IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

LANDON ROBINSON, individually and on behalf of all others similarly situated, Plaintiff, v. BANK OF HAWAII, dba BANKOH, Defendant.	CIV. NO. 17-00072 HG-RLP

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND (ECF No. 17)

Plaintiff Landon Robinson filed a proposed class action complaint in the Circuit Court for the First Circuit of the State of Hawaii. The Complaint states two claims against Bank of Hawaii. First, Plaintiff alleges a violation of Hawaii state usury law. Second, Plaintiff alleges a claim for breach of contract.

Defendant Bank of Hawaii, a federally-insured state-chartered bank, removed the case to federal court. Defendant argues there is federal question subject-matter jurisdiction. Defendant claims federal law provides the exclusive remedy for usury claims against state-chartered banks.

Plaintiff filed a motion to remand the case to Hawaii State Court on the basis that there is no federal question

stated in his Complaint.

Plaintiff's Motion to Remand (ECF No. 17) is **GRANTED**.

PROCEDURAL HISTORY

On January 20, 2017, Plaintiff filed his action as a proposed class action complaint in the Circuit Court for the First Circuit of the State of Hawaii. (Complaint, attached as Exhibit 1 to Bank of Hawaii's Notice of Removal, at p. 6, ECF No. 1-1).

On February 17, 2017, Defendant filed DEFENDANT BANK OF HAWAII'S NOTICE OF REMOVAL OF A CIVIL ACTION PURSUANT TO 28 U.S.C. § 1441(a). (ECF No. 1).

On March 16, 2017, Plaintiff filed a MOTION TO REMAND PURSUANT TO 28 U.S.C. § 1447(c). (ECF No. 17).

On April 7, 2017, Defendant filed DEFENDANT BANK OF HAWAII'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO REMAND. (ECF No. 23).

On April 24, 2017, Plaintiff filed his Reply. (ECF No. 24).

On May 16, 2017, Plaintiff filed a letter regarding additional uncited authority. (ECF No. 25).

On May 25, 2017, a hearing was held on Plaintiff's Motion to Remand before the Honorable Judge Helen Gillmor. (ECF No.

26).

BACKGROUND

Plaintiff had a checking account with Bank of Hawaii. Plaintiff claims certain fees were charged to his account because he overdrew his account.

Bank of Hawaii's Consumer Deposit Account Agreement ("Account Agreement") allows for a customer to overdraw his account. (Account Agreement, attached as Exhibit A to Complaint, p. 16, ECF No. 1-1). An account is overdrawn when a customer spends more money than what is available in his account and the account balance goes below zero. (Id. at p. 33).

Bank of Hawaii may charge a customer an initial "Overdraft Fee" of $26 for attempting to overdraw the account. (Id.) The Account Agreement allows Bank of Hawaii to pay the amount of the overdraft on behalf of the customer. (Id.) The terms require the customer to repay the amount of the overdraft promptly. (Id.)

The Account Agreement allows Bank of Hawaii to charge a $10 "Continuing Negative Balance Fee" if an account has a negative balance for seven consecutive days. (Id.) The Agreement also allows Bank of Hawaii to charge a "Continuing

Negative Balance fee for each seven-day period that [an] account remains in a negative balance condition at the end of each day." (Id.)

Plaintiff states that on August 16 or 17, 2016, he overdrew his account. (Complaint, attached as Exhibit 1 to Bank of Hawaii's Notice of Removal, at p. 6, ECF No. 1-1). On August 16, 2016, Plaintiff was charged a $26 "Overdraft Fee." (Id. at p. 7).

From August 16, 2016 to August 22, 2016, Plaintiff's account balance fluctuated from negative $8.43 to negative $346.48. (Id.) Plaintiff alleges that Bank of Hawaii charged him a "Continuing Negative Balance Fee" of $10 on August 22, 2016. (Id.)

Plaintiff argues that the "Continuing Negative Balance Fee" is interest on money that the bank loaned to him to fund his overdrawn account. (Id. at p. 10). Plaintiff claims that $10 of interest charged to his account over a seven-day period violates Hawaii Revised Statutes Chapter 478, which limits the amount of interest that can be charged on a loan. (Id. at p. 11). Plaintiff claims that Bank of Hawaii breached the contract of the Account Agreement by charging the "Continuing Negative Balance Fee" before the seven-day period established in the contract. (Id. at p. 13).

