IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-2380
Summary Calendar

MILTON D. HALL,

Plaintiff-Appellant,

versus

TOTAL MINATOME CORPORATION and
WILLIAM LAWRENCE,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Texas
(CA-H-90-1457)

(February 24, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Milton J. Hall appeals the judgment of the district court, rendered at the conclusion of a bench trial, that denied him employee severance benefits under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq. Because we believe the district court was correct in its decision, we affirm.

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

I

Hall is a former salaried employee of CSX Oil & Gas Corporation (CSX) and its predecessor. He held various positions with CSX from 1982 until late April 1988. In the spring of 1988, Total Minatome Corporation (Total) purchased CSX pursuant to a Stock Purchase Agreement executed on March 22, 1988; the actual closing of the CSX stock purchase occurred on April 27, 1988. Immediately upon closing, Hall became an employee of Total, retaining his position as assistant treasurer with no break in service or change in his annual base salary of $70,100.

Because of corporate restructuring some of Hall's job responsibilities were altered. Many of the financial decisions were now made in Total's home office, which is located in France. After working for Total for ten months, until February 1989, Hall obtained employment at another corporation and voluntarily resigned from Total.

Before its purchase by Total, CSX had established a severance plan for its salaried employees. The plan qualified as an "employee welfare benefit plan" as defined by the provisions of ERISA at 29 U.S.C. § 1002(1). As a salaried employee of CSX, Hall was covered by this severance plan. A participant was eligible for benefits if he was terminated after February 1, 1988, assuming that he was not otherwise disqualified or ineligible. A participant became ineligible under the plan if he voluntarily resigned from his job, or if he was terminated for cause, or if he failed to

release all employment and termination-related rights or claims against the employer. Additionally, a participant was ineligible to receive benefits if he was given a "reasonable offer of employment" from a purchaser of CSX that offered a base salary of at least 90% of the participant's current base salary and whose location was not more than fifty miles from the site of the terminated job. The administrator of the severance plan, appellee William Lawrence, who was also Total's manager of human resources, was granted express authority under the plan to determine participants' eligibility for benefits.

Now we come to the second document that figures into this case: the stock purchase agreement. Under a provision of the stock purchase agreement between Total and CSX, Total agreed to maintain CSX's severance plan without substantive change for at least one year from the date of closing. That provision also provided that severance payments were not to be made by CSX after the signing of the stock purchase agreement without Total's consent except in the following three specific instances: (1) a reduction in total compensation of more than 10%; (2) an offer of employment involving a change in the geographic work location of more than 50 miles; or (3) a reduction in responsibility or position of more than one level.

When Hall submitted his resignation to appellee Lawrence, he also requested severance benefits under the severance plan. He claimed his responsibilities had been reduced by more than one

level and thus he was entitled to benefits under the provision of the stock purchase agreement outlined above. Lawrence denied Hall's request. Lawrence determined that because Hall had voluntarily resigned from his job at Total and because he had previously accepted Total's offer to continue in his position with no salary reduction or position change, he was ineligible for benefits under the severance plan. Lawrence maintained that the stock purchase agreement upon which Hall based his claim for benefits (arguing a reduction in his responsibilities by Total) was applicable only during the period between the signing of that agreement and the ultimate closing of the deal on April 27, 1988.[1] Lawrence explained that the only reason this provision was included in the stock purchase agreement was to limit severance payments by CSX prior to closing to prevent the reduction of CSX's cash account after the agreement was signed but before the closing took place.

Hall sued both Total and Lawrence, claiming entitlement to the severance benefits under the stock purchase agreement. Hall argued that the stock purchase agreement, which was not, independently, an "employee welfare benefit plan" under ERISA, effectively amended the severance pay plan (an ERISA welfare benefit plan) to the

[1]While the severance plan disqualified a participant if he voluntarily resigned, was terminated for cause, or if a purchaser of CSX offered him "reasonable employment," defined as at least 90% of his base salary at CSX and a new job location within fifty miles of his former one, the stock purchase agreement additionally allowed severance benefits in the event of a reduction in responsibilities by more than one level; this provision, however, was not included in the severance plan.

effect that an employee was entitled to severance pay under the severance pay plan if such reduction in responsibilities occurred within one year of the date of the agreement, i.e., prior to March 22, 1989. After a one day bench trial, the district court found that CSX's original, unamended severance plan was in effect when Total purchased the company pursuant to the stock purchase agreement.

The court thus held that the provisions of the ERISA-governed severance plan prevailed over those of the stock purchase agreement; after reviewing the terms of the plan, the court found them unambiguous and unamended by the stock purchase agreement. Concluding that the plan's language conferred discretionary authority upon the administrator to determine eligibility for benefits, the district court applied the abuse of discretion standard of review to the administrator's decision. The court then found that the plan administrator (appellee Lawrence) did not abuse his discretion in denying severance benefits to Hall because the plan unambiguously disqualified Hall on two separate grounds: voluntary resignation and reasonable offer of employment.

Hall timely filed this appeal. He argues that the district court applied an incorrect standard of review when evaluating the plan administrator's decision to deny benefits and that the court ignored the testimony and plan interpretation of every witness. He also argues that the conduct of the defendants was sufficiently reprehensible to justify an award of attorney's fees. Because we

find no merit in any of these arguments after careful review of each, we affirm the district court's decision.

II

A trial court's findings of fact will not be set aside on appeal unless clearly erroneous. Stine v. Marathon Oil Company, 976 F.2d 254, 260 (5th Cir. 1992); Fed. R. Civ. P. 52(a). Matters of law, including the interpretation of contracts, are reviewed de novo on appeal. City of Austin v. Decker Coal Co., 701 F.2d 420, 425 (5th Cir. 1983).

III

Hall asserts that the district court "ignored the testimony and plan interpretation of every witness" to arrive at its conclusion that the plan was not amended by the agreement. Our review of each of the contracts, however, leads us only to one conclusion irrespective of whether the ERISA severance plan was amended by the stock purchase agreement: Hall is not entitled to severance benefits under either the stock purchase agreement or the severance pay plan because under neither does he qualify as not having been given "a reasonable offer of employment."

The pertinent portion of the stock purchase agreement, under which Hall claims his entitlement to severance pay, reads as follows:

> Except in the case of payment of severance to an employee on account of (i) a reduction in total compensation of more than 10%, (ii) an offer of employment that involves a change in the geographic work location by more than 50 miles or (iii) a reduction in responsibility or position

> by more than one level, after the signing of this Agreement without Purchaser's consent no severance payment shall be made by the Company or any Subsidiary by reason of severance of a Company or Subsidiary employee because there has been no reasonable offer of employment.... (Emphasis added.)

Thus the three categories set forth in the stock purchase agreement apply only to former CSX employees who claim severance pay because they had been given no reasonable offer of employment, and further, the agreement specifically limits "no reasonable offer" to the three stated conditions. Therefore, Hall's sole claim to entitlement to the payment lies in the language of section (iii) above: he asserts that because his responsibility was reduced by more than one level after Total's purchase of the company, he did not receive a "reasonable offer of employment" from Total.

After reviewing the testimony of the witnesses at trial, we cannot agree. Although it is undisputed that Hall's job responsibilities changed after the sale of the company to Total, he retained the "identical job, salary, and job location at Total that he enjoyed at CSX." District Court's Memorandum Order, p. 6. Even on appeal, Hall offers no explanation as to how the changes in his duties amounted to an overall reduction in responsibility "by more than one level," or indeed what that term, in the context of this case, is supposed to mean where position, salary, and location remain the same. Thus, even if the district court erred in holding that the plan was unamended by the agreement, and the stock purchase agreement did govern the administration of severance pay

at the time Hall resigned from his job, he still has failed to show that he is entitled to severance benefits under its provisions.[2] It is thus unnecessary to say that, with respect to the claim for attorney's fees, we do not find the defendant's conduct sufficiently reprehensible to justify an award.

Because we find no merit in any of the appellant's arguments, the judgment of the district court is

A F F I R M E D.

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[2]We focus on the stock purchase agreement because Hall has no arguable claim under the severance pay plan. It did not include section (iii) of the stock purchase agreement, which is the provision upon which Hall bases his claim.

Hall also argues that the district court applied an incorrect standard of review to the plan administrator's decision to deny benefits. We find it unnecessary to address this argument because, after reviewing the pertinent contracts de novo, we agree with the plan administrator's decision and that of the district court. Thus, even under the de novo standard of review that Hall argues the district court should have applied, his appeal fails.