

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

WILLIAM C. GROVER,)	CIVIL ACTION NO. 3:01CV00035
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
COMDIAL CORPORATION,)	
)	
Defendant.)	JUDGE JAMES H. MICHAEL, JR.

Before the court are the plaintiff's May 10, 2001 motion to remand and the defendant's June 1, 2001 motion to dismiss, or in the alternative, for summary judgment. This matter was referred to United States Magistrate Judge B. Waugh Crigler for proposed findings of fact, conclusions of law, and a recommended disposition. See 28 U.S.C. § 636(b)(1)(B). In his July 24, 2001 Report and Recommendation, the Magistrate Judge recommended that the court grant the plaintiff's motion and deny the defendant's motion. The defendant filed timely objections to the Magistrate Judge's recommendations. Having reviewed *de novo* those portions of the Report and Recommendation as to which objections were made, see 28 U.S.C. § 636(b)(1) (West 1993 & Supp. 2000); Fed. R. Civ. P. 72(b), the court shall grant the plaintiff's motion to remand for the reasons stated herewith.

I.

As the parties come before the court on the defendant's motion to dismiss, the court accepts as true the well-pleaded allegations contained in the amended motion for judgment (hereinafter "amended complaint").¹ *Edwards v. City of Goldsboro*, 178 F.3d 231, 237 n.1 (4th

¹The Magistrate Judge granted the plaintiff's motion to file an amended complaint on July 11, 2001. The court shall then, for purposes of the motion to dismiss, rely on the well-pleaded allegations in this amended complaint. However, as explained in Section II of the opinion, the court shall rely on the complaint filed in state court for its analysis of the plaintiff's motion to remand.

Cir. 1999). In August 1993, William C. Grover, the plaintiff, began to work for the defendant, Comdial Corporation, a publicly-traded communications equipment company. The plaintiff rose to the position of senior vice-president. As a senior executive, the plaintiff was a beneficiary under the defendant's "Retirement Benefit Restoration Plan," (hereinafter the "RBR Plan"), and the "Executive Severance Plan," (hereinafter the "Severance Plan").

On July 31, 2000, the defendant informed the plaintiff both orally and in writing that he was being terminated immediately "for cause." The letter, signed by vice president of human resources, Joe D. Ford, included the following: "After reviewing your actions in connection with the Ingram Micro transaction the end of the first quarter of this year, the company is terminating your employment for cause." (Pl.'s Ex. C.) The defendant stated that under the terms of the RBR Plan and the Severance Plan, termination for cause meant the plaintiff would lose his benefits. The defendant then offered "an alternative" which was twenty-six weeks of severance pay and health insurance in exchange for the plaintiff releasing the defendant from all further liability. *Id.*

The plaintiff rejected the offer. On February 21, 2001, the plaintiff filed this action in the Circuit Court for the County of Albemarle. The plaintiff alleged (Count I) that the defendant breached the plaintiff's employment contract by terminating him for cause and (Count II) that the defendant's communication of the fact that the plaintiff had been terminated for cause was defamatory. The plaintiff seeks nearly \$2 million in compensatory and punitive damages. On April 12, 2001, the defendant demurred to the motion for judgment and filed a notice of removal asserting that ERISA preempted the plaintiff's claims and alternatively, that diversity jurisdiction existed.

This action was referred to the Magistrate Judge B. Waugh Crigler on May 1, 2001. The plaintiff filed a motion to remand to state court on the grounds that the defendant waived its

right to removal by filing a demurrer in state court and that ERISA did not preempt his claims. The defendant, meanwhile, filed a motion to dismiss, or alternatively, for summary judgment. The Magistrate Judge recommended that the case be remanded to state court. The defendant filed timely objections to the Magistrate Judge's report. For the reasons stated below, the court shall grant the plaintiff's motion to remand and deny the defendant's motion to dismiss as moot.

II.