Defendant Bank of Hawaii removed the case to federal District Court on the basis that there is federal question subject-matter jurisdiction. Bank of Hawaii claims federal law completely preempts state laws regarding usury. (Notice of Removal, at pp. 3-6, ECF No. 1). Defendant argues that supplemental jurisdiction is proper for the breach of contract claim. (Id. at pp. 5-6).

Plaintiff filed a motion to remand, arguing that complete preemption does not apply in this situation. (Motion to Remand, at pp. 5-15, ECF No. 17).

STANDARD OF REVIEW

Federal district courts have original jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Removal of a civil action from state court to the appropriate federal district court is permissible if the federal district court would have had original jurisdiction over the action. 28 U.S.C. § 1441. A motion to remand may be brought to challenge the removal of an action from state to federal court. 28 U.S.C. § 1447(c).

There is a strong presumption against removal. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). The statute

authorizing removal is strictly construed, and the removing party has the burden of establishing that removal was proper. Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009).

Absent diversity jurisdiction, removal is proper if a federal question is apparent on the face of the plaintiff's well-pleaded complaint. Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987). The well-pleaded complaint rule makes the plaintiff the master of the claim, able to avoid federal jurisdiction by relying exclusively on state law. Id.

An exception to the well-pleaded complaint rule exists when a federal statute wholly displaces state law and provides the exclusive cause of action for a plaintiff's requested relief. Metro. Life Ins. Co. v. Taylor, 481 U.S. 58, 64 (1987). In such cases, federal law "completely preempts" state law claims. Hawaii ex rel. Louie v. HSBC Bank Nevada, N.A., 761 F.3d 1027, 1034 (9th Cir. 2014).

ANALYSIS

Plaintiff filed a Complaint in Hawaii State Court alleging state law claims against Bank of Hawaii. The Complaint asserts two counts: (1) a violation of Hawaii state usury law; and, (2) a breach of contract claim.

Defendant removed the Complaint to federal court and

argues that removal is proper. Defendant asserts that Plaintiff's state law usury claims are completely preempted by federal law. Defendant argues there is supplemental jurisdiction as to the breach of contract claim. Supplemental jurisdiction as to the breach of contract claims is contingent on federal jurisdiction over the usury claims. 28 U.S.C. § 1367.

Plaintiff seeks remand. He argues he has only alleged state law causes of action. He denies there is preemption by federal law.

I. PREEMPTION

The preemption doctrine is rooted in the Supremacy Clause of the United States Constitution. U.S. CONST. ART. VI., cl. 2. Pursuant to the Supremacy Clause, the United States Congress has the power to preempt state law. Montalvo v. Spirit Airlines, 508 F.3d 464, 470 (9th Cir. 2007).

Complete preemption arises only in extraordinary situations. Ansley v. Ameriquest Mortg. Co., 340 F.3d 858, 862 (9th Cir. 2003) (citing Wayne v. DHL Worldwide Express, 294 F.3d 1179, 1183-84 (9th Cir. 2002)). Complete preemption exists when Congress intended the scope of federal law to be

so broad as to entirely replace any state law claim. Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am., 768 F.3d 938, 947 (9th Cir. 2014). Complete preemption applies only where a federal statutory scheme is so comprehensive that it entirely supplants state law causes of action. Id.

The test for complete preemption is whether Congress clearly manifested an intent to convert state law claims into federal question claims. Wayne, 294 F.3d at 1184. Courts examine the statutory text to determine if Congress intended for the federal statute to provide the exclusive remedy so as to create federal jurisdiction. Ansley, 340 F.3d at 862-64.

The United States Supreme Court has held that complete preemption by federal law applies to claims of usury against national banks under Sections 85 and 86 of the National Bank Act. Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 11 (2003). The United States Supreme Court has not addressed if federal law completely preempts claims of usury against federally-insured state-chartered banks.

Defendant argues that another statute, Section 521 of the Depository Institutions Deregulation and Monetary Control Act ("DIDA"), completely preempts claims of usury against federally-insured state-chartered banks. Section 521 of DIDA governs interest rates for federally-insured state-chartered

banks. 12 U.S.C. § 1831d(a).

Defendant argues that because the National Bank Act completely preempts state usury claims against federally-chartered banks, it follows that Section 521 of DIDA should completely preempt Plaintiff's state law usury claim against Defendant, a state-chartered bank.

Plaintiff argues that remand is required. Plaintiff asserts that his state law usury claim is not completely preempted by Section 521 of DIDA. Plaintiff contends that Section 521 of DIDA has a limiting clause that distinguishes it from Sections 85 and 86 of the National Bank Act.

II. SECTION 521 OF DIDA DOES NOT CREATE COMPLETE PREEMPTION

The United States Supreme Court has not decided if Section 521 of DIDA completely preempts state law usury claims against state-chartered banks. Vaden v. Discover Bank, 556 U.S. 49, 56 n.4 (2009). There is a split in authority among the United States Circuit Courts of Appeals that have considered the issue. The Ninth Circuit Court of Appeals has not ruled on the issue.

A review of the text of Section 521 of DIDA demonstrates that Congress did not intend for federal law to provide the

exclusive remedy for state law usury claims against state-chartered banks. The opinion of the United States Eighth Circuit Court of Appeals in the Thomas v. US Bank Nat.'l Ass'n ND, 575 F.3d 794, 797 (8th Cir. 2009) provides a well-reasoned interpretation of the law. Thomas appropriately applies the rules of statutory construction in analyzing Section 521 of DIDA. See id. at 797-800.

The starting point in interpreting a statute is its language. United States v. Turner, 689 F.3d 1117, 1119 (9th Cir. 2012). There is no need for further interpretation if the intent of Congress is clear from the language of the statute. Id. Section 521(a) of DIDA establishes the maximum interest rate for loans made by state-chartered, federally-insured banks. See 12 U.S.C. § 1831d(a). The statute provides:

> In order to prevent discrimination against State-chartered insured depository institutions, including insured savings banks, or insured branches of foreign banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this subsection, such State bank or such insured branch of a foreign bank may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in

> effect at the Federal Reserve bank in the Federal Reserve district where such State bank or such insured branch of a foreign bank is located or at the rate allowed by the laws of the State, territory, or district where the bank is located, whichever may be greater.

12 U.S.C. § 1831d(a).

Section 521(b) of DIDA sets forth the remedy available to borrowers who are charged rates in excess of the limits established in Section 521(a). See 12 U.S.C. § 1831d(b). The text of DIDA § 521(b) provides:

> If the rate prescribed in subsection (a) of this section exceeds the rate such State bank or such insured branch of a foreign bank would be permitted to charge in the absence of this section, and such State fixed rate is thereby preempted by the rate described in subsection (a) of this section, the taking, receiving, reserving, or charging a greater rate of interest than is allowed by subsection (a) of this section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from such State bank or such insured branch of a foreign bank taking, receiving, reserving, or charging such interest.

12 U.S.C. § 1831d(b).

The text of the statute clearly limits when the statute is applicable: “**if** the applicable rate prescribed in this subsection exceeds the rate [a] State bank ... would be

permitted to charge in the absence of this subsection...." Id. Section 521(a) of DIDA only applies if the federal rate exceeds the state-law rate. Id. Federal law does not apply when the state law allows for state-chartered banks to charge a higher interest rate than what is prescribed by the federal law in Section 521. Id.

The limiting language is repeated in Section 521(b) of DIDA, which sets forth the available remedy: "**If** the rate prescribed in subsection (a) of this section exceeds the rate [a] State bank ... would be permitted to charge in the absence of this section ...." 12 U.S.C. § 1831d(b). The remedy available pursuant to Section 521(b) applies if the federal rate exceeds the state law rate. Id.

A findings and recommendation issued by a Magistrate Judge in the District Court for the District of Hawaii agrees with the holding here. In Robinson v. First Hawaiian Bank, Civ. No. 17-00105DKW-RLP, the Magistrate Judge issued a findings and recommendation that determined that Section 521 of DIDA does not completely preempt state law usury claims against state-chartered banks. (Dkt. No. 17-00105DKW-RLP, ECF No. 27).

