

UNITED STATES COURT OF APPEALS

APR 20 2000

TENTH CIRCUIT

PATRICK FISHER
Clerk

JOHN A. AMERIKS; GORDON BARTEK, Trustee/Beneficiary for X-Ray Associates P.C. Profit Sharing Plan & Trust/Bartek Section; RUTH BARTEK, Trustee/Beneficiary for X-Ray Associates P.C. Profit Sharing Plan & Trust/Bartek Section; RONALD N. BOYLE, Trustee for Ronald N. Boyle M.D. Unincorporated Profit Sharing Plant; RONALD N. BOYLE PC, Trustee for Ronald N. Boyle M.D. P.C. Pension Trust Defined Contribution; CLAYTON CHING, Trustee for Clayton T.M Ching M.D. Inc., Defined Benefit Pension; DAVID COLLINS, Trustee for Collins and Johnson Defined Benefit Trust; KAREN JOHNSON, Trustee for Collins and Johnson Defined Benefit Trust; EUGENE A. DOERR, Trustee for Eugene A. Doerr D.D.S., Inc. Pension & Profit Sharing Plan; JOHN W. EMMETT, Trustee for John W. Emmett M.D. Keogh H.R. 10-Retirement Trust; J.W. EMMETT, Trustee for Logan Radiology Associates Inc. Retirement Trust; JAMES T. SHAW, Trustee for Logan Radiology Associates, Inc. Retirement Trust; JOSEPH J. ERRAMOUSPE, Trustee for Joseph J. Erramouspe D.D.S. P.C. Restated Employees Profit Sharing Plan; J. J. ERRAMOUSPE, Trustee for Joseph J. Erramouspe D.D.S. P.C. Restated Employee Pension Plan; AURELIUS ARTHUR

No. 98-4221
(D.C. No. 88-CV-1017)
(D. Utah)

FERMELIA, Trustee for A. Arthur Fermelia D.D.S. P.C. Restated Employees Pension Plan; AURELIUS A. FERMELIA, Trustee for A. Arthur Fermelia D.D.S. P.C. Restated Employees Profit Sharing Plan & Trust; FIRST INTERSTATE BANK, a Nevada banking corporation, as Trustee of Agent for Stanley A. Ames Money Purchase Pension Plan; Stanley A. Ames, M.D. Chartered Defined Pension Plan & Trust; Paul D. Bandt Pension Plan; Paul D. Bandt Profit Sharing Plan; Brent B. Birkin Pension; Richard Ellis Pension Plan; Taylor, Knudsen & Lum Pension Plan for Ellis, Ralph J. Litton Profit Sharing Plan; Ralph H. Litton Pension Plan; Ralph J. Litton Profit Sharing Trust; Marasso, Miller, Ltd. Money Purchase Pension Trust; Marasso, Miller, Ltd. Profit Sharing Plan & Trust; Douglas S. Wong Pension Plan; Taylor, Knudsen & Lum Profit Sharing Trust for Wong; Taylor, Knudsen & Lum Pension Trust for Wong; L. Keith Gates, Trustee for Gates, Jensen & Warren, Inc. Employee Retirement Plan; ROBERT L. JENSEN, Trustee for Gates, Jensen & Warren, Inc. Employee Retirement Plan; DENNIS P. GORDON, Trustee for Dennis P. Gordon; JOHN J. HEIECK, Trustee for Plastic & Reconstructive Surgery Profit Sharing Trust and Trustee for Plastic & Reconstructive Surgery Pension Trust; WILLIAM F. HOPKINS, Trustee for Urology Services of Tri-Cities Defined Benefit

Pension Plan; JOAN HULME, Trustee for Joan Hulme, M.D. P.C. Defined Benefit Trust; JAMES LUM, Trustee to Knudsen Family trust f/k/a Taylor, Knudsen & Lum Pension & Profit Plans for Knudsen; DONALD R. MACKAY, Trustee for Donald R. Mackay, M.D. Ltd. Pension & Profit Sharing Trust; JOSEPH H. NELSON, Trustee for Joseph H. Nelson Profit Sharing Keogh Plan, Trustee for Joseph H. Nelson Retirement Trust; ALBERT G. NOORDA, Trustee for Albert G. Noorda, M.D. Chartered Employees Profit Sharing Plan & Trust, Trustee for Albert G. Noorda, M.D. Chartered Money Purchase Pension Plan & Trust; JOYCE NOORDA, Trustee for A.G. Noorda, M.D. Chartered Employees Profit Sharing Plan & Trust, Trustee for Albert G. Noorda, M.D. Chartered Money Purchase Pension Plan & Trust; JUEL A. PARKER, Trustee for Juel A. Parker, D.D.S. Ltd. Pension Trust; K. DAVID PERKINS, Trustee for Pathology Consulting Services Retirement Trust; BOB SOROKOLIT, Trustee for Bob Sorokolit, M.D. P.A. Employees Pension Trust; ANDREW J. WELCH, Trustee for Southwest Orthopedic & Sports Clinic P.C. Pension Plan; MARILYN S. WELCH, Trustee for Southwest Orthopedic & Sports Clinic P.C. Pension Plan; ROBERT N. WELLS, Trustee for Robert N. Wells, M.D. Inc. Pension Trust; MARY LUCILE BISHOP; STEVEN H. HODSON; STEPHEN A.

KOLLINS, General Partner for Miklat Enterprises; DAVID A. MULKEY, Trustee for Associated Pathologists Chartered Profit Sharing Plan; General Partner for P.F. Partnership, aka Mulkey Limited Partnership; HENRY J. NAVE; LINDA R. NAVE; DANIEL R. SUCHY; CARL M. FISHER,

Plaintiffs - Appellants,

vs.

ZIONS FIRST NATIONAL BANK,

Defendant - Appellee

ORDER AND JUDGMENT*

Before **EBEL** and **KELLY**, Circuit Judges, and **ELLISON**,** District Judge.

Plaintiffs-Appellants are trustees of pension plans and individuals who purchased promissory notes or limited partnership interests in partnerships syndicated by a now-defunct corporation known as Coordinated Financial Services (“CFS”). Defendant-Appellee Zions First National Bank served as

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

**The Honorable James O. Ellison, Senior District Judge, United States District Court for the Northern District of Oklahoma, sitting by designation.

indenture trustee for the partnerships. After CFS went bankrupt, Plaintiffs sued Zions under a number of theories, including violations of ERISA and the Trust Indenture Act, breach of fiduciary duty, breach of contract, constructive fraud, negligence, violation of federal and state securities laws, common law fraud, negligent misrepresentation, and a claim for an accounting. The parties are familiar with the detailed facts and the arguments raised upon appeal; we need not restate them here.

In two orders, the district court granted summary judgment in favor of Zions on all counts. See Add. to Aplt. Br. 1, 34 (Aug. 27, 1996) & 35, 70-71 (Sept. 30, 1998). We review the grant of summary judgment de novo. In doing so, we apply the same standard as the district court to determine whether there is a genuine issue of material fact, and whether defendant is entitled to judgment as a matter of law. See Southwestern Bell Wireless, Inc. v. Johnson County Bd. of County Comm'rs, 199 F.3d 1185, 1189 (10th Cir. 1999). We examine the entire factual record and any reasonable inferences which may be drawn from it in the light most favorable to the Plaintiffs. See Chessin v. Keystone Resort Management, Inc., 184 F.3d 1188, 1191-92 (10th Cir. 1999).

Guided by these standards, we have carefully reviewed the materials provided to us, and conclude that the district court was correct in entering summary judgment in favor of Zions on all claims. We affirm the for

substantially the same reasons contained in the district court's orders cited above.

It is thus unnecessary to review the district court's denial of class certification.

AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge