

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 08-798 JVS (ANx) Date September 15, 2008

Title Gomaroooni v. Rite Aid Corp., et al.

Present: The Honorable James V. Selna

Karla J. Tunis

Deputy Clerk

Attorneys Present for Plaintiffs:

Harry A. Wallace

Sharon Seffens

Court Reporter

Attorneys Present for Defendants:

David Foster

Proceedings: Defendant's Motion to Dismiss (Fld 7-29-08)

Cause called and counsel make their appearances. The Court's tentative ruling is issued. Counsel make their arguments. The Court GRANTS the defendant's motion and rules in accordance with the tentative ruling as follows:

Defendants Rite Aid Corporation and Thrifty Payless, Inc., also erroneously sued as Rite Aid Pharmacy (collectively "Rite Aid") move to dismiss Plaintiff Andrea Mohsen Gomaroooni's ("Gomaroooni") Complaint ("Complaint") in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6). Fed. R. Civ. P. 12(b)(6).

I. Legal Standard

Under Federal Rule of Civil Procedure 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, -- U.S. --, 127 S. Ct. 1955, 1974 (2007). In resolving a Rule 12(b)(6) motion, the Court must construe the Complaint in the light most favorable to the plaintiff and must accept all well-pleaded factual allegations as true. Cahill v. Liberty Mutual Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). The Court must also accept as true all reasonable inferences to be drawn from the material allegations in the Complaint. Pareto v. F.D.I.C., 139 F.3d 696, 699 (9th Cir. 1998). "However, conclusory allegations of law and unwarranted inferences are not sufficient to defeat a motion to dismiss." Id.

"A court may consider evidence on which the complaint 'necessarily relies' if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion."

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Marder v. Lopez, 450 F.3d 445, 448 (9th Cir. 2006) (citations omitted). “The court may treat such a document as ‘part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6).’” Id. (internal quotation marks and citations omitted).

II. Discussion

The Complaint alleges that Rite Aid hired Gomarooni as a pharmacist on October 1, 2007, and terminated him on February 13, 2008 when he refused to join United Food and Commercial Workers Union Local 135 (“the Union”). (Complaint ¶¶ 9-10, 22.) Based on these allegations, Gomarooni states four claims: 1) wrongful discharge in violation of public policy; 2) breach of contract; 3) breach of the covenant of good faith and fair dealing; and 4) wrongful termination-misrepresentation. (Id. ¶¶ 8-42.)

Rite Aid argues that each of Gomarooni’s claims is preempted by the Labor Management Relations Act (“LMRA”) section 301 and that he has failed to state a claim under that section because he does not allege a breach of the applicable collective bargaining agreement (“CBA”) or exhaustion of the grievance procedures provided under the applicable CBA. (Opening Br. p. 1); 29 U.S.C. § 185.

A. Whether Gomarooni’s employment is covered by the CBA

Gomarooni’s primary argument against preemption under section 301 is that he was not “subject to the CBA,” or, alternately, that he was “excluded from any CBA,” so that section 301 does not apply. (Opposition Br. pp. 4, 5, 6, 7.) Gomarooni concedes that he was provided a copy of the Retail Drug Agreement (“Retail CBA”) when he began working for Rite Aid. (Gomarooni Decl. ¶ 5.) He notes that the Retail CBA expressly excludes pharmacists. (Id.) Gomarooni does not, however, address the applicability of the Retail Pharmacist Agreement (“Pharmacist CBA”) submitted by Rite Aid with its motion. (Opposition Br. passim.) He simply insists he was never provided with any other “version of a Collective Bargaining Agreement.” (Gomarooni Decl. ¶ 5.)

It is well-settled that the fact that an employee “is not a member of the union . . . does not mean that he is not subject to the CBA.” Montag v. Aerospace Corp., 1996 U.S. App. LEXIS 20339 at 5 (9th Cir. 1996); Rose v. Beverly Health and Rehabilitation Services, Inc., 2006 U.S. Dist. LEXIS 54530 at 7 (E.D. Cal. 2006) (noting the fact “[t]hat

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[employee] was not a member of the union and did not pay dues is irrelevant” to whether the employee “was a member of the collective bargaining unit covered by the CBA”). This is because “[t]he labor organization chosen to be the representative of the craft or class of employees is . . . chosen to represent all of its members, regardless of their union affiliations or want of them.” Steele v. Louisville & N. R. Co., 323 U.S. 192, 200 (1944). Accordingly, “[t]he CBA covers all members of the bargaining unit,” as defined by the CBA. Montag, 1996 U.S. App. LEXIS 20339 at 5.

In this case, the Pharmacist CBA states that Gomarooni’s job position, viz. staff pharmacist, was governed by that agreement. (Palmer Decl. ¶ 3, Ex. A.) Specifically, it defines the bargaining unit in terms of employees defined as “pharmacist[s] . . . to whom a license to practice pharmacy in the State of California has been issued by the California State Board of Pharmacy,” “graduate pharmacist[s],” “full-time pharmacist[s],” and “part-time pharmacist[s].” (Pharmacist CBA pp. 1-2, Art. 2.2.1, 2.2.3.1 – 2.2.3.5.) Gomarooni was undisputedly employed by Rite Aid as a pharmacist. (Complaint ¶ 9.) Accordingly, since Gomarooni’s “job position [was] covered by the CBA,” his employment with Rite Aid was covered by the Pharmacist CBA, irrespective of whether or not he ever joined the Union.¹ Young, 830 F.2d at 997.

Since the Pharmacist CBA is central to Gomarooni’s claim, the Court treats it as part of the Complaint. See, Marder, 450 F.3d at 448; Young v. Anthony’s Fish Grottos, Inc., 830 F.2d 993, 997 (9th Cir. 1987) (noting that even though the complaint did mention the collective bargaining agreement, the district court “properly looked beyond the face of the complaint to determine whether the contract claim was in fact a section 301 claim.”).

B. Preemption

Section 301(a) of the LMRA states that “[s]uits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the

¹ Gomarooni relies on Caterpillar Inc. v. Williams, 482 U.S. 386 (1987) for the proposition that claims based on individual employment contracts are not preempted. Id. at 394. While that is true where the job positions involved are not part of the collective bargaining unit, it is inapposite to this situation, since Gomarooni’s position was undeniably part of that unit. Id. at 395, n.9; Young, 830 F.2d at 998 (distinguishing Caterpillar).

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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). Preemption by the LMRA is governed by whether the state-law rights in question exist independently of the terms stated within the CBA. Allis-Chalmers Corporation v. Lueck, 471 U.S. 202, 213 (1985). The test for preemption hinges on whether the application of state law is “inextricably intertwined” with the CBA, *id.*, such that adjudicating the state law question “requires the interpretation of a collective-bargaining agreement.” Lingle v. Norge Division of Magic Chef, Inc., 486 U.S. 399, 413 (1988). Under this standard, “the mere need to consult the terms of the CBA does not necessarily result in preemption,” Humble v. Boeing Company, 305 F.3d 1004, 1011 (9th Cir. 2002), and simple reference to parallel facts does not render the state law in question preempted. Lingle, 486 U.S. at 410. Thus, preemption by the LMRA will only occur if it “necessarily requires the court to interpret an existing provision of a CBA that can reasonably be said to be relevant to the resolution of the dispute.” Cramer v. Consolidated Freightways, Inc., 255 F.3d 683, 693 (9th Cir. 2001).

1. Wrongful Termination

Gomarooni alleges that his termination, which he concedes was based on his refusal to join the Union,² was wrongful and in violation of both his constitutional right to “pursuit of happiness,” and California Labor Code section 921. (Complaint ¶ 11, 12.) Wrongful termination claims are preempted if they are “not based on any genuine state public policy.” Young, 830 F.2d at 1002; see also Hollinquest v. St. Francis Medical Center, 872 F. Supp. 723, 726 (C.D. Cal. 1994).

The Supreme Court of California has held that Labor Code section 921 does not prohibit closed union shop agreements. Shafer v. Registered Pharmacists Union Local 1172, 16 Cal. 2d 379, 387-88 (1940); see also, Colgate-Palmolive-Peet Co. v. NLRB, 338 U.S. 355, 361 (1949) (citing Shafer for the validity of “closed-shop contracts” under California law). Thus, Gomarooni’s assertion that Rite Aid’s union shop agreement violates state law is in error.

² The Pharmacist CBA requires all pharmacists to join the Union as a condition of their employment with Rite Aid. (Palmer Decl. Ex. A. p. 3, Art. 3.1.1.) Gomarooni alleges that, although initially misrepresented to him, the “true facts were that . . . plaintiff would only be employed on a full-time basis upon condition of union membership.” (Complaint ¶ 35(c).)

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Gomaroooni provides no argument or authority to support his position that his right to the “pursuit of happiness” is infringed by the requirement that he join the Union as a condition of his employment. (Opposition Br. passim.) Since Gomaroooni has not identified a public policy on which to base his wrongful termination claims, the Court concludes that this claim “is merely a claim for wrongful termination.” Hollinquest v. St. Francis Medical Center, 872 F. Supp. 723, 726 (C.D. Cal. 1994).

“To determine whether [Gomaroooni] was wrongfully terminated from [his] employment at [Rite Aid], this Court must examine the CBA.” Id. Therefore, this claims is preempted by the LMRA. See, e.g., Cramer, 255 F. 3d at 693.

2. Breach of Contract

Gomaroooni alleges that he entered into an “Employment Contract” with Rite Aid on October 1, 2007, pursuant to which he committed to work for Rite Aid for one year, or “so long as his performance was satisfactory,” and Rite Aid committed to refrain from discharging him without “good and just cause.” (Complaint ¶¶ 17, 19.) Gomaroooni attaches the documents comprising the Employment Contract, including a letter from Rite Aid and a promissory note, each dated September 24, 2007, to the Complaint.³ (Id. Ex. A.)

Gomaroooni contends that this Employment Contract constitutes an “individual employment contract” that is not subject to the CBA. (Opposition Br. pp. 5-6.) This position is unavailing, because the Pharmacist CBA was in effect between Rite Aid and the collective bargaining unit of which Gomaroooni, as a pharmacist, was a member at the time he allegedly entered into the independent agreement with Rite Aid. See, Hollinquest, 872 F. Supp. at 727; Palmer Decl. ¶¶ 3-4. Therefore, the Pharmacist CBA governed the terms of Gomaroooni’s employment with Rite Aid, and “any agreement concerning [his] employment could be effective only if . . . interpreted as part of the CBA.” Id. (citing Young, 380 F.2d at 997-98).

Accordingly, Gomaroooni’s claim for breach of contract is preempted.

³ The Court notes that the letter expressly states “your employment is at will, and this letter does not constitute a contract.” (Complaint Ex. A.) Thus, Gomaroooni could not have stated a claim for breach of contract even if his claim were not pre-empted.

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3. Breach of Covenant of Good Faith and Fair Dealing

“State law claims for Breach of the Implied Covenant of Good Faith and Fair Dealing are always pre-empted because the right asserted is rooted in the labor contract and can only be determined by interpreting the rights and obligations established in the contract.” Hill v Ralphs Grocery Co., 896 F. Supp. 1492, 1498 (C.D. Cal. 1995) (internal citations omitted); Harris v. Alumax Mill Products, Inc., 897 F.2d 400, 403 (9th Cir. 1990) (finding a claim for breach of the covenant of good faith and fair dealing is clearly dependent on the terms of the collective bargaining agreement and therefore completely preempted by section 301); Chimel v. Beverly Wilshire Hotel Co., 873 F.2d 1283, 1286 (9th Cir. 1989) (finding the claim completely preempted by section 301).

