IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CRAIG AMIN,

Plaintiff, ORDER

v. 05-C-543-C

LOYOLA UNIVERSITY CHICAGO,

Defendant.

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In this civil lawsuit, plaintiff Craig Amin, proceeding pro se, contends that defendant Loyola University Chicago breached its fiduciary duty to him by failing to adequately record and report benefits and to disclose documents relevant to his retirement plan as required under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461. In an order dated March 31, 2006, I denied plaintiff's motion for summary judgment, after finding that plaintiff had failed to establish that he was a "participant" in defendant's ERISA-governed retirement plan, and was therefore authorized to bring suit under 29 U.S.C. § 1132(a).

Because a case may not proceed in this court when subject matter jurisdiction is lacking, I directed plaintiff to submit an explanation, along with relevant documentation,

demonstrating that he has a colorable claim to "vested benefits" under defendants' faculty retirement plan. Now before the court are plaintiff's "Objections to March 31, 2006 Opinion and Order," which I construe as a motion for reconsideration, and plaintiff's "Supplemental Filing," which appears to be a response to the court's request for proof of plaintiff's standing. I will address each in turn.

I. PLAINTIFF'S MOTION FOR RECONSIDERATION

In his motion for reconsideration, plaintiff contends first that the court's summary judgment decision improperly characterized several disputed facts as undisputed. Specifically, plaintiff objects to the court's finding that (1) the Faculty Retirement Plan was known also as the Defined Contribution Plan; (2) plaintiff contacted defendant's Human Resources Department to ask about participation in the retirement plan; and (3) upon completing necessary paperwork, plaintiff became eligible to receive a contribution equal to 8% of the total compensation he had received while employed by defendant. It is difficult to understand plaintiff's objections to these facts, both because he did not dispute them properly on summary judgment and because he has not proposed any contradictory facts in his motion for reconsideration. As this court's summary judgment procedures make clear, when a party fails to place an opposing party's proposed facts into dispute with admissible evidence, the opposing party's fact will be adopted by the court. That is exactly what

occurred in this case.

Next, plaintiff contends that in denying his motion to strike defendant's responses to his motion for summary judgment, the court failed to address "whether all pleadings signed and submitted by Kristofer L. Hanson in Defendant's Response papers to Plaintiff's Motion for Summary Judgment and when not signed by Michael P. Malone, attorney of court record, constitutes following F.R.C.P. 11(a)." Dkt. #45, at 2. The name of Michael P. Malone of Hinshaw & Culbertson LLP appears on the court's electronic docketing system in a column titled "Attorneys for Defendants." Apparently, plaintiff believes that defendant's summary judgment submissions are improper because they are signed by Kristofer L. Hanson (also of Hinshaw & Culbertson LLP), instead of by Malone.

Rule 11(a) of the Federal Rules of Civil Procedure requires that "every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name." In defendant's answer to plaintiff's complaint, dkt #6, at 1, defendant's lawyers are identified as "Hinshaw & Culbertson LLP." Although Rule 11 requires that every document filed with the court be signed by an individual attorney, the rule does not prohibit more than one attorney from being named as an "attorney of record." It is common practice for a law firm to undertake representation of a party and for different lawyers within the firm to sign various filings throughout the course of a case. The fact that Malone signed the answer to plaintiff's complaint does not mean that Malone was required

to sign defendant's summary judgment submissions; Hanson's signature was sufficient.

Because plaintiff has not demonstrated that the court mischaracterized facts or erred by accepting defendant's summary judgment submissions, plaintiff's motion for reconsideration will be denied.

II. PLAINTIFF'S SUPPLEMENTAL FILING

As the March 31, 2006 summary judgment order explained, a participant in an ERISA-governed plan is "any employee or former employee . . . who is or may become eligible to receive a benefit" due under the plan. 29 U.S.C. § 1002(7). The United States Supreme Court has interpreted § 1002(7) to include (1) "employees in, or reasonably expected to be in, currently covered employment" and (2) "former employees who have . . . a reasonable expectation of returning to covered employment or who have a colorable claim to vested benefits." Jackson v. E.J. Brach Corp., 176 F.3d 971, 978 (7th Cir. 1999). Only plan participants have standing to bring a claim for the purpose of "enforc[ing their] rights under the terms of the plan or to clarify[ing their] rights to future benefits under the terms of the plan." 29 U.S.C. 1132(a).

