IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3574

JAMES T. QUITTA, ET AL.,

Plaintiffs-Appellants,

versus

CAVENHAM FOREST INDUSTRIES, INC.,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Louisiana
(CA-87-4068-G-2)

(April 22, 1994)

Before REAVLEY and JOLLY, Circuit Judges, and PARKER, District Judge.[*]

PER CURIAM[**]

The plaintiffs, who were successful in a prior appeal, now ask for attorneys' fees under an Employee Retirement Income Security Act ("ERISA") provision that allows an award of reasonable court costs and attorneys' fees in certain instances. Because we agree

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[*]Chief Judge of the United States District Court for the Eastern District of Texas, sitting by designation.

[**]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 Pursuant to that Rule, the court has determined that this opinion should not be published.

that an award of attorneys' fees is not warranted in this case, we affirm the district court's refusal to award attorneys' fees.

I

In 1985, Crown Zellerbach Corporation ("CZ") enacted a "golden parachute" plan to dissuade a possible hostile takeover. A significant change in control of CZ's stock would trigger increased severance and retirement benefits for its employees. The increased benefits served as a potential liability that would reduce the net value of the corporation's assets to potential hostile bidders. Despite this tactic, outside bidders bought CZ and split up or sold off various parts of its operations. The day after the change in control, CZ amended its retirement plan to eliminate the increased retirement benefits.

Six employees of CZ were transferred to Cavenham Forest Industries ("CFI"), but their employment was terminated less than one year later. CFI had assumed the liabilities of the portion of CZ's operations that it acquired, including the liabilities for employee benefits. After CFI refused to pay increased retirement and severance benefits, the employees filed suit under ERISA, 29 U.S.C. §§ 1001 et seq.

II

The district court awarded the employees increased retirement benefits because of a provision in the severance plan that prohibited the subsequent amendment that eliminated the increased retirement benefits. The district court denied the employees'

request for increased severance benefits from CFI because those benefits had already been accrued under the CZ plan and another payment would constitute double counting.

On appeal, this court affirmed the district court's holding but on different grounds. Harms v. Cavenham Forest Indus., 984 F.2d 686 (5th Cir. 1993). We held that the increased retirement benefits provision was part of the retirement plan, not the severance plan, and, thus, the provision of the severance plan prohibiting future amendment was inapplicable to the amendment that eliminated the increased retirement benefits. Id. at 690. Instead, we held that ERISA section 204(g), 29 U.S.C. § 1054(g)(2), prevented the elimination of the increased retirement benefits provision. Id. at 692. We also held that the employees were not entitled to double severance benefits. Id. at 693.

After the first appeal, the district court, which had reserved its ruling on attorneys' fees until after the completion of the parties' appeal, ruled that the employees were not entitled to an award of attorneys' fees. The employees brought this appeal.

III

Section 502(g)(1) of ERISA, 29 U.S.C. § 1132(g)(1), gives a court discretion to award reasonable court costs and attorneys' fees to a party for its successful ERISA claim. In Iron Workers Local # 272 v. Bowen, 624 F.2d 1255 (5th Cir. 1980), we outlined five factors that should be considered in deciding whether to award attorneys' fees under section 502(g):

> (1) the degree of the opposing parties' culpability or bad faith; (2) the ability of the opposing parties to satisfy an award of attorneys' fees; (3) whether an award of attorneys' fees against the opposing parties would deter other persons acting under similar circumstances; (4) whether the parties requesting attorneys' fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA itself; and (5) the relative merits of the parties' positions.

Bowen, 624 F.2d at 1266.

Although CFI concedes that it has the financial ability to satisfy an award of attorneys' fees, we agree with the district court that no other factor militates in favor of an award of attorneys' fees. CFI did not act with bad faith because the language of the retirement and severance plans was somewhat confusing and susceptible to different plausible interpretations.[1] Similarly, the relative merits of the parties' respective positions were not completely unbalanced. As the struggle the district court and this court engaged in regarding the validity of the amendment intended to eliminate the increased retirement benefits shows, this was a difficult case, and CFI's position was not ill-considered or frivolous. Further, we agree with the district court that an award of attorneys' fees would not deter persons in similar circumstances from acting as CFI did because the company-specific anti-takeover

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[1]The plaintiffs also mention that they should have been allowed more discovery on the bad faith issue. We find the facts in the record sufficient, and hold that the district court was not "arbitrary or clearly unreasonable" in denying more discovery. See Williamson v. United States Dept. of Agric., 815 F.2d 368, 382 (5th Cir. 1987).

provision at issue in this case is unlikely to produce similar circumstances. Finally, we agree with the district court that the employees in this case did not intend to benefit other participants in the plan, and that the fact-specific nature of this case precludes a finding that a significant ERISA issue was resolved.

IV

For the reasons stated above, the judgment of the district court is

A F F I R M E D.