

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE NEW YORK TIMES COMPANY, et al.,

Plaintiffs,

vs.

NEWSPAPER AND MAIL DELIVERERS' UNION OF  
NEW YORK AND VICINITY, ENRIQUE GRADOS,  
DJEVALIN GOJANI, CHRISTOPHER FABIANI,  
RICHARD ATKINS, RAIMON MORAN, JOHN  
CASSARO, MUNIR FAHREDDINE, and WILLIE  
MILES,

Docket No. 12-cv-5430 (AKH)

Defendants,

NATIONAL LABOR RELATIONS BOARD,

Intervenor.  
-----X

=====

MEMORANDUM OF LAW IN OPPOSITION TO REQUEST FOR  
DISMISSAL FOR LACK OF SUBJECT MATTER JURISDICTION

=====

VLADECK, RASKIN & CLARK, P.C.  
Attorneys for Defendants Enrique  
Grados, Djevalin Gojani, Christopher  
Fabiani, Richard Atkins, Munir  
Fahreddine and Willie Miles  
565 Fifth Avenue, 9th Floor  
New York, New York 10017  
(212) 403-7300

Of Counsel:

Anne C. Vladeck  
Valdi Licul

TABLE OF CONTENTS

PRELIMINARY STATEMENT ..... 1

ARGUMENT ..... 1

I. INTERPLEADER..... 1

    A. Rule Interpleader..... 2

    B. Statutory Interpleader..... 5

II. THIS COURT HAS THE AUTHORITY TO DISTRIBUTE THE FUNDS ..... 6

CONCLUSION ..... 7

PRELIMINARY STATEMENT

This Court denied an effort by the National Labor Relations Board ("NLRB") to stay payment of long overdue buyouts to the individual defendants in this matter. Undeterred, the NLRB, now joined by the Defendant Newspaper and Mail Deliverers' Union of New York and Vicinity (the "Union"), argues that this Court lacks subject matter jurisdiction over these proceedings. For the below reasons, the NLRB and the Union are mistaken.

ARGUMENT

I. INTERPLEADER

The arguments by the NLRB and the Union claiming that this Court lacks jurisdiction are based on a misconstruction of federal interpleader rules. "Interpleader is a statutory remedy that offers 'a party who fears being exposed to the vexation of defending multiple claims to a limited fund or property that is under [its] control a procedure to settle the controversy and satisfy [its] obligation in a single proceeding.'" Hartford Casualty Ins. Co. v. Lexington Ins. Co., No. 14-CV-8060(KMK), 2016 WL 1267801, at \*2 (S.D.N.Y. Mar. 30, 2016) (quoting 7 Charles Alan Wright, et al., Federal Practice and Procedure Civil § 1704 (3d ed 2013); see Locals 40, 361 & 317 Pension Fund v. McInerney, No. 06 Civ. 5224 (JFK), 2007 WL 80686, at \*3 (S.D.N.Y. Jan. 9, 2007) ("Interpleader is designed to protect stakeholders . . . from undue burden in the face of multiple claims against the same assets, and to relieve the stakeholder from determining the merits of the competing claims.")). "An interpleader action is normally conducted in two stages: During the first stage, the Court determines whether the interpleader action is appropriate and the stakeholder is entitled to bring the action; during the second, the Court determines the rights of the competing claimants to the fund." Fid. Brokerage Servs., LLC v. Bank of China, 192 F. Supp. 2d 173, 178 (S.D.N.Y. 2002). "[I]nterpleader is a 'remedial' device to be 'liberally construed.'" 6247 Atlas Corp. v. Marine Ins.

Co., Ltd., No. 2A/C, 155 F.R.D. 454, 461 (S.D.N.Y. 1994) (quoting State Farm & Casualty Co. v. Tashire, 386 U.S. 523, 533 (1967)). "There are two forms of interpleader: rule interpleader, as set forth in Federal Rule of Civil Procedure 22; and statutory interpleader, as set forth in 28 U.S.C. § 1335." 6247 Atlas Corp., 155 F.R.D. at 461.

A. Rule Interpleader

Rule interpleader "does not convey jurisdiction on the courts." Aetna Life Ins. Co. v. Bayona, 223 F.3d 1030, 134 (9th Cir. 2000). Rather, the court must have an independent statutory basis for jurisdiction. Id. The Employee Income Retirement Security Act of 1974 ("ERISA") provides that statutory basis. Metro. Life Ins. Co. v. Bigelow, 283 F.3d 436, 440 (2d Cir. 2002).

