UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOHN KRAKOWSKI, individually, and on behalf of all others similarly situated,	)	
Plaintiff,	)	Cause No.: 4:17-cv-1527-HEA
v.	)	
ALLIED PILOTS ASSOCIATION,	)	
Defendant.	)	

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Plaintiff John Krakowski, individually and on behalf of all others similarly situated, for his opposition to Defendant Allied Pilots Association's ("APA") Motion to Dismiss, states:

I. INTRODUCTION

Plaintiff filed this case in the Circuit Court of St. Louis County, Missouri. Plaintiff and the putative Class are pilots at American Airlines, Inc. ("American Airlines"), and APA is their union. Plaintiff's Petition alleges two state-law claims against APA: civil conversion and unjust enrichment. Both claims are based upon APA's improper collection and retention of funds from a Global Profit Sharing Plan (the "Plan") created and implemented by American Airlines.

APA removed the case, and now moves to dismiss. It raises 3 arguments in support of dismissal: 1) Plaintiff's claims are pre-empted by the Railway Labor Act ("RLA"); 2) the plain language of the collective bargaining agreement between APA and American Airlines (the "CBA") permit APA to collect dues from distributions made under

the Plan, and 3) Plaintiff has not sufficiently alleged a breach of the duty of fair representation.

As fully explained below, APA's arguments have no merit. APA improperly refers to numerous documents outside the pleadings, and its motion is not properly raised as a motion to dismiss. Regardless, Plaintiff's claims are not pre-empted, as they can be resolved without interpreting the CBA. Also, the plain language of the Plan, which is the relevant document relied upon by the Petition, does not permit APA to collect dues on distributions from the Plan. Finally, Plaintiff is not making any claim against APA for a breach of the duty of fair representation or anything equivalent to it. Both of Plaintiff's claims are simple, state-law tort claims that do not implicate APA's representational duties, so APA's assertion that Plaintiff has not properly pleaded a breach of the duty of fair representation is irrelevant.

II. PROCEDURAL ISSUES

A. The Court should defer ruling on APA's motion until it rules on Plaintiff's Motion to Remand

Plaintiff originally filed this case in the Circuit Court of St. Louis County, Missouri. APA filed its Notice of Removal on May 17, 2017. On June 2, 2017, Plaintiff filed his Motion to Remand. If the Court grants Plaintiff's Motion to Remand, the Court lacks jurisdiction and APA's Motion to Dismiss is moot. Therefore, Plaintiff requests the Court defer ruling on the Motion to Dismiss until it rules on Plaintiff's Motion to Remand.

B. APA's Motion to Dismiss is improper, as it relies on numerous documents outside of the Petition

APA's Motion to Dismiss is not properly filed as a Rule 12(b)(6) motion. "If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. Proc. 12(d). APA relies on two documents, a Declaration of Steven K. Hoffman and the CBA, that are not part of the pleadings. Without these documents, the Motion to Dismiss fails. As a result, the Court must treat the Motion to Dismiss as a motion for summary judgment under Rule 56.

APA attempts to circumvent Rule 12(d) by claiming the documents relied upon are "necessarily embraced by the complaint." APA's Memorandum in Support of Motion to Dismiss, p. 2, quoting *Enervations, Inc. v. Minn Mining & Mfg. Co.*, 380 F.3d 1066, 1069 (8th Cir. 2004). This rule applies when "the plaintiffs' claims are based solely on the interpretation of the documents" referred to in the pleadings, *Jenisio v. Ozark Airlines, Inc. Ret. Plan for Agent & Clerical Employees*, 187 F.3d 970, 972 (8th Cir. 1999), or when "documents whose contents are alleged in a complaint" are at issue. *Ashanti v. City of Golden Valley*, 666 F.3d 1148, 1151 (8th Cir. 2012).

Contrary to APA's assertions, Hoffman's declaration and the CBA do not meet this standard. The CBA is never quoted in the Petition, and it never refers to a specific provision in the CBA. The Petition certainly does not "embrace" the CBA, nor does it allege any of the CBA's contents. And, as fully briefed below, resolution of Plaintiff's claims do not involve the interpretation of the CBA. As a result, it is improper to consider

these documents in a motion to dismiss, and APA's motion must be considered as a motion for summary judgment.

III. FACTUAL BACKGROUND

All of the following facts, which are to be taken as true, are taken from Plaintiff's Petition.

