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2013 U.S. Dist. LEXIS 157910

Harris v. All State Van Lines Relocation, Inc., 2013 U.S. Dist. LEXIS 157910 (Copy citation)

United States District Court for the Western District of Washington
November 4, 2013, Decided; November 4, 2013, Filed
CASE NO. C13-1683 MJP

Reporter: 2013 U.S. Dist. LEXIS 157910 | 2013 WL 5912571

JAMES HARRIS AND ROSANN HARRIS, Plaintiffs, v. ALL STATE VAN LINES RELOCATION, INC., BEST PRICE MOVING AND STORAGE, INC., AND RELO VAN LINES, LLC, Defendants.

Core Terms

remove, claims, motion, contract, preempt, completely, interstate, federal claim, federal court, state court, amended, preemption, holding, rule

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For Best Price Moving and Storage Inc., Defendant: Patrick Vail, Todd C Nichols, LEAD ATTORNEYS, COGDILL NICHOLS REIN WARTELLE ANDREWS, EVERETT, WA.

Judges: Marsha J. Pechman, Chief United States District Judge.

Opinion by: Marsha J. Pechman

Opinion

ORDER ON MOTION TO REMAND

This matter is before the Court on Plaintiffs' motion to remand this action. (Dkt. No. 3.) Defendant Relo opposes the motion (Dkt. No. 11), and Defendants All State Van Lines Relocation Inc. (Dkt. No. 12) and Best Price Moving and Storage, Inc. (Dkt. No. 13) join in opposition. Having reviewed the motion, the responses, and the reply (Dkt. No. 16), and all related papers, the Court GRANTS the motion and REMANDS this action to Snohomish County Superior Court, but does not award fees or costs.

Background

In October 2012 Plaintiffs James Harris and Rosann Harris engaged the services of one or more Defendants in transporting their belongings from their former residence in Michigan to their new home [2] in Bothell, Washington. (See Snohomish County Compl., Dkt. No. 1-2 at 4.) They allege various acts of malfeasance by Defendants during this move, including allegations that their property was held hostage and that upon payment and delivery, items were discovered to have been damaged or lost. (*Id.* at 5-8.)

Plaintiffs filed a complaint alleging only state law claims in Snohomish County Superior Court on May 23, 2013. (*Id.*) However, most were contract claims arising out of interstate shipping contracts, and such claims are generally preempted by the federal Carmack Amendment. (See preemption discussion below.) Defendants chose to respond with a motion to dismiss based on preemption, also asserting improper venue in view of a forum selection clause. (Dkt. No. 1-3.) On August 22, Judge Bowden of

Snohomish County Superior Court denied the motion to dismiss, holding that the Carmack Amendment preempted Plaintiffs' contract claims but not their tort claims and that venue was proper in Snohomish County. (Dkt. No. 1-5.) Judge [Bowden](#) also ordered Plaintiffs to amend their complaint within thirty days to add federal Carmack claims. ([Id.](#))

On September 3, Plaintiffs amended their complaint to add **[3]** the federal claims. (Dkt. No. 1-6.) Only then, on September 17, did Defendants remove to federal court, asserting federal question jurisdiction on the basis of Carmack claims totaling more than \$10,000. (Dkt. No. 1.) Before the Court is Plaintiffs' motion to remand the action, arguing that Defendants' notice of removal was untimely. (Dkt. No. 3.)

Discussion

I. Removal in Complete Preemption Case

This case presents an unusual clash between two procedural rules: the short deadline for removal to federal court once a complaint's removability can be ascertained, [see 28 U.S.C. § 1446\(b\)](#), and the complete preemption "corollary" to the well-pleaded complaint rule in preemption cases, [see generally Metropolitan Life Ins. Co. v. Taylor](#), 481 U.S. 58, 107 S. Ct. 1542, 95 L. Ed. 2d 55 (1987).

In their motion to remand, Plaintiffs argue that when Defendants waited to remove to federal court until after federal claims appeared on the face of the complaint, they missed the deadline for removing a certain class of apparent state-law claims that are immediately removable even when no federal claims are evident. ([See](#) Dkt. No. 3 at 5-7.) This class consists of claims that are "completely" preempted by federal law—ERISA claims, notably, [see Metropolitan Life](#), 481 U.S. at 63-66 **[4]**, but also, per the 9th Circuit's holding in [Hall v. N. Am. Van Lines, Inc.](#), 476 F.3d 683, 687-89 (9th Cir. 2007), state-law breach of contract claims against interstate moving companies. Because a state court complaint alleging loss or damage to property arising out of interstate shipping contracts is immediately removable to federal court despite the absence of explicit federal claims, [see id.](#), Plaintiffs argue that their initial complaint triggered the thirty-day removal deadline in [28 U.S.C. § 1446\(b\)](#) and any later attempt to remove is untimely.

Defendants urge that only the amended complaint containing explicit Carmack claims triggered the thirty-day removal deadline, citing the ordinary well-pleaded complaint rule and the fact that no federal claims appeared within the four corners of plaintiff's original complaint. ([See](#) Dkt. No. 11 at 3-6.) Defendants further insist that the state court's determination that Defendant Relo was "an interstate motor carrier" was a prerequisite to removability. ([Id.](#) at 6-8.)

Defendants are incorrect. [Hall](#), which Defendants cited in their motion to dismiss in state court ([see](#) Dkt. No. 1-4 at 4), clearly establishes that **[5]** "the Carmack amendment is the exclusive cause of action for interstate shipping contract claims alleging loss or damage to property." 476 F.3d at 688. [Hall](#) also holds that state court complaints are removable in the absence of explicit federal claims if they present state-law contract claims arising from interstate shipping contracts. [Id.](#) at 688-89. The fact that Defendant Relo is an interstate motor carrier, although relevant to Relo's liability, is adequately alleged by the facts presented in the complaint. Facts need not be definitively established in state court proceedings before an action can be removed to federal court. Plaintiffs are therefore correct that Defendants could have removed to federal court at the time of the first complaint.

Furthermore, the language of [28 U.S.C. § 1446\(b\)\(3\)](#) makes clear that the thirty-day clock runs from the time at which removability "may first be ascertained." Removal statutes are strictly construed against removal, [Luther v. Countrywide Home Loans Servicing, LP](#), 533 F.3d 1031, 1034 (9th Cir. 2008), and the defendant bears the burden of establishing that removal was appropriate. [Duncan v. Stuetzle](#), 76 F.3d 1480, 1485 (9th Cir. 1996). As the **[6]** 9th Circuit has held with respect to completely preempted ERISA claims, the thirty-day clock for timely removal begins at the filing of a complaint containing a completely preempted state-law claim, and remand is appropriate if the defendant removes thereafter. [Cantrell v. Great Republic Ins. Co.](#), 873 F.2d 1249, 1253-54 (9th Cir. 1989); [see also Harris v. Bankers Life & Cas. Co.](#), 425 F.3d 689, 694 (9th Cir. 2005) (clarifying that [Cantrell](#) does not place the burden on defendant to investigate facts within the subjective knowledge of the defendant but not discernible within the four corners of the pleading).

Many other district courts have reached the same conclusion as Cantrell, holding that the complete preemption "corollary" to the well-pleaded complaint interacts with § 1446(b) so that remand is appropriate where a defendant belatedly removes completely preempted claims. See, e.g., Koolaire v. Cardinal Transport, Inc., No. 1:10-cv-00501, 2010 U.S. Dist. LEXIS 60431, 2010 WL 2541812, *2-*3 (N.D. Ohio May 25, 2010) (adopted by 2010 U.S. Dist. LEXIS 60420, 2010 WL 2541796 (N.D. Ohio June 18, 2010)) (recommending remand when defendant delayed beyond thirty days the removal of state contract claims completely preempted by the Carmack Amendment); **[7]** Hoover v. Allied Van Lines, 205 F. Supp. 2d 1232, 1240-41 (D. Kan. 2002) (same); Davidson v. Life Ins. Co. of N. Am., 716 F. Supp. 674, 675-76 (D. Mass. 1989) (same conclusion under ERISA); cf. Burks v. Amerada Hess Corp., 8 F.3d 301, 305-06 (5th Cir. 1993) (holding that removal was timely because state law claims in initial complaint were not preempted by ERISA, and therefore only the amended complaint, which contained ERISA-preempted claims, started the thirty-day clock). The application of this procedural rule may seem harsh, but in this case the action has been proceeding briskly in state court, and it is clear from Defendants' motion to dismiss in state court that Defendants were able to recognize through a straightforward examination of Plaintiffs' complaint that it contained inartfully pleaded Carmack Amendment claims.

II. Fees and Costs

The Court has discretion to award fees and costs under 28 U.S.C. § 1447(c), but should do so only when the removing party "lacked an objectively reasonable basis for seeking removal." Martin v. Franklin Capital Corp., 546 U.S. 132, 141, 126 S. Ct. 704, 163 L. Ed. 2d 547 (2005). Although the outcome of this motion is largely controlled by the intersection of easily ascertainable **[8]** procedural rules and 9th Circuit case law, the conclusion reached thereby is at least mildly counterintuitive. Defendants did not act unreasonably in resisting it. The Court therefore declines to award fees and costs.

Conclusion

Because Plaintiffs' original state court complaint contained contract claims that were completely preempted by the Carmack Amendment, Defendant's removal when Plaintiffs formally amended the complaint to add Carmack claims several months later was untimely. The Court therefore REMANDS the action to Snohomish Superior Court. The Court does not award fees or costs.

The clerk is ordered to provide copies of this order to all counsel.

Dated this 4th day of November, 2013.

/s/ [Marsha J. Pechman](#)

[Marsha J. Pechman](#)

Chief United States District Judge

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