UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JOHN F. LOONIE, for himself and as a participant in The Sheet Metal Workers National Pension Fund,
Plaintiff-Appellant,

v.

OAKLEIGH J. THORNE; MARIA E. DEQUATRO,
Defendants-Appellees,

and

EDWARD J. CARLOUGH, Substituted by JUNE CARLOUGH as representative of the Estate of Edward J. Carlough, Deceased; CAVET SYNDER; GORDON JONES; RICHARD S. DOMANICO; RAYMOND J. SWEENEY; HARRY HUGE;

KRISTA FOGLEMAN; ROGOVIN, HUGE & SCHILLER; DONOVAN, LEISURE, NEWTON & IRVINE, formerly Rogovin, Huge & Schiller, and Donovan, Leisure, Rogovin, Huge & Schiller; SHEA & GOULD; WALTER CARLOUGH,
Defendants,

v.

DONALD FISHER; BOARD OF TRUSTEES; SHEET METAL WORKERS NATIONAL PENSION FUND,
Third Party Defendants,

RAYMOND J. SWEENEY; HARRY HUGE; ROGOVIN, HUGE & SCHILLER,
Defendants-Amici Curiae.

No. 95-2300

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
Albert V. Bryan, Jr., Senior District Judge.
(CA-93-1596-A)

Submitted: April 9, 1996

Decided: November 4, 1996

Before HALL and NIEMEYER, Circuit Judges, and
BUTZNER, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

J. Hardin Marion, William Willis Carrier, III, Lawrence Joseph Quinn, Jennifer Carie Holmes, TYDINGS & ROSENBERG, Baltimore, Maryland, for Appellant. Thomas Robert Folk, Grayson Pollard Hanes, HAZEL & THOMAS, P.C., Falls Church, Virginia; Maria E. Dequatro, New Bern, North Carolina, for Appellees. James J. McGuire, New York, New York; John Quinn Rounsaville, Jr., Anne D. Bolling, Steven P. Finizio, WILMER, CUTLER & PICKERING, Washington, D.C.; Michael Charles Montavon, Fairfax, Virginia, for Amicus Curiae.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Appellant Loonie appeals from the district court's orders dismissing his claims against Maria DeQuatro for fraud and conversion and

granting summary judgment in favor of Oakleigh Thorne on a malpractice claim. We vacate the district court's orders and remand to allow the district court to reconsider the claims in light of an intervening decision of this court.

Loonie is a participant in the Sheet Metal Workers' National Pension Fund, an employee benefit plan governed by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.A. §§ 1001-1461 (West 1985 & 1996 Supp.). He alleged in his complaint that Thorne, a real estate appraiser, was hired by the Fund as an advisor on the purchase of a conference center and that Thorne negligently failed to discover a zoning conflict. Loonie alleged that DeQuatro, as a consultant to the Fund, wrongfully converted fund assets by making personal purchases with Fund money and defrauded the Fund by misrepresenting the nature of her purchases. The district court dismissed these state law claims because it found they were preempted by ERISA.

After the district court entered these orders this court considered an appeal dealing with the factually-related case of Custer v. Sweeney, ___ F.3d ___, No. 95-1077 (4th Cir. July 22, 1996). This court held in Custer that a legal malpractice claim did not fall under ERISA's preemptive umbrella. Slip op. at 15. Because the district court did not have the benefit of Custer when it decided that Loonie's claims against DeQuatro and Thorne were preempted by ERISA, we vacate those orders and remand the case back to the district court for further proceedings.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED