Honorable Chief Judge Ricardo S. Martinez

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REBECCA ALEXANDER, a single woman;

Plaintiff,

vs.

KING COUNTY, WASHINGTON, a county municipality; STATE OF WASHINGTON, one of the fifty states of the United States; Bank of America, N.A., a national banking association; NORTHWEST TRUSTEE SERVICES, INC., A Washington Corporation; U.S. BANK NATIONAL ASSOCIATION, as Trustee for Harborview Mortgage Loan Trust 2005-12, Mortgage Loan Pass-through Certificates, Series 2005-12 Trust; Nationstar Mortgage, LLC, a foreign entity, JOHN DOE TRUSTEE; JOHN DOE TRUST; MERS, a foreign corporation;

Defendant.

Case No.: 2:17-cv-00653

PLAINTIFF'S REPLY TO OPPOSITION TO MOTION TO REMAND

NOTED: June 2, 2017

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"The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Additionally, "[u]nder the 'artful pleading' doctrine, a well-pleaded state law claim presents a federal question *when a federal statute has completely preempted that particular area of law*." *Hall v. N. Am. Van Lines, Inc*., 476 F.3d 683, 687 (9th Cir. 2007)(emphasis supplied). Although defendants Nationstar, U.S. Bank, and MERS ask this Court to employ the "artful pleading doctrine" to impose federal jurisdiction they do not argue, because they cannot, that the ADA completely preempts the area of disability law related to this case. Nor do they consider the role the Fourteenth Amendment plays with regard to their arguments that this Court should decide ADA issues before they are even raised as causes of action by Alexander. *See infra.*

Significantly, for purposes of this reply opposing defendants concede the standard for removal here is: "whether the 'federal issue' is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of being resolved without disrupting the federal-state balance approved by Congress." Dkt 14, 4:21-5:6.

1. The ADA is not raised as a cause of action.

The plaintiff is the master of her complaint. *Caterpillar, Inc.,* 482 U.S. at 398-399. Here, Alexander clearly eschewed any cause of action under the federal ADA in her complaint and defendants admit this. Opp. 2:9-19. She simply notifies the Snohomish County Superior Court Court that it must follow those requirements imposed on it by Title II of the ADA. This obligation is imposed on Washington courts pursuant to both the Fourteenth Amendment and

Washington General Rule (GR) 33. GR 33 expressly incorporates the ADA as part of the protections afforded persons with disabilities in Washington State courts. GR 33 also provides disabled persons protections under RCW 49.60. et. seq., ***and other similar local, state, and federal laws.*** GR 33 (c)(1)(a).

A plaintiff may by eschewing claims based on federal law chose to have the cause heard in state court. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 398-399 (1987). Plaintiff, through the declaration of her attorney makes clear Alexander seeks no relief for any violation of the ADA or other federal statute or treaty. *See* Stafne Reply Declaration.

2. As Alexander has raised no federal claim in her complaint none is actually disputed.

Opposing defendants argue because Alexander's state "outrage claim" alleges their servicing practices proximately caused and/or exacerbated her disabilities, i.e. personal injuries, she has stated a federal cause of action. Opp. 2:7-19. Defendants cite no authority supporting the proposition that mere mention of the word "disability" in a state tort cause of action allows this Court to jump in and take over. U.S. Const. Art. III, § 2.

3. There is no substantial federal claim involved in this lawsuit

Opposing defendants put a lot of emphasis on Plaintiff's reply to their opposition to Alexander's motion for a temporary restraining order because it specifically references the ADA. Opp. 2:10-3:22. To the extent that reply suggests Alexander may be seeking a remedy for violations of the ADA in this case in contravention of the specific allegations of her complaint, her attorney clarifies that she is not. Further, Alexander is willing to give up any rights she has under the ADA rather than be forced to litigate in this federal court where she

believes there is no possibility of obtaining justice or accommodation of her disabilities pursuant to GR 33.

Significantly, defendants do not even attempt to argue Alexander's case involves a substantial federal claim, which requires every theory of relief must raise a federal claim. *Merrill, Lynch, Pierce, Fenner & Smith v Manning*, 136 S.Ct. 1562, 1569 (2016); *See also Virginia ex rel. Hunter Labs., L.L.C. v. Virginia*, 828 F.3d 281, 288 (4th Cir. 2016) construing *Manning*'s requirements for establishing a substantial federal claim. Defendants failure to substantiate a substantial federal claim means this Court has no jurisdiction. *Id.*

4. This Court's assumption of jurisdiction in this case will disturb the federal-state balance and violate Alexander's liberty interests not to be forced into a federal court in violation of the Separation of Powers and Federalism structure of government.

