BenefitsLink.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE SUNTRUST BANKS, INC. ERISA LITIGATION	:	CIVIL ACTION NO. 1:08-CV-03384-RWS

ORDER

This matter is before the Court on the Motion for Summary Judgment [Doc. No. 247] filed by Defendants Dr. Frank S. Royal, Patricia C. Frist, Jeffrey C. Crowe, Blake P. Garrett, Jr., William A. Linnenbringer, Dr. Phail Wynn, Jr., David M. Ratcliffe, and Steve Castle. As an initial matter, the Court notes that Plaintiffs do not oppose the entry of judgment in favor of all Defendants except Defendant Castle [Doc. No. 255, p. 4]. As such, the Court will only analyze whether dismissal of Plaintiffs' claims against Defendant Castle is appropriate.

Defendant Steve Castle served as in-house counsel at SunTrust during the Class Period. He attended Benefits Plan Committee meetings as a representative from the legal department of SunTrust, the sponsor of the Plan. He has never served as a member of the Benefits Plan Committee or the Investment Sub-Committee. He argues that the claims against him should be dismissed because he is not a fiduciary of the Plan. The Court agrees.

Although Plaintiffs argue that additional discovery is needed prior to resolution of this issue, they have failed to meet their burden under Federal Rule of Civil Procedure 56(d) to establish that the motion is premature. They have not filed any affidavit or declaration in opposition to the motion, and they have not identified what specific facts they expect to uncover through additional discovery.

Additionally, Plaintiffs concede that no facts support their only alleged basis for Defendant Castle's fiduciary status — that he was a member of the Investment Sub-Committee. This is the sole theory in the Plaintiff's Complaint, and they cannot now change their theory of liability.

Finally, even if the Court considers Plaintiffs' new theory that Defendant Castle was a *de facto* fiduciary because he provided legal services to the Plan, this theory fails. Plaintiffs' proffered evidence establishes that Defendant Castle performed the same professional services that in-house counsel routinely provide to the employee benefit plans that are sponsored by their corporate employer. As the Department of Labor has explained and courts have agreed, attorneys

AO 72A
(Rev.8/82)

BenefitsLink.com

"performing their usual professional functions will ordinarily not be considered fiduciaries" under ERISA. See 29 C.F.R. § 2509.75-5; Useden v. Acker, 947 F.2d 1563, 1577 (11th Cir. 1991).

For the reasons stated above, the Court finds that Defendant Castle is not a fiduciary of the Plan, and as a result, Plaintiffs' claims against him fail as a matter of law. Defendants' Motion for Summary Judgment [Doc. No. 247] is GRANTED.

SO ORDERED, this 5th day of October, 2016.

RICHARD W. STORY
United States District Judge

AO 72A
(Rev.8/82)

BenefitsLink.com