

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

Allison Schaber,

Plaintiff,

Case No. 62-CV-21-1228

v.

ORDER

Ramsey County, Minnesota State Retirement
System, Erin Leonard

Defendant.

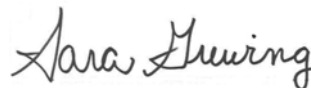
The above-captioned matter came before the undersigned on September 17, 2021, upon Defendants Minnesota State Retirement System and Erin Leonard's motion to dismiss Plaintiff's First Amended Complaint. Rebekah Bailey, Attorney at Law, appeared on behalf of Plaintiff. Kathryn Woodruff, Assistant Attorney General, appeared on behalf of Defendants Minnesota State Retirement System and Erin Leonard. Michelle Weinberg, Attorney 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.

Dated: December 8, 2021



Growing, Sara (Judge)
Dec 9 2021 10:10 PM

The Honorable Sara R. Growing
Judge of District Court

MEMORANDUM

FACTUAL BACKGROUND

Plaintiff Allison Schaber has worked for Ramsey County (“County”) since 2012 and serves as a Deputy Sherriff.¹ Compl. ¶ 15. Plaintiff is also a member and president of the Ramsey County Deputy Federation (hereafter “Union”), a union representing a subset of Ramsey County employees. Kelly Decl. ¶ 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 is established in statute, Minn. Stat. § 352.965, which provides that its fiduciary activities must be undertaken in a manner consistent with chapter 356A. Minn. Stat. § 352.965 (2020). A plan document also governs the Plan. *See* Minn. State Ret. Sys., *Section 457(b) Eligible Deferred Compensation Plan for Governmental*

¹ The Court incorporates the factual background of its previous order from September 7, 2021.

Employers, (available at https://www.msrs.state.mn.us/sites/default/files/2020-11/mndcp_plan_document.pdf). Section 7.08 of the Plan Document provides as follows:

(b) In accordance with Minnesota Statute §356A.04, subd. 2, a fiduciary identified in section §356A.02 shall act in good faith and shall exercise that degree of judgment and care, under the circumstances then prevailing, that persons of prudence, discretion, and intelligence would exercise in the management of their own affairs.

Id. at 31.

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

1.12 “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.

Id. at 6.

The Plan also describes the match as being an amount of money that the employer sends 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) at 10)). Both the Plan and operative 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.

Ramsey County’s summary of benefits provides that “non-unionized participating employees may receive up to \$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 outlined 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 Decl. 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. Instead, Ramsey County remitted the funds to Plaintiff through their paychecks as a "refund." *Id.* at ¶¶ 66–78.

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 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. The Court denied Defendant Ramsey County's motion on September 7, 2021.

Defendants MSRS and Erin Leonard filed a motion to dismiss Plaintiff's Amended Complaint for lack of subject matter jurisdiction and failure to state a claim pursuant to 12.01, 12.02(a) and 12.02(e) of the Minnesota Rules of Civil Procedure on August 19, 2021.² A hearing on the motion was held on September 17, 2021.

CONCLUSIONS OF LAW

I. Defendants' Motion to Dismiss: Common Law Claim for Breach of Fiduciary Duty

² For the remainder of this order, the Court's reference to "Defendants" means Defendant Leonard and Defendant MSRS.

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 documents are 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 Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995).

Defendants argue that the Minnesota Legislature codified the applicable fiduciary standard when it adopted Chapter 356A, known as the Public Pension Plan Fiduciary Responsibility Act (“The Act”). As such, Defendants argue that Plaintiff’s case must be dismissed because Chapter 356A applies to her case, and Chapter 356A prohibits common law claims against MSRS fiduciaries. Defendants further argue that Plaintiff’s sole recourse for an alleged breach of fiduciary duty against an MSRS fiduciary is, if at all, under Chapter 356A. Defendants ask that this Court conclude that the “natural inference” from the scope and available legislative history of Chapter 356A is that the chapter supplants or preempts comparable common law claims as to the affected fiduciaries.

The parties agree that the Minnesota Legislature did not include this plan in the definition of pension plans covered by Chapter 356A. *See* Minn. Stat. § 356A.01 subd. 8 (defining “covered

pension plan” as a pension plan or fund listed in section 356.20, subdivision 2, or section 356.30, subdivision 3, or a plan established under chapters 353D, 354B, 354C, or 354D.) The Plan’s operative statute is Minnesota Statutes Section 352.965, which is clearly not included in subdivision eight of section 356A.01. Nevertheless, Defendants argue that there are other ways that indicate that Chapter 356A applies, specifically the operative statute’s cross-reference to the Act and the Plan document itself.

