

Ninth Circuit Holds Attorneys' Fees Cannot be Recovered as “Other Equitable Relief” under ERISA

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In *Castillo v. Metro. Life Ins. Co.*, 2020 U.S. App. LEXIS 25985 (9th Cir. Aug. 17, 2020), the Ninth Circuit held that attorneys' fees incurred during the administrative review process cannot be recovered as “other equitable relief” under Section 502(a)(3) of ERISA.

Juan Castillo (“Castillo”) was a participant in an ERISA plan and submitted a claim for long-term disability (LTD) benefits. Metropolitan Life Insurance Company (“MetLife”), the plan’s claims administrator, approved and paid Castillo’s claim for LTD benefits for four years. After receiving notice from Castillo’s former employer that he received pension benefits in the form of an IRA rollover at the outset of his disability, MetLife determined this was an offset under the Plan that reduced his monthly benefits and resulted in a significant overpayment. Castillo retained counsel to represent him during the administrative review process, which resulted in a reversal of MetLife’s decision and the payment of all benefits due to Castillo.

Castillo nonetheless sued MetLife for breach of fiduciary duty and sought to recover the attorneys’ fees he incurred during the administrative review process as a surcharge under 29 U.S.C. § 1132(a)(3). Even though he obtained all benefits due to him under the terms of the Plan, Castillo argued he was entitled to “make whole” equitable relief under the U.S. Supreme Court’s decision in *CIGNA Corp. v. Amara*, 563 U.S. 421 (2011). Castillo argued that MetLife breached its fiduciary duties when it misapplied the Plan’s offset provisions and caused harm to Castillo in the form of the attorneys’ fees he was required to pay his lawyers to get MetLife’s decision reversed and his benefits paid.

The district court dismissed Castillo’s case at the pleading stage and the Ninth Circuit affirmed the judgment on appeal. The Ninth Circuit first found that Section 1132(a)(1)(B) did not provide an “adequate remedy” for Castillo’s injury and that, as a result, Castillo could seek other equitable “make whole” relief. Still, the Ninth Circuit held that the requested relief was not available because it was contrary to the court’s decision in *Cann v. Carpenters’ Pension Tr. Fund for N. Cal.*, 989 F.2d 313, 314 (9th Cir. 1993) and ERISA’s fee shifting statute, 29 U.S.C. § 1132(g). In *Cann*, the court held that ERISA’s fee-shifting provision expressly limited an award of “reasonable attorney’s fee

and costs” incurred to proceedings in court, and not in an administrative proceeding. Also in *Cann*, the court concluded that permitting an award of fees incurred in an administrative proceeding would undermine the congressional purpose underlying ERISA to promote “the soundness and stability of plans with respect to adequate funds to pay promised benefits.” 29 U.S.C. § 1001(a).

The Ninth Circuit further reasoned that Castillo’s request for fees under § 1132(a)(3) failed to accord sufficient weight to § 1132(g). The court considered it significant “that § 1132(g) expressly addresses the subject of attorney’s fees, affirmatively authorizing an award of fees in civil actions, while making no mention of fees incurred in the administrative proceedings mandated by the statute.” Applying the *expressio unius* canon of statutory construction, the court noted that “Congress expressly addressed the question of attorney’s fees under ERISA but omitted any reference to fees incurred in the administrative proceedings mandated by the statute,” which “support[s] the inference that Congress did not authorize an award of fees incurred in such proceedings.”

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