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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JOSE SAUCEDO, Plaintiff, v. FELBRO, INC., a California corporation, Defendants.	Case No. CV 07-06572 DDP (Ex) **ORDER REMANDING THE CASE TO STATE COURT** [Motion filed on November 5, 2007]

This matter comes before the Court on Plaintiff's motion to remand the case to state court. After reviewing the materials submitted by the parties and considering the arguments therein, the Court grants the motion.

I. Background

Plaintiff Jose Saucedo brought this suit in California Superior Court against Defendant FELBRO, Inc. ("FELBRO") on state law claims of wrongful termination, retaliation, disability discrimination, and negligent and intentional infliction of emotional distress.

According to the complaint, Plaintiff has been employed by FELBRO as a packer for approximately six years. Plaintiff alleges that during his employment he experienced a rash on his hands and was diagnosed with eczema. In May 2006, because the condition limited his ability to perform certain work activities, Plaintiff took disability leave. Plaintiff then filed a workers' compensation claim for the work-related injury. Plaintiff alleges he was placed on disability leave from May 2006 through January 29, 2007.

Plaintiff alleges that FELBRO was provided notice of Plaintiff's disability, his workers compensation claim, and his leave of absence. Plaintiff informed FELBRO that he would be able to return to work on January 29, 2007. Plaintiff alleges that a few days prior to his scheduled return, FELBRO terminated his employment. FELBRO'S alleged reason for the termination was Plaintiff's failure to show up to work and failure to advise of the reason he was unable to work.

Plaintiff alleges that he was terminated because of his disability, because he filed a workers' compensation claim, and because he took leave due to recover from his work-related injury. Plaintiff claims that Defendants' alleged reasons for termination are a pretext for discrimination and retaliation.

Plaintiff filed a Complaint in Los Angeles Superior Court stating the following six causes of action:

1. Wrongful termination in violation of Government Code § 1290, et seq.
2. Wrongful termination in violation of Labor Code § 132(a)
3. Discrimination based upon disability.

4. Retaliation

5. Intentional infliction of emotional distress ("IIED"), and

6. Negligent infliction of emotional distress ("NIED").

FELBRO timely removed the case to federal court on the grounds that the third, fifth and sixth causes of action are preempted by Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185. FELBRO argues that these claims are preempted because based upon rights created by the collective bargaining agreement or rights that require interpretation of the collective bargaining agreement.

Plaintiff filed this motion to remand to state court, arguing that the causes of action for discrimination, NIED, and IIED are not founded on rights established by the CBA and are not preempted by section 301.

II. Legal Standard

A defendant has the right to invoke federal removal jurisdiction if the case could have been filed originally in federal court. City of Chicago v. Intern. College of Surgeons, 522 U.S. 156, 163 (1997). A defendant who seeks to remove a case from state to federal court has the burden of establishing federal subject matter jurisdiction. Wilson v. Republic Iron & Steel Co., 257 U.S. 92, 97 (1921). Courts "strictly construe the removal statute against removal jurisdiction." Gaus v. Miles, Inc., 980 F2d 564, 566 (9th Cir. 1992).

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III. Discussion

FELBRO argues that the Court has federal question jurisdiction over this case on the basis of LMRA preemption. "The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." Balcorta v. Twentieth Century-Fox Film Corp., 208 F.3d 1102, 1106 (9th Cir. 2000) (citing Caterpiller, Inc. v. Williams, 482 U.S. 386, 392 (1987)). "[I]t is 'settled law that a case may not be removed to federal court on the basis of a federal defense, including a defense of preemption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties conceded that the federal defense is the only question truly at issue.'" Id. (quoting Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for S. Cal., 463 U.S. 1, 14 (1983)). However, "[t]he Supreme Court has concluded that the preemptive force of some statutes is so strong that they 'completely preempt' an area of state law" and thus is considered "a federal claim" Id. (quoting Metro. Life Ins. Co. v. Taylor, 481 U.S. 58, 65 (1987)).

Under certain circumstances, section 301 of the LMRA may trigger complete preemption. Section 301(a) of the LMRA establishes federal jurisdiction for "suits for violation of contracts between an employer and a labor organization." 29 U.S.C. § 185. Section 301 covers claims arising directly from rights created by a collective bargaining agreement and claims "substantially dependent on analysis of a collective-bargaining

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agreement." Caterpillar, Inc., 482 U.S. at 394 (quoting Electrical Workers v. Hechler, 481 U.S. 851, 859, n. 3 (1987)).

Here, Plaintiff's employment with FELBRO is governed by a collective bargaining agreement ("CBA") negotiated between Plaintiff's union and the employer. FELBRO asserts that existence of the CBA triggers LMRA preemption of Plaintiff's state law disability discrimination, NIED, and IIED claims. FELBRO almost entirely focuses its argument on Plaintiff's IIED claim. After briefly discussing the reasons that Plaintiff's disability discrimination and NIED claims are not preempted, the Court accordingly directs its analysis to the IIED claim, and finds under the facts of this case that the IIED claim is not preempted.

A. The LMRA Does Not Preempt Plaintiff's Disability Discrimination Claim

Section 12921 of the California Government Code provides that it is unlawful to engage in employment discrimination on the basis of physical disability, mental disability, or medical condition. Cal. Gov. Code § 12921. FELBRO argues that the CBA terms must be interpreted in connection with Plaintiff's disability discrimination claim.

Contrary to Defendants' position, the Court finds that Plaintiff's disability discrimination claim is not preempted. Not every suit concerning employment and termination is preempted by section 301. LMRA preemption does not apply to "non-negotiable state-law rights . . . independent of any right established by contract." Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 212 (1985). Independent state-law rights are those rights that "can be enforced without any need to rely on a particular term, explicit or

implied, contained in the labor agreement." Miller v. AT&T, 850 F2d 543, 546 (1998). LMRA preemption is inapplicable when a statute articulates a standard to evaluate the state claim, without the need to consider CBA terms, and the state intended that the state-law right could not be altered by private contract. Id. at 548.

California's prohibition against disability discrimination is a nonnegotiable, independent state-law right; thus, interpretation of the CBA is not required. The statute is based on a declared state policy of guaranteeing to all persons the ability to seek, obtain, and hold employment without discrimination on the basis of a disability. See Cal. Gov. Code § 12921. Section 12921 does not allow employers to bargain for the right to discriminate. A contrary rule would permit exemption of unions and employers from protections California has declared a civil right. See id. Thus, California's statute creates a mandatory and independent state right that is not preempted by section 301.

B. The LMRA Does Not Preempt Plaintiff's NIED Claim

The Court finds no LMRA preemption of Plaintiffs' NIED claim. See Ward v. Circus Circus Casinos, Inc., 473 F.3d 994, 999 (9th Cir. 2007) (holding that plaintiffs' negligence claims, including a NIED claim, were not preempted where those claims did not require interpretation of the CBA and were based upon a duty of reasonable care).[1] Here, Plaintiffs do not allege that FELBRO negligently violated a duty arising under the terms of the CBA; rather, FELBRO

[1] The Court notes that FELBRO does not address its arguments to Plaintiff's NIED claims, only asserting that the NIED claim is preempted.

is "accused of acting in a way that might violate the duty of reasonable care owed to every persons in society." See id. (quoting United Steelworkers v. Rawson, 495 U.S. 362, 369 (1990)). Essentially, the duty of reasonable care exists independently of the agreement, and the state law NIED claim is therefore not preempted.

C. The LMRA Does Not Preempt Plaintiff's IIED claim

FELBRO argues that existence of the CBA triggers LMRA preemption of Plaintiffs's IIED claim.[2] The Court disagrees. The Supreme Court has held that in general, the "preemptive force of § 301 is so powerful as to displace entirely any state cause of action 'for violation of contracts between an employer and a labor organization.'" Franchise Tax Bd., 463 U.S. at 23 (explaining the decision in Avco Corp. v. Aero Lodge No. 735, Int'l Ass'n of Machinists & Aerospace Workers, 390 U.S. 557 (1968)). However, application of this "complete preemption" is not absolute; "when the meaning of contract terms are not subject to dispute, the bare fact that a collective bargaining agreement will be consulted in the course of state-law litigation plainly does not require the claim to be extinguished." Balcorta, 208 F.3d at 1108 (internal quotations and alterations omitted).

[2] FELBRO argues in a footnote that Plaintiff's retaliation claim is preempted. However, in its notice of removal, FELBRO did not include preemption of the retaliation claim in its notice of removal as a basis for federal jurisdiction. The Court, therefore, does not consider LMRA preemption with respect to this claim. Nevertheless, no dispute over the meaning of terms within the collective bargaining agreement has been raised, the Court notes that Plaintiff's retaliation claim does not require interpretation of the collective bargaining agreement. See Detabali v. St. Luke's Hospital, 482 F.3d 1199, 1203 (9th Cir. 2007).

An IIED claim requires proof of extreme and outrageous conduct by a defendant that intentionally or recklessly causes plaintiff severe emotional distress. Cervantez v. J.C. Penney Co., 24 Cal. 3d 579, 593 (1979). FELBRO asserts that the outrageousness of its conduct can only be determined by interpreting CBA provisions on discharge and discipline, discrimination, and leaves of absence. (Def.'s Opp'n 9; Feldner Decl., Ex. B - CBA Articles 6, 7, & 24.) Other than pointing to those provisions, however, FELBRO provides no argument to support its bare assertion that interpretation is required. FELBRO, therefore, does not carry its burden of establishing removal jurisdiction by showing to any reasonable degree of sufficiency that a court is required to interpret the CBA with respect to the IIED claim.