Plaintiff and the putative Class are American Airlines pilots. Petition, ¶ 3. APA is their certified bargaining agent, and it receives dues and "agency fees" (collectively, "dues") from the pilots. Id., ¶¶ 8, 9. The amount of dues to be paid by each member is specifically set out in APA's Constitution and Bylaws:

> Members shall pay dues at the rate of one percent (1%) on current monthly income. Dues at the rate in effect at the time any such payments are received by the member shall be collected on all **contractual pay**, including Variable Compensation, cash bonuses, and cash profit sharing.

Id., ¶ 10 (emphasis supplied in Petition).

In 2016, American Airlines implemented the Plan, a goodwill gesture towards its employees. Id., ¶ 13. It was not negotiated for by APA, nor was it contemplated in the CBA. Id., ¶ 15. In fact, the Plan expressly distinguishes itself from the CBA:

> In no event shall the terms of this Plan be deemed incorporated into any collective bargaining, works council or similar agreement and nothing herein shall be deemed to amend, modify or otherwise alter any collective bargaining, works council or similar agreement.

Id., ¶ 18. Since the Plan is independent of the CBA, any distributions made pursuant to it are not "contractual pay" from which APA may charge dues under its Constitution and Bylaws. Id., ¶ 19.

However, when American made a distribution pursuant to the Plan on March 10, 2017, APA collected and retained dues payments from those distributions. Id., ¶¶ 20-23. It did this despite having actual notice that it was not entitled to these funds. Id., ¶ 25.

Based on these facts, Plaintiff has alleged conversion and unjust enrichment against APA. Nowhere in its motion does APA argue the Petition fails to state a claim for conversion or unjust enrichment, and instead argues dismissal is proper based on documents outside the Petition. For the reasons stated below, APA's motion fails.

IV. ARGUMENT

A. Legal Standard

"The purpose of a motion to dismiss for failure to state a claim is to test the legal sufficiency of the complaint." *Doyel v. McDonald's Corp.*, 2009 U.S. Dist. LEXIS 9622 at *3 (E.D. Mo. 2009). The Petition must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When reviewing a motion to dismiss, the Court must "accept[] as true all factual allegations in the complaint and draw[] all reasonable inferences in favor of the nonmoving party." *ABF Freight Sys. v. Int'l Bhd. of Teamsters*, 728 F.3d 853, 857 (8th Cir. 2013). The Petition more than meets this standard.

B. Plaintiff's claims are not pre-empted by the RLA

APA first refers to its primary argument in its Notice of Removal, asserting Plaintiff's claims are pre-empted by the RLA and should be dismissed. However, this is not the case, as Plaintiff's claims do not "arise under" federal law.

APA argues removal is proper based on the "complete pre-emption doctrine." Under that doctrine, "the pre-emptive force of a statute is so extraordinary that it converts an ordinary state commonlaw complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." *Caterpillar, Inc. v. Williams,* 482 U.S. 386, 393 (1987) (internal quotations omitted). APA argues Plaintiff's claims are completely pre-empted by the RLA, since the RLA "completely preempts state law claims arising out of collective bargaining agreements." APA's Notice of Removal, p. 7, quoting *Deford v. Soo Line R. Co.*, 867 F.2d 1080, 1084 (8th Cir. 1989). In order for a claim to arise out of a collective bargaining agreement, it must require interpretation of "duties and rights created or defined by the collective bargaining agreement." *Gore v. TWA*, 210 F.3d 944, 949 (8th Cir. 2000). If Plaintiff's claims do not concern the interpretation of rights or duties in a collective bargaining agreement, the complete pre-emption doctrine does not apply.

Plaintiff does not seek to enforce any rights or duties under the CBA, and Plaintiff's claims do not rely on any interpretation of the CBA. In fact, the Petition does not reference any particular provision of the CBA, but just briefly mentions it by way of background. See Petition, ¶¶ 8, 11, 18. A claim that merely mentions a collective bargaining agreement is not pre-empted, as "the mere need to reference or consult a collective bargaining agreement during the course of state court litigation does not require preemption." *Gore*, 210 F.3d at 949.

Instead, the Petition relies on two documents: the Plan and APA's Constitution and Bylaws. Neither of these documents are collective bargaining agreements between

a carrier and a union, and are outside the scope of the RLA. Therefore, claims based on these documents are not pre-empted.

The first document, the Plan, distinguishes itself from the CBA (and consequently, the RLA) by its own terms. The Plan, which is quoted and repeatedly referenced in the Petition, states:

> In no event shall the terms of this Plan be deemed incorporated into any collective bargaining, works council or similar agreement and nothing herein shall be deemed to amend, modify or otherwise alter any collective bargaining, works council or similar agreement.