Instead of clarifying why he believes he is a plan participant, plaintiff's supplemental filing borders on the incomprehensible. Without addressing any of the questions raised by the court in the March 31 order, plaintiff contends that he has proven already that he has

a colorable claim to future benefits. In addition, he asserts

> since the court has chosen to ignore its deductive or inferential ability based on facts in the court record, Plaintiff will let Defendant state case for "vested benefits" in black-n-white rendition, plain English, devoid of legalese and court record to meet this court's beyond reasonable doubt standard instead of preponderance of evidence standard utilized in civil cases.

The party asserting federal jurisdiction bears the burden of establishing jurisdiction, by affidavits or other material. E.g., United Phosphorus, Ltd. v. Angus Chemical Co., 322 F.3d 942, 946 (7th Cir. 2003). Therefore, plaintiff cannot require defendant to prove his case for him; he must produce his own proof.

Attached to plaintiff's supplemental filing is his affidavit, in which he authenticates four "exhibits:" (1) a Fidelity Investment "Retirement Savings Statement" showing a September 30, 2001 account balance of $3,545.39; (2) a redacted letter from plaintiff to Loyola University Human Resources Department employee Karen Bretz, dated October 16, 2001; (3) a response letter from Bretz to plaintiff dated October 30, 2001; and (4) a heavily redacted letter from Bretz to plaintiff dated February 19, 2002. Plaintiff's first two exhibits merely confirm facts found undisputed on summary judgment; namely, that plaintiff had a retirement plan account funded by defendant for a period of time between 2001 and 2003. (Some time in 2003, plaintiff withdrew his funds from the Fidelity account.)

However, the second two documents provide new information. In the letter dated October 30, 2001, Bretz writes:

> The 2001 IRS Section 415 limit says that retirement contributions in any given year cannot exceed 25% of salary. In 2001, we forwarded $3,541,68 to your Fidelity account. This amount is 25% of your total 2001 Loyola earnings ($14,166.70). *That leaves $2,189.24 in pension contributions which are still due to you*.

Dkt. #46, exh. 3 (emphasis added.) Her February 19, 2002 letter reiterates, "Loyola acknowledges that you are entitled to an additional $2,189.24 in *pension accruals*." Dkt. #46, exh. 4 (emphasis added). These admissions by defendant's agent are sufficient to establish plaintiff's standing as a plan participant.

In this lawsuit, plaintiff is not seeking a return of any money that may be owed him under the plan. Therefore, this court need not resolve whether defendant is correct when it asserts that the tax code prohibits it from making contributions directly into plaintiff's retirement account. The only question for this court to resolve is whether plaintiff retains "a colorable claim to vested benefits." If so, he is a plan participant and would be entitled under 29 U.S.C. §§ 1024 (b)(4) and 1025(a) to receive the summary plan description and benefits statement documents he requested from defendants. See Op. & Or., dated Mar. 31, 2006, dkt. #44, at 10-11.

The Court of Appeals for the Seventh Circuit has held that the proof requirement for establishing a "colorable claim" is not a stringent one. Panaras v. Liquid Carbonic Industries Corp., 74 F.3d 786, 790 (7th Cir. 1996). Jurisdiction depends on an arguable claim, not on success. Id.; Kennedy v. Connecticut General Life Ins. Co., 924 F.2d 698, 700 (7th

Cir.1991). Here, plaintiff has made a showing that, by its agent's own admission, defendant owes him benefits under the faculty pension plan. That showing is sufficient to establish plaintiff's standing to bring his claim as a plan participant.

ORDER

IT IS ORDERED that plaintiff's motion for reconsideration is DENIED.

FURTHER, IT IS ORDERED that plaintiff has established that he has standing to continue prosecuting this suit. Trial remains scheduled for July 24, 2006.

Entered this 17th day of April, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge