IP 02-0413-C H/K Roddy v Urb Lg of Madison Cnty
Judge Tim A. Baker Signed on 06/25/02

INTENDED FOR PUBLICATION AND PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RODDY, MINNIE L,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
URBAN LEAGUE OF MADISON COUNTY,	)	CAUSE NO. IP02-0413-C-H/K
	)	
Defendant.	)	

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MINNIE L. RODDY	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CAUSE NO. IP 02-413-C-H/K
	)	
URBAN LEAGUE OF MADISON COUNTY	)	
	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION

After being terminated from her position as the director of Madison County's Head Start program, Plaintiff filed a complaint in state court. The complaint alleges that Defendant Urban League of Madison County failed to follow proper procedure pursuant to a federal regulation in terminating her employment and, therefore, breached its grantee contract with the U.S. Department of Health and Human Services. As a result, Plaintiff's breach of contract claim arises out of her alleged status as a third-party beneficiary to the grantee contract.

Based on Plaintiff's reliance on the federal regulation to form her breach of contract claim, Defendant asserted federal jurisdiction and removed the action to this Court. Defendant filed a motion to dismiss, claiming that Plaintiff fails to state a claim upon which relief can be granted. Plaintiff filed a motion to remand, stating that her breach of contract claim should be litigated in state court.

I. Background

Plaintiff Minnie L. Roddy, the former director of Madison County's Head Start program, filed an amended verified complaint for a preliminary injunction and a temporary restraining order in the Madison County Superior Court. [AVC. ¶ 6]. The amended complaint alleges that on July 20, 2001, her former employer, Defendant Urban League of Madison County, a grantee agency responsible for operating the local Head Start program, unlawfully terminated her employment. Id. at ¶¶ 7-8. Roddy states that just three days after her termination, Defendant reconsidered its termination decision and placed her on unpaid suspension because it realized that it could not terminate her without the approval of the "Policy Council," a group composed of parents of currently enrolled children and community representatives pursuant to 45 C.F.R. § 1304.50 (b), a regulation that interprets the Head Start Act, 42 U.S.C. §§ 9831-9852a, promulgated by the Department of Health and Human Services ("HHS").

Defendant recommended to the Policy Council that it approve its decision to terminate Roddy. Id. at ¶¶ 8-9. On July 24, 2001, the Policy Council voted to disapprove of Roddy's termination unless Defendant provided documented evidence supporting its request. Id. at ¶ 10. Despite the Policy Council's objections that Defendant's termination decision subverted its authority under the regulation, on September 26, 2001, the Urban League Board of Directors voted to accept Defendant's recommendation to terminate Roddy's employment. Id. at ¶¶ 12-15.

Roddy alleges that Defendant breached its grantee contract with HHS by terminating her employment without the approval of the Policy Council. Id. at ¶ 20. Therefore, as a third-party beneficiary to the grantee contract, Roddy states she suffered injury as a result of Defendant's breach.

[Pl.'s Br. Remand, p. 1].

On March 15, 2002, pursuant to 28 U.S.C. § 1441, Defendant removed this case claiming that this Court has original jurisdiction under 28 U.S.C. § 1331 since Roddy's claim arises under federal regulation 45 C.F.R. § 1304.50. [Not. of Rem., ¶ 6]. Roddy claims that this Court lacks jurisdiction over her claim because there is no federal question since her claims arise out of Indiana common law. [Pl.'s Br. Remand, pp. 3-4].

There are two motions pending before the Court. First, Defendant moves to dismiss Roddy's amended complaint, claiming it fails to state a claim upon which relief can be granted since: (1) 45 C.F.R. § 1304.50 does not create a private right of action; and (2) Roddy cannot proceed on a third-party beneficiary theory on the grantee contract between Defendant and HHS. [Def.'s MTD, pp. 4-12]. Second, Roddy moves to remand her case to state court and for an award of costs and expenses. [Pl.'s Br., pp. 2-4]. For the reasons set forth below, the Magistrate Judge recommends that Roddy's motion to remand be GRANTED, and Defendant's motion to dismiss be DENIED as MOOT. Further, the Magistrate Judge recommends that Roddy's motion for costs and expenses be GRANTED.

II. Discussion

A. Standard on Motion to Remand

A defendant may remove to federal court actions originally brought in state court when the federal court has "original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States...." Bailey v. Wal-Mart Stores, Inc., 2001 WL 1155149, *1 (S.D. Ind.

2001), quoting 28 U.S.C. § 1441(b). See also Moran v. Rush Prudential HMO, Inc., 230 F.3d 959, 966 (7th Cir. 2000) (same). The statute governing remand, 28 U.S.C. § 1447, provides that a case may be remanded "if at any time before final judgment it appears that the district court lacks subject matter jurisdiction." Radaszewski v. Garner, 2002 WL 832598, *3 (N.D. Ill. May 1, 2002).

The right to remove an action from a state court to a federal court exists only in limited circumstances. The party invoking the Court's jurisdiction bears the burden of proving that jurisdiction exists. Transit Exp., Inc. v. Ettinger, 246 F.3d 1018, 1023 (7th Cir. 2001), citing Kontos v. United States Dept. of Labor, 826 F.2d 573, 576 (7th Cir. 1987). Defendant, the party asserting federal jurisdiction, must meet its burden by supporting its allegation of jurisdiction with competent proof which in the Seventh Circuit requires defendants to offer evidence that shows a reasonable probability that jurisdiction exists. See Markham v. Vancura, 2002 WL 1291807, *1 (N.D. Ill. June 11, 2002), citing Chase v. Shop 'N Save Warehouse Foods, Inc., 110 F.3d 424, 427 (7th Cir. 1997). See also Powell v. Zoning Board of Appeal of City of Chicago, 1994 WL 130766, *1 (N.D. Ill. 1994) ("The burden of proof on a motion to remand falls on the party seeking to preserve the right of removal, not the party moving for remand.").

Courts should "interpret the removal statute narrowly and presume that the plaintiff may choose his or her forum." Doe v. Allied-Signal, 985 F.2d 908, 911 (7th Cir.1993). The Court resolves any doubt as to whether jurisdiction exists in favor of state court jurisdiction. Alberto-Culver Co. v. Sunstar, Inc., 2001 WL 1249055, *2 (N.D. Ill. 2001), citing Jones v. General Tire & Rubber Co., 541 F.2d 660, 664 (7th Cir. 1976).

B. Defendant Improperly Removed This Case to Federal Court

1. Roddy's Claims Arise Under Indiana Common Law

Roddy claims that her case should be remanded because her cause of action does not arise under federal law or federal regulation. Rather, her claims arise from a state common law breach of contract claim. [Pl. Br. Remand, p. 3]. The Court agrees. Defendant claims its removal petition was proper because Roddy's reliance on 45 C.F.R. § 1304.50 provided the requisite jurisdiction. [Def.'s Opp. Remand, p. 3]. However, this regulation does not give rise to a private right of action under which Roddy can proceed. The case of Johnson v. Quin Rivers Agency for Community Action, Inc., 128 F. Supp.2d 332 (E.D. Va. 2001) presents facts substantially similar to those in this case. There, plaintiff was an employee of the local organization that operated the Head Start program. She brought suit alleging, among other causes of action, violations of certain federal regulations promulgated to interpret the Head Start Act, namely 45 C.F.R. § 1304.1. Id. at 336-37. In addition, similar to Roddy, the plaintiff brought a state law breach of contract claim. Id. at 339. With regard to claims under the federal regulations, the court granted defendant's motion to dismiss, noting that "[t]here is no provision in the Head Start Act . . . permitting a private citizen to enforce its provisions." Id. at 337. The court did not rule on the merits of plaintiff's contract claim but rather declined to exercise pendent jurisdiction and dismissed it without prejudice. Id. at 339.

Similarly, in Hodder v. Schoharie County Child Development Council, Inc., 1995 WL 760832 (N.D.N.Y. 1995), plaintiffs were also employees of the local organization administering the Head Start

program. They brought suit alleging that their terminations violated the Head Start Act and its interpretive federal regulations. The court held that there is no private right of action under the Act and found that "the essence of [plaintiffs'] claim is breach of an employment contract. Actions of this kind are traditionally relegated to state law." Id. at *6.

In the case at bar, in light of Johnson and Hodder, Roddy acknowledges that asserting a private right of action pursuant to this federal regulation, which does not recognize one, deprives a federal court of subject matter jurisdiction. [Pl.'s Br. Remand, pp. 3-4]. Rather, she states that her claim arises out of state contract law as a third-party beneficiary to the grantee contract between Defendant and HHS, and the proper forum is in state court. [Pl.'s Br. Remand, pp. 3-4]. Therefore, Roddy is entitled to the inference that her claim arises out of state contract law rather than under a federal regulation that clearly provides no private right of action. See, e.g., Doe v. Allied-Signal, 985 F.2d 908, 911 (7th Cir.1993) (courts should "interpret the removal statute narrowly and presume that the plaintiff may choose his or her forum"); Alberto-Culver Co. v. Sunstar, Inc., 2001 WL 1249055, *2 (N.D. Ill. 2001), citing Jones v. General Tire & Rubber Co., 541 F.2d 660, 664 (7th Cir. 1976) (courts resolve any doubt as to whether jurisdiction exists in favor of state court jurisdiction); Allstate Life Ins. Co. v. Hanson, 200 F. Supp.2d 1012, 1014 (E.D. Wis. May 3, 2002), citing Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994) ("Federal courts are courts of limited jurisdiction. They can adjudicate only those cases that the Constitution and Congress authorize them to adjudicate - generally those involving diversity of citizenship, a federal question, or to which the United States is a party.").

Therefore, since Roddy's claims arise from state contract law, and Defendant asserts no other basis for personal jurisdiction, the proper forum is a state court rather than a federal court. See

Napoleon Hardwoods, Inc. v. Professionally Designed Benefits, Inc., 984 F.2d 821, 822 (7th Cir. 1993) ("Napoleon's claim for breach of a contract or negligent performance of a duty imposed by a contract to procure insurance is a state law claim. It is not a cause of action created by federal law.").

2. Defendant's Federal Defense Does Not Result in Federal Jurisdiction

"To remove a case as one falling within federal-question jurisdiction, the federal question ordinarily must appear on the face of a properly pleaded complaint; an anticipated or actual federal defense generally does not qualify a case for removal." Jefferson County, Ala. v. Acker, 527 U.S. 423, 430-31 (1999). In this case, Defendant claims that Roddy cannot maintain her action in state court because the "very core" of her claim is that Defendant "violated a specific federal regulation." [Def.'s Opp. Remand, p. 1]. While Roddy asserts in her complaint a state common law breach of contract action citing to a federal regulation, Defendant's reliance on the federal regulation as a defense to her motion to remand is insufficient to invoke a federal court's jurisdiction. See Moran v. Rush Prudential HMO, Inc., 230 F.3d 959, 966-67 (7th Cir. 2000), quoting Blackburn v. Sundstrand Corp., 115 F.3d 493, 495 (7th Cir.), cert. denied, 522 U.S. 997 (1997) ("A defendant's federal defense to a claim arising under state law, therefore, 'does not create federal jurisdiction and therefore does not authorize removal.'"); Emerson Power Transmission Corp. v. Roller Bearing Co. of America, Inc., 922 F. Supp. 1306, 1310 (N.D. Ind. 1996) ("defendant's assertion of an issue of federal law in its answer or in the removal petition does not create a federal question basis for removal jurisdiction"); Bebble v. National Air Traffic Controllers' Ass'n, 2001 WL 128241, *2 (N.D. Ill. 2001) ("Even if the defense is based on federal preemption of the state law claim, the preemption defense is not a basis for

removal.").

Therefore, Defendant's attempt to keep this case in federal court by asserting a federal defense to Roddy's motion to remand also fails.

3. No "Substantial" Federal Question is Before the Court

Finally, Defendant's assertion of federal jurisdiction also fails because there is no "substantial" federal question before the Court. In Seinfeld v. Austen, 39 F.3d 761 (7th Cir. 1994), plaintiffs were shareholders who brought a derivative action in state court against members of the board of directors. They alleged a breach of fiduciary duty to the corporation for the members' failure to monitor the company's most senior executives and prevent them from engaging in violations of federal antitrust laws. Id. at 763. Similar to Roddy's case, the reason plaintiffs brought their action in state court was because the federal antitrust provisions did not recognize a private right of action. When defendants removed the case to federal court, plaintiffs filed a motion to remand. The district court denied plaintiffs' motion and granted defendants' motion to dismiss. Id. On appeal, plaintiffs claimed that the federal court did not have jurisdiction over their claims since they arose under state law. Defendants claimed that the language in plaintiffs' complaint created federal jurisdiction regardless of whether Congress intended a federal cause of action. Thus, the question before the court was whether plaintiffs' complaint stated a claim that "arises under" federal law. Id. Relying on the Supreme Court's decision in Merrell Dow Pharmaceuticals Inc. v. Thompson, 478 U.S. 804 (1986), the Seventh Circuit found that there was no "substantial" federal question before the court, and, therefore, no federal jurisdiction for the district court to hear the case. The Seinfeld court observed:

> [T]he mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction . . . The congressional determination that there should be no federal remedy for the violation of this federal statute is tantamount to a congressional conclusion that the presence of a claimed violation of the statute as an element of a state cause of action is insufficiently "substantial" to confer federal-question jurisdiction . . . We conclude that a complaint alleging a violation of a federal statute as an element of a state cause of action, when Congress has determined that there should be no private, federal cause of action for the violation, does not state a claim arising under the Constitution, laws, or treaties of the United States.

Seinfeld, 39 F.3d at 764, quoting Merrell Dow, 478 U.S. at 814, 817 (internal quotations omitted). The court went on to note that "[u]nder Merrell Dow, therefore, if federal law does not provide a private right of action, then a state law action based on its violation perforce does not raise a 'substantial' federal question." Id., quoting Utley v. Varian Assoc., Inc., 811 F.2d 1279, 1283 (9th Cir.), cert. denied, 484 U.S. 824 (1987).

Roddy is asserting a claim against Defendant similar to the claim in Seinfeld in that she asserts a state claim relying on a federal regulation that does not provide for a private right of action. Notwithstanding the fact that 45 C.F.R. § 1304.50 does not create a private right of action for Roddy to bring a suit, the Court doubts that Roddy's reliance on a federal regulation would create a federal question authorizing this Court to exercise subject matter jurisdiction or that it would provide a basis for removal to federal court. The Court is unable to locate, and Defendant does not cite, authority for the proposition that one may invoke a federal court's jurisdiction in this instance on the basis of a federal regulation. Therefore, since 45 C.F.R. § 1304.50 does not provide for a private right of action, the Court concludes that there is no "substantial" federal question for Defendant to sustain its notice for removal to federal court. See, e.g., Bebble v. National Air Traffic Controllers' Ass'n, 2001 WL 128241, *3 (N.D. Ill. 2001) ("even if a state law claim is premised on the violation of a federal law, no

'substantial' federal question is presented unless the federal law itself creates a private right of action in favor of the plaintiff"); Clemons v. Quest Diagnostics, Inc., 2001 WL 58953, *3 (N.D. Ill. 2001) (since "the court has determined that 42 U.S.C. § 13951(h)(2)(D) does not provide a private right of action," and "even though Clemons' state actions depend on purported violations of federal law, they do not raise a substantial federal question and must be dismissed").

In sum, the Court finds that Defendant fails to meet its burden of proving with competent proof that a federal question exists for this Court to exercise jurisdiction. Rather, Roddy's claim arises out of state common law. Accordingly, the Magistrate Judge recommends that Roddy's motion to remand be GRANTED, and Defendant's motion to dismiss be DENIED as MOOT.

C. Motion For Award of Costs and Expenses

Roddy's motion to remand also seeks attorney's fees and costs. 28 U.S.C. § 1447(c) permits recovery of "costs and any actual expenses, including attorney fees, incurred as a result of the removal." See Markham v. Vancura, 2002 WL 1291807, *3 (N.D. Ill. June 11, 2002), citing 28 U.S.C. § 1447(c). The Court has discretion to award attorney's fees and costs under this section because it "is not a sanctions rule; it is a fee-shifting statute, entitling the district court to make whole the victorious party." Wethington v. State Farm Mut. Auto. Ins. Co., 2000 WL 1911886, *8 (S.D. Ind. 2000) (Tinder, J.), quoting Garbie v. DaimlerChrysler Corp., 211 F.3d 407, 410 (7th Cir. 2000). The Court may exercise its discretion based upon the propriety of the removal. Katonah v. USAir, Inc., 876 F. Supp. 984, 990 (N.D. Ill. 1995). The standard for awarding attorney's fees and costs under § 1447(c) "is less strict than under the more familiar Fed. R. Civ. P. 11; the statute does not require a showing of bad faith or frivolousness." Traynor v. O'Neil, 94 F. Supp.2d 1016, 1022 (W.D. Wis.

2000).

Defendant fails to state why an award of costs and expenses would be improper if the Court granted Roddy's motion to remand. In any event, Roddy's "sound and straightforward arguments for remand prevailed, and as [a] prevailing part[y], [she is] presumptively entitled to recover attorneys' fees incurred in [seeking remand]." In re Bridgestone/Firestone Inc. Tires Products Liability Litigation, _ F. Supp. 2d _, 2002 WL 1301500, *5 (S.D. Ind. June 12, 2002), quoting Garbie v. DaimlerChrysler Corp., 211 F.3d 407, 411 (7th Cir. 2000). See also Tenner v. Zurek, 168 F.3d 328, 329-30 (7th Cir. 1999) (district court is not required to find that the defendants removed the case in bad faith to award costs and expenses).

Accordingly, the Magistrate Judge recommends that Roddy's petition for costs and expenses be GRANTED pursuant to § 1447(c), and that Roddy be given 14 days from the District Court's adoption of this report and recommendation to submit proof to the Court of the costs and any actual expenses, including attorney fees, incurred in moving to remand this case.

III. Conclusion

For the reasons set forth above, the Magistrate Judge recommends that Roddy's motion to remand be GRANTED, and Defendant's motion to dismiss be DENIED as MOOT. Further, the Magistrate Judge recommends that Roddy's motion for costs and expenses pursuant to 28 U.S.C. § 1447(c) be GRANTED, and that within 14 days of the District Judge's adoption of this report and recommendation, Roddy shall submit to the Court proof of the costs and any actual expenses, including attorney fees, incurred in moving to remand this case.

Any objections to the Magistrate Judge's report and recommendation shall be filed with the Clerk in accordance with 28 U.S.C. § 636(b)(1), and failure to file timely objections within ten days after service shall constitute a waiver of subsequent review absent a showing of good cause for such failure.

So ordered.

DATED this 25th day of June, 2002.

Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

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