Defendants argue that the Plan’s operative statute provides that its fiduciary activities must be conducted “consistent with” Chapter 356A, which means the entirety of the chapter applies. Minn. Stat. § 352.965. In addition, Defendants argue that the actual Plan itself contains three references to Chapter 356A, specifically sections 356A.04, subd. 2, and 356A.02, and 356A.11, subd. 2, that confirm that the Plan is bound by the Act.

Moreover, Defendants urge this Court to look to *Minnesota Break the Bonds Campaign v. Minnesota State Bd. of Inv.* because the Court in that case concluded that the State Board of Investment, (“SBI”) a similar fund also not specifically named in 356A, is governed by Minn. Stat. §§ 356A.01–.13 (2010). *Minnesota Break the Bonds Campaign v. Minnesota State Bd. of Inv.*No. A12-0945, 2012 WL 5476166, at *1 (Minn. App. Nov. 13, 2012).

Plaintiff argues that the SBI case is distinguishable, primarily because neither party in *Minnesota Break the Bonds Campaign* challenged the applicability of Chapter 356A at all. *Id.* Plaintiff further alleges that the language in SBI’s operative statute is also distinguishable from the Plan’s operative statute, because SBI’s language provides “for the investment of pension fund assets, the members and director of the state board and members of the Investment Advisory Council *shall act in accordance with* chapter 356A.” Minn. Stat. 11A.09 (emphasis added).

The Court agrees with Plaintiff that the Act cannot be read to limit Plaintiff's claims for three primary reasons. First, the Legislature did not include this Plan in the list of plans that the Act covers. Second, the Court cannot conclude that the phrase "*consistent with Chapter 356A*" alone is sufficient cross-reference to mean that that every provision of the Act applies. There are several definitions of "consistent" in Merriam-Webster's dictionary, but the most relevant here appears to be "of the same quality" or "always happening in the same way". *See Consistent, Merriam-Webster Dictionary* (available at, <https://www.merriam-webster.com/dictionary/consistent>) (last accessed Dec. 9, 2021). For the purposes of a Rule 12 motion, the Court cannot conclude that the phrase "consistent with" is equal to complete preemption. Third, the three references to Chapter 356A on one page of a forty-four-page Plan are not so significant on their own that they bring this matter within the purview of 356A. Most importantly, the Plan document is silent on the question of remedies, both statutory and common law.

It follows, then, that Chapter 356A does not usurp Plaintiff's right to bring a common law breach of fiduciary duty claim against Defendants. It is undisputed that Chapter 356A does not include an exclusivity provision. Moreover, statutes are presumed to be consistent with the common law in Minnesota. *Ly v. Nystrom*, 615 N.W.2d 302, 314 (Minn. 2000). In order for a statute to abrogate common law, "the abrogation must be by express wording or necessary implication." *Id.* at 314. Without more explicit indications in Chapter 356A, the Court is disinclined to draw the "natural inferences" the Defendants seek that would completely abolish Plaintiff's common law claims.

The Court is deeply cognizant of the impact that an overly broad order could have on the dozens of other pensions included in 356A, both by express definition and cross-reference. The

Court only intends, through this narrow ruling, to determine that *this* Plaintiff's common law claims are not abrogated by Chapter 356A. Plaintiff's plan is not covered by 356A because it is not included in the definition of "covered plans" and also because its operating statute and plan do not clearly say that 356A applies.

II. Defendant's Motion to Dismiss MSRS

Defendant further argues that Plaintiff's claims must be dismissed as a matter of law because both MSRS and the Executive Director are named as defendants, and MSRS is not a recognized fiduciary. Defendants argue that Minnesota Statutes section 356A.02, subdivision 1, lists persons who are fiduciaries, and MSRS is not among them. MSRS thus must be dismissed as a defendant.

The Plan's operative statute, Minnesota Statutes § 352.965, is more helpful to the Court on this point, as it provides "The Minnesota State Retirement System *shall* administer the plan" which suggests that the MSRS could be a fiduciary that "enjoys a superior position in terms of knowledge and authority and in whom the other party places a high level of trust and confidence." *See Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 330 (Minn. App. 2007). In short, for the purposes of a Rule 12 motion and drawing all inferences in favor of the non-moving party, there is an argument that MSRS could be determined to be fiduciaries for Plaintiff's claims.

III. Plaintiff's Request for Sanctions

Plaintiff argues that Defendant's motion should be denied as untimely. Defendants had previously filed a motion for a more definite statement and withdrew that motion on June 25, 2021. Defendants did not answer the Complaint within fourteen days. Instead, Defendants filed the instant Rule 12.02(e) motion, which Plaintiff argues has caused undue delay, particularly because the parties had agreed to limited discovery while the matter was under advisement. The Court

declines Plaintiff's request, primarily because there is no indication that Defendants proceeded in bad faith.

CONCLUSION

In conclusion, Plaintiff's claims against the Defendants survive their arguments under Rule 12 and the motion is denied in its entirety.