(2004)

BILL REBANE, Plaintiff,

v.

DIRECTORS GUILD OF AMERICA, Defendant.

03-C-0639-C.

United States District Court, W.D. Wisconsin.

March 8, 2004.

OPINION AND ORDER

BARBARA CRABB, Chief District Judge.

If Pacific Cycle can revive the Schwinn Sting-Ray and lava lamps can have a comeback, why not dust off a 1970s claim against the Directors Guild of America? Maybe that's what plaintiff Bill Rebane was thinking when he brought this action for money or an accounting of residuals and payment of royalties earned from showings of the motion picture "The Giant Spider Invasion," made in 1975. Unfortunately for plaintiff, nothing but good taste and the market place prevent revivals of bicycles and lighting fixtures, but the legal system has statutes of limitations to bar the recycling of stale claims from the 1970s.

In the sparse complaint plaintiff filed in the Circuit Court for Iron County, Wisconsin, he alleged that he was a dues paying member of defendant Directors Guild of America from 1975 to 1994, that defendant has failed to file reports of royalties and failed to pay royalties due plaintiff under the assumption of an agreement with Group One International Distribution Organization, and that despite numerous and repeated requests, defendant has failed to provide any accounting or documentation of "such" (presumably the royalties due plaintiff), with the result that plaintiff has sustained damages, including such undue trauma and suffering as to cause him to resign from the guild in 1993. Plaintiff contends that defendant breached its responsibility to him and is grossly negligent on its membership obligations. Plaintiff seeks payment of damages and actual royalties.

Defendant removed the case to this court on the ground that federal courts have original jurisdiction over cases arising under the Labor Management Relations Act, 29 U.S.C. § 185(a). Defendant reads plaintiff's complaint as alleging a breach of fair representation and seeking to enforce rights created under a collective bargaining agreement. That reading is consistent with plaintiff's allegations, if not exactly self-evident, given their lack of detail and context. Cases arising under the LMRA raise federal questions. Therefore, jurisdiction exists under 28 U.S.C. § 1331.

Fair representation claims must be brought within six months from the day on which the claimant discovers or should have discovered with the exercise of due diligence the acts constituting the alleged breach of duty. DelCostello v. Teamsters, 462 U.S. 151, 171 (1983) (adopting § 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b), as statute of limitations for breach of fair representation claims); Dozier v. Trans World Airlines, 760 F.2d 849, 851 (7th Cir. 1985) (setting out date of accrual as date on which claimant discovers or should discover breach of duty). It is not clear from plaintiff's complaint when he learned that defendant was not doing anything to obtain compensation for him or give him an accounting, but there is no doubt that it was more than six months before he filed this suit. He alleges having made "numerous and repeated requests" of defendant and of being forced to resign his Directors Guild membership in 1993 because defendant's failures to furnish him either accountings or royalties caused him undue trauma and suffering.

In his brief in opposition to the motion for summary judgment, plaintiff argues that his right to sue is not time barred as long as he still has a right to collect residuals. He is wrong about this. It is the union's response or failure to respond that is determinative, not the continuing nature of the matter on which a claimant seeks representation. Once the union fails to respond to a request for representation, a claimant knows all the acts that constitute the alleged breach of duty. His cause of action against the union has accrued. Christiansen v. APV Crepaco, 178 F.3d 910, 916 (7th Cir. 1999).

Plaintiff makes no allegations that might suggest he has grounds for holding defendant equitably estopped from raising the statute of limitations as a defense. This is not surprising. It is impossible to imagine what defendant could have told plaintiff that would be sufficient to make a reasonable person think he could put off suing for nearly thirty years after he had discovered his cause of action.

I will dismiss the complaint on the ground that it is barred by the running of the applicable six-month statute of limitations. This conclusion makes it unnecessary to consider whether plaintiff's allegations are adequate to plead a breach of the duty of fair representation and whether plaintiff's tort claim is preempted by federal labor law or subsumed under it (even if it is not, Wisconsin's six-year statute of limitations for tort actions would bar plaintiff from pursuing any tort claim related to defendant's alleged failure to represent him appropriately).

ORDER

IT IS ORDERED that defendant Directors Guild of America's motion for summary judgment is GRANTED. The clerk of court shall enter judgment for defendant and close this case.