A civil action filed in state court may be removed to a federal district court in as much as the district court has original jurisdiction over the action. 28 U.S.C. §1441(a). A federal court has subject matter jurisdiction over a claim where a federal question exists pursuant to 28 U.S.C. §1331, or where diversity of citizenship exists pursuant to 28 U.S.C. §1332(a)(1). The defendant maintains that the court has jurisdiction pursuant to both statutes. Specifically, the defendant asserts that both of plaintiff's claims arise under ERISA, and thus involve a federal question, and that the parties are of diverse citizenship. The plaintiff disagrees on both grounds and also argues that the defendant waived its right to removal when it filed a demurrer in state court.² The Magistrate Judge recommended that the court find lack of subject matter jurisdiction and remand the case to state court. Such a remand is carried out pursuant to 28 U.S.C. §1447(c).³

A. Federal Question Jurisdiction

Section 1331 of Title 28 of the United States Code provides:

² The Magistrate Judge rejected the plaintiff's contention that by filing a demurrer in state court, the defendant waived its right to remove this action. No objection having been filed to this conclusion, and no clear error appearing in the Magistrate Judge's analysis, the court accepts this finding.

³ Section 1447(c) of Title 28 of the United States Code provides in pertinent part:
If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.

28 U.S.C. §1331. This has been construed to mean that "Congress has given the lower federal courts jurisdiction to hear 'only those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law.'" *Interstate Petroleum Corp. v. Morgan*, 249 F.3d 215, 219 (4th Cir.2001) (*en banc*) (quoting *Franchise Tax Bd. v. Const. Laborers Vacation Trust*, 463 U.S. 1, 27, 103 (1983)). Under the well-pleaded complaint rule, federal question jurisdiction must be apparent from the face of the complaint. *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987). The court must look to the original complaint filed in state court to conduct its inquiry on a motion to remand. See *Hook v. Morrison Milling Co.*, 38 F.3d 776, 779 (5th Cir. 1994).

The plaintiff in this case pleads a breach of contract claim and a defamation claim. These causes of action are clearly not created by federal law. As such, the court must determine whether the plaintiff's right to the requested relief depends on the resolution of a substantial question of federal law. The federal law at issue is the Employment Retirement Income Security Act of 1974 (ERISA).⁴

ERISA preempts "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan..." §514(a), 29 U.S.C. § 1144(a). "A law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983). This phrase is to be given a broad reading. See *id.* However, some laws may affect benefit plans in "too tenuous, remote

⁴ For purposes of this inquiry only, the court shall treat the benefit plans involved in this case as being governed by ERISA. The parties dispute this issue, but given the outcome of the court's analysis on the motion to remand, it is unnecessary for the court to reach it.

or peripheral a manner to warrant a finding that the law ‘relates to’ the plan.” *Id.* at 100 n.21.

The Fourth Circuit, in addressing ERISA preemption, asks whether the state law claim poses the potential for (1) “conflicting employer obligations and variable standards of recovery;” (2) whether the claims “‘would determine whether any benefits are paid;’” and (3) whether the claims would “‘directly affect the administration of benefits under the plan.’” *Holland v. Burlington Industries, Inc.*, 772 F.2d 1140, 1147 (4th Cir. 1985). In *Holland*, the court rejected the argument of the North Carolina Commissioner of Labor that a company’s severance pay policy should be governed solely by state law. Employees had sought severance pay in state court asserting common law claims and a state wage statute. The Fourth Circuit found that both the common law and statutory claims were preempted by ERISA because the employees were seeking benefits under an ERISA governed plan which could result in variable standards of recovery and affect the administration of benefits. *Id.*

Meanwhile, in *Pizlo*, the Fourth Circuit found no ERISA preemption for claims brought by employees against their employer for benefit plan misrepresentations. Among the claims brought were breach of contract, promissory estoppel and negligent misrepresentation. *See Pizlo v. Bethlehem Steel Corp.*, 884 F.2d 116, 120 (4th Cir. 1989). The Fourth Circuit reversed the district court’s dismissal of these claims based on ERISA preemption. According to the *Pizlo* court, the plaintiffs’ common law claims did not bring into question their eligibility for benefits but “whether they were wrongfully terminated.” *Id.* According to *Pizlo*, the damages sought “would be measured in part by lost pension benefits..., but the pension trust itself would not be liable and the administrators of the pension plan would not be burdened in any way.” *Id.* at 120-21. Thus, the court ordered the claims remanded to state court.

