

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

IN RE: ASBESTOS PRODUCTS : Consolidated Under
LIABILITY LITIGATION (No. VI) : MDL DOCKET NO. 875

REX

FILED

v.

FEB 24 2015

VARIOUS DEFENDANTS

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

E.D. Pa. Case No. 15-00324

O R D E R

AND NOW, this 23rd day of February, 2015, it is hereby
ORDERED that Plaintiffs' Motion to Remand (ECF No. 16) is
GRANTED.¹

¹ Before the Court is Plaintiffs' motion to remand to state court. The instant case was filed by Robert and Virginia Rex ("Plaintiffs") against various defendants in the Philadelphia Court of Common Pleas on November 19, 2014. Plaintiffs allege that Mr. Rex developed mesothelioma as a result of his exposure to asbestos, inter alia, while working at the Norristown Water Company. The removing defendant, Pennsylvania-American Water Company ("PAWC" or "Defendant"), was served with Plaintiffs' complaint on November 24, 2014. Plaintiffs allege that PAWC, as the successor to the Norristown Water Company, is liable for Mr. Rex's asbestos-related injuries.

Defendant filed a notice of removal on January 22, 2015. Defendant asserts that the Court has federal question jurisdiction pursuant to Section 301 of the Labor Management Relations Act ("LMRA"). Plaintiffs filed the instant motion to remand on January 30, 2015. Plaintiffs assert that (1) PAWC's removal was untimely pursuant to 28 U.S.C. § 1446(b), and (2) PAWC's removal was improper as a matter of law because no federal question exists and the Court lacks subject matter jurisdiction over their claims. Because the Court finds that Defendant has not satisfied its burden as to the substantive basis for removal, the

Court need not consider whether the LMRA provides a basis for removal under these circumstances or, whether in this case, removal was timely.

I. Legal Standard

A district court has original jurisdiction "of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. A civil action brought in a state court may be removed to the district court where the state action is pending if the district court had original jurisdiction over the case. 28 U.S.C. § 1441. The removing party bears the burden of demonstrating that the district court has jurisdiction over the case. Samuel-Bassett v. KIA Motors Am., Inc., 357 F.3d 392, 396 (3d Cir. 2004). Because federal courts are courts of limited jurisdiction, 28 U.S.C. § 1441 is to be strictly construed against removal. La Chemise Lacoste v. Alligator Co., 506 F.2d 339, 344 (3d Cir. 1974). "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c).

II. Analysis

A. Plaintiffs' Motion to Remand

Plaintiffs argue that they have only pleaded claims based on state law and no federal question is implicated by their claims. According to Plaintiffs, prior to the Pennsylvania Supreme Court's decision in Tooey v. AK Steel Corp., 81 A.3d 851 (Pa. 2013), the instant common law claims were not available to them because they were precluded by the Pennsylvania Workers Compensation Act. Following Tooey, however, employees are now permitted to pursue common law causes of action against their employers for injuries relating to occupational diseases manifesting more than 300 weeks after the last occupational exposure. Plaintiffs assert that no claim is being made under a collective bargaining agreement and therefore removal pursuant to the LMRA is improper. Plaintiffs also note that PAWC has not provided Plaintiffs or the Court with a collective bargaining agreement and cannot satisfy its removal burden.

B. Complete 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." Caterpillar, 482 U.S. at 392. Following this doctrine, a case may not be removed on the basis of a federal defense, including a defense of ordinary preemption. Id. at 393. There exists, however, an "independent corollary" to this rule, when the preemptive force of a federal statute "is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim" Id. This concept, known as "complete preemption," provides that any such claim is transformed, for jurisdictional purposes, and necessarily "'arises under' federal law." Franchise Tax Bd. v. Constr. Laborers Vacation Trust for S. Cal., 463 U.S. 1, 23 (1983).

C. The Labor Management Relations Act

Section 301 of the LMRA is one of the few statutes where the complete preemption corollary to the well-pleaded complaint rule applies. Caterpillar, 482 U.S. at 393. Section 301 states:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a).

The parties agree that no claim under Section 301 of the LMRA appears on the face of Plaintiffs' complaint. Defendant, however, asserts that Plaintiffs cannot avoid federal jurisdiction by labeling their claims as strictly state-law claims. Specifically, Defendant alleges that resolution of Plaintiffs' claims is substantially dependant upon analysis of

the terms of the collective bargaining agreements ("CBAs") between the Norristown Water Company and Firemen and Oilers Local 1201 ("Local 1201") as they relate to the alleged breach of a duty owed to Mr. Rex by his employer. See Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 405-06 (1988) ("[I]f the resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law . . . is pre-empted and federal labor-law principles . . . must be employed to resolve the dispute."). Defendant asserts that any claim that it is liable to Mr. Rex for his injuries cannot be resolved without the Court's analysis of the CBAs, as the CBAs defined Defendant's rights, obligations, customs, and practices as they pertained to the union workers of Local 1201.