See Plaintiff's Petition, ¶ 18.

The second document, APA's Constitution and Bylaws, defines the scope of APA's right to collect dues. It provides:

> Members shall pay dues at the rate of one percent (1%) on current monthly income. Dues at the rate in effect at the time any such payments are received by the member shall be collected on all **contractual pay**, including Variable Compensation, cash bonuses, and cash profit sharing.

See Plaintiff's Petition, ¶ 10 (emphasis supplied in Petition).

Putting these two documents together, Plaintiff has alleged APA is only permitted to collect dues on "contractual pay", and the Plan, by its own terms, is independent of the CBA and any contractual pay required by it. Therefore, APA does not have a right to collect dues on distributions made pursuant to the Plan. Plaintiff's Petition, ¶ 19. These core allegations give rise to state-law claims of conversion and unjust enrichment against APA, and simply do not require the Court to ever interpret any rights or obligations under the CBA. There is thus no RLA pre-emption.

The Supreme Court found no pre-emption under analogous facts. In *Caterpillar*, several salaried employees had employment contracts with Caterpillar that were outside of Caterpillar's collective bargaining agreement with the union, which only covered hourly employees. 482 U.S. at 388-390. The employees were later demoted to hourly employees, and therefore subject to the collective bargaining agreement. *Id.* at 389. When they were later laid off, the employees sued in state court, alleging breach of their employment contracts independent of the collective bargaining agreement. *Id*. at 389-390. Caterpillar removed, claiming the employment contracts were "merged into and superseded by" the collective bargaining agreement. *Id.* at 390.

The Supreme Court held that removal was improper. *Id.* at 391. The Court reasoned that because the employees' complaint was "not substantially dependent upon interpretation of the collective-bargaining agreement," it was not pre-empted by federal law. *Id.* at 395. The Court noted that as "masters of the complaint…[plaintiffs] chose not" to bring a federal claim, even though they "possessed substantial rights under the collective agreement." *Id.*

The Court found Caterpillar's defense that the employees' claims were "merged into and superseded by" the collective bargaining agreement unconvincing:

> the presence of a question, even a [question that involved interpretation of a collective bargaining agreement], in a defensive argument does not overcome the paramount policies embodied in the well-pleaded complaint rule -- that the plaintiff is the master of the complaint, that a federal question must appear on the face of the complaint, and that the plaintiff may, by eschewing claims based on federal law, choose to have the cause heard in state court.

Id. at 398-399. This is the case even "when a defense to a state claim is based on the terms of a collective bargaining agreement, [and] the state court will have to interpret that agreement to decide whether the state claim survives." *Id.* at 398.

Caterpillar controls here. As in *Caterpillar*, Plaintiff's state law claims are based on contracts outside of the collective bargaining agreement (the Plan and APA's Constitution and Bylaws).

APA has merely raised a CBA-based defense in a vain attempt to make a federal case of what is clearly a state-law case. It focuses on a letter signed October 20, 2016, between APA and American (the "October Letter"). See APA's Memorandum in Support of Motion to Dismiss, p. 2. APA argues that Plaintiff's claims are pre-empted because the Court must determine whether or not the October Letter qualifies as a side letter of agreement between APA and American, which APA argues makes it part of the CBA. This, however, is the same "merged into and superseded by" argument raised in *Caterpillar*. And, as in *Caterpillar*, it should not matter that APA is asking the Court to interpret the CBA, as Plaintiff did not raise this issue in the Petition. Plaintiff is "the master of the claim; [he] may avoid federal jurisdiction by exclusive reliance on state law." *Caterpillar*, 482 U.S. at 392. Because Plaintiff has exclusively relied on state law, pre-emption does not apply, and the Court should deny APA's motion.

C. The plain language of the Plan itself governs Plaintiff's claims, not the CBA

APA next argues the Petition must be dismissed because the plain language of the CBA and APA's Constitution and Bylaws defeat Plaintiff's claims. It claims that

because the October Letter is actually part of the CBA, it entitles APA to collect dues on distributions from the Plan. This argument is wrong procedurally, legally, and practically.

As stated above in the Petition, Plaintiff's claims come from two sources: the Plan and APA's Constitution and Bylaws. In essence, Plaintiff has alleged APA is only permitted to collect dues on "contractual pay", and the Plan, by its own terms, is independent of the CBA and any contractual pay required by it. Therefore, APA does not have a right to collect dues on distributions made pursuant to the Plan. See Petition, ¶ 19. These allegations clearly state viable causes of action against APA based on the language of these two documents. APA's request that the Court parse through the terms of the CBA is improper at this stage, and should not be considered in a motion to dismiss.

