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PRELIMINARY STATEMENT

In its Motion to Dismiss, defendant The Roman Catholic Archdiocese of Newark (“RCAN”) describes plaintiffs’ complaint as a “tapestry” of “juicy summertime reading.” Defendant the Roman Catholic Archdiocese of Newark’s Brief in Support of Its Motion to Dismiss the Complaint (“RCAN Brief”) at 1. The story told in the complaint is hardly light fiction to the plaintiffs and the proposed class for it chronicles events that have suddenly and unexpectedly turned their retirement years into a hellish financial reality without the monthly pension income they had earned in exchange for decades of work in RCAN’s hospital system. The Motion to Dismiss shows that RCAN is trying to shed its obligations to these people just like it shed its hospitals in various transactions over the years. But as we show below, plaintiffs have pled more than enough facts in the complaint to earn the right to hold RCAN accountable for its actions under New Jersey law.

STATEMENT OF FACTS

Plaintiffs Richard Salvia (“Mr. Salvia”), Alveira Dillard (“Ms. Dillard”) and Virginia Coleman (“Ms. Coleman”) bring this purported class action on behalf of themselves and other former employees of Saint James Hospital of Newark (“St. James”), Saint Michael’s Medical Center (“SMMC”) and/or Cathedral Health Services, Inc. (“CHS”). Complaint, at ¶¶ 1-5. Mr. Salvia worked for the RCAN hospitals from 1976-1993 (*id.*, at ¶2), Ms. Dillard worked for the RCAN hospitals from 1972-1994 (*id.* at ¶3), and Ms. Coleman worked at the corporate headquarters for the RCAN hospitals from 1981-1994 (*id.* at ¶ 4).

RCAN sponsored pension plans providing income in retirement as part of the compensation it offered to the employees in its hospital system. *Id.*, at ¶ 9. The three plaintiffs received pension benefits from the St. James Hospital of Newark Retirement Income Plan

(“Pension Plan”) commencing in 2010, 2012 and 2013 (id. at ¶¶ 2-4). The Pension Plan offered a guaranteed monthly pension for life. Id. at ¶ 10.

RCAN decided to terminate the Pension Plan in 1996. Id. at ¶ 29. It transferred assets to an insurance company with instructions to use the money to pay pension benefits to the participants in the Pension Plan. Id. at ¶ 34. RCAN also sent a letter to the plaintiffs (1) confirming that they had “earned a right to receive a future Pension benefit from our Pension Plan when you reach retirement age;” (2) stating in bolded all caps, “**THIS CHANGE WILL HAVE NO IMPACT ON YOUR RIGHT TO RECEIVE A FUTURE MONTHLY RETIREMENT BENEFIT FROM US;**” (3) reaffirming the “obligation to you;” and (4) assuring them that, “[t]he Pension Plan was fully funded and you will receive, when due, the full amount of your vested monthly retirement benefit . . . for as long as you are entitled to receive it.” Id. at ¶ 37.

On November 3, 2016, Transamerica Insurance Co., which was then managing the account with the assets underlying the payment of plaintiffs’ pension benefits, wrote to the plaintiffs to whom it had been sending monthly pension checks that:

We regret to inform you that Transamerica has not received any deposits to the Plan for a number of years. As a result, the Plan’s assets are diminishing and we anticipate that they will be depleted in approximately five to seven months, depending upon the investment performance of the assets. Once the Plan assets have been entirely depleted, no further pension payments will be processed by Transamerica.

Id., at ¶ 48. Transamerica stopped sending pension checks to the plaintiffs when the money ran out in November, 2017. Id., at ¶ 49.

ARGUMENT

A. The Legal Standard for a Motion to Dismiss

RCAN has moved to dismiss the complaint for failure to state a claim upon which relief can be granted under N.J. Court Rules, 1969, Rule 4:6-2(e). For purposes of this motion, the Court assumes that all facts pled in the complaint are true and the plaintiffs are given the benefit of all reasonable factual inferences supported by their claims. *F.G. v. MacDonell*, 150 N.J. 550, 556 (1997). The task for the Court is to determine “whether a cause of action is ‘suggested’ by the facts” alleged. *Teamsters Local 97 v. State of New Jersey*, 434 N.J. Super. 393, 412 (App. Div. 2014).