D. Defendant's Removal Burden

"The removing party . . . carries a heavy burden of showing that at all stages of the litigation the case is properly before the federal court. Removal statutes are to be strictly construed, with all doubts to be resolved in favor of remand." Manning v. Merrill Lynch Pierce Fenner & Smith, Inc., 772 F.3d 158, 162 (3d Cir. 2014) (internal citations omitted). Here, Defendant asserts that removal was proper because Mr. Rex's relationship with the Norristown Water Company was governed exclusively by the CBAs and the "CBAs contain numerous detailed provisions that address several specific workplace safety issues, such as monitoring for employees' exposure to contaminants, providing free medical examinations to employees who may have been exposed to harmful levels of contaminants, and paying benefits to employees who suffered work-related injuries, among many other provisions." Def.'s Resp. 15, ECF No. 29-1. Curiously, however, Defendant does not cite to any collective bargaining agreement in support of this broad assertion. In fact, the record is devoid of the very document that Defendant alleges is the foundation for federal question jurisdiction. The Court has combed the record, but it appears that Defendant has not attached any collective bargaining agreement between the Norristown Water Company (or PAWC) and Local 1201 to either its response to Plaintiffs' motion to remand, nor to its notice of removal.

Instead, in support of its assertion that the "case cannot be litigated without interpreting the duties owed by PAWC to Mr. Rex . . . as set forth by the CBAs," Defendant relies on

snippets of Mr. Rex's deposition and answers to interrogatories. See Def.'s Resp. 15, ECF No. 29-1. Defendant points to, inter alia, the following statements from Mr. Rex's interrogatories:

- Mr. Rex was a member of Firemen and Oilers Local 1201 from 1964-1970.
- Mr. Rex attended local union meetings when the information was posted at the Norristown Water Company.

Defendant points to, inter alia, the following statements from Mr. Rex's deposition:

- The collective bargaining agreement permitted Mr. Rex to raise safety concerns or issues to a shop steward.
- The collective bargaining agreement covered the work and safety conditions at the Norristown Water Company.
- The collective bargaining agreement set forth the duties of the union membership, as well as the employer's duties.

Notably, however, none of the statements pulled from Mr. Rex's deposition or interrogatories relate to asbestos or occupational diseases. At best, Defendant has shown that Mr. Rex was aware that he could raise a concern about safety or work conditions to a shop steward pursuant to the CBA. There is no discussion of what constituted a "work or safety condition," nor is there any assertion that Mr. Rex could not also proceed at common law for any claim against his employer. Moreover, there is no mention, as Defendant alleges, of the "monitoring for employees' exposure to contaminants, providing free medical examinations to employees who may have been exposed to harmful levels of contaminants, and paying benefits to employees who suffered work-related injuries." See Def.'s Resp. 15, ECF No. 29-1. In addition, Mr. Rex also testified to the following:

- He never reviewed the collective bargaining agreement.

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- There was never a mention of asbestos hazards at the union meetings.

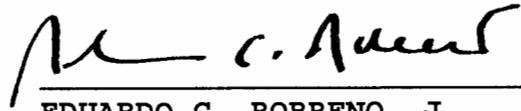
In sum, the record is completely silent as to how the CBAs relate to Plaintiffs' claims at all, let alone how the CBAs completely preempt Mr. Rex's claims. Defendant cites to numerous cases from around the country, however, each is distinguishable at the very least on the basis that in those cases the court was actually presented with the collective bargaining agreement at issue. See Minch v. City of Chicago, 486 F.3d 294 (7th Cir. 2007) (discussing certain provisions of the pertinent CBA); Carter v. Tyson Foods, Inc., No. 08-00209, 2009 WL 4790761 (N.D. Ind. 2009) (same); Dent v. National Football League, No. 14-02324, 2014 WL 7205048 (N.D. Cal. 2014) (same). Defendant asks this Court to hold that the resolution of Plaintiffs' claims substantially depends on this Court's interpretation of the CBAs without attaching the very document (or documents) it relies on. This Court simply cannot divine such a conclusion. See also, Palmer v. Kraft Foods Global, Inc., No. 13-06260, 2014 WL 317876 at *5 (E.D. Pa. Jan. 29, 2014) (Baylson, J.) (holding that the defendant failed to meet its burden on removal to show that the plaintiff's claims were preempted by the LMRA when defendant failed to include the collective bargaining agreement it was relying on).

Defendant has failed to carry its heavy burden in showing that this case is properly before this Court, and all doubts must be resolved in favor of remand. Manning, 772 F.3d at 162; Samuel-Bassett, 357 F.3d at 396; La Chemise Lacoste, 506 F.2d at 344. Accordingly, Plaintiffs' motion to remand must be granted. Id.

E. Plaintiffs' Motion for Costs

Plaintiffs move for costs and fees pursuant to 28 U.S.C. § 1447(c). The removal statute provides that an "order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." Id. The Court assesses whether costs and fees are proper based on the reasonableness of removal. Martin v. Franklin Capital Corp., 546 U.S. 132, 136 (2005). "[W]hen an objectively reasonable basis exists [for removal], fees should be denied." Id. Here, Defendant had an objectively reasonable basis for

AND IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

removal, although it did not carry its burden in establishing jurisdiction. The Court declines to award costs and fees in such a situation. Accordingly, Plaintiffs' motion for costs is denied.

III. Conclusion

For all of the reasons stated above, Plaintiffs' motion to remand is granted. Plaintiffs' motion for costs is denied.