

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DION & GOLDBERGER,
Plaintiff

CIVIL ACTION

v.

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY
Defendant

NO. 02-5298

MEMORANDUM AND ORDER

McLaughlin, J.

October 25th, 2002

The question raised by the plaintiff's motion to remand is whether the Court has removal jurisdiction under 28 U.S.C. § 1441(b). The question turns on whether a federal question is raised by the plaintiff's claim that federal employment discrimination laws deprive the defendant of a state law defense of sovereign immunity. A federal question is not raised in this situation so the Court has no basis for removal jurisdiction. The plaintiff's motion to remand is granted.

The plaintiff is a law firm in Philadelphia who represented an employee of the Southeastern Pennsylvania Transportation Authority ("SEPTA"). The representation was for a religious discrimination claim by the employee arising from her termination. The attorneys were to be paid under a contingency

fee arrangement that was entered into on December 11, 2000. See Compl. at ¶ 3, Ex. A.

In March 2001, the employee attended a union grievance hearing regarding the termination at which SEPTA proposed to reinstate the employee in exchange for her agreement not to pursue her religious discrimination claim. The settlement made no provision for attorney fees. The plaintiff in this suit was not present at that hearing. See Compl. at ¶¶ 5, 12,

The employee unsuccessfully attempted to reach her attorney, the plaintiff in the present case, before deciding whether to accept the proposed settlement. Although she had not spoken with her attorney, the employee agreed to the settlement. See Compl. at ¶¶ 6, 8.

The plaintiff filed suit in the Court of Common Pleas, Philadelphia County against SEPTA on May 9, 2002 alleging violation of Pennsylvania law by the defendant. The claims brought by the plaintiff are for tortious interference with a contract and unjust enrichment. The tortious interference with a contract claim alleges that the defendant knowingly interfered with the contractual relationship between the SEPTA employee and the plaintiff by negotiating a settlement directly with the employee. The unjust enrichment claim alleges that SEPTA eliminated its legal exposure to the employee, but the plaintiff

went uncompensated for the 8.3 hours of work already the plaintiff already had performed on the employee's case. See Compl. at ¶¶ 15-21.

SEPTA filed a memorandum of law in support of its preliminary objections on June 24, 2002 asserting a defense of sovereign immunity under Pennsylvania law. See Def.'s Mem. of Law at 2-7. The plaintiff responded to the defendant's state sovereign immunity argument on July 9, 2002 claiming that employment discrimination laws, such as Title VII, deprive the defendant of any sovereign immunity it enjoys under state law. See Br. in Resp. at 1-2, 4-5.

On July 24, 2002, SEPTA filed a notice of removal claiming that the plaintiff's response to SEPTA's sovereign immunity defense raised federal claims. See Def.'s Notice of Removal at ¶ 5. On August 9, 2002, the plaintiff filed a motion to remand this case back to the Court of Common Pleas. The plaintiff contends that a remand is proper because (1) this case is a state law action containing a tortious interference with a contract claim and an unjust enrichment claim, (2) the defendant improperly filed its notice of removal 56 days after it was first served with the complaint, and (3) the defendant is a railroad and cases involving railroads are not removable under 28 U.S.C. § 1445(a). See Mot. to Remand at ¶¶ 1, 4, 5.

For a federal court to exercise jurisdiction over a removed case, the district courts must have original jurisdiction over the case based either on diversity or federal question jurisdiction. 28 U.S.C. § 1441(b); Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 8 (1983); U.S. Express Lines Ltd. v. Higgins, 281 F.3d 383, 389 (3d Cir. 2002) If a case is not properly removable, it shall be remanded to state court. 28 U.S.C. § 1447(c). There is not diversity jurisdiction in the present case because all of the parties are from Pennsylvania.

Federal question jurisdiction lies over "only those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." Franchise Tax Bd., 463 U.S. at 27-28; see United Jersey Banks v. Parell, 783 F.2d 360, 366 (3d Cir. 1986).

Neither method for properly invoking federal question jurisdiction exist& "over a case in which the complaint presents a state-law cause of action, but also asserts that federal law deprives the defendant of a defense he may raise." Franchise Tax Bd., 463 U.S. at 10. In the present case, the plaintiff's suit alleged that state law was violated by SEPTA's interference in

the plaintiff's contract with a SEPTA employee and by SEPTA being unjustly enriched. SEPTA raised a state law defense of sovereign immunity, and the plaintiff responded that federal employment discrimination laws deprive the defendants of that defense. This is the situation that Franchise Tax Board held does not allow for proper exercise of federal question jurisdiction. Removal of this case from state to federal court, therefore, is improper.

The Court does not express a view on the plaintiff's other arguments for remand.

An appropriate order follows.

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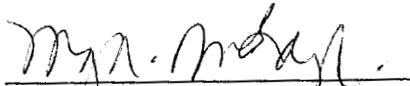
SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY
Defendant

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ORDER

AND NOW, this 25th day of October, 2002, upon
consideration of the plaintiff's motion to remand (Docket #3) and
the defendant's response to the motion (Docket #7), it is hereby
Ordered that the plaintiff's motion is granted and the case
remanded to the Court of Common Pleas of Philadelphia County,
Pennsylvania for the reasons given in a memorandum of today's
date.

BY THE COURT:


MARY A. MCLAUGHLIN, J.

10/25/02 filed to: J. Borowski (minutes)
S. Dion