

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIARA YACHTS, INC.,

Plaintiff,

v.

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant.

Case No. 1:22-cv-603

Honorable Robert J. Jonker

Magistrate Judge Ray Kent

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR LEAVE TO FILE
REPLY IN SUPPORT OF ITS MOTION FOR ATTORNEYS' FEES AND COSTS**

I. INTRODUCTION

Plaintiff Tiara Yachts, Inc. ("Tiara") opposes the motion by Defendant Blue Cross Blue Shield of Michigan ("BCBSM") to file a reply brief in regard to BCBSM's motion for attorneys' fees and costs. The Local Rules do not provide for a reply for a reason, and at some point the compulsion to always have the last word is outweighed by the burden imposed on the Court and opposing party. Moreover, the matters contended by BCBSM are inaccurate and serve little purpose other than to further confuse the issues. BCBSM's Motion should be denied.

II. ANALYSIS

A. Legal Standard.

The Local Rules do not allow for a moving party to file a reply brief motion without leave of the court. This Court has denied such requests for leave where the party has "failed to show good cause or that any further briefing is necessary." *Wizinsky v. Leelanau Twp.*, No. 1:21-CV-496, 2022 WL 3040733, at *3 (W.D. Mich. Aug. 2, 2022); *Meirs v. Cashman*, No. 1:15-CV-866,

2018 WL 9815835, at *1 (W.D. Mich. Sept. 20, 2018) ("[T]he issue has been adequately addressed by the parties, such that further briefing is unnecessary."); *Fleet Engineers, Inc. v. Mudguard Techs., LLC*, No. 1:12-CV-1143, 2015 WL 11348286, at *2 (W.D. Mich. Apr. 9, 2015). Here, no further briefing is necessary and BCBSM's request should be denied.

B. BCBSM Just Wants the Final Word On Arguments It Has Already Addressed.

None of the arguments made by Tiara in response to BCBSM's Motion for attorneys' fees and costs are new. BCBSM is trying to get the final word and rehash the same arguments before the Court for over eight months—whether this was an ERISA case brought by Tiara as a fiduciary to its Plan. Notably, BCBSM can raise its arguments on this issue in its response to Tiara's Rule 59 Motion.

Nonetheless, the arguments BCBSM seeks to make are conflicting and misguided. In one section, BCBSM is saying Tiara "brought its case under ERISA" so ERISA applies. (ECF No. 37-1, PageID.884). But this is not the standard for awarding fees under ERISA. Under 29 U.S.C. § 1132(g)(1), "[i]n any action under this subchapter ... by a participant, beneficiary, or fiduciary," the Court has the discretion to allow reasonable attorneys' fees and costs. 29 U.S.C. § 1132(g)(1) (emphasis added). So, the question is—is this an action by a fiduciary? BCBSM has repeatedly argued (and still does) that based on the face of the Complaint, Tiara "seek[s] contract damages *for itself*." (ECF No. 37-1, PageID.885). The Court agreed that Tiara did not seek relief as a fiduciary on behalf of its Plan.

The case law flagged by BCBSM is not helpful. *Moore* involved a denial of benefits case. *Moore v. Lafayette Life Ins. Co.*, 458 F.3d 416, 424 (6th Cir. 2006). Contrary to here, the parties there engaged in discovery, and afterward the court made a "factual determination on the merits" as to the plaintiff's status as a participant and awarded defendants summary judgment. *Id.* at 441

(emphasis added). There the plaintiff argued that the court did not have jurisdiction to award fees under ERISA after granting summary judgment. *Id.* at 440. Here, Tiara highlighted that ERISA expressly provides for fees in cases brought by a fiduciary, and this Court held that the Complaint did not allege that it was brought by Tiara in its fiduciary capacity. Moreover, here, unlike in *Moore*, there was no factual determination of whether Tiara qualified as a fiduciary on the merits. On the pleadings alone, this Court held that this action was not brought by Tiara as a fiduciary on behalf of its Plan. This is distinguishable from the plaintiff in *Moore* who pleaded that he was a participant and only after discovery was found not to be.

Similarly, BCBSM says the Court should ignore the bedrock principal that an award of attorneys' fees against ERISA plaintiffs are highly disfavored, because here the only damage is against Tiara individually, not a fiduciary to its Plan. (ECF No. 37-1, PageID.884). In support of its position, BCBSM argues that "*every single case* Tiara Yachts cites" supporting this principal would have adversely affected an ERISA plan, beneficiary, or fiduciary. (*Id.*). But this further proves Tiara's point—ERISA only provides for fee awards in cases brought by a plan, beneficiary, or fiduciary. BCBSM is essentially arguing that this is an ERISA case, but Tiara is not an ERISA plaintiff. BCBSM is speaking out of both sides of its mouth.

In short, BCBSM's request to have the final word serves only to rehash the same arguments which have repeatedly been before the Court. The Court should deny BCBSM's request.

III. CONCLUSION

Based on the foregoing, Tiara Yachts respectfully requests that the Court deny Defendant's Motion for Leave to File Reply in Support of Its Motion for Attorneys' Fees and Costs.

Respectfully submitted,

VARNUM LLP
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Dated: April 19, 2023

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CERTIFICATE OF COMPLIANCE

Pursuant to L. Civ. R. 7.3(b)(ii), I hereby certify that this document complies with L. Civ. R. 7.3(b)(i) because this document, generated using Microsoft Word 2010, contains 824 words.

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