Here, the defendant argues that the facts of the case call for a result similar to that reached by the *Holland* court, while the plaintiff advocates that the court look to *Pizlo* for

guidance in resolving this issue. In the breach of contract claim contained in the complaint, the plaintiff asserts that his actions “were justified” and “undertaken in accordance with instructions from Comdial.” (Compl. at ¶¶ 18, 19.) It is further alleged that the “action of Comdial in terminating Mr. Grover, allegedly for cause, constituted a breach of his employment contract with Comdial and violated the terms and provisions of the Retirement Plan and the Severance Plan, for which Comdial is liable...” (Compl. at ¶ 21.) The plaintiff admits that the amount of damages, \$912,500, includes a calculation of benefits he would have been entitled to, had he not, as he alleges, been wrongfully terminated.

The defendant maintains that any reasonable understanding of this complaint must include a claim for benefits. The plaintiff argues that the focus should be on his discharge, and the fact that its wrongful characterization by his employer resulted in damages to him. The plaintiff essentially views any award of damages as a “one time lump sum” payment with no obligation on the plan itself. 884 F.2d at 121 (citing *Schlenz v. United Airlines, Inc.*, 678 F.Supp. 230, 235 (N.D.Ca. 1988)).

The court returns to the inquiry into whether the plaintiff’s right to the requested relief depends on the resolution of a substantial question of federal law. In this case, the relief, while it is measured in part by the benefits the plaintiff would have received, depends not on a resolution of any question involving ERISA interpretation; rather, it depends on a resolution of whether an employment contract has been breached. In other words, the plaintiff is not disputing that termination for cause is grounds to deny benefits. He is, therefore, not attacking the administration of the plan, or alleging improper processing of benefits. *See, e.g.*, 38 F.3d at 782. Instead, the plaintiff is disputing his termination for cause, one of the consequences of which was the subsequent denial of his benefits. The claim implicates the employee-employer relationship, and not the employer’s obligations vis-a-vis the benefit plans. *See id. and* 884 F.2d

at 120. As the *Pizlo* court also determined, the damages in this case may relate to the amount of future benefits the plaintiff would have been entitled to had he not been fired for cause, but this relief would not be a liability against the benefit plans, but against the employer. See 884 F.2d at 121.

As such, the court finds that the plaintiff's breach of contract claim does not sufficiently relate to ERISA to conclude that this claim arises under the statute. Therefore, the plaintiff's breach of contract claim does not provide the basis for federal question jurisdiction in this action.

The defendant argues that Count II of the complaint alleging defamation also arises under ERISA. The plaintiff asserts in his complaint that the "actions of Comdial in terminating [his] employment ... for alleged cause to other employees of Comdial and perhaps to others constitute defamation of character *per se*" (Compl. at ¶28.) He continues that his "reputation was harmed wrongfully causing him damages which cannot yet be fully determined, but which exceed \$912,500." (Compl. at ¶29.) The plaintiff therefore argues that his reputation was defamed because his employers revealed the fact that he was terminated for cause to others, including those running the benefit plans, and it is his contention that no cause existed for his termination.

The defendant asserts that the plaintiff is attempting to recover damages, under state law, based on plan communications made in the course of determining his claim. According to the defendant, the plaintiff's claim attempts to regulate communications among principal ERISA entities.

