IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOHN R. FRANCE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 01-600 (JJF)
	:	
SYNGENTA CROP PROTECTION, INC., a Delaware corporation, KEY TO RETAIN PLAN, an employee welfare benefit plan, SYNGENTA CROP PROTECTION, INC., Plan Administrator of Key to Retain Plan,	:	
	:	
Defendants.	:	

John M. Stull, Esquire, of JOHN M. STULL, Wilmington, Delaware.
Attorney for Plaintiff.

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Attorneys for Defendants.

MEMORANDUM OPINION

September 30, 2002
Wilmington, Delaware

FARNAN, District Judge

Presently before the Court are cross motions for summary judgment (D.I. 22 & 25). For the reasons set forth below, Defendants' Motion for Summary Judgment (D.I. 22) will be granted, and Plaintiff's Motion for Summary Judgment (D.I. 25) will be denied.

BACKGROUND

This case arises out of an employee's claimed entitlement to a retention bonus. The parties agree that no facts central to this case are in dispute.

Zeneca Ag Products ("Zeneca"), the Plaintiff's former employer, adopted a Key to Retain plan (the "KTR") effective January 1, 1998, that consisted of two parts, a quarterly premium and a retention component paid in lump sum. (D.I. 33, ¶ g). The KTR was designed to promote stability and continuity in a competitive business market by retaining key individuals possessing needed technical or project management skills for a definite period of time. (D.I. 33, ¶ h).

The Plaintiff signed the KTR plan document on December 22, 1997. (D.I. 33, ¶ j). During most of 2000, Plaintiff was an employee of Zeneca. (D.I. 33, ¶ a). On September 1, 2000, Plaintiff resigned from Zeneca to take a position with AstraZeneca, Inc. ("AstraZeneca"). (D.I. 33, ¶ b). In November, 2000, Zeneca and Novartis AG merged to create a new company,

Syngenta Crop Protection, Inc. ("Syngenta"). (D.I. 33, ¶ c).

The Plaintiff resigned from Zeneca because the plans to create Syngenta made his job status uncertain. (D.I. 33, ¶ d). However, when the Plaintiff resigned from Zeneca, Syngenta had not yet been formed, and no decision had been made concerning the Plaintiff's continued employment with the business. (D.I. 33, ¶ e). By joining AstraZeneca when he did, the Plaintiff was able to preserve his seniority, years of service and benefits, and increase his salary. (D.I. 33, ¶ f).

During the months following the Plaintiff's resignation from Zeneca, he made several requests to receive all or part of his retention bonus under the KTR. This lawsuit stems from Zeneca's denial of those requests.

Plaintiff claims Defendants violated the KTR instituted by Zeneca when they failed to pay him the retention component of the KTR. (D.I. 33). Plaintiff contends that the KTR is a plan covered under the Employee Retirement Income Security Act ("ERISA") and that he is owed approximately $22,500 under the plan. (D.I. 33). Defendants assert that the KTR is not an ERISA plan, and thus, this Court lacks subject matter jurisdiction. (D.I. 33). Defendants further assert that even if the KTR is an ERISA plan that the Plaintiff is not entitled to any additional benefits under the plan. (D.I. 33).

The parties filed cross motions for summary judgment based

on the above contentions, and this Opinion resolves those pending motions.

DISCUSSION

I. Standard of Review

Federal Rule of Civil Procedure 56(c) provides that a party is entitled to summary judgment where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c).

In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Valhal Corp. v. Sullivan Assocs., Inc., 44 F.3d 195, 200 (3d Cir. 1995). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000).

To defeat a motion for summary judgment, Rule 56(c) requires the non-moving party to show that there is more than:

> some metaphysical doubt as to the material facts.... In the language of the Rule, the nonmoving party must come forward with specific facts showing that there is a genuine issue for trial.... Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)(citations and punctuation omitted).

Accordingly, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986).

