UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN B. DAVIDSON, *et al.*

Plaintiffs,

v.

Case No. 12-cv-14103
Honorable Gershwin A. Drain

HENKEL CORPORATION,
HENKEL OF AMERICA, INC., *et al.*

Defendants.
_____/

OPINION AND ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [#103] AND GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT [#105]

I. INTRODUCTION

On September 14, 2012, Plaintiff, John B. Davidson ("Davidson"), filed the instant class action Complaint, pursuant to the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq*. ("ERISA"). *See* Dkt. No. 1. In the Complaint, Davidson alleged that Henkel Corporation, Henkel of America, Inc., and Henkel Corporation Deferred Compensation and Supplemental Retirement Plan (collectively "Defendants") failed to follow the Internal Revenue Code's ("IRC") Special Timing Rule for the withholding of Federal Income Contributions Act ("FICA") taxes on vested deferred compensation. *Id.*

On September 29, 2014, this Court granted Davidson's Motion for Class Certification. *See Davidson v. Henkel Corp.*, No. 12-cv-14103, 2014 WL 4851759, at *22 (E.D. Mich. Sept. 29, 2014). The Court appointed Davidson as the Class Representative and the Miller Law Firm P.C. as Class Counsel. *Id.* Presently before the Court are Defendants' Motion for Summary

Judgment and Plaintiffs' Motion for Partial Summary Judgment. *See* Dkt. Nos. 103, 105. For the reasons discussed herein, the Court will **DENY** Defendants' Motion and **GRANT** Plaintiffs' Motion for Partial Summary Judgment regarding the liability of the Defendants.

II. FACTUAL BACKGROUND

John Davidson began working for Henkel Corporation in 1972. During their employment, Davidson and the Class Members (collectively "Plaintiffs") participated in Defendants' available retirement programs. One such program was the Henkel Corporation Deferred Compensation and Supplemental Retirement and Investment Plan (the "Plan"); a nonqualified retirement plan maintained pursuant to the IRC. The Plan is known as a "Top Hat" plan within the meaning of ERISA.

The Plan was designed to provide a supplemental retirement benefit for a select group of management or highly compensated employees. This was to be accomplished by permitting the Participants to defer a portion of their compensation, which was not taken into account under the normal Henkel Corporation Retirement Plan. Under the Plan, the Participants would defer their compensation until the time of their retirement. Presumptively, at retirement, the Participants would be taxed in a lower tax bracket, thereby decreasing their overall tax liability.

Davidson retired on August 1, 2003, and began receiving his monthly supplemental benefit under the Plan. Eight years later, on September 15, 2011, a letter was sent from the Director of Benefits at Henkel Corporation to all Plaintiffs. The letter informed Plaintiffs that:

> During recent compliance reviews performed by an independent consulting firm, it was determined that Social Security FICA payroll taxes associated with your nonqualified retirement benefits have not been properly withheld. . . .
>
> At the time of your retirement, FICA taxes were payable on the present value of all future non-qualified retirement payments. Therefore, you are subject to FICA Taxes on your non-qualified retirement payments on a "pay as you go" basis for

> 2008 and beyond, which are the tax years that are still considered "open" for retroactive payment purposes.

Dkt. No. 106-2 at 2. In the letter, Defendants also informed Plaintiffs that Defendants: (1) consulted with the IRS Chief Counsel's office to determine the best approach to rectify the Defendants' failure to properly withhold Plaintiffs' FICA taxes; (2) remitted the full payment of FICA tax owed to the IRS on behalf of Plaintiffs; (3) did not deduct the entire amount owed for FICA taxes from the Plaintiffs' accounts, and instead reimbursed themselves by reducing the Plaintiffs' monthly benefit payments for a 12 to 18 month period; and (4) planned to adjust Plaintiffs' monthly payments under the Plan, effective January of 2012. *Id.*

Davidson contacted Defendants to challenge the change to his benefits. He received the following response on October 14, 2011:

> Yes, at the time you commenced receipt of this benefit, Henkel should have applied FICA tax to the present value of your nonqualified pension benefit. . . .
>
> Yes, this applies to the non-qualified benefit only. . . .
>
> No, this benefit comes from the Henkel Corporation Supplement Retirement Plan payment. This is the restoration plan which provides benefits similar to the qualified plan, but on compensation that exceed IRS limits for qualified plans.

