

NA 04-0005-C H/B Deich-Keibler v Bank One
Judge Sarah Evans Barker

Signed on 09/19/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

ELIZABETH DEICH-KEIBLER and LARRY)
K. HALER,)
Plaintiffs,)
)
vs.)
)
BANK ONE and RBC MORTGAGE)
COMPANY,)
Defendants.)

4:04-CV-00005-SEB-WGH

**ENTRY DENYING PLAINTIFFS' MOTION TO SET ASIDE JUDGMENT AND
DENYING DEFENDANTS' MOTION FOR ATTORNEY FEES AND AN AWARD OF
COSTS AGAINST PLAINTIFFS**

This Cause comes before the Court on the Motion to Set Aside Judgment [Docket No. 60] filed by Plaintiffs, Elizabeth Deich-Keibler and Larry K. Haler, pursuant to Fed. R. Civ. P. 59(e). Because we find that Plaintiffs' request does not conform to the requirements of Rule 59(e), we hereby DENY Plaintiffs' Motion.

In addition, regarding Defendants' Motion for Attorney Fees and Costs [Docket No. 64], we hereby DENY Defendants' Motion and hold that each party shall bear its own attorneys' fees and costs in this cause.

Plaintiffs' Motion to Set Aside Judgment

Plaintiffs' Motion requests that this court set aside its Judgment of September 30, 2005, pursuant to Rule 59(e). In our order of that date, we granted Defendants' Motion for Summary Judgment and denied Plaintiffs' Cross-Motion for Summary Judgment pertaining to various ERISA, Indiana statutory, and Indiana common-law claims against Defendants.

Rule 59(e) provides a procedural mechanism by which an aggrieved party may seek to alter or amend a previous judgment. Courts have broad discretion in determining whether to grant such motions. See In re Prince, 85 F.3d 314, 324 (7th Cir. 1996), cert. denied, 519 U.S. 1040 (1996) (“The decision whether to grant or deny a Rule 59(e) motion is entrusted to the sound judgment of the district court[.]”). Rule 59(e) is *not* intended as a means by which a disappointed party may acquire “another bite at the apple” – that is, it is not merely a tool by which a party may simply “rehash[] old arguments.” Oto v. Metropolitan Life Ins. Co., 224 F.3d 601, 606 (7th Cir. 2000). The Seventh Circuit has held that “there are only three valid grounds for a Rule 59(e) motion – newly-discovered evidence, an intervening change in the law, and manifest error in law[.]” Cato v. Thompson, 118 Fed.Appx. 93, 96 (7th Cir. 2004). “Manifest error” consists of the “wholesale disregard, misapplication, or failure to recognize controlling precedent.” Oto, 224 F.3d at 606.

Plaintiffs contend that we “should seriously consider granting a motion such as this based upon the simple standard of error.” Pls.’ Mem. at 1. However, as stated above, this is clearly not a basis for relief under Rule 59(e). Plaintiffs further state that “the Court’s error in dismissing these claims was quite manifest,” id. at 2; however, Plaintiffs’ Memorandum in support of their motion amounts to nothing more than a restatement of their previous arguments. This will not suffice in terms of securing post-judgment review. Plaintiffs in any event have failed to demonstrate manifest error in the Court’s judgment. As Defendants correctly state, “A ‘manifest error’ is not simply . . . where the Court rules against the moving party.” Defs.’ Mem. at 2. Therefore, Plaintiffs’ Motion to Set Aside this Court’s judgment based on Rule 59(e) is hereby DENIED.

Defendants' Motion for Attorney Fees and Costs

Defendants seek a ruling whereby their attorney fees and costs in the above Cause would be shifted to Plaintiffs, given the Court's determination that Plaintiffs' lawsuit lacked legal merit. The amount of the award Defendants seek is \$22,054.94. This total reflects \$18,747.20 in attorneys' fees, \$890.43 in computerized legal research charges, and \$2,417.31 in statutory costs. Defs.' Mem. at 6. Defendants' request is based on Section 502(g) of ERISA – 29 U.S.C. § 1132(g) – which provides that “the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.”

In Hooper v. Demco, 37 F.3d 287, 294 (7th Cir. 1994), the Seventh Circuit stated that “the bottom-line question” in determining whether to award attorneys' fees and costs is: “was the losing party's position substantially justified and taken in good faith, or was that party simply out to harass its opponent?” Id. A position is “substantially justified” if it is “something more than nonfrivolous, but something less than meritorious.” Stark v. PPM America, Inc., 354 F.3d 666, 673 (7th Cir. 2004).

Plaintiffs' arguments in this Cause, though not ultimately successful, were not frivolous; in our view, they were “substantially justified,” at least for purposes of this issue of fees and costs assessments. We find no evidence indicating that Plaintiffs' arguments were made in bad faith. The Seventh Circuit has stated that “ERISA's remedial purpose is to protect, rather than penalize participants who seek to enforce their statutory rights[.]” Stark, 354 F.3d at 673. Accordingly, we hold that each party shall bear its own attorneys' fees and costs, and hereby DENY Defendants' Motion for Attorney Fees and Costs.¹

¹ Because we so hold, we need not address the parties' filings with respect to the
(continued...)

Conclusion

For the reasons set forth above, Plaintiffs' Motion to Set Aside Judgment is hereby DENIED. Defendants' Motion for Attorney Fees and Costs is also DENIED. IT IS SO ORDERED.

Date: _____

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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¹(...continued)
particulars of the Bill of Costs submitted by the Defendants (Docket Nos. 66, 67, 70, 71).