The court considers the ERISA connection regarding the defamation claim to be even more remote than to the breach of contract claim. Returning once again to the inquiry required of the court, it must determine if the plaintiff's right to damages based on his defamation claim

depends on resolution of a substantial question of law concerning ERISA. The plaintiff is challenging his employers' actions in publicizing that he was terminated for cause. This publication included informing ERISA administrators of this fact who then denied his benefits. Keeping in mind that in a jurisdictional inquiry, the court is not concerned with the merits of such a claim, the court considers only whether the claim arises under federal law. Even recognizing that the ERISA preemption provision is one of "unparalleled breath," 884 F.2d at 120 (quoting *Salomon v. Transamerica Occidental Life Ins. Co.*, 801 F.2d 659, 661 (4th Cir. 1986)), the court cannot find that the common law claim of defamation, pled in this action, relates to ERISA so as to warrant preemption. The plaintiff's claim is against his employer for action which the employer is alleged to have taken, that is, for publicizing the fact that he was terminated for cause. The plaintiff is not attacking the plan itself or the administrators. It is true that the plaintiff is claiming damages which include an amount of future benefits he would have received had he not been terminated for cause. However, the *Pizlo* analysis applies here as well where the damages, if awarded, go against the employer for his breach of common law, and not against the plan.

Moreover, the Fourth Circuit in *Holland* pointed out that the policy objective of having a broad ERISA preemption provision was to promote "*uniformity* in employee benefit laws." 772 F.2d at 1147 (emphasis in original). Clearly, this concern is not implicated in this case. Should the plaintiff prevail on the merits of his claims, uniformity in the application of employee benefit laws is not in jeopardy, indeed, it is not even impacted. While the Supreme Court has stated that ERISA preemption is to be given a broad sweep, it has nevertheless "recognized limits to ERISA's preemption clause." *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 138 (1990). The court believes that those limits apply in this case, and finds that the breach of contract and the defamation claims have too tenuous a connection to the benefit plans to conclude

that they arise under ERISA. As such, the court rejects the defendant's contention that federal question jurisdiction attaches to the plaintiff's claims.

B. Diversity Jurisdiction

Section 1332(a)(1) of Title 28 of the United States Code provides that "district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between ... citizens of different States." 28 U.S.C. §1332(a)(1). The plaintiff contends that there is no diversity in this action as both parties are citizens of Virginia. The defendant argues that it had already moved its headquarters, that is, its principal place of business, to Florida before this action was filed, and therefore, that diversity exists.

For the purposes of determining diversity jurisdiction, a corporation is deemed to be "a citizen of any state by which it has been incorporated and of the state where it has its principal place of business." 28 U.S.C. §1332(c)(1).⁵ In addition, diversity jurisdiction must exist "at the time an action commences." *Athena Automotive, Inc. v. DiGregorio*, 166 F.3d 288, 290 (4th Cir. 1999). The Fourth Circuit recognizes two tests to determine a corporation's principal place of business. One, described as the nerve center test, is invoked for a corporation engaged "primarily in the ownership and management of geographically diverse investment assets," and requires a court to look for the "'home office, or place where the officers direct, control and coordinate its activities.'" *Id.* (quoting *Peterson v. Cooley*, 142 F.3d 181, 184 (4th Cir. 1998)). The second test, called the place of operations test, applies when a corporation has "'multiple centers of manufacturing, purchasing, or sales,'" and focuses on "'the place where the bulk of corporate activity takes place.'" *Id.*

Because the defendant engages in the sale of communications equipment, the court

⁵The parties agree that the defendant is incorporated in the state of Delaware.

considers the place of operations test to be appropriate in this case. Thus, the court must determine where the bulk of corporate activity took place at the time this action was filed in state court, on February 21, 2001.

The parties dispute when the defendant announced a relocation of corporate headquarters from Charlottesville, Virginia to Sarasota, Florida. The plaintiff produced news articles in which this relocation was reported as being announced on March 27, 2001. (Ex. A, Pl.'s Mot. to Remand.) The plaintiff also attached a public records search revealing that as of April 3, 2001, Comdial still listed Charlottesville, Virginia as its address. (Ex. B, Pl.'s Mot. to Remand.) The defendant countered with its own article from the Charlottesville daily paper, dated February 8, 2001, in which the sale of the Comdial site was announced. (Ex. 6, Def.'s Opp. to Pl.'s Mot. to Remand.)