II. The KTR is an ERISA plan

As an initial matter, the parties dispute whether the KTR is covered by ERISA. The United States Supreme Court has stated that an ERISA plan is characterized by the "ongoing, predictable nature of [an] obligation ... creat[ing] the need for an administrative scheme to process claims and pay out benefits, whether those sums are received by beneficiaries in a lump sum or on a periodic basis." Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 16 n.9 (1987). When applying Fort Halifax, courts examine whether the plan requires an administrative scheme and evaluate the amount of discretion involved in the decision whether to pay the benefit at issue. Pane v. RCA Corp., 868 F.2d 631, 635 (3d Cir. 1989)(holding that a severance program was an ERISA plan because the plan administrator was authorized to use his discretion in determining whether an employee was terminated for cause); Darlin v. Consolidated Rail Corp., 93 F. Supp. 2d 599, 601 (E.D. Pa. 2000).

Here, the KTR plan involves significant discretion. Administrators must set performance objectives for each employee and must make a determination as to whether those objectives have

been met. (D.I. 25 at A146). Additionally, the KTR requires an existing, on-going administrative scheme. (D.I. 33, ¶ i; D.I. 25 at A146). Therefore, the Court concludes that the KTR is an ERISA plan.[1] Consequently, the Court has jurisdiction to decide this case on the merits.

II. The Plaintiff is not entitled to any further KTR benefits

The KTR signed by the Plaintiff, in relevant part, provides: "plan participants who remain in Zeneca Ag Products in the IS Group through December 31, 2001, will be eligible for an additional one-time lump sum payment...." (D.I. 25 at A145). The Plaintiff resigned from Zeneca on September 1, 2000. (D.I. 33, ¶ b). Because the Plaintiff resigned sixteen months prior to the date specified in the KTR, he is not entitled to receive the lump sum retention payment. Moreover, the KTR signed by the Plaintiff made no provision for a pro rata payment of the retention component. (D.I. 33, ¶ m). In fact, the KTR, in relevant part, provides: "[i]f a plan participant exits the plan for any reason ... that individual will not be eligible for the ... retention component payments." (D.I. 25 at A146). Therefore, the Plaintiff is entitled to no further benefits under the explicit terms of the KTR he signed.

Nonetheless, the Plaintiff contends that the KTR was amended

[1] As a result of the Court's conclusion, Defendants' Motion to Dismiss (D.I. 8) that is pending before the Court is now moot.

and that he is entitled to a pro-rated retention benefit under the amended KTR. The Plaintiff makes two arguments in support of this contention.

First, the Plaintiff argues that the Defendants amended the KTR by paying the Plaintiff two quarterly KTR bonuses after his resignation from Zeneca. The Defendants characterize both payments as "good will" bonuses and assert that they were paid outside the KTR because they were included in the Plaintiff's AstraZeneca paycheck, (D.I. 25 at A135), and were not paid as dictated by the terms of the KTR. (D.I. 25 at A146).

However, Defendants' August 29, 2001, letter to the Plaintiff's attorney admits that "Mr. France received the 3rd quarter KTR payment of $2,500 even though he had left prior to the end of that quarter." (D.I. 25 at A-150). Thus, by the defendants' own admission, the third quarter bonus was paid under the KTR.

The Plaintiff received a fourth quarter bonus of $625, which is only 25% of what he would have received under the KTR. (D.I. 25 at A92). This fact supports the defendant's characterization of the payment as gesture of good will.

Regardless, Defendants' payment of quarterly KTR bonuses after the Plaintiff's resignation is not relevant to the Plaintiff's eligibility for the retention bonus. The quarterly performance bonuses and the retention bonus are separate

incentives and the modification of one does not mandate an amendment to the other. Moreover, it would be inequitable to require the Defendants to pay a large retention bonus simply because they paid two relatively small quarterly bonuses as a gesture of good will.

