Katrin Avassapian v. BMO Harris Financial Advisors, Inc.

2024 | Cited 0 times | C.D. California | April 26, 2024

UNITED STATES DISTRICT COURT JS-6 CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL Case No. CV 24-3146-JFW(PDx) Date: April 26, 2024 Title: Katrin Avassapian -v- BMO Harris Financial Advisors, Inc.

PRESENT: HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly Courtroom Deputy

None Present Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

None

ATTORNEYS PRESENT FOR DEFENDANTS:

None PROCEEDINGS (IN CHAMBERS): ORDER REMANDING ACTION TO LOS ANGELES

COUNTY SUPERIOR COURT FOR LACK OF SUBJECT MATTER JURISDICTION On January 25, 2024, Plaintiff Katrin Avassapian ("Plaintiff") filed a small claims action against Defendant BMO Harris Financial Advisors, Inc. ("Defendant") in Los Angeles County Superior Court. On April 17, 2024, Defendant filed a Notice of Removal, alleging that this Court has federal question jurisdiction pursuant to 28 U.S.C. §1331.

Federal courts are courts of limited jurisdiction, having subject matter jurisdiction only over matters authorized by the Constitution and Congress. See Bender v. Williamsport Area School District, 475 U.S. 534, 541 (1986). "Because of t he Congressional purpose to restrict the jurisdiction of the federal courts on removal, the statute is strictly construed, and federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." Duncan v. Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996) (citations and quotations omitted). There is a strong presumption that the Court is without jurisdiction unless the contrary affirmatively appears. See Fifty Associates v. Prudential Insurance Company of America, 446 F.2d 1187, 1190 (9th Cir. 1990). As the party invoking federal jurisdiction, Defendant bears the burden of demonstrating that removal is proper. See, e.g., Gaus v. Miles, 980 F.2d 564, 566 (9th Cir. 1992); Emrich v. Touche Ross & Co., 846 F.2d 1190, 1195 (9th Cir.

1988).

Defendant alleges that this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331, stating: "Plaintiff alleges false reporting, and thus, purports to plead a claim under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq., which is a federal act." Notice of Removal ¶ 4. Plaintiff's Complaint however contains no refe rence to the Fair Credit Reporting Act ("FCRA"). "Removal based on federal-question jurisdiction is reviewed under the longstanding well-pleaded complaint rule." Hansen v. Grp. Health Coop., 902 F.3d 1051, 1057 (9th Cir. 2018). The "well-pleaded complaint rule" "provides that federal jurisdiction exists only when a federal question

Page 1 of 3 Initials of Deputy Clerk sr is presented on the face of the plaintiff's properly pleaded complaint." California ex rel. Lockyer v. Dynegy, Inc., 375 F.3d 831, 838 (9th Cir. 2003) (quoting Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987)). The federal issue "must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal." Id. (quoting Gully v. First Nat. Bank, 299 U.S. 109, 113 (1936) (holding that the federal controversy cannot be "merely a possible or conjectural one")). "Thus the rule enables the plaintiff, as 'master of the complaint,' to 'choose to have the cause heard in state court' 'by eschewi ng claims based on federal law.'" Id. (quoting Caterpillar, 482 U.S. at 399). In this case, "Plaintiff does not cite a federal statute or use language that substantially tracks the language of a federal statute, and thus it is not clear that she is trying to state a claim under federal law. Plaintiff could be attempting to state, for example, a negligence claim." Stone-Molloy v. Midland Funding LLC, CV 15-8017 ODW (AJWx), 2015 WL 6159104, at *1 (C.D. Cal. Oct. 19, 2015).

And, to the extent Defendant contends that the FCRA preempts any state claim that Plaintiff might be alleging, Plaintiff's Complaint may not be removed on this basis. As the Supreme Court stated in Caterpillar Inc. v. Williams, 482 U.S. 386 (1987):

Ordinarily federal pre-emption is raised as a defense to the allegations in a plaintiff's complaint . . . . [I]t is now settled law that a case may not be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue. 482 U.S. at 392-93.

Complete preemption is an exception to the well-pleaded complaint rule. "[T]he complete preemption doctrine, provides that 'Congress may so completely preempt a particular area that any civil complaint raising this select group of claims is necessarily federal in character.'" Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1243–44 (9th Cir. 2009) (citing Toumajian v. Frailey, 135 F.3d 648, 653 (9th Cir. 1998) (quoting Metro. Life Ins. Co. v. Taylor, 481 U.S. 58, 63–64 (1987)). If complete preemption applies, "the st ate-law claim is simply 'recharacterized' as the federal claim that Congress made exclusive." Hansen , 902 F.3d at 1058 (quoting Vaden v. Discover Bank, 556 U.S. 49, 61 (2009)). "[W]hen a federal statute wholly displaces the state-law cause of action through

complete preemption," the state claim can be removed. Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 8 (2003).

Complete preemption is extremely "rare." Hansen, 902 F.3d at 1057. The Supreme Court has found complete preemption applicable to an extremely limited number of federal statutes. See City of Oakland v. BP PLC, 969 F.3d 895, 905 (9th Cir. 2020) (noting that the Supreme Court has only determined that complete preemption applies to three statutes -- § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, § 502(a) of the Employee Retirement Income Security Act of 1974, and §§ 85 and 86 of the National Bank Act). While discussing the limited nature of the doctrine, the Ninth Circuit held that "complete pr eemption for purposes of federal jurisdiction under Section 1331 exists when Congress: (1) intended to displace a state-law cause of action, and (2) provided a substitute cause of action." City of Oakland, 969 F.3d at 906 (citing Hansen, 902 F.3d at 1057).

Neither the Supreme Court nor the Ninth Circuit has ever concluded that the FCRA's

Page 2 of 3 Initials of Deputy Clerk sr preemption provisions "completely preempt" state law claims for purposes of supporting removal based on the existence of a federal question, and numerous district courts within the Ninth Circuit have rejected removals based on FCRA preemption. See Stone-Molloy, 2015 WL 6159104, at *2; Alan v. Austin Cap. Bank, SSB, No. CV 19-9618 PA (AFMX), 2019 WL 6002406, at *2 (C.D. Cal. Nov. 12, 2019); Hernandez v. Credit Acceptance Corp., No. 3:20-CV-00112-H-BLM, 2020 WL 898086, at *2 (S.D. Cal. Feb. 24, 2020); Cordes v. Select Portfolio Servicing, Inc., SACV 12-315 CJC (RNBx), 2012 WL 12904077, at *1-2 (C.D. Cal. May 22, 2012); Chase Bank USA, N.A. v. Duran, CV 06-2258 MMC, 2006 WL 889432, at *1 (N.D. Cal. Apr. 5, 2006); Sehl v. Safari Motor Coaches, Inc., CV 01-1750 SI, 2001 WL 940846, at *6-7 (N.D. Cal. Aug. 13, 2001).

For the foregoing reasons, this Court lacks subject matter jurisdiction over this action. Accordingly, this action is REMANDED to Los Angeles County Superior Court for lack of subject matter jurisdiction. See 28 U.S.C. § 1447(c).

IT IS SO ORDERED.

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