

**STATE OF MINNESOTA
COUNTY OF RAMSEY****DISTRICT COURT
SECOND JUDICIAL DISTRICT**

Allison Schaber,

Case No. 62-CV-21-1228

Plaintiff,

v.

ORDER

Ramsey County, Minnesota State Retirement
System, Erin Leonard,

Defendant.

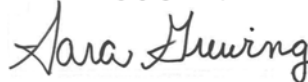
The above-captioned matter came before the undersigned on June 25, 2021, upon Defendants Minnesota State Retirement System and Erin Leonard's Motion for a More Definite Statement and Defendant Ramsey County's motion to dismiss and temporary injunctive relief. Rebekah Bailey, Attorney at Law appeared on behalf of Plaintiff. Kathryn Woodruff, Attorney at Law, appeared on behalf of Defendant Minnesota State Retirement System and Erin Leonard. Michelle Weinberg and James Strommen, Attorneys at Law, appeared on behalf of Defendant Ramsey County. All appearances were made remotely via Zoom, due to the ongoing COVID-19 pandemic.

Based on all the files, records and proceedings herein:

IT IS HEREBY ORDERED that:

- 1) Defendants' motion to dismiss is denied.
- 2) The attached memorandum is incorporated herein.

BY THE COURT:



Grewing, Sara (Judge)
Sep 7 2021 9:10 AM

Sara R. Grewing
Judge of District Court

Dated: September 7, 2021

Factual Background

Plaintiff Allison Schaber has worked for Ramsey County since 2012 and serves as a Deputy Sheriff. Compl. ¶15. Plaintiff is also a member and president of the Ramsey County Deputy Federation (hereinafter “Union”), a union representing a subset of Ramsey County employees. Kelly Dec. ¶ 3. Plaintiff’s employment with the County is subject to the terms and conditions of a collective bargaining agreement entered into between the County and the Law Enforcement Labor Services union (“LELS”) on January 1, 2018. *Id.* at ¶ 4; Ex. A, CBA, at 1.

Plaintiff has participated in a defined contribution plan with Defendant Ramsey County since the beginning of her employment. Compl. ¶ 16. Defendant Minnesota State Retirement System (“MSRS”) has administered employee benefit plans for public employees working throughout Minnesota since 1929. *Id.* at ¶ 17. Defendant Erin Leonard is the Executive Director for the Board of Directors of MSRS and is named in this litigation in her official capacity. *Id.* ¶ 18.

Defendant Ramsey County offers all eligible employees, including Ms. Schaber, the opportunity to participate in Defendant MSRS’s deferred compensation plan (“The Plan”), which is a pre-tax retirement investment vehicle, and receive a corresponding “match” investment from Defendant Ramsey County. *Id.* at ¶¶ 22–25, 64.

The Plan defines the term “match” and explains that a “match” cannot be cash:

“Nonelective Employer Contribution” Nonelective Employer Contribution is a contribution made by an Eligible Employer for the Participant with respect to which the Participant does not have the choice to receive the contribution in cash or property. Such term may also include an Employer matching contribution.

Def. Ex. E ¶ 1.12.

The Plan also describes the match as being an amount of money that is sent by the employer to the employees’ investment account. Compl. ¶ 35 (“When remitting contributions to the Plan,

the Employer must identify the Employee salary deferral contributions and Nonelective Employer Contributions [(match)] separately.” (quoting the Plan, Def. Ex. E ¶ 2.05(e), p.10). Both the Plan and Minnesota Statute describe employer matches as “pretax deferrals.” *Id.* at ¶¶ 29, 31; Minn. Stat. § 352.965, subd. 1(b). The Plan delegates the responsibility for remitting both employee and employer contributions to investment accounts to employers. Compl. ¶¶ 33–35.

With regard to the amount of match available to employees, Ramsey County’s summary of benefits provides that “non-unionized participating employees may receive up to a \$35.00 per month in a match.” Kelly Decl. Ex. D. For unionized eligible employees, such as Plaintiff, Ramsey County provides that their match is set forth in their respective collective bargaining agreements. *Id.* Plaintiff’s collective bargaining agreement states that she is currently eligible for a matching contribution to deferred compensation of \$25.00 per month. Kelly Dec. Ex. A.

Here, it is undisputed that Defendant Ramsey County never sent the employer-contribution portion of Plaintiff’s funds to her MSRS account. *Id.* at ¶ 66. Nor did it treat the amount as a pre-tax deferral. *Id.* at ¶¶ 68, 74. Rather, it remitted the funds to Plaintiff through their paychecks as a “refund.” *Id.* at ¶¶ 66–78.

In May 2020, Plaintiff initiated a grievance as articulated by her collective bargaining agreement, alleging that the County was in violation of the CBA, Section 25.10, the provision setting forth the employer match benefit for deferred compensation. Kelly Decl. ¶ 7; Ex. B, LELS Step 3 Grievance Letter, at 1. Representatives from Defendant Ramsey County met with Plaintiff and union representatives on May 14, 2020, to discuss the grievance. *Id.* at ¶ 8. During this meeting, the Union stated that it believed the contract language in Section 25.10 was misleading because the employer’s matching contribution is made directly to the employee rather than to the deferred compensation account. *Id.* The County explained its payroll system and practices with

respect to making deferred compensation matches to qualified employees directly to the employees. *Id.* Following this meeting, on May 22, 2020, the County responded to the Union's Step 3 grievance, determining that, based on a review of information gathered through the grievance process, including Plaintiff's compensation records and the CBA, there was no violation of the CBA. *Id.* To date, the Union has not moved the grievance to step 4, even though the CBA grievance procedure mandates a continuing dispute be appealed to the next stage. *Id.*

Plaintiff commenced this action in March of 2021 and amended her complaint on May 17, 2021. Compl. ¶ 1. Among other things, Plaintiff asserts that Defendants breached their fiduciary duties to her, and that Defendant Ramsey County breached the unilateral contract created by its employment policies. *Id.* at ¶¶ 91-112.

On April 22, 2022, Defendants MSRS and Ms. Leonard filed a motion for a more definite statement seeking primarily to clarify when Plaintiff discovered the alleged issue. Def. MSRS Mot. at 2. Defendants MSR and Leonard assert this information is necessary to determine whether the alleged conduct falls outside of the applicable statute of limitations, if Plaintiff was proceeding under Minnesota Statutes Chapter 356A. *Id.* At argument, Plaintiff clarified that her breach of fiduciary duty claim is proceeding under common law, and MSRS Defendants withdrew their motion.

On May 28, 2021, Defendant Ramsey County filed a motion to dismiss Plaintiff's case for lack of subject-matter jurisdiction, or in the alternative, to dismiss the claims against the County (Count I – Breach of Fiduciary Duty and Count III – Breach of Contract) for failure to state a claim upon which relief can be granted.

Conclusions of Law

I. Motion to Dismiss: Lack of Subject Matter Jurisdiction

In reviewing a motion to dismiss, the Court must accept all facts contained in the Complaint as true and grant all reasonable inferences to the non-moving party. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). Minnesota’s pleading standard is notice-based and under this standard, “[a] claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief demanded.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014).

In general, the Court must limit its review to those matters set forth in the Complaint on a Rule 12 motion, or the motion shall be treated as one for summary judgment under Rule 56. *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004). If there are documents referenced in a complaint, a court may choose to consider them without converting the motion to dismiss to one for summary judgment. *Id.* at 490; *see also In re Hennepin County 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995).

Further, Rule 12.02(a) of the Minnesota Rules of Civil Procedure allow a party to defend a claim for relief in a pleading by asserting that the court does not have subject-matter jurisdiction to hear the lawsuit. As a threshold issue, subject matter jurisdiction determines a court’s authority to decide a particular class of actions and the particular questions before it. *Witzke v. Mesabi Rehab. Servs., Inc.*, 769 N.W.2d 127, 129 (Minn. App. 2009). Because subject matter jurisdiction goes to the court’s authority to hear the matter at all, it cannot be waived or conferred by the parties’ consent. *Id.* at 129.

In general, arbitration is a proceeding favored by the law as an efficient and inexpensive means of resolving disputes between contracting parties. *Ehlert v. W. Nat’l Mut. Ins. Co.*, 207 N.W.2d 334, 336 (Minn. 1973). Minnesota courts have found this to be sound policy in order “to discourage litigation and to foster speedy, informal, and relatively inexpensive procedures for the

voluntary resolution of disputes in a forum created, controlled, and administered by the written arbitration agreement.” *Dunshee v. State Farm Mutual Auto. Ins. Co.*, 303 Minn. 473, 481, 228 N.W.2d 567, 572 (1975). When considering the arbitrability of a dispute, then, this Court’s inquiry is limited to (1) whether a valid arbitration agreement exists, and (2) whether the dispute falls within the scope of the arbitration agreement.” *Amdahl v. Green Giant Co.*, 497 N.W.2d 319, 322 (Minn. App. 1993). *See also* Minn. Stat. § 572B.07 (2020). If a dispute does not require interpretation of a collective bargaining agreement, Minnesota courts have concluded that a plaintiff does not have to exhaust her/his rights under a collective bargaining agreement. *McDaniel v. United Hardware Distrib. Co.*, 469 N.W.2d 84, 88 (Minn. 1991)

Defendant Ramsey County’s primary argument is that Plaintiff is a member of a Union that has a valid CBA with the County which contains a standard grievance policy. The grievance policy provides that it applies to “a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this agreement” and that any grievance “shall be resolved in conformance” with the CBA’s grievance procedure. Kelly Decl. Ex. A, Article 7.1. Specifically, the CBA provides that “a grievance unresolved in Step 3 and appealed to Step 4 by the Union *shall be* submitted to arbitration subject to the provisions of the Public Employment Labor Relations Act of 1971, as amended.” *Id.* at 7.4. (emphasis added). Defendant argues that Plaintiff’s right to a match arises only from Article 25 of Plaintiff’s CBA, and thus, her right to dispute the terms of that right fall within the scope of the agreement. In short, Defendant asserts that Plaintiff is not free to disregard the grievance-arbitration process, even if their match is also a part of the Defendant’s general employment policies.

In contrast, Plaintiff, while conceding that a collective bargaining agreement exists, argues that this dispute falls outside of the scope of the agreement. Plaintiff asserts that she did not

actually proceed this lawsuit to enforce the collective bargaining agreement. Rather, this action was filed because the County breached its own employment policies, which apply to the vast majority of its employees whether or not they are a union. In doing so, Plaintiff argues that Defendant operated contrary to its policies by failing to deposit matching funds into employees' retirement investment accounts. Plaintiff alleges these failures constitute a breach of the County's employment policies and fiduciary duty owed to employee participants. Plaintiff's causes of action are independent of—and liability can be determined without reference to—the CBA. The primary factors relevant in this litigation, including the compensation vehicles available, the vendors, the definition of “match” and provisions for how the “match” would be provided to employees, are not mentioned in the CBA.

The Court is inclined to agree with Plaintiff that this matter can be adjudicated without interpretation of the parties' collective bargaining agreement. In fact, if the Court were to order arbitration, it is likely that an arbitrator would have to go far beyond the four corners of the CBA to determine an appropriate result. Such a scenario could deprive Plaintiff of her right to a judicial forum on issues not bargained for as a member of her union. As such, Plaintiff's claims fall outside of the scope of the grievance provision and Defendant Ramsey County's motion to dismiss for lack of subject matter jurisdiction is denied.

II. Motion to Dismiss: Failure to State a Claim for Breach of Fiduciary Duty

Defendant further argues that Plaintiff's claims must be dismissed as a matter of law because she does not state a claim upon which relief can be granted. Namely, Defendant argues that the Plaintiff and Ramsey County are neither in a fiduciary relationship, nor does Plaintiff sufficiently allege the existence of an enforceable contract.

To prevail in an action for breach of fiduciary duty, a plaintiff must demonstrate duty, breach, causation, and damages. *TCI Bus. Capital, Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d

423, 434 (Minn. App. 2017). A fiduciary duty is the highest standard of duty implied by law and a fiduciary duty adds additional responsibilities beyond general business or good-faith dealings. *Potter v. Pohlada*, 560 N.W.2d 389, 392 (Minn. App. 1997); *D.A.B. v. Brown*, 570 N.W.2d 168, 172 (Minn. App. 1997). In general, special circumstances must exist in a relationship between parties to create a fiduciary relationship. *St. Paul Fire & Marine Ins. Co. v. A.P.I., Inc.*, 738 N.W.2d 401, 406 (Minn. App. 2007). Minnesota caselaw recognizes two categories of fiduciary relationships: relationships of a fiduciary nature per se, and relationships in which circumstances establish a de facto fiduciary obligation. *Swenson v. Bender*, 764 N.W.2d 596, 601 (Minn. App. 2009). Defendant argues that Plaintiff's fiduciary-duty claim must be dismissed because (1) the County is not a per se fiduciary and (2) the County is not a de facto fiduciary because its actions are not discretionary and are akin to settlor duties.

