

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LYNN KAY,

Plaintiff,

v.

CHILED A INSTITUTE, INC.,

Defendant.

OPINION AND ORDER

12-cv-680-bbc

Plaintiff Lynn Kay brought a civil action against Chileda Institute, Inc., in the Circuit Court for La Crosse, Wisconsin. She alleged that in 2009, she and defendant entered into a Non-Competition and Consultation Agreement, in which defendant promised to provide her health insurance in exchange for her promise not to compete with defendant. Later that same year, defendant purported to declare the agreement null and void, without paying any consideration to plaintiff. Plaintiff is suing for specific performance of the contract, including the reinstatement and guarantee of health insurance benefits.

After the case was filed, defendant removed it to this court, arguing that plaintiff was raising federal claims preempted by the Employee Retirement Income Security Act (ERISA) and for that reason, her case had to be tried in federal court. The case is before the court on plaintiff's motion to remand.

Although plaintiff maintains that this suit is nothing more than a breach of contract

action that should be tried in state court, she has asserted a claim for the reinstatement of health insurance benefits. That assertion presents a federal question within this court's original jurisdiction. Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58 (1987). In Taylor, as in this case, the plaintiff had sued his former employer for breach of contract. He also asked for immediate reimplementaion of all benefits and insurance coverage to which he was entitled and damages for wrongful termination and failure to promote him in retaliation for an old worker's compensation claim. The Supreme Court held that Taylor's common law contract and tort claims were preempted by ERISA because the lawsuit related to an employee benefit plan. Id at 62. "[A]s a suit by a beneficiary to recover benefits from a covered plan, [the suit] falls directly under § 502(a)(1)(B) of ERISA, which provides an exclusive federal cause of action for resolution of such disputes." Id. at 62-63.

Plaintiff tries to distinguish her suit from Taylor, saying that her dispute with defendant is confined to the alleged breach of contract and has nothing to do with the health insurance guarantee that is the subject of the disputed contract. A look at her claims shows that her effort is unsuccessful. Two paragraphs from the complaint make the point:

The Non-Competition and Consultation Agreement between Defendant and [Plaintiff] provided, in part, that in exchange for [Plaintiff's] covenants not to compete with Defendant, Defendant would provide health insurance to [Plaintiff], with a policy that is the same or similar to that employment benefits received by [Plaintiff] at the time of execution of this contract. . . ,” and “Plaintiff seeks specific performance of her 2009 contract with Defendant, including the reinstatement and guarantee of health insurance benefits . . .”

Cpt., dkt. 1-2, at ¶ 11; id. at ¶ 21.

Plaintiff could have brought her claim under the civil enforcement provisions of

ERISA, which means that ERISA completely preempts her claim. Jass v. Prudential Health Care Plan, Inc., 88 F.3d 1482, 1486 (7th Cir. 1996) (“federal subject matter jurisdiction exists if the complaint concerns an area of law ‘completely preempted’ by federal law, even if the complaint does not mention a federal basis of jurisdiction”).

Plaintiff argues essentially that resolution of her claim requires only a decision that the Non-Competition and Consultation Agreement was or was not breached; if it was not, she loses; if it was, she is entitled to the health insurance she was promised and the court’s job is complete. In other words, the only question is whether she is entitled to enforce the agreement that would allow her to obtain health insurance benefits, not what kind of benefits she is entitled to. This is too narrow a reading of the complaint and a misunderstanding of the preemptive force of ERISA. “Congress has clearly manifested an intent to make causes of action within the scope of the civil enforcement provisions of § 502 removable to federal court . . . though [the suit] purports to raise only state law claims.” Jass, 88 F.3d at 1490 (quoting Taylor, 481 U.S. at 66-67).

ORDER

IT IS ORDERED that plaintiff Lynn Kay’s motion for remand of this case to state court, dkt. #7, is DENIED.

Entered this 11th day of January, 2013.

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