Second, the Plaintiff argues that the Defendants amended the KTR by paying pro-rated retention bonuses to employees that were similarly situated to the Plaintiff. Specifically, the Plaintiff points out that Syngenta employees Karl Jorgensen and Donald S. Constantine, Jr. received pro-rated retention bonuses despite the fact that they did not remain Syngenta employees until December 31, 2001. However, the Plaintiff's argument is based on a faulty premise. Rather than amending the KTR by taking actions inconsistant with it, Syngenta instead formally amended the KTR retention benefit to permit pro-rated retention benefits for employees who met specific requirements. A February 16, 2001, email from Syngenta's Human Resources Department explains:

> During 2000 we shared with you the impacts of the merger with Syngenta on the KTR plan under various scenarios. Since you were an employee of Syngenta through December 31, 2000, you will be receiving at least a portion of your Retention Pool. If you remain an employee of Syngenta through December 31, 2001, you will receive your full Retention Pool amount. If you are terminated from Syngenta either because you were not offered a job, or declined a job due to the necessity to relocate, and you remain with Syngenta up to the Company set Severance Date, you will receive a prorated portion of your Retention Pool based on your Severance Date.

(D.I. 25 at A147). Mr. Jorgensen and Mr. Constantine were

Syngenta employees through December 31, 2000, and they stayed until their respective company-specified termination dates. (D.I. 25 at A8-9, A42-43). Thus, they received pro-rated portions of their respective retention benefits because they met the requirements of the amended KTR. (D.I. 25 at A8-9, A42-43).

However, the Plaintiff was not a Syngenta employee through December 31, 2000, was not terminated from Syngenta, and did not remain with Syngenta until a company-specified severance date. In fact, when the Plaintiff resigned from Zeneca, Syngenta had not yet been formed, and no decision had been made concerning the Plaintiff's continued employment with the business. (D.I. 33, ¶ e). Thus, the Plaintiff meets none of the amended KTR's requirements and is not entitled to a pro-rated portion of the retention benefit under Syngenta's amended KTR.

Moreover, the Plaintiff admits that Defendants' amended the KTR after he resigned from Zeneca.[2] (D.I. 25 at A140). Thus, the amended KTR does not apply to him because as an ex-employee he was no longer in the retention plan. By his own admission, the Plaintiff seeks an "exception," (D.I. 25 at A143), and is looking for "any angle ... to get access to the baloon [sic] payment." (D.I. 25 at A138). The Plaintiff's claim to any

[2] Plaintiff stated in his January 12, 2001, email to Mark Quarles, "When I accepted the position with AstraZeneca the terms of the KTR were that employees had to remain in IS until the end of 2001. The policy has since been changed to allow for a prorated portion of the KTR." (D.I. 25 at A-140).

entitlement under the amended KTR is without merit, and the Court concludes that the Plaintiff is not entitled to any further benefits under the KTR.

CONCLUSION

The Court concludes that the KTR at issue is an ERISA plan and thus, the Court may exercise jurisdiction over the instant dispute. The Court further concludes that the Plaintiff is not entitled to the retention bonus he seeks because he does not meet the explicit requirements of the KTR he signed. Moreover, the Plaintiff is not eligible for a pro-rated retention bonus because the amended KTR is not applicable to him, and, even if it was, he does not meet the requirements for payment under the amended KTR.

An appropriate Order will be entered.

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SYNGENTA CROP PROTECTION, INC., a Delaware corporation, KEY TO RETAIN PLAN, an employee welfare benefit plan, SYNGENTA CROP PROTECTION, INC., Plan Administrator of Key to Retain Plan,	:	
	:	
Defendants.	:	

ORDER

At Wilmington this 30th day of September 2002, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

A. Defendants' Motion For Summary Judgment (D.I. 22) is **GRANTED**;

B. Plaintiff's Motion For Summary Judgment (D.I. 25) is **DENIED**;

C. Defendants' Motion to Dismiss the Complaint (D.I. 8) is **MOOT**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE