

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-7002

September Term, 2018

FILED ON: FEBRUARY 15, 2019

JAMAL J. KIFAFI,

APPELLANT

v.

HILTON HOTELS RETIREMENT PLAN, ET AL.,

APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:98-cv-01517)

Before: GARLAND, *Chief Judge*, and PILLARD and WILKINS, *Circuit Judges*.

J U D G M E N T

The court considered this appeal on the record from the United States District Court for the District of Columbia, and on the briefs and oral arguments of the parties. The court has given the issues full consideration and has determined that they do not warrant a published opinion. *See* FED. R. APP. P. 36; D.C. CIR. R. 36(d). It is hereby

ORDERED AND ADJUDGED that the judgment of the District Court is **AFFIRMED**.

On June 17, 1998, Appellant Jamal Kifafi, on behalf of himself and similarly situated individuals, filed a complaint alleging violations of the Employee Retirement Income Security Act (ERISA). In 2009, the district court found that Appellees Hilton Hotels Retirement Plan, et al. did violate ERISA's anti-backloading and vesting provisions. *See* 29 U.S.C. §§ 1053(b), 1054; *accord Kifafi v. Hilton Hotels Retirement Plan*, 616 F. Supp. 2d 7 (D.D.C. 2009). This appeal concerns the administration of the 2011 permanent injunction ordered by the district court to rectify those violations. In that order, the district court required Hilton to amend the Plan's benefit-accrual formula; award back payments for increased benefits that should have been paid in the past; commence increased benefits for all class members; and administer a claim procedure to credit employees' union service for

vesting purposes. Feb. 2015 Mem. Op., at 3 (J.A. 71). The court said that it would retain jurisdiction for two years over the injunction's enforcement. *See Kifafi v. Hilton Hotels Retirement Plan*, 826 F. Supp. 2d 25, 37 (D.D.C. 2011).

The order was stayed pending appeal to this circuit, which affirmed in full the district court's liability and remedial rulings. *See Kifafi v. Hilton Hotels Retirement Plan*, 701 F.3d 718 (D.C. Cir. 2012). Following that affirmance, the district court's two-year period of jurisdiction commenced, such that it would conclude on February 23, 2015. Feb. 2015 Mem. Op., at 4 (J.A. 72).

In February 2015, after seventeen years of presiding over this matter, the court found that Hilton was "in compliance." *Id.* at 12 (J.A. 80). Measuring compliance by examining Hilton's efforts to locate and pay class members, the district court credited Hilton for paying out benefit increases to 11,000 of approximately 20,000 total class members, sending notices of such increases to another 5,600 members, and trying to locate the remaining members and pay those who remained unpaid. *Id.* at 11-12 (J.A. 79-80). Based on its finding of compliance, the court denied Kifafi's motion for post-judgment discovery. In December 2015, the district court denied Kifafi's motion for reconsideration, ordered Hilton to conduct periodic address searches through December 2017, and otherwise terminated its jurisdiction over the case. Dec. 2015 Mem. Op., at 8 (J.A. 132).

Kifafi appealed to this court. Notwithstanding the pending appeal, Kifafi returned to the district court in 2017 to seek post-judgment discovery regarding Hilton's compliance. Oct. 2017 Order, at 1 (J.A. 134). The district court denied the requests. *Id.* at 2 (J.A. 135).

The district court did not abuse its discretion by choosing to end its active supervision of the permanent injunction. *See Massachusetts v. Microsoft Corp.*, 373 F.3d 1199, 1207 (D.C. Cir. 2004); *Sims v. Johnson*, 505 F.3d 1301, 1305 (D.C. Cir. 2007). After carefully assessing the evidence before it, the court concluded that it was "satisfied that there are no systemic problems or failures in [Hilton's] implementation of the judgment." Feb. 2015 Mem. Op., at 27 (J.A. 95). The court recognized that Hilton has ongoing "obligations to class members or beneficiaries that have already been identified or who will be identified by other means in the future." Dec. 2015 Mem. Op., at 8 (J.A. 132). Hilton, too, confirmed to us that it has continuing obligations under the decree to find and pay beneficiaries. Oral Arg. 45:57-46:26 (Hilton "has a continuing obligation to try and find anyone who came into benefits by virtue of this court's and the district court's prior orders."); 47:09-26. In stepping aside from intensive supervision of Hilton's compliance, the court recognized that Hilton has been taking continuous steps to fulfill its obligations. The court's relinquishment of jurisdiction did not terminate the underlying injunction, nor did the court hold that Hilton was done satisfying its terms. Should the implementation break down, class members retain the

enforcement rights of a party to a permanent injunction. In sum, the district court did not abuse its discretion when it concluded that Hilton was adequately complying with its current duties under the permanent injunction and that the court would no longer exercise supervisory jurisdiction.

Kifafi's central argument on appeal is that the district court should have ordered an equitable accounting regarding Hilton's implementation of the injunction before terminating its jurisdiction. Hilton argues that Kifafi never sought such an accounting before the district court, while Kifafi counters that his repeated requests for post-judgment discovery and compliance reporting were akin to seeking an accounting. Assuming without deciding that Kifafi's remedial requests constituted a request for an accounting, we find no abuse of discretion in the court's denial of the requests in light of its finding that Hilton was in compliance.

Kifafi's other two arguments also lack merit. First, he argues that the district court erred by declining to exercise jurisdiction when Kifafi again sought post-judgment discovery over a year after the court had dismissed the case and after he had already filed an appeal on the same issue. Whatever authority it may have had to involve itself in the parties' discovery disputes pending appeal, the district court did not abuse its discretion by declining the request for post-judgment information on the specifics of Hilton's efforts to contact and make payments to those 298 class members whose verified addresses class counsel provided it in 2017.

Finally, we reject Kifafi's argument that the district court should have entertained his objections to the denial of certain vesting claims submitted through Hilton's established claims process. As the district court noted, Kifafi first raised those objections after the court had terminated its jurisdiction. *See* Dec. 2015 Mem. Op., at 7 (J.A. 131). We further note that Kifafi's principal objection about vesting-claim denials concerns denials based on nonunion nonparticipating service, a type of service that the district court -- affirmed by this court -- long ago held was beyond the scope of this litigation. *See Kifafi*, 701 F.3d at 732 (affirming as reasonable the district court's decision to confine the certified vesting subclass to union participation).

Pursuant to D.C. Cir. R. 36(d), this disposition will not be published. The Clerk is directed to withhold issuance of the mandate until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk