UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TRACY NEIGHBORS et al., Plaintiffs, v. KING COUNTY, Defendant.	CASE NO. C15-1358 MJP ORDER ON PLAINTIFFS' MOTION TO REMAND

THIS MATTER comes before the Court on Plaintiffs' Motion to Remand. (Dkt. No. 13.) Having reviewed the Motion, Defendant's Response (Dkt. No. 18), and Plaintiffs' Reply (Dkt. No. 22), the Court hereby GRANTS the Motion and REMANDS the case to state court.

Background

This action is the third separate case brought by many of the same plaintiffs concerning a proposed paved path along a "railbanked" nature trail that Burlington Northern & Santa Fe Railroad ("BNSF") originally transferred to Defendant King County through operation of the National Trails System Act Amendments of 1983, Pub. L. No. 98-11, § 208, 97 Stat. 42, codified at 16 U.S.C. § 1247(d) (2006) (the "Trails Act"). The Court previously dismissed with leave to

amend one case, filed in federal court, which contended certain plaintiffs have fee ownership of the land extending to the centerline of the former railroad right of way; those plaintiffs have since filed an amended complaint with additional factual allegations regarding chain of title. That action remains pending. (See Case No. 15-cv-284-MJP.) This Court dismissed a second case, concerning the maximum width of the easement that was transferred via the Trails Act, because its state causes of action did not present a substantial federal question. (See Case No. 15-cv-970-MJP, Dkt. No. 27.)

In this case, Defendant King County removed Plaintiffs' complaint from state court on the basis of federal question jurisdiction. (Dkt. No. 1, Ex. 1.) Plaintiffs moved to remand the case (Dkt. No. 13) and Defendant now opposes remand on the basis that Plaintiffs' declaratory judgment and quiet title causes of action require a determination of the parties' rights pursuant to the Trails Act and directly rely on adverse possession claims that are completely preempted by the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. § 10501. (Dkt. No. 18.)

Discussion

I. Substantial Federal Issue

The Supreme Court has held that "federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress. Where all four of these requirements are met, [. . .] jurisdiction is proper because there is a 'serious federal interest in claiming the advantages thought to be inherent in a federal forum,' which can be vindicated without disrupting Congress's intended division of labor between state and federal courts." Gunn v. Minton, 133 S. Ct. 1059, 1065 (2013). Here, Defendant argues

Plaintiffs' apparent claim that BNSF was unable to convey by deed its interest in land acquired by adverse possession (see Compl., Dkt. No. 1 at 6) requires a determination whether the Trails Act stopped the application of state law during the conveyance (which would have otherwise extinguished the railroad easement following discontinuance of use). (Dkt. No. 18 at 8.)

Because Plaintiffs do not appear to contend that the Trails Act did not prevent the easement from being extinguished (Dkt. No. 22 at 3), or to make any other argument that conflicts with Defendant's interpretation of the effect of the Trails Act, the issues involving the Trails Act do not appear to be "actually disputed." At this stage of the case, it also appears that interpretation of the Trails Act is not necessary to determine whether the declaratory relief requested by Plaintiffs (Dkt. No. 1 at 7) is proper, so it falls short of the "necessarily raised" requirement as well. The Court does not have federal jurisdiction by virtue of this claim on the current record.

II. Complete Preemption

Defendant also argues Plaintiffs' adverse possession claims are completely preempted by the ICCTA. (Dkt. No. 18 at 6–18.) Complete preemption is distinct from ordinary or defensive preemption. See Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am., 768 F.3d 938, 946–47 (9th Cir. 2014). While ordinary preemption provides a defense to state law causes of action and thus does not overcome the well-pleaded complaint rule, complete preemption is a doctrine solely applicable to removal jurisdiction and allows a complaint to be removed despite the absence of an explicit federal cause of action. Id. at 947–49.

Complete preemption is rare, and the Supreme Court has recognized only three federal statutes that completely preempt state law causes of action. In two of those three examples, the federal statute contains language creating a specific cause of action for which "the district courts

of the United States" have jurisdiction "without respect to the amount in controversy" or "the citizenship of the parties." See 29 U.S.C. § 185(a) (regarding actions under § 301 of the Labor Management Relations Act or "LMRA"); 29 U.S.C. § 1132(f) (regarding actions under § 502 of the Employee Retirement Income Security Act or "ERISA"). The Supreme Court has also emphasized that "the touchstone of the federal district court's removal jurisdiction is [. . .] the intent of Congress," Metro. Life Ins. Co. v. Taylor, 481 U.S. 58, 66 (1987), and in the case of ERISA, the legislative history also strongly indicated that Congress intended the section to completely preempt similar state court claims. In the third instance of complete preemption recognized by the Supreme Court, over one hundred years of case law indicated that state-law usury claims against national banks were displaced by the National Bank Act. Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 10 (2003).

Here, the statute Defendant argues completely preempts Plaintiffs' adverse possession-based claims is 49 U.S.C. § 10501(b), which provides:

> The jurisdiction of the [Surface Transportation] Board over—
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> > (1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and
> > (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,
>
> is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

At first glance the statute seems to indicate that the Surface Transportation Board ("STB"), as opposed to the federal district court, has sole "exclusive" jurisdiction over preempted claims. If that were the case, this Court would not have original jurisdiction over such claims, a prerequisite for removal jurisdiction. See 28 U.S.C. § 1441(a). Cf. Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1245 (9th Cir. 2009) (holding the Railroad Labor Act or

"RLA" does not completely preempt state law causes of action requiring interpretation of a collective bargaining agreement in part because the RLA "requires submission of such disputes to internal dispute-resolution processes and then to a division of the National Adjustment Board or an arbitration board selected by the parties [. . . .] Only after the grievance has been heard by the adjustment board does exclusive jurisdiction rest with the federal court") (alterations and citations omitted); Ethridge v. Harbor House Rest., 861 F.2d 1389, 1400 (9th Cir. 1988) (holding that disputes under sections 7 or 8 of the National Labor Relations Act are not removable to federal district court because the National Labor Relations Board has primary jurisdiction).

As the Fifth Circuit has pointed out, certain claims against rail carriers that would appear to be subject to ICCTA's "exclusive" jurisdiction provision may also be brought in federal district court, pursuant to another provision of the ICCTA. See Elam v. Kansas City S. Ry., 635 F.3d 796, 809 (5th Cir. 2011) (citing 49 U.S.C. § 11704(c)(1)). Due to this statutory structure, the Fifth Circuit held that the invocation of "exclusive" jurisdiction should not be read literally. Id. But the Fifth Circuit's alternative interpretation of the language of § 10501(b) still presents problems under Ninth Circuit precedent, because the Fifth Circuit concluded that even if the ICCTA does not vest exclusive jurisdiction in the STB, it does vest primary jurisdiction in the STB. Elam, 635 F.3d at 809–10. The Ninth Circuit has held that statutes that vest primary jurisdiction in an agency do not provide the federal district courts with original jurisdiction or give rise to complete preemption. See Moore-Thomas, 553 F.3d at 1245; Ethridge, 861 F.2d at 1400; but see United States v. W. Pac. Ry. Co., 352 U.S. 59, 63–64 (1956) ("'Primary jurisdiction,' on the other hand, applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative

body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views.") (emphasis added).

The Fifth Circuit also relied on an isolated reference to "complete" preemption in the legislative history of the ICCTA. See Elam, 635 F.3d at 809 (citing H.R. Rep. 104-311, 95, 1995 U.S.C.C.A.N. 793, 807 ("This provision replaces the railroad portion of former Section 10501. Conforming changes are made to reflect the direct and complete pre-emption of State economic regulation of railroads.")). However, the incidental use of the term "complete," without any context indicating a discussion of removal jurisdiction or the jurisdiction of state courts as opposed to the application of state law, does not compare with the more explicit legislative history the Supreme Court found persuasive with respect to ERISA claims.

Because district courts holding that the STB provision completely preempts state law in similar adverse-possession cases did not cite Moore-Thomas and Ethridge or are not located in the Ninth Circuit, the Court does not find them persuasive. See B & S Holdings, LLC v. BNSF Ry. Co., 889 F. Supp. 2d 1252, 1258 (E.D. Wash. 2012); 14500 Ltd. v. CSX Trans., Inc., 2013 WL 1088409, at *4-5 (N.D. Ohio, Mar. 14, 2013).

The Ninth Circuit has made clear that remand rather than dismissal is appropriate where state court claims may be subject to the primary jurisdiction of a federal agency. Moore-Thomas, 553 F.3d at 1246; Ethridge, 861 F.2d at 1399. The question of defensive preemption may be performed in the first instance by the state court. Plaintiffs' Motion to Remand is therefore granted.

Conclusion

Because a substantial federal issue is not presented with respect to the Trails Act and because under Ninth Circuit precedent, the Court does not have original jurisdiction over claims

that are subject to the primary or exclusive jurisdiction of the STB, the Court GRANTS Plaintiffs' Motion to Remand and REMANDS the case to state court.

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

Dated this 16th day of December, 2015.

Marsha J. Pechman
Chief United States District Judge