

UNITED STATE DISTRICT COURT

DISTRICT OF CONNECTICUT

VINCENT SORRENTINO

:

v.

:

NO. 3:01CV1449 (AHN)

ALLIED VAN LINES, INC. and
WEST END MOVING & STORAGE CO.

:

RULING ON PLAINTIFF'S MOTION TO REMAND

This is an action against an interstate carrier for breach of contract, negligence, and misrepresentation in connection with the shipment of goods. Presently before the court is Plaintiff Vincent Sorrentino's ("Sorrentino") motion to remand. Sorrentino asserts that his complaint does not assert a federal question because all counts sound in state law and thus argues that removal was improper. For the following reasons, the motion to remand [doc. # 9] is DENIED.

FACTS

Sorrentino contracted with the defendants Allied Van Lines, Inc. and West End Moving & Storage ("Allied") to ship certain items from Stratford, Connecticut to Marietta, Georgia on November 11, 1999. Sorrentino alleges that on delivery of his items to him in Marietta, he discovered that several valuable items were missing, including furs and rare collectibles.

On **July 12, 2001**, Sorrentino filed suit in the Connecticut Superior Court against Allied alleging only state law claims. On

August 2, 2001, Allied removed the case to this court on the grounds that the action is governed by 49 U.S.C. § 14706, the "Carmack Amendments" and that this court has original federal question jurisdiction pursuant to 28 U.S.C. §§ 1337 and 1331.

DISCUSSION

The issue before the court is whether Sorrentino's state law claims are completely preempted by the Carmack Amendments thereby rendering this case one that arises under federal law.

The Carmack Amendments establish a national standard for liability of common carriers for goods lost or damaged during interstate shipment, and allow shippers to recover actual damages for losses from any of the carriers involved in the shipment. See 49 U.S.C. § 14706. While it is clear that Congress intended the Carmack Amendments to preempt all claims against interstate carriers for loss or damage to goods during shipping, see Adams Express Co. v. Croninger, 226 U.S. 491, 505-07 (1913); Cleveland v. Beltman North American Co., 30 F.3d 373, 378 (2d Cir. 1994); North American Phillips Corp., v. Emery Air Freight Corp., 579 F.2d 229, 234 (2d Cir. 1978), it is not clear whether Congress intended the Carmack Amendments to completely preempt all state law claims for such losses. This is significant because removal is proper only if there is complete preemption. See Marcus v. AT&T Corp., 138 F.3d 46, 52-53 (2d Cir. 1998).

"It is long settled that a cause of action arises under federal law and is thus removable only when the plaintiff's well-pleaded complaint raises issues of federal law." See Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987). A federal defense alone, even preemption, does not give rise to a federal question justifying removal. See Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). However, under the "complete preemption" exception to the well-pleaded complaint rule, "the pre-emptive force of a statute is so 'extraordinary' that it converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." Marcus, 138 F.3d at 53 (quoting Caterpillar, 482 U.S. at 393). In such a case, "[o]nce an area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore one that arises under federal law." Id. In Marcus, the Second Circuit narrowed the complete preemption doctrine by holding that it only exists "where Congress has clearly manifested an intent to disallow state law claims in a particular field" and there is a "clear statement to that effect by Congress." Id. at 54-55 (citing Metropolitan Life Ins. Co., 481 U.S. 58).

Thus, although it is settled that Congress clearly intended the Carmack Amendments to preempt all claims against interstate carriers for loss or damage to goods during shipping, the issue of whether the

Carmack Amendments completely preempt state law claims has not been decided by the Second Circuit since it narrowed the complete preemption doctrine in Marcus. However, prior to Marcus, the Second Circuit held that removal under the Carmack Amendments is proper where a complaint contains only state claims against a common carrier alleging loss of goods during interstate shipping. See North American Phillips Corp. 579 F.2d at 234. Moreover, since Marcus, numerous district courts have held that the Carmack Amendments completely preempt state law claims for damages and losses incurred in interstate shipping of goods. See Orlick v. J.D. Carton & Sons, Inc., 144 F. Supp.2d 337, 345 (D.N.J. 2001); Ash v. Artpack Int'l, Inc., No. 96civ8440(MBM), 1998 WL 132932, at *4 (S.D.N.Y. Mar. 23, 1998); Dominique Ford v. Allied Van Lines, Inc., No. 3:96cv2598(AHN), 1997 WL 317315, at * 3 n.1 (D. Conn. Jun. 3, 1997). Indeed, there is no authority to the contrary.

Here, although Sorrentino has crafted his claims under state law, he alleges that his loss occurred during the interstate shipment of his goods. Accordingly, the court concludes that his claims are completely preempted by the Carmack Amendments and are thus removable to this court pursuant to 28 U.S.C. §§ 1337 and 1331.

CONCLUSION

For the foregoing reasons, the plaintiff's motion for remand [doc. # 9] is DENIED.

SO ORDERED this day of March, 2002, at Bridgeport,
Connecticut.

Alan H. Nevas
United States District Judge