Here, Gomarooni’s “cause of action for breach of the covenant of good faith and fair dealing is inexplicably intertwined with the [Pharmacist] CBA because a determination of whether [Rite Aid] breached the covenant of good faith and fair dealing would necessarily require this Court to examine the CBA.” Hollinquest, 872 F. Supp. at 727. The Court cannot decide his claim for breach of an implied contractual covenant that must exist, if at all, within the Pharmacist CBA, without interpreting its provisions.⁴

Accordingly, the Court finds that Gomarooni’s claim for relief for breach of the implied covenant of good faith and fair dealing is preempted by section 301.

⁴ Nor could he state a claim for breach of the covenant under his at-will contract because such a contract expressly allows an employer to terminate an employee at any time. See, Guz v. Bechtel National, Inc., 24 Cal. 4th 317, 350 (2000) (citing Foley v. Interactive Data Corp., 47 Cal. 3d 654, 698 n.39 (1988) for the proposition that “breach of the implied covenant cannot logically be based on a claim that the discharge of an at-will employee was made without good cause”). Accordingly, “because the implied covenant protects only the parties’ right to receive the benefit of their agreement, and, in an at-will relationship there is no agreement to terminate only for good cause, the implied covenant standing alone cannot be read to impose such a duty.” Id. (internal quotation marks and citations omitted).

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4. Wrongful Termination – Misrepresentation

Gomaroooni's fourth claim alleges that Rite Aid recruiter Soojung Kim ("Kim") made various misrepresentations to him, orally and in writing, including that his term of his employment would be for one year and that he "had the option of being a union pharmacist." (Complaint ¶¶ 34(a), (b).) He alleges that these representations were false, that he relied on them to his detriment, and that Rite Aid "made the false representations with the intent and purpose of defrauding Plaintiff and to coerce plaintiff into acquiring a membership into [the Union]." (Complaint ¶¶ 35-37.)

Notwithstanding Gomaroooni's emphasis on the fact that the representations were oral (Complaint ¶¶ 34, 36, 37), "determining [his] misrepresentation claims would require interpretation of the collective agreement." Young, 830 F.2d at 1001. This is because, "[i]n order to prove misrepresentation, [Gomaroooni] would be required to show that the terms of the CBA differed significantly from the terms of the individual contract." Id. Therefore, adjudication of Gomaroooni's misrepresentation claim is "inextricably intertwined" with the CBA, so that the LMRA preempts this claim as well. Allis-Chalmers, 471 U.S. at 213.

C. Failure to State a Claim

Since all of Gomaroooni's claims are preempted by the LMRA, the Court now turns to question of whether he successfully states a claim under section 301 of that statute.

Rite Aid argues that he fails to do so, because he does not allege that he complied with the mandatory grievance procedures under the Pharmacist CBA. (Opening Br. pp. 5-6; citing Soremekun v. Thrifty Payless, Inc., 509 F.3d 978, 986 (9th Cir. 2007).) Gomaroooni does not contend that he has so complied, but rather bases the entirety of his opposition on the assertion that no CBA applied to his employment with Rite Aid. (Opposition Br. passim.)

Accordingly, in the absence of any evidence or allegation to the contrary, the Court concludes that Gomaroooni has not exhausted his remedies under the CBA and therefore fails to state a claim for its breach. See, Soremekun, 509 F.3d at 987.

III. Conclusion

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In sum, because the Court finds that the Pharmacist CBA applies to Gomarooni, that all of his claims are preempted by the LMRA, and that he has not exhausted his remedies under the CBA, each of Gomarooni's claims fail to state a claim upon which relief can be granted. Therefore, the Court grants the motion in its entirety.

Gomarooni has 10 days to replead.

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Initials of Preparer

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