The defendant also attached termination letters sent to Comdial employees. One such letter, dated December 15, 2000, discusses the company's transfer to Florida as a "phased process over the next several months" and notifies the employee that his last work day will likely be June 30, 2001. (Ex. 5, Def.'s Mot. to Remand.) In addition, the defendant represents that the new CEO of Comdial announced in January 2000 that the company would be managed on a day-to-day basis from Florida, effective February 14, 2001. (Ford Supp. Aff. ¶¶ 10, 12.)

With regard to the defendant's article, the court points out that it is also reported that "the transaction is expected to close by March 1" and that an employee had been told "his last day will be Sept. 28 "if not before." (Ex. 6, Def.'s Opp. to Pl.'s Mot. to Remand.) This is hardly strong support for the contention that the relocation of corporate headquarters had been completed as of February 21, 2001. The same can be said of the termination letter. These documents suggest that a move was in progress. Even if the court accepts that the day-to-day management had been moved to the Florida location as of February 14, 2001, this does not

mandate a finding for defendant. As the Fourth Circuit noted, “a corporation’s winding up of its business affairs may well constitute a significant activity and consume a considerable period of time.” 166 F.3d at 291. Indeed, the *Athena Automotive* court found that even a corporation that had become inactive could continue to impact a locale “to an extent sufficient to give it a geographical identity there as a principal place of business.” *Id.*

The court believes the conflicting reports as to the actual date of relocation are due to the fact that it was a transition process, which is supported by both the plaintiff’s and the defendant’s submissions. The court, therefore, cannot find that there was a clear cut-off date of Comdial’s activities in Charlottesville, Virginia and a start-up date of activities in Sarasota, Florida. Certainly, the record reflects that significant activity was still taking place in Virginia at the time the complaint was filed. This is evident from both the termination letters indicating that employment would be terminated in September and by the newspaper articles.

Accordingly, the court concludes that the evidence is sufficient to prove that the defendant still had its principal place of business in Virginia at the time the complaint was filed. As such, diversity jurisdiction does not attach to this action.

III.

In conclusion, the court accepts the Magistrate Judge’s Report and Recommendation. Therefore, the court finds that subject matter jurisdiction is lacking in this case, and therefore, grants the plaintiff’s motion to remand. The case shall be remanded to state court pursuant to 28 U.S.C. §1447(c). The defendant’s motion to dismiss is dismissed as moot.

An appropriate Order this day shall issue.

ENTERED: _____
Senior United States District Judge

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

WILLIAM C. GROVER,) CIVIL ACTION NO. 3:01CV00035
)
Plaintiff,)
)
v.) ORDER
)
COMDIAL CORPORATION,)
)
Defendant.) JUDGE JAMES H. MICHAEL, JR.

For the reasons stated in the accompanying Memorandum Opinion, it is accordingly this
day

ADJUDGED, ORDERED AND DECREED

as follows:

- (1) The Magistrate Judge's Report and Recommendation, dated July 24, 2001, shall be, and it hereby is, ACCEPTED IN ITS ENTIRETY.
- (2) The plaintiff's May 10, 2001 Motion to Remand, shall be, and it hereby is, GRANTED.
- (3) The defendant's June 1, 2001 Motion to Dismiss, shall be, and it hereby is, DISMISSED AS MOOT.
- (4) This action is hereby REMANDED for lack of subject matter jurisdiction pursuant to 28 U.S.C. §1447(c) to the Circuit Court for the County of Albemarle.
- (5) The Clerk of the Court is instructed to transfer the entire case file to the Albemarle County Circuit Court and to strike this action from the docket of the court.

The Clerk of the Court is also directed to send a certified copy of this Order and the accompanying Memorandum Opinion to Magistrate Judge Crigler and to all counsel of record.

ENTERED: _____
Senior United States District Judge

Date