Defendants do not demonstrate that removal will not disrupt the federal state balance created by Congress with regard to its enactment of Title II of the ADA pursuant to the Fourteenth Amendment, section 2. This Court should not ignore the significant issues of federal-state balance that this case presents[1]. Title II of the ADA, which strips States of their sovereign immunity for discriminating against the disabled with regard to their access to state courts, is a valid prophylactic remedy enacted by Congress to remedy the pervasive evidence of unequal treatment of persons with disabilities. *See e.g. Tennessee v. Lane*, 541 U.S. 509,

[1] Chief Justice Roberts recently observed:
"In celebration of Law Day, May 1, 2017, I encourage federal judges throughout the country to recognize the day and this year's theme, "The Fourteenth Amendment: Transforming American Democracy," as we work together to advance public education about the constitutional values that define and shape our great nation."
See ABA Law Journal, "Law Day 2017: Looking at 14th Amendment" (2017); *See also* ABA Journal, entitled "The 14th: A Civil War-era amendment has become a mini-Constitution for modern times" (May, 2017)

513 (2004); *Quick v. San Francisco Superior Court*, 65 F. Supp. 3d 907, 908 (N.D. Cal. 2014); *Barrilleaux v. Mendocino County*, 61 F. Supp. 3d 906, 913 (N.D. Cal. 2014)

Congress' abrogation of Eleventh Amendment immunity has proved to be a powerful impetus for elimination of state courts' longstanding discrimination against the disabled. The fact Washington court's General Rule (GR) 33, "Requests for Accommodation by Persons with Disabilities", incorporates the ADA as well as "RCW 49.60 et. seq., and other similar local, state, and federal laws" is evidence that Washington courts have attempted to achieve those Fourteenth Amendment's goals of equal protection and due process for the disabled. Further evidence Washington complies with GR 33 (which includes the ADA) is the accommodation Alexander has been given by the Snohomish County Superior Court Administrator.

There is no reason this Court should remove Alexander's case from a Washington court because she has clearly eschewed any cause of action against anyone for the violation of the ADA because she has been allowed an accommodation pursuant to GR 33. Alexander fears that if this Court assumes jurisdiction, she likely will be worse off because this Court claims it is not bound by the ADA and obviously will not feel constrained to follow GR 33. Defendants argument that this Court will accommodate Alexander's disabilities in the same way as will the Superior Court applying GR 33 is not supported by any facts, argument, or history. *Lane*, 541 U.S. at 534 ("[E]vidence ... show[s] that the [federal] judiciary itself has endorsed the basis for some of the very discrimination subject to congressional remedy under § 5." citing *Buck* v. *Bell,* 274 U. S. 200 (1927) (Souter concurrence)

Federal courts should not interfere with a state court's implementation of disability policies, even when they incorporate the ADA specifically, because this would be inconsistent with those federalism and Fourteenth Amendment principles which allowed Congress to enact these protections for the disabled pursuant to Section 5. See *Miles v. Wesley*, 801 F.3d 1060, 1063 (9th Cir. 2015) ("The Supreme Court has repeatedly recognized a 'longstanding public policy against federal court interference with state court proceedings' based on principles of federalism and comity.") If the Ninth Circuit felt federal jurisdiction was not appropriate where violations of the ADA were clear as in *Miles*, it is difficult to understand how such principles will not disrupt the federal-state balance here - in a lawsuit where defendants have not identified any substantial cause of action based on federal law. *See supra.*

Alexander also claims this Court's assumption of jurisdiction over this case without any statutory or treaty basis for doing so violates Art III, § 2 and her liberty interests under the separation of powers and federalism structures of our government. *Bond v United States*, 564 U.S. 211, 217-223 (2011) (federalism); *United States v McIntosh*, 833 F.3d 1163, 1173-74 (9th Cir. 2016) (separation of powers).

This Court should grant Alexander fees because defendants have offered no argument or evidence there is a substantial federal question this Court can resolve without upsetting the federal balance of power established by the ADA, which was enacted by Congress pursuant to Section 5 of the Fourteenth Amendment. Defendants had the burden to make such a showing because there is a presumption against this Court's jurisdiction. *See Kokkonen v.*

Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994); *Bender v Williamsport Area Sch. Dist*., 475 U.S. 533, 536 (1986).

For the reasons set forth in this reply Alexander's motion for remand should be granted.

Dated this 1st day of June 2017 at Arlington, Washington.

BY: */s Scott E. Stafne*

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on this date I electronically filed the foregoing document, the Declaration of Scott E. Stafne and associated Exhibits with the Clerk of the Court using the CM/ECF system which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 1st day of June, 2017 at Arlington, Washington.

/s Pam Miller

Pam Miller, Paralegal
STAFNE LAW FIRM