B. RCAN’s Brief Ignores Many of the Complaint’s Allegations.

Despite RCAN’s description of the complaint as a “tapestry” of “juicy summertime reading,” it insists that there is “[a] complete and total lack of factual support for any of [plaintiffs’] purported claims.” RCAN Brief at 1. In particular, RCAN claims that there is a “complete and total” lack of facts in the complaint about (1) the alleged legal relationship between the plaintiffs and RCAN; and (2) elements of the claims under which relief is requested. That is not accurate.

1. The Complaint Alleges that RCAN Controlled the Actions of the Hospitals.

RCAN’s contention that the complaint does not allege that there was a direct relationship between RCAN and the plaintiffs is a preview of RCAN’s affirmative defense that it is not legally responsible for the loss of plaintiffs’ pension benefits because the actions that caused the loss were taken by persons and entities without the involvement of RCAN. But the issue for purposes of the Motion to Dismiss is whether the facts in the complaint, and the reasonable inferences that can be drawn from them, could cause a jury to conclude that RCAN caused the

damages to the plaintiffs by using its control over its hospital system to repudiate the pension promises that had been made to the plaintiffs and to breach the fiduciary duties owed to the plaintiffs as participants and beneficiaries of the Pension Plan trust funds.

The complaint alleges that RCAN in fact controlled the persons and entities in its hospital system, as follows:

- RCAN controlled and administered the hospitals;
- System and CHS were RCAN's agents for overseeing and controlling the hospitals;
- RCAN exercised control over System and CHS by the power of appointment and removal of their officers;
- RCAN exercised governance and control over the hospitals through the appointment of management personnel and Board members at the hospitals; and
- RCAN controlled the administration of the Pension Plan.

Complaint, ¶7. Those allegations in themselves not only are sufficient to defeat RCAN's Motion to Dismiss, but they are also based on the representations of RCAN itself. As the complaint explains, during most of the time that plaintiffs were employed in the RCAN hospital system, RCAN took the position that the Pension Plan in which they were participants was covered by the federal law regulating such plans, the Employee Retirement Income Security Act of 1974 ("ERISA"). Complaint, ¶ 11-18. In 1990, RCAN sought a ruling from the Internal Revenue Service ("IRS Ruling") that the Pension Plan was exempt from the requirements of ERISA. *Id.* at ¶ 20. In order to obtain the IRS Ruling, RCAN argued that the Pension Plan met the definition of a "church plan" in ERISA Section 3, 29 U.S.C. § 1002 (3)(33), as "a plan established and maintained . . . for its employees (or their beneficiaries) by a church" RCAN supported this assertion with representations to the effect that RCAN "established and maintained" the Pension Plan for "its employees" by virtue of its direction and control of the entities within its hospital system. The IRS made the following findings based on RCAN's representations:

Subdivision B's [RCAN] direct and immediate control over Corporation C [System] and the Hospital [St. James]; the operation and administration of the Hospital in keeping with Church A's religious injunction to care for the sick, injured, or disabled; commitment to operate the Hospital according to the teachings, tenets, and ecclesiastical law of Church A; and, compliance with the directives for health care facilities sponsored by Church A, as promulgated by the religious leaders of Church A in the United States for affiliated health-care facilities. To these ends, [System], which is controlled by RCAN of Church A, operates several hospitals, including the [St. James]. Through [System] and Corporation D [CHS], [RCAN] exercises governance and control powers over the Hospital.

See Certification of Richard Meisner, Exhibit A, page 3.¹

Plaintiffs assume that RCAN's representations to the IRS about its control over the entities and persons in its hospital system were truthful. Plaintiffs also assume that discovery in this action will reveal additional facts that supported RCAN's representations to the federal government beyond those summarized in the IRS Ruling. At this stage of the case, however, it is clear that the plaintiffs have alleged specific facts based upon RCAN's own representations which could cause a jury to conclude that RCAN caused the damages to plaintiffs by using its control over its hospital system to repudiate the pension promises that had been made to the plaintiffs and to breach the fiduciary duties owed to them.

