



The strategic importance of ERISA preemption in wrongful termination cases: *Swindler v. Ben Lippen School and Columbia International University*

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BY: MARK S. THOMAS

In *Swindler v. Ben Lippen School and Columbia International University*, No. 3:12-CV-2314-CMC, the U.S. District Court for the District of South Carolina remanded a case back to state court after the plaintiff amended his complaint to assert only claims arising under state law and waived all claims arising under ERISA. The defendants' use of ERISA's broad preemption provision strategically impacted this litigation of wrongful employment termination claims.

The Plaintiff ("Swindler") was a former teacher at the Defendants' Ben Lippen School and enrolled in the Defendants' retirement plan. Following termination of his employment, Swindler filed a complaint in state court that alleged, among other things, that he was wrongfully terminated because his retirement benefits were about to vest. Such a termination, if true, would violate a plan participant's rights under ERISA's Section 510, which bars an employer or others from firing a participant employee in order to interfere with the participant's exercise or attainment of rights under an ERISA benefit plan. However, Swindler did not expressly rely upon ERISA remedies but asserted a claim for breach of contract damages under state law.

The Defendants ("the Schools") removed the case from state court to the federal district court on the ground that Swindler's allegation of a motive to interfere with his retirement benefits had asserted a claim based on ERISA-protected rights, and that his state law claims were therefore completely preempted under ERISA. The Schools subsequently filed a motion to dismiss. The federal court granted that motion and dismissed Swindler's original contract claim and other state law claims but allowed Swindler to file an amended complaint. His amended complaint was the focus of the decision reported here.

Swindler's amended complaint asserted five state law causes of action based on allegations that his termination had been arbitrary and unreasonable. His amended pleading expressly disavowed that he was pursuing any damages measured by benefits under an ERISA plan, and did not allege that the Schools took any action to interfere with his retirement benefits or any other rights protected under ERISA. In response, the federal court ruled that the amended complaint did not state a cause of action under federal law and ought to be remanded to the state court, but invited the parties to respond as to whether remand was appropriate.

Swindler supported remand, and stipulated that he was not making any federal claim and that the limitations in his amended claims would be binding in the state court. The Schools strongly opposed remand on the grounds that the case had been properly removed, and that Swindler should not be allowed to manipulate the basis for federal jurisdiction by revising his factual pleadings after the removal to federal court.

Reviewing those arguments, the federal court found that Swindler had disavowed any claim that could be cognizable under ERISA, which had been the original basis for removal. The court also found that the amended complaint limited Swindler's claims such that he could no longer allege that his termination or any other wrongful act by the Schools was done for the purpose of interfering with his ERISA rights. This limitation and his disavowal of damages based on ERISA benefits would be binding in either the federal court (if the case was not remanded) or the state court upon remand. The federal court then exercised its judicial discretion to remand the surviving claims back to the state court from which the case had been removed.

In *Swindler*, the Defendants did not achieve an end of the litigation in its entirety, nor did they manage to keep the case in the federal forum. Nonetheless, their exploitation of the Plaintiff's original factual allegations enabled them to obtain a dismissal of his original claims and forced him to choose either to seek ERISA remedies or to limit his claims and the scope of his measure of damages. The Defendants' strategic use of ERISA preemption thus appears to have narrowed their potential liability somewhat. Whether that achievement will now offset their exposure to the surviving state remedies in a state forum, remains to be seen.

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