Dkt. No. 106-3 at 2. As a result of the Defendants' response, Davidson commenced this action on September 14, 2012. *See* Dkt. No. 1. On November 16, 2012, Defendants moved to dismiss Plaintiff's Complaint. *See* Dkt. No. 10. On July 24, 2013, this Court denied Defendants' Motion to Dismiss in part. Two of Plaintiff's claims remain: (1) a civil enforcement action brought pursuant to Section 502(a) of ERISA ("Count I"), and (2) an equitable estoppel claim brought pursuant to Section 502(a) of ERISA ("Count III"). *See Davidson v. Henkel Corp.*, No. 12-cv-14103, 2013 WL 3863981, at *9 (E.D. Mich. July 24, 2013).

III. LAW & ANALYSIS

A. Standard of Review

Federal Rule of Civil Procedure 56(a) empowers the court to render summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *See Redding v. St. Eward*, 241 F.3d 530, 532 (6th Cir. 2001). The Supreme Court has affirmed the court's use of summary judgment as an integral part of the fair and efficient administration of justice. The procedure is not a disfavored procedural shortcut. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986); *see also Cox v. Kentucky Dept. of Transp.*, 53 F.3d 146, 149 (6th Cir. 1995).

The standard for determining whether summary judgment is appropriate is "'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Amway Distributors Benefits Ass'n v. Northfield Ins. Co.*, 323 F.3d 386, 390 (6th Cir. 2003) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986)). The evidence and all reasonable inferences must be construed in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Redding*, 241 F.3d at 532 (6th Cir. 2001). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original); *see also National Satellite Sports, Inc. v. Eliadis, Inc.*, 253 F.3d 900, 907 (6th Cir. 2001).

If the movant establishes by use of the material specified in Rule 56(c) that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law, the opposing

party must come forward with "specific facts showing that there is a genuine issue for trial." *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 270 (1968); *see also McLean v. 988011 Ontario, Ltd.*, 224 F.3d 797, 800 (6th Cir. 2000). Mere allegations or denials in the non-movant's pleadings will not meet this burden, nor will a mere scintilla of evidence supporting the non-moving party. *Anderson*, 477 U.S. at 248, 252. Rather, there must be evidence on which a jury could reasonably find for the non-movant. *McLean*, 224 F.3d at 800 (citing *Anderson*, 477 U.S. at 252).

B. Legal Analysis

1. Defendants' Motion for Summary Judgment

The crux of Defendants' argument is that Plaintiffs are seeking a "tax refund in disguise." *See* Dkt. No. 103 at 16. Defendants cite John Davidson's deposition testimony as evidence of this fact. *Id.* After reviewing Davidson's deposition testimony, however, the Court disagrees. For the following reasons, the Court finds that Defendants' arguments fail to demonstrate that Defendants are entitled to summary judgment

a. The IRC does not preclude Plaintiff's claims.

Both Parties describe the issue at the center of this case as the "FICA issue." Defendants maintain that they did not violate the Plan because, "Henkel resolved the FICA issue exactly as it was supposed to do under the applicable regulations." Dkt. No. 103 at 17. Defendants also assert that Davidson is arguing "that the FICA issue could have somehow been resolved more favorably to him through a different approach to the issue." Dkt. No. 103 at 17.

The Court does not, however, reach Defendants' conclusion that, "[t]his is just another way of saying that [Plaintiffs] want[] a tax refund from [Defendants]." *Id.* The Court does not reach this conclusion because the Plaintiffs have repeatedly focused on *how* the FICA issue

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