Section 502(a) of ERISA, 29 U.S.C. § 1132(a)(3), "creates a cause of action for fiduciaries 'to obtain . . . appropriate equitable relief . . . to enforce . . . the terms of'" an ERISA plan. Metropolitan Life Ins. Co. v. Price, 501 F.3d 271, 276 (3d Cir. 2007). Indeed, the Second Circuit has held that 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331 convey subject matter on district courts over interpleader actions brought by plan fiduciaries. Id.; see Locals 40, 361 & 417 Pension Fund, 2007 WL 80868, at \*2 ("ERISA provides an independent basis for subject matter jurisdiction in an interpleader action arising under ERISA") (quoting Am. Int'l Life Assur Co. v. Vazquez, No. 02 Civ. 0141, 2002 U.S. Dist. Lexis 17312, at \*5 (S.D.N.Y. Sept. 13, 2002)).

Here, the minimal jurisdictional requirements are met. See Price, 501 F.3d at 277 (asserting a "substantial, non-frivolous claim for relief" sufficient to "confer subject matter jurisdiction under ERISA"). This action concerns an ERISA plan. (Complaint ¶ 4) It was brought by two fiduciaries, the "Plan Administrator of the City and Suburban Delivery Systems,

Inc. January 2009 Severance Pay Plan for Eligible Employees Represented by The Newspaper And Mail Deliverers' Union of New York and Vicinity" (id. ¶ 5) and the "ERISA Management Committee for The New York Times Company." (Id. ¶ 6)<sup>1</sup> And, its purpose is to fulfill the fiduciaries' obligation to "ensure proper disbursement" of funds under the plan. Bayona, 223 F.3d at 1034.

The Union nonetheless claims, for the first time, that the Plan is not governed by ERISA because it does not "involve administration of ongoing benefits with rules, reporting requirements, etc." (Supplemental Reply of Defendant Newspaper and Mail Deliverers' Union of New York and Vicinity to Intervenor National Labor Relations Board's Motion to Stay ("Union Brf." at 4)) However, the Plan, by its very terms, states that it is "intended to fall within the definition of an employee welfare benefit plan under" ERISA (NLRB Brf. attachment at 1); names a "Plan Administrator" whose function is to "administer the Plan" (id. at Article II, par. 7); vests the "Plan Administrator" with "absolute discretion . . . to determine the eligibility for, and amount of, benefits due under the Plan" (id. Article VI, par. 2); requires ongoing payments to beneficiaries (id. at Article IV); and includes an elaborate, multi-step "Claims Procedure." (Id. at Article VII)

Fort Halifax Packing Co., Inc. v. Coyne, 482 U.S. 1 (1987), cited by the Union (Union Brf. 4-5), is inapposite. Fort Halifax recognizes that a state statute that is sufficiently related to an employee benefit plan may be preempted in order to further ERISA's purpose in creating a "uniform administrative scheme." Id. at 9. "A patchwork scheme of regulation would introduce considerable inefficiencies in benefit program operation, which might lead those

---

<sup>1</sup> The NLRB makes the points that "ERISA does not authorize plans to bring causes of action under 502." ((National Labor Relations Board's Suggestion of Lack of Subject-Matter Jurisdiction ("NLRB Brf.") at 4) This does little to help its cause because the fiduciaries are also plaintiffs.

employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them." Id. at 11. Contrary to the Union's suggestion, however, Fort Halifax does not hold that an employer is barred from creating an employee benefit plan involving severance payments. See Schonoltz v. Long Island Jewish Medical Ctr., 87 F.3d 72, 75 (2d Cir. 1996) ("the term 'employee welfare benefit plan' has been held to apply to most . . . employer undertakings or obligations to pay severance benefits"). Nor has the Union cited a single case where Fort Halifax or its progeny were used to strip a self-described ERISA plan, such as the one here, of its ERISA status.

The NLRB suggests that ERISA cannot provide jurisdiction because the relief requested is not equitable. (NLRB Brf. 4-5). The NLRB is wrong. It is well-settled that "[i]nterpleader is a form of 'appropriate equitable relief' for purposes of section 1132(a)(3)(B)." Bayona, 223 F.3d at 1034; see Price, 501 F.3d at 277 ("interpleader . . . is a form of equitable relief"); Metropolitan Life Ins. v. Marsh, 119 F.3d 415, 418 (6th Cir. 1997) ("an interpleader action is equitable for purposes of ERISA").

