman became seriously ill and was placed on disability leave. (FAC ¶ 15.) According to the First Amended Complaint, ATS enrolled Mrs. Hoffman in the First Reliance Standard Life Insurance Company group insurance policy number GL02464 in November 2007,

and the Metropolitan Life Insurance Company group insurance policy number TS05457475-G in January 2008, during which time Mrs. Hoffman was out on disability. (FAC ¶¶ 16, 17.)

On November 5, 2009, Plaintiff filed a lawsuit individually and on behalf of the estate of Mrs. Hoffman, against ATS, Metropolitan Life, [*3] First Reliance, and Ronnie Pallay. (Doc. No. 1.) On March 22, 2010, ATS and Ronnie Pallay filed a motion to dismiss the complaint in part, which was granted. (Doc. Nos. 13, 26.) After the dismissal of third, fourth, fifth and sixth claims of the complaint, Plaintiff filed a First Amended Complaint. (Doc. No. 27.) The First Amended Complaint alleges four claims: (1) life insurance benefits under 29 U.S.C. § 1132(a)(1)(B); (2) denial of severance benefits under 29 U.S.C. § 1132(a)(1)(B); (3) life insurance benefits under 29 U.S.C. § 1132(a)(3) (equitable estoppel); (4) life insurance benefits under 29 U.S.C. § 1132(a)(3) (surcharge).

Presently before the Court is Defendants' motion to dismiss the third and fourth claims in the First Amended Complaint. Being fully briefed, the Court finds the motion suitable for determination on the papers without oral argument, pursuant to *Civil Local Rule 7.1.d.1*.

DISCUSSION

Under *Federal Rule of Civil Procedure 12(b)(6)*, dismissal is appropriate if, taking all factual allegations as true, the complaint fails to state a plausible claim for relief on its face. *FED. R. CIV. P. 12(b)(6)*; *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-57, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) [*4] (requiring plaintiff to plead factual content that provides "more than a sheer possibility that a defendant has acted unlawfully"). Under this standard, dismissal is appropriate if the complaint fails to state enough facts to raise a reasonable expectation that discovery will reveal evidence of the matter complained of, or if the complaint lacks a cognizable legal theory under which relief may be granted. *Twombly*, 550 U.S. at 556.

Defendants seek dismissal of Plaintiff's claims for life insurance benefits pled in the alternative under § 1132(a)(3), where Plaintiff already has a claim for benefits under § 1132(a)(1)(B). The Supreme Court in *Varity Corp. v. Howe* held that "where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief, in which case such relief normally would not be appropriate." 516 U.S. 489, 515, 116 S. Ct. 1065, 134 L. Ed. 2d 130 (1996) (internal quotation marks omitted).

Here, Plaintiff inappropriately seeks equitable relief under § 1132(a)(3), where Congress provided adequate

relief for Plaintiff's alleged injury under § 1132(a)(1)(B). Specifically, Plaintiff brings a first claim for life insurance benefits under § 1132(a)(1)(B), [*5] as well as a third and fourth claim, in the alternative, for the same life insurance benefits based on theories of equitable estoppel and surcharge under § 1132(a)(3). The third and fourth claims, therefore, are barred by *Varity*.

First, Plaintiff argues that in *CIGNA Corp. v. Amara*, 131 S. Ct. 1866, 179 L. Ed. 2d 843 (2011), the Supreme Court allowed the plaintiff to plead in the alternative under both § 1132(a)(1)(B) and § 1132(a)(3)(B). According to Plaintiff, if *Amara* had been brought to the Court's attention before it ruled on Defendants' Motion to Dismiss the Original Complaint, the Court would have allowed Plaintiff to bring claims under § 1132(a)(2) and § 1132(a)(3), as well as § 1132(a)(1)(B). In *Amara*, however, the plaintiffs were allowed to seek relief under § 1132(a)(3) only because they had no cognizable claim under § 1132(a)(1)(B). *Id.* at 1880-82; *see also Biglands v. Raytheon Emp. Sav. & Inv. Plan*, 801 F. Supp. 2d 781, 786 (N.D. Ind. 2011) ("[T]he plaintiffs in *Amara* were allowed to proceed with their claim under § 1132(a)(3) because they had no claim for relief under § 1132(a)(1)(B).").

Second, Plaintiff argues that the holding in *Varity* does not apply here because it is "unknown" whether [*6] § 1132(a)(1)(B) provides adequate relief for Plaintiff's injury, because there is no administrative record and no confirmed plan documents. (Opp. at 7.) However, Plaintiff has possession of all documents that contain the terms of the plan at issue--the American Society for Technion-Israel Institute of Technology, Inc.'s "Personnel Practices Code," First Reliance's group life insurance policy number GL024764, the Certificate of Insurance for the First Reliance life insurance policy, and the certificate of insurance for Metropolitan Life group life insurance policy TS05457475-G. (FAC ¶ 4.) These documents taken together contain the terms of the ERISA plan at issue. As Plaintiff acknowledges, "Plaintiff's allegations set forth [in the First Amended Complaint] regarding the terms of the Plan are premised on the assumption that these three documents accurately reflect the Plan terms." (*Id.* ¶ 7.) There is no written document entitled "Plan" or "Summary Plan Description." Accordingly, Plaintiff's third and fourth claims are **DISMISSED**.

CONCLUSION

For the reasons stated above, Defendants' Motion to Dismiss in Part the First Amended Complaint is **GRANTED**. The third and fourth claims are **DISMISSED**.

IT [*7] IS SO ORDERED.

DATED: August 21, 2012 HON. ROGER T. BENITEZ
/s/ Roger T. Benitez United States District Judge