

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY *AS* D.C.  
04 APR 21 PM 12:03

ROBERT P. DI TROLIO  
CLERK, U.S. DIST. CT.  
W.D. OF TN, MEMPHIS

KATHLEEN PARKS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 FINANCIAL FEDERAL SAVINGS )  
 BANK, )  
 )  
 Defendant. )  
 )

03 CV 2326 D/P

ORDER GRANTING PLAINTIFF'S MOTION TO AMEND COMPLAINT

Before the Court is Plaintiff's Motion to Amend Complaint, filed on February 24, 2004 (docket entry 47). Plaintiff seeks to amend her complaint to reintroduce state law claims for intentional misrepresentation (Count I) and negligent misrepresentation (Count II). On February 27, 2004, Defendant filed its response in opposition to the motion. On March 31, 2004, after obtaining leave of court, Plaintiff filed a reply to Defendant's opposition. For the reasons below, Plaintiff's motion is GRANTED.

I. BACKGROUND

In her proposed Third Amended Complaint, Plaintiff claims that Defendant induced her to leave her prior employment and accept employment with Defendant by telling her that the thirty day waiting period for disability and medical benefits would be waived,

58

and that Plaintiff's benefits would commence as soon as she started work with Defendant. Shortly after beginning work with Defendant, Plaintiff was involved in an automobile accident which left her severely disabled. After the accident, Plaintiff applied for long-term disability benefits from Defendant's policy. The insurance carrier denied the application and informed Plaintiff that she was not covered by the policy because the injury occurred two days before the end of the thirty day exclusionary period.

On April 24, 2003, Plaintiff filed a complaint against Defendant in Shelby County Chancery Court alleging negligent and intentional misrepresentation, and breach of contract.<sup>1</sup> Defendant filed a notice of removal on May 7, 2003, under 28 U.S.C. § 1441(b), claiming that the Employee Retirement Income Security Act of 1974 ("ERISA") preempts Plaintiff's state law claims.<sup>2</sup>

Plaintiff filed a motion to remand the case to state court, arguing that ERISA preemption was not applicable. On August 6, 2003, the District Judge denied Plaintiff's motion to remand, finding that the essence of Plaintiff's claim was to recover disability benefits allegedly owed to her under Defendant's plan and concluding, therefore, that ERISA preempts Plaintiff's state law claims. In a separate order entered on August 6, 2003, the

---

<sup>1</sup>Plaintiff subsequently amended her complaint to strike the breach of contract claim.

<sup>2</sup>The parties do not dispute that the benefit plans at issue are ERISA plans.

District Judge *sua sponte* granted Plaintiff leave to file an amended complaint to recast her state law claims as ERISA claims. Plaintiff subsequently filed her Second Amended Complaint adding a claim for "[v]iolation of ERISA," and filed a notice striking her claims for negligent and intentional misrepresentation "with the understanding and agreement of the parties that Plaintiff's right to appeal any and all issues related to ERISA preemption and remand are preserved." See Pla.'s Notice, Sept. 8, 2003.

On August 19, 2003, Plaintiff filed a motion to alter or amend the court's August 6, 2003 order denying Plaintiff's motion to remand, arguing that the state law misrepresentation claims are not preempted by ERISA. On September 12, 2003, Plaintiff filed a supplement to her motion "to bring to the Court's attention [Marks v. Newcourt Credit Group, Inc., 342 F.3d 444 (6th Cir. 2003),] a recently decided case from the Sixth Circuit which bears on the issues under consideration."

On January 6, 2004, the District Judge granted in part and denied in part Plaintiff's Motion to Alter or Amend Judgment. The Court concluded that Marks applies to a "limited extent" in this case, and that "to the extent that Plaintiff's state law claims seek relief for the damages involved in inducing her to accept employment with Defendant, they are not preempted by ERISA. The [August 6, 2003] Order is amended to reflect that distinction only. To the extent that they relate to her damages in not receiving

long-term disability benefits, however, the state law claims are preempted, as found in the Order." The Court further concluded that its prior order is amended "such that Plaintiff's state law claims are not preempted only to the extent that they relate to her acceptance of employment with Defendant."

Plaintiff subsequently filed the instant motion seeking to reintroduce her state law claims for negligent and intentional misrepresentation in her Third Amended Complaint. Plaintiff argues that her amended complaint complies with the District Judge's January 6, 2004 order.

## II. DISCUSSION

A party seeking to amend a complaint after a responsive pleading has been filed "may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed.R.Civ.P. 15(a); see Hamad v. Woodcrest Condominium Ass'n, 328 F.3d 224, 238 (6th Cir. 2003).

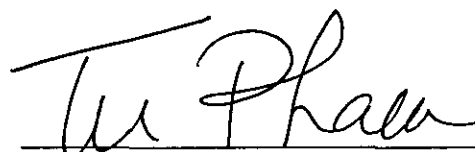
As the Court ruled in its January 6 order, Plaintiff is not entitled to claim the denied long-term disability benefits as damages for her state law claims, nor is she allowed to claim any compensatory or punitive damages that relate to the denial of those benefits. Because Plaintiff is not entitled to compensatory or punitive damages for her ERISA-based breach of fiduciary duty claim alleged in Count III, she cannot seek those same damages via her

state law claims. See Allinder v. Inter-City Products Corp., 152 F.3d 544, 552 (6th Cir. 1998) (breach of fiduciary duty claim under ERISA does not entitle plaintiff to compensatory or punitive damages as a matter of law); Vargas v. Child Development Council of Franklin County, Inc., 269 F.Supp.2d 954, 956 (S.D. Ohio 2003) ("It is well established that extracontractual compensatory and punitive damages are not available under ERISA."). In other words, Plaintiff may claim punitive damages and damages for emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life only to the extent that those damages were a result of her change in employment - and not because she was denied benefits.

As discussed earlier, the proposed Third Amended Complaint seeks to add state law claims for intentional and negligent misrepresentation, and asks in pertinent part for the following relief: "2. That this Court award Plaintiff compensatory damages . . . she has suffered as a result of Defendant's conduct;" and "4. That this Court award Plaintiff punitive damages . . . to punish Defendant for its intentional misconduct and to deter others from similar acts of misconduct[.]" Based on Plaintiff's statement in her reply brief that her complaint "only seek[s] general compensatory and punitive damages for Defendant's fraudulent inducement to accept employment" - and in light of the Court's January 6 order allowing her to bring the state law claims -

Plaintiff's Motion to Amend Complaint is GRANTED.

IT IS SO ORDERED.



TU M. PHAM  
United States Magistrate Judge

4/21/04  
Date