APA claims "it took a collective bargaining agreement-the October 20, 2016 Letter of Agreement-to establish the participation of American pilots in the Plan in the first place." APA's Memorandum in Support of its Motion to Dismiss, p. 8. This conclusion requires an enormous leap in logic to presume the October Letter is a "collective bargaining agreement." Critically, APA's conclusion completely ignores the terms of the Plan, which is the controlling document here.

The October Letter states "the terms and conditions set forth in the Profit Sharing Plan shall apply and shall govern the participation of employees represented by APA." See Exhibit 2 of Exhibit B of APA's Notice of Removal, which APA refers to in its Motion to Dismiss. Section H of the Plan explicitly states that the Plan is not part of any collective bargaining agreement:

> In no event shall the terms of this Plan be deemed incorporated into any collective bargaining, works council or similar agreement and nothing herein shall be deemed to amend, modify or otherwise alter any collective bargaining, works council or similar agreement.

Petition, ¶ 18.

Plaintiff and the putative Class's participation in the Plan is governed by its terms. And since the Plan is expressly independent of the CBA, the October Letter signed by APA as part of the Plan cannot be considered part of the CBA. It is irrelevant what the CBA includes, since the terms of the Plan so clearly distinguish the Plan from the CBA.

Furthermore, APA's argument fails on a practical matter. Assuming *arguendo* that the October Letter is part of the CBA (and Plaintiff in no way concedes this point), APA would still be prohibited from collecting dues on funds distributed pursuant to the Plan. The distributions were made pursuant to the Plan, not the October Letter. And the Plan is not part of the CBA. To conclude otherwise would render Section H of the Plan meaningless, and a "contract is not interpreted to render its terms meaningless." *Gen. Elec. Capital Corp. v. Dial Business Forms*, 283 B.R. 537, 541 (8th Cir. B.A.P. 2002).

APA's argument that the plain language of the CBA entitles it to collect dues from the Plan fails on its face, independent of the fact that it relies on materials outside of the pleadings.

D. Plaintiff's claims are properly pleaded as state-law claims, and do not implicate the duty of fair representation

APA finally tries to twist Plaintiff's claims into an entirely new theory completely absent from the Petition, and then attempts to argue that dismissal is proper based on that theory.

As in its Notice of Removal, APA argues Plaintiff's claims should be treated as a breach of the duty of fair representation claim. However, Plaintiff's Petition never alleges or implies that APA breached its duty of fair representation. It instead properly raises state-law claims of conversion and unjust enrichment.

The duty of representation "applies only when a union is exercising its statutory authority as exclusive representative in the negotiation and administration of a collective bargaining agreement." *Flora v. Air Line Pilots Association, Int'l,* 575 F.2d 673, 675 (8th Cir. 1978). Not every claim an employee may have against his or her union falls within the duty of fair representation. *See e.g. Farmer v. United Brotherhood of Carpenters & Joiners*, 430 U.S. 290 (1977) (union member bringing intentional infliction of emotional distress claim against union); *Bednarek v. United Food & Commercial Workers International Union, Local Union 227,* 780 S.W.2d 630 (Ct. App. Ky. 1989) (wrongful discharge claim against union); *Sheet Metal Workers Int'l Asso. v. Carter*, 212 S.E. 2d 645 (Ct. App. Ga. 1975) (tortious conspiracy claim against union).

Plaintiff's claims here are not based on APA's duty to fairly negotiate and administrate the CBA. In fact, Plaintiff alleges the opposite conclusion: since the Plan is independent of the CBA, when APA collected and retained dues from distributions made pursuant to it, APA was acting outside of its representational capacity. Nowhere in the Petition does Plaintiff allege APA failed to fairly represent him and the putative Class; instead, he accuses APA of taking and accepting money that does not belong to it. Simply put, this is not a representational issue. It would therefore be improper for the

Court to dismiss Plaintiff's Petition based on Plaintiff's failure to plead a claim that is never alleged or contemplated in the Petition.

IV. CONCLUSION

For the reasons stated above, APA's Motion to Dismiss should be denied. Plaintiff's claims are not pre-empted, the plain language of the Plan and APA's Constitutuion and Bylaws give rise to Plaintiff's claims, and the Petition properly alleges claims independent of the duty of fair representation.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The filing attorney certifies that on June 6, 2017, a copy of the foregoing was served pursuant to the Court's ECF system.