2. The Complaint Alleges the Elements of the Claims under New Jersey Law.

RCAN also argues that the complaint does not allege facts relating to each element of the three causes of causes of action in the complaint. That is not accurate.

a. The Complaint States a Claim for Breach of Contract.

To establish a claim for breach of contract under New Jersey law, a plaintiff must plead that: (1) the parties entered into a valid contract containing certain terms; (2) the defendant failed

¹ The copy of the IRS Ruling currently in plaintiffs' possession is the version that is released to the public. It is identical to the actual ruling except for redactions of information that might identify the requester.

to perform its obligations under the contract; and (3) the defendant's breach caused a loss to the plaintiff. *EnviroFinance Group, LLC v. Envtl. Barrier Co., LLC*, 440 N.J. Super. 325, 345 (App. Div. 2015); *Murphy v. Implicito*, 392 N.J. Super. 245, 265 (App. Div. 2007). The parties to a contract may demonstrate their intentions to be bound by the terms of an offer through words or conduct. *Weichert Co. Realtors v. Ryan*, 128 N.J. 427, 435-436 (1992), citing *West Caldwell v. Caldwell*, 26 N.J. 9, 24-25 (1958); Restatement (Second) of Contracts § 19(1) (1981).

The courts have recognized that pension plans are enforceable contracts in which an employer promises to put aside money for the employees in exchange for the employees' labor. Many of these cases arise under ERISA and not state law because ERISA Section 514, 29 USC § 1144, completely preempts "any state law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy," including state contract laws. *Aetna Health Ins. v. Davila*, 542 U.S. 200, 208 (2004). Nevertheless, the federal courts, including those in New Jersey, have often held that a pension plan is a contract between an employer and its employees as part of their analysis of the statute of limitations for claims by individuals that they are entitled to pension benefits. For example, the Third Circuit Court of Appeals has held with respect to such benefit claims,

'In the absence of an applicable ERISA limitation, the courts thus apply the statute of limitations for the state claim most analogous to the ERISA claim pursued.' In this context, we apply New Jersey's six-year limitations period that governs contract actions.

Kapp v. Trucking Employees of North Jersey Welfare Fund-Pension Fund, 426 Fed. Appx. 126, 129 (3d Cir. 2011), quoting *Connell v. Trustees of the Pension Fund of the Ironworkers Dist. Council of N. New Jersey*, 118 F.3d 154, 156 n. 4 (3d Cir. 1997). Other federal and state courts have also consistently recognized that a pension plan is a contract between employer and employee. See *Audio Fidelity v. Pension Ben. Guaranty Corp.*, 624 F.2d 513 (4th Cir. 1980);

Childs v. National Bank of Austin, 658 F.2d 487 (7th Cir. 1981); *Wilson v. Rudolph Wurlitzer Co.*, 1934, 48 Ohio App. 450, 194 N.E. 441; *David v. Veitscher Magnesitwerke Actien Gesellschaft*, 1944, 348 Pa. 335, 35 A.2d 346.

RCAN does not seek to dismiss this state law case on the basis of ERISA preemption because the loss of protection from state law is one consequence of RCAN's decision to obtain the IRS Ruling that the Pension Plan is not covered by ERISA. Nor does RCAN argue that a pension plan does not create an enforceable contract under New Jersey law. Instead, RCAN argues only that the complaint does not allege enough facts concerning certain aspects of this pension plan contract.