Both the NLRB and the Union also contend that this Court lacks jurisdiction because the plan beneficiaries (the drivers who have waited nearly nine years for their \$100,000 buyouts) failed to exhaust their administrative remedies. (NLRB Brf. 5-6; Union Brf. 5) They argue, in effect, that this Court cannot "assume the role of Plan Administrator in this case." (NLRB Brf. 6) ERISA's exhaustion requirement, however, is not jurisdictional; rather, it has been described as "a non-jurisdictional affirmative defense." Price, 501 F.3d at 280. In particular, "Congress has expressly provided for jurisdiction over ERISA cases in 29 U.S.C. § 1332(e). Neither that provision nor any other part of ERISA contains an exhaustion requirement. Thus, as a judicially-crafted doctrine, exhaustion places no limits on the court's

adjudicatory power." Price, 501 F.3d at 279. Having participated in these proceedings without objection, the affirmative exhaustion defense has been waived.<sup>2</sup>

Moreover, the exhaustion requirement makes little sense here even as a prudential matter. This is not a case where plan participants seek to challenge an administrator's ruling. Nor are they asking a court to interfere with the administrator's authority. To the contrary, it is the administrator, "unable to decide" a proper distribution of benefits, Bigelow, 283 F.3d at 442, that is asking this Court for a determination in furtherance of its fiduciary obligations. Interposing an exhaustion requirement "would exalt form over substance and would assist none of the interested parties." Id.

B. Statutory Interpleader

Alternatively, this Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1335. That section provides a district court with original jurisdiction over a civil action involving adverse claims to money worth at least \$500 where at least two of the adverse claimants are of diverse citizenship. 28 U.S.C. § 1335. Here, there is no dispute that there are multiple claimants (i.e, the individual defendants) with claims to a specific amount in controversy that exceeds \$500. Moreover, some of the claimants hail from different states. (Compare Declaration of Christopher Fabiani (a resident of Connecticut), attached hereto as Exhibit A, with Declaration of Djevalin Gojani (a resident of New York) attached hereto as Exhibit B).

---

<sup>2</sup> The same is true of the Union's statute of limitations defense. (Union Brf. 2-4) The defense, which is not jurisdictional, has been waived by the Union because it was not asserted in the Answer. See Litton Indus., Inc. v. Lehman Bros. Kuhn Loeb Inc., 967 F.2d 742, 751-52 (2d Cir. 1992) ("A claim that a statute of limitations bars suit is an affirmative defense, and, as such, it is waived if not raised in the answer to the complaint.").

II. THIS COURT HAS THE AUTHORITY TO DISTRIBUTE THE FUNDS

Ultimately, both the NLRB and the Union do not appear to seriously contest this Court's subject matter jurisdiction. Rather, they seem to argue that this Court has the authority to grant the Plan Administrator's request to deposit the buyout funds with the court but that it lacks the authority to determine to whom those funds should be paid. In other words, this Court is stripped of its authority to do anything once it takes possession of the funds at issue. Of course, neither the NLRB nor the Union present any support for such a limitation. Indeed, the express objective of interpleader is to "settle the controversy" over the funds at issue "in a single proceeding." Hartford Casualty Ins. Co., 2016 WL 1267801, at \*2; see 6247 Atlas Corp., 155 F.R.D. at 461 (interpleader joins claims "into one single action"). The second stage of an interpleader action expressly allows a court to "determine[] the rights of the competing claimants to the fund." McInerney, 2007 WL 80868, at \*3. A district court can even enjoin parallel proceedings that might interfere with its interpleader obligations. 28 U.S.C. § 2361. In other words, "[o]nce the interpleader fund has been deposited with the district court, the court holds it for whichever party it determines is the rightful owner." Avant Petroleum Inc. v. Banque Paribas, 853 F.2d 140, 143 (2d Cir. 1988) (emphasis added). That is precisely the next step in this action.

CONCLUSION

For the above-stated reasons, the individual defendants respectfully request that this Court deny the requests by the NLRB and the Union to dismiss this matter for lack of subject matter jurisdiction.

Dated: New York, New York  
October 9, 2017

VLADECK, RASKIN & CLARK, P.C.

By: \_\_\_\_\_ /s/  
Anne C. Vladeck  
Valdi Licul  
565 Fifth Avenue, 9th Floor  
New York, New York 10017  
(212) 403-7300  
Attorneys for Defendants Enrique Grados,  
Djevalin Gojani, Christopher Fabiani,  
Richard Atkins, Munir Fahreddine and  
Willie Miles