Only when a court must interpret the contract terms may section 301 preempt a plaintiff's state law claims, and "the term 'interpret' is defined narrowly – it means something more than 'consider,' 'refer to,' or 'apply.'" Balcorta, 208 F.3d at 1108. Here, a review of the CBA provisions does not reveal any particular ambiguous term requiring interpretation. That a court may 'consider,' 'refer to,' or 'apply' the unambiguous provisions of the CBA in resolving the IIED claim is insufficient for LMRA preemption. See id. at 1109-10. Accordingly, the Court finds that it is unnecessary to interpret the CBA in order to litigate Plaintiff's IIED claims.

The Ninth Circuit has clearly articulated that section 301 preemption will only apply when a plaintiff's claim cannot be resolved without interpreting the CBA:

> The plaintiff's claim is the touchstone for this analysis; the need to interpret the CBA must inhere in the nature of the plaintiff's claim. If the claim is plainly based on state law, § 301 pre-emption is not mandated simply because the defendant refers to the CBA in mounting a defense.

Cramer v. Consolidated Freightways Inc., 255 F.3d 683, 691 (9th Cir. 2001) (en banc) (citing Caterpillar, Inc. v. Williams, 482 U.S. 386, 398-99 (1987). Cramer instructs that preemption is not mandated where a defendant relies on the presence of a CBA, without demonstrating the need to interpret the CBA: "[A]lleging a hypothetical connection between the claim and the terms of the CBA is not enough . . . [because] the proffered interpretation argument must reach a reasonable level of credibility." Id. at 691-92. Here, FELBRO does not offer any interpretation argument; it simply asserts the existence of the CBA. The existence of a CBA does not ipso facto establish LMRA preemption, nor a basis for federal jurisdiction.

FELBRO relies on several cases that held IIED claims subject to LMRA preemption. See, e.g., Newberry v. Pacific Racing Ass'n, 854 F.2d 1142, 1149-50 (9th Cir. 1988); Miller, 850 F.2d at 550-51. These cases have found that "the terms of the CBA can become relevant in evaluating whether the defendant's behavior" was outrageous because "[a]ctions that the collective bargaining agreement permits might be deemed reasonable in virtue of the fact that the CBA permits them." Miller, 850 F.2d at 550.[3] However,

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[3] The Court is unclear as to the purpose of the comparison in Miller between reasonableness and outrageousness, two distinct legal concepts. A court may look to a CBA in considering whether (continued...)

the Court reads the decisions cited by FELBRO together with more recent case law, which clearly requires some dispute about the meaning of CBA terms and some showing that an interpretation of terms is necessary, for section 301 preemption to apply. See Cramer, 255 F.3d at 691-92; Balcorta, 208 F.2d at 1108-1110. FELBRO has not raised a dispute about the meaning of terms, nor shown that an interpretation of terms is necessary. The Court does not consider the existence of a CBA by itself to preempt the IIED claim.[4] Therefore, the Court holds that the IIED claim is not preempted.

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[3](...continued)
conduct is outrageous, but it need not determine whether the conduct was reasonable for purposes of IIED analysis. Furthermore, Miller identifies conduct permitted by a CBA as relevant to determination of an IIED claim. While this may be true, this does not establish that interpretation of CBA terms is necessary. A court need not interpret CBA terms when the CBA unambiguously does or does not permit the conduct. That is an instance where a state court may consult the terms of the CBA without any need for interpretation. However, Miller does not articulate this point.

[4] This is consistent with the section 301 preemption cases for IIED claims, which do not recognize a bright-line rule that IIED claims are preempted. An IIED claim will not be preempted when the basis for the claim is a criminal statute or the CBA does not govern the offending behavior. Miller, 850 F.2d at 550 n.5. Moreover, an emotional distress claim is not preempted when no dispute regarding the terms is raised, see Balcorta, 208 F.2d at 1108-1110, a defendant fails to make a showing of the need for interpretation, see Cramer, 255 F.3d at 691-92, or it can otherwise be resolved without examination or interpretation of the CBA, see Tellez v. Pacific Gas & Elec. Co., 817 F.2d 536, 539 (9th Cir. 1987).

IV. Conclusion

For the foregoing reasons, the Court finds that Plaintiff's claims are not preempted by section 301 of the LMRA. The Court, therefore, GRANTS the motion and remands the action to California state court.

IT IS SO ORDERED.

Dated: December 5, 2007

DEAN D. PREGERSON
United States District Judge