For example, RCAN argues that the complaint does not allege facts concerning the essential terms of the bargain between RCAN and the plaintiffs. But RCAN concedes that “[t]he complaint generally concludes that RCAN offered to provide lifetime pension payments to plaintiffs as compensation for their labor, which plaintiffs and purported class members accepted by working at St. James or System.” RCAN Brief, at 8 (citing ¶¶ 55-56). Those paragraphs of the complaint are backed up by other allegations. Thus, the complaint alleges that the promise of pension payments was “part of the compensation [RCAN] offered to the employees in its hospital system.” Complaint, ¶ 9. Similarly, contrary to RCAN's claim that the complaint does not allege when plaintiffs performed their end of the contractual bargain, the complaint details when each named plaintiff began to work in the RCAN hospital system and the years each worked in order to earn a pension. *Id.*, ¶¶ 2-4.²

² One of the redactions in the public version of the IRS Ruling is the date that the Pension Plan came into existence. This information, however, is contained in a Settlement Agreement between the Pension Benefit Guaranty Corporation, another federal agency, and RCAN that resulted from the IRS Ruling. That agreement states that the Pension Plan was established “on or about January 1, 1962,” which means that it was in existence when each plaintiff first became

RCAN also concedes that the complaint alleges that RCAN “provided numerous unspecified documents and written communications setting forth the terms of the alleged contract,” but it claims that those terms “are not identified.” RCAN Brief at 8. The complaint in fact alleges the terms of the pension promise in detail:

The SJH [Pension] Plan offered a guaranteed pension for life. For every year that employees worked, they earned an increase in monthly payments that started at retirement (benefits could start as early at age 55 but the normal retirement age was 65) and lasted for the rest of their (or their spouse’s) lives.

Complaint, ¶ 10.³ RCAN also claims that the numerous documents and written communications wherein the complaint alleges RCAN reaffirmed its promise to provide pension benefits to plaintiffs are “unspecified.” RCAN Brief, at 8. That is not accurate either. The complaint refers to, and quotes from, letters sent by RCAN to plaintiffs in 1988 (Complaint, ¶ 16) and 1996 (id., ¶ 37), and the representations RCAN made to the federal government (id., ¶ 40) about its commitment to provide lifetime benefits to the plaintiffs. See Certification of Richard Meisner, Exhibits C and D.

Finally, while RCAN does not argue that the complaint fails to cite facts relating to RCAN’s breach of the pension contract or the loss suffered by plaintiffs, it is worth noting that both those elements of a breach of contract claim under New Jersey law are pled in detail. Thus, the complaint describes the transactions involved in RCAN’s decision not to set aside enough

employed in the RCAN hospital system. See Certification of Richard Meisner, Exhibit B, page 2.

³ RCAN represented to the IRS that it had maintained the Pension Plan pursuant to the requirements of ERISA from its inception in 1972. One of those requirements was that the Pension Plan be “established and maintained pursuant to a written instrument.” ERISA Section 402, 29 U.S.C. § 1142. RCAN was also subject to ERISA’s regulations that required the Pension Plan to spell out in writing how the plaintiffs could earn a pension and the circumstances which could cause them to lose their benefits. 29 C.F.R. § 2920.102-3(j), (k), (l), and (m).

money to fulfil its promise to provide lifetime pensions for plaintiffs (Complaint, ¶ 34), and it sets forth in detail the nature of plaintiffs' loss and when it was incurred (*id.*, ¶¶ 46-49).

In sum, the complaint alleges facts concerning each element of a breach of contract claim under New Jersey law, and there is no basis for dismissing this cause of action.

b. The Complaint States a Claim for Breach of Fiduciary Duty.

To state a claim for breach of fiduciary duty, a plaintiff must allege: (1) the existence of a fiduciary relationship where one places his trust and confidence in another; (2) a breach of the duties imposed by the fiduciary relationship, including the duty of loyalty and good faith; and (3) resulting damages. *McKelvey v. Pierce*, 173 N.J. 26, 57 (2002) (citing *F.G. v. MacDonnell*, 150 N.J. 550 (1997)). A pension plan is the embodiment of the principles underlying the common law of trusts because money is set aside in trust and managed for the benefit of trust beneficiaries. Congress recognized that when it designed the federal law. For example, ERISA Section 402, 29 U.S.C. § 1142, provides that all plans must have a "Named Fiduciary." ERISA's "Findings and Declarations of Policy" highlight the establishment of "standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans." ERISA Section 1, § 1001(b). And the United States Supreme Court has stated that the duties imposed by ERISA upon persons who control benefit plans "have the familiar ring of their source in the common law of trusts." *Pegram v. Herdrich*, 530 U.S. 211, 224 (2000).