Complete preemption is limited to situations where Congress intended to provide the exclusive cause of action.

Beneficial Nat. Bank v. Anderson, 539 U.S. 1, 8 (2003). Congress expressly limited the application of Section 521 of DIDA to situations where the maximum federal rate exceeds the maximum state rate. See 12 U.S.C. § 1831d. The limiting language contained in Section 521 does not reflect an intent by Congress to convert all state law usury claims into federal question causes of action. Federal law does not apply when state law allows for state-chartered banks to charge a higher interest rate than what is prescribed by the federal law in Section 521 of DIDA.

Defendant's arguments in opposition to remand are unpersuasive. Defendant relies, in part, on a statement in dicta in an unpublished decision of the Ninth Circuit Court of Appeals in Cross-Country Bank v. Klussman, 74 Fed. Appx. 796, 797 (9th Cir. 2003). In the unpublished decision, the Ninth Circuit Court of Appeals stated that there is a possibility that Section 521 of DIDA completely preempts state law usury claims against state-chartered banks. (Id.) The appellate court stated that the rationale of the United States Supreme Court's decision in Beneficial National Bank v. Anderson, 539 U.S. 1 (2003) [in which the Supreme Court found complete preemption of state law usury claims against federally chartered banks under the National Bank Act] may be extended

to completely preempt such claims against state-chartered banks. Cross-Country Bank, 74 Fed. Appx. at 797. The Ninth Circuit Court of Appeals ultimately declined to rule of the issue. The appeals court stated, "[w]hile it appears that the rationale of the Supreme Court's decision in Anderson would extend to usury claims against state chartered, federally insured banks, we do not decide this question." Id. The statement, in dicta, is not precedent.

The issue of complete preemption pursuant to Section 521 of DIDA was previously raised in this District. In Hawaii ex rel. Louie v. JP Morgan Chase & Co., 907 F.Supp.2d 1188, 1213-14 (D. Haw. 2012), the district court found that DIDA completely preempted the plaintiffs' claims. The decision did not include any discussion of Congressional intent reflected in the statutory language of Section 521 of DIDA. Id. On appeal, the decision was reversed. The Ninth Circuit Court of Appeals found that complete preemption did not apply because the plaintiffs were not asserting claims regarding interest. Hawaii ex rel. Louie v. HSBC Bank Nevada, N.A., 761 F.3d 1027, 1037-38 (9th Cir. 2014).

Defendant argues that Section 521 of DIDA should be interpreted in line with the analyses of the First, Third, and Fourth Circuit Courts of Appeals. Defendant relies on these

cases in support of its position that Section 521 of DIDA should be interpreted the same way as the National Bank Act. (See Defendant's Opposition to Plaintiff's Motion to Remand at pp.1-2, ECF No. 23).

The reasoning in the non-binding authority is unpersuasive. The cases cited by the Defendant do not address the differences in the text between Section 521 of DIDA and the National Bank Act. The cases do not address the limiting clause contained in Section 521 of DIDA. See In re Community Bank of No. VA, 418 F.3d 277, 294-96 (3rd Cir. 2005); Discover Bank v. Vaden, 489 F.3d 594, 603-07 (4th Cir. 2007), rev'd on other grounds, 556 U.S. 49 (2009); Greenwood Trust Co., v. Commonwealth of Mass., 971 F.2d 818, 822-25 (1st Cir. 1992) (discussing if Section 521 of DIDA is express or implied preemption, not complete preemption).

Section 521 of DIDA does not completely preempt state law usury claims against state-chartered banks. DIDA does not provide the basis for federal question jurisdiction in this case. There are no federal law causes of action in the Complaint. Remand is required.

CONCLUSION

Plaintiff Landon Robinson's Motion to Remand (ECF No. 17) is **GRANTED**.

The case and all files herein are **REMANDED** to the Circuit Court of the First Circuit, State of Hawaii for further proceedings.

IT IS SO ORDERED.

DATED: July 7, 2017, Honolulu, Hawaii.

Helen Gillmor
United States District Judge