

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

MARK W. BAILEY, DONALD C. BELL, NORMAN D. DAY, RICHARD W. GERWE, BOBBY D. GHEEN, ANTHONY J. MUTO, C. DANIEL NASH, DANNA PAGLINO, DAVID RIORDAN, PATRICIA MONICA RICHIE, and GLENN PAUL WELCH,	:	APPEAL NO. C-110142 TRIAL NO. A-0906760
Plaintiffs-Appellants,	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
GEORGE C. JUILFS, DAVID FYFFE, and MARIE MARISCALCO BOYLE,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Raising a single assignment of error, the plaintiffs-appellants, former employees or beneficiaries of former employees of Senco Products, Inc., contest the trial court’s entry of summary judgment in favor of the defendants-appellees, officers of the company, on their claim to recover benefits under the Senco Products, Inc., Supplemental Retirement Plan (“SERP”). The benefits had been lost when Senco Products filed for bankruptcy and indefinitely suspended payments under the plan leaving the appellants as unsecured general creditors for their remaining SERP payments. The appellants brought suit raising state-law claims alleging that improper conduct by the appellees had “caused the company to breach the terms and conditions” of the SERP.

The appellees moved for summary judgment, supported by the affidavit of Senco Product's chief executive officer, asserting that the appellants' claims were preempted by the provisions of the federal Employee Retirement Income Security Act ("ERISA"). The trial court agreed and entered summary judgment for the appellees.

When, as here, the party moving for summary judgment discharges its initial burden to identify the absence of genuine issues of material fact on an essential element of the nonmoving party's claims, the nonmoving party then has a reciprocal burden of specificity and cannot rest on the allegations or denials in the pleadings, but must set forth specific facts, by the means listed in Civ.R. 56(C) and 56(E), showing that triable issues of fact exist. *See Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996).

It is well established that "ERISA preempts state-law claims that 'relate to' any employee benefit plan." *Gromada v. Barrere*, 1st Dist. No. C-040545, 2005-Ohio-1557, ¶ 11, citing 29 U.S.C. 1144(a). A state-law claim relates to a benefit plan "if it has a connection with or reference to an employee benefit plan," and is not merely peripheral to the plan. *Id.*

As appellants' claims were premised on the improper termination of benefits, sought the recovery of plan benefits, and would have required interpretation of the SERP provisions to determine whether the appellees had caused a breach of the plan, the trial court properly entered summary judgment. *See Gromada* at ¶ 13. *See also Paneccasio v. Unisource Worldwide, Inc.*, 532 F.3d 101, 114 (2d Cir.2008). The assignment of error is overruled.

Therefore, the trial court's judgment is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

OHIO FIRST DISTRICT COURT OF APPEALS

DINKELACKER, P.J., HENDON and CUNNINGHAM, J.J.

To the clerk:

Enter upon the journal of the court on February 10, 2012

per order of the court _____.
Presiding Judge