Prior to the enactment of ERISA and its preemption provision, New Jersey courts had relied on the common law of trusts in holding that those who make decisions about pension plans and benefits are fiduciaries with respect to the plan participants. For example, in *Thompson v. Sheet Metal Workers Local Union*, 132 N. J. Super. 348, 355 (Ch. Div. 1975)(emphasis in original), the court held that the "law of our own State establish[es] that the standard of care" for

those with the responsibility to make decisions about Pension plans “is that of a *fiduciary* administering a trust,” and the Court further recognized the “common-law *fiduciary* responsibilities” of persons administering employee pension funds. See also *Judge v. Kortenhaus*, 79 N.J. Super. 574 (Ch. Div. 1963).

RCAN acknowledges that “[p]laintiffs claim that ‘assets of the pension plans were held in trust and segregated from [RCAN’s] other business’”. But it insists that plaintiffs fiduciary duty claim must be dismissed because the complaint does not allege that RCAN itself “held the money.” RCAN Brief, at 13. This is not accurate. The complaint alleges that RCAN transferred pension assets “into trust accounts that it established.” *Id.*, ¶ 25. The complaint details the series of transactions involving the assets of the Pension Plan that are alleged to have constituted the breach of fiduciary duty by RCAN. *Id.*, ¶ 34. The complaint alleges that these actions were part of a scheme by RCAN to benefit itself at the expense of the plaintiffs. *Id.* ¶¶ 28-29. Finally, the complaint alleges that these actions caused damages to the plaintiffs when the underfunded pension account established by RCAN ran out of money and the plaintiffs ceased to receive their pension payments. *Id.*, ¶¶ 47-49.

The complaint states a classic breach of fiduciary duty claim involving assets held in trust. It alleges facts concerning each element of that claim under New Jersey law, and there is no basis for dismissing this cause of action.

c. The Complaint States a Claim for Promissory Estoppel.

Promissory estoppel requires that a plaintiff allege (1) that the defendant made a clear and definite promise; (2) with the expectation that the promise would be relied upon; (3) reasonable reliance on behalf of the plaintiff; and (4) definite and substantial detriment incurred in reliance

on the promise. *Segal v. Lynch*, 211 N.J. 230, 253 (2012). RCAN contends that the complaint does not identify the promise made by RCAN. RCAN Brief at 11-12. This is not accurate.

One aspect of RCAN's operation of the Pension Plan in compliance with ERISA from 1972-1991 is that it made periodic disclosures to the plan participants under the law's reporting and disclosure regime. This included a "summary plan description" that provided, among other things, a "description of the provisions providing for nonforfeitable pension benefits [and the] circumstances which may result in disqualification, ineligibility, or denial or loss of benefits." ERISA Section 102(b), 29 U.S.C. § 1022(b). The complaint quotes directly from another ERISA disclosure by RCAN in 1988 which assured the plaintiffs of their entitlement to pension benefits and that there were sufficient assets to pay those benefits. Complaint, ¶ 16.

RCAN cynically contends that the claim will fail because RCAN never intended for its promise of a lifetime pension to be relied upon by the plaintiffs, but for purposes of the Motion to Dismiss, the assumed fact is that the pension was part of the compensation package RCAN offered to recruit and retain employees of the hospital system. Complaint, ¶ 9. RCAN similarly contends that the complaint does not allege that the promise of a lifetime pension was a factor in the plaintiffs' decisions to remain employees of the RCAN hospital system for the majority of their working lives. That is also not accurate. The complaint specifically alleges that plaintiffs relied on that promise in deciding to remain employees of the system. *Id.*, ¶ 62.


In sum, the complaint alleges facts concerning each element of a claim of promissory estoppel under New Jersey law, and there is no basis for dismissing this cause of action.

CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that the Court deny defendant's Motion to Dismiss and hold that the complaint states claims for relief under New Jersey law. If the Court believes that the complaint does not allege sufficient facts to support one or more

claims, plaintiffs respectfully request that the Court dismiss that claim without prejudice and allow plaintiffs to file an amended complaint.

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