Plaintiff disputes Defendant's characterization and argues that the County, her employer, owed her a duty because it acted in a fiduciary capacity when it administered or carried out the Plan's requirements – i.e., its discretionary duties – and that it breached these fiduciary duties by failing to remit employer-match contribution funds to her investment account. Plaintiff cites to multiple cases where fiduciary relationships can and have been found employer-employee relationships. *See, e.g., State ex rel. McClure v. Sports & Health Club, Inc.*, 370 N.W.2d 844, 858 (Minn. 1985) (“[A]ll employees, to a lesser or greater extent, have a fiduciary relationship to their employers, ... with a duty to act in the interests of the employer and not as an adversary.”) (citing Restatement (Second) of Agency §§ 1, 2, 13 (1957)); *Electro-Craft Corp. v. Controlled Motion, Inc.*, 332 N.W.2d 890, 901 (Minn. 1983) (employee's misappropriation of employer's “secret” information violates duty of confidentiality); *Sanitary Farm Dairies, Inc. v. Wolf*, 112 N.W.2d 42 (Minn. 1961) (employee's solicitation of employer's customers prior to leaving breaches duty of loyalty).

Moreover, Plaintiff argues that the act of remitting payment intended for employees' investment accounts is an administrative, not a settlor function. When the County undertook such administrative functions, Plaintiff argues the County was acting as an administrator and, by extension, a fiduciary. With that fiduciary status, Plaintiff argues that it had a responsibility to perform this function in a manner consistent with the duty of loyalty owed to employee-participants.

For the purposes of a Rule 12 motion and drawing all inferences in favor of the non-moving party, the Court finds that Plaintiff has plead facts sufficient to proceed on its breach of fiduciary duty claims against Defendant Ramsey County. There is a cognizable argument that Defendant did not act as a settlor, but as a fiduciary when it managed how and when employer contributions to the Plan are provided to employees. The issues may be more appropriate for Court resolution following initial discovery, but at this point the issues have simply become too granular for determination on a Rule 12 motion. Defendant's motion to dismiss is denied.

III. Motion to Dismiss: Breach of Contract

Defendant argues that Plaintiff's breach of contract claim must also be dismissed because the Amended Complaint, as pleaded, fails as a matter of law. Minn. R. Civ. P. 12.02(e). The parties cite to the same case, *Hall v. City of Plainview*, for its holding that an employment policy can form the basis of a unilateral employment contract if the policy's terms are sufficiently definite to support an offer to contract. 954 N.W.2d 254, 261 (Minn. 2021). Defendant argues that Plaintiff has not pled any policy or aggregation of policies that creates definite terms sufficient enough to create a contract under *Hall*. *Id.* at 254.

In addition, Defendant argues that Plaintiff's contention that the policy created a contract must fail as a matter of law because a contract cannot exist when an essential term is missing. *TNT*

Props., Ltd. v. Tri-Star Devs. LLC, 677 N.W.2d 94, 100 (Minn. App. 2004). A contract does not exist, Defendant asserts, unless the parties have reasonable certainty about its terms. *Furuseth v. Olson*, 493, 210 N.W.2d 47, 50 (Minn. 1973).

Specifically, Defendant argues that policies Plaintiff points to lack the essential terms about whether Plaintiff is entitled to a match, namely:

- (1) the MSRS Plan, which establishes that an employer *may* make an employer contribution, and establishes a maximum for the employer contribution, but does not provide a right to a match; 57
- (2) the MSRS website index, which does not address employer or union contributions;
- (3) the MNDCP FAQs page, which states “Contact your employer or bargaining unit to determine *if* they offer any matching dollars to your MNDCP account.”; and
- (4) the County Summary of Employee Benefits, which directs employees who are union members to their CBA to determine their eligibility for a match.

See Exs. E, F and G. Defendant argues that none of these policies suggest that it has made any sort of promise to provide a match to Plaintiff – merely that these are vague summaries of benefits of the benefits provided by the County that lack the specificity to form a contract.

While this question is an extremely close call, the Court is inclined to agree with Plaintiff at this Rule 12 stage. At a minimum, on its website the County identified to employees that the match was available, it identified the amount for the non-union employees, and it told the union employees where to look for their match amount. Plaintiff has plead sufficient facts for her breach of contract claim to proceed. Defendant’s motion to dismiss is denied.