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2004 WL 1084414 (E.D.Mich.), 2004 A.M.C. 572
(Cite as: 2004 WL 1084414 (E.D.Mich.))

Motions, Pleadings and Filings

United States District Court,
E.D. Michigan, Southern Division.

Barbara LEWIS, Plaintiff,
v.
LAKES PILOTS ASSOCIATION, Defendant.

No. 03-CV-75158-DT.

filed Dec. 23, 2003.
Feb. 12, 2004.
of last filing April 9, 2004.

Paul D. Galea, Foster, Meadows, Detroit, MI, Lead Attorney, Attorney to be
Noticed, representing Lakes Pilots Association, Incorporated, (Defendant).

Dennis M. O'Bryan, O'Bryan, Baun, Birmingham, MI, Lead Attorney, Attorney to be
Noticed, representing Barbara Lewis, (Plaintiff).

David M. Spotts, Ashtabula, OH, Lead Attorney, Attorney to be Noticed,
representing Lakes Pilots Association, Incorporated, (Defendant).

ORDER GRANTING PLAINTIFF'S "MOTION FOR REMAND"

CLELAND, J.

*1 Pending before the court is Plaintiff Barbara Lewis's "Motion for Remand,"
filed on December 30, 2003. The matter has been fully briefed and the court finds
that the hearing scheduled for March 3, 2004 is unnecessary. See E.D. Mich. LR
7.1(e)(2). For the reasons set forth below, Plaintiff's motion will be granted and
the case will be remanded to state court.

I. BACKGROUND

This matter stems from the October 23, 2001 capsizing and sinking of the J.W.
WESTCOTT II, in which two crew members of the WESTCOTT were killed. The WESTCOTT
is a vessel that delivers mail, packages, and pilots to commercial vessels on the
Detroit River. On November 15, 2001, the J.W. Westcott Company ("Westcott") filed
a limitations action in the Eastern District of Michigan. Ultimately, numerous
parties entered into that proceeding, including Plaintiff Lewis and the Great
Lakes Pilotage Authority. The limitations proceeding concluded after the dismissal
of certain parties, the granting of summary judgment for the Great Lakes Pilotage

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Authority, and settlement agreements between all remaining parties.

On November 14, 2003, Plaintiff Lewis filed an action against Defendant Lakes Pilots Association, Inc., the American counterpart to the Great Lakes Pilotage Authority, in Wayne County Circuit Court. Plaintiff alleges the following theories of liability, all of which are related to Defendant's contract with Westcott for the transportation of pilots to and from vessels in the Detroit River (the "Pilot Transportation Agreement"): (1) Negligent Selection of Incompetent Contractor; (2) Third Party Beneficiary; (3) Concert of Activities; (4) Breach of Implied Contract; (5) Negligent Inspection; and (6) Breach of Implied Warranty of Workmanlike Services. Defendant removed the case to federal court on December 23, 2003, and on January 16, 2004, this case was reassigned to this court as a companion to Gary Naslatka's case against the Lakes Pilots Association (Case no. 03-CV-75157). Plaintiff now seeks remand, arguing that Defendant's removal was improper because the complaint does not assert a cause of action arising under federal law.

II. DISCUSSION

Defendant removed this matter to federal court, asserting that removal was appropriate because:

[The complaint] alleges breach of contract and other claims relative to Defendant's Pilot Transportation Agreement with J.[W]. Westcott Company, said contract having been executed pursuant to the Great Lakes Pilotage Act, 46 U.S.C. § 1903, et seq. As such, said action is a civil action of which this Court has original jurisdiction pursuant to 46 U.S.C. § 1903, et seq. and 46 U.S.C. § 1701, et seq.

(Notice of Removal at ¶ 3.) The parties do not dispute that this case, which involves a collision on the Detroit River, arose from maritime activity and therefore implicates maritime principles. See *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 206 (1996) (citations omitted) ("Because this case involves a watercraft collision on navigable waters, it falls within admiralty's domain. With admiralty jurisdiction, we have often said, comes the application of substantive admiralty law. The exercise of admiralty jurisdiction, however, does not result in automatic displacement of state law."). Nonetheless, the court must examine the allegations to determine whether a federal basis for removal exists.

*2 Pursuant to 28 U.S.C. § 1333, federal district courts "shall have original jurisdiction, exclusive of the courts of the States, of ... [a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. § 1333(1).

Although the plain meaning of this language is by no means an intuitive matter, the Supreme Court has clearly held that the "saving" clause "leave[s] state courts 'competent' to adjudicate maritime causes of action in proceedings 'in personam,' that is, where the defendant is a person, not a ship or some other instrument of navigation."

In *re Chimenti*, 79 F.3d 534, 537 (6th Cir.1996) (citing *Madruga v. Superior Court of State of Calif.*, 346 U.S. 556, 560-61 (1954)). Thus, under § 1333, federal courts have exclusive jurisdiction over *in rem* maritime actions, and both state and federal courts have concurrent jurisdiction over *in personam* actions. See *id.* "[T]he effect of the [saving to suitors] clause is to give an *in personam*

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plaintiff 'the choice of proceeding in an ordinary civil action, rather than bringing a libel in admiralty.' ' *Id.* (citing 14 Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure: Jurisdiction* § 3672, at 430 (1985)). The instant matter is an *in personam* action, and thus removal cannot be premised upon maritime principles alone. Rather, the court must examine whether an independent federal basis for removal of the complaint filed in state court, such as diversity jurisdiction or federal question jurisdiction, exists. *See id.* (stating that "it is settled that actions brought in state court under the 'saving to suitors' clause are not generally removable," unless the defendant can demonstrate an additional requirement for federal jurisdiction).

Defendant argues that the court has original jurisdiction over this case because "Plaintiff's Complaint requires the interpretation of the ... Pilot Transportation Agreement ..., [which] was specifically entered into pursuant to the Great Lakes Pilotage Act, 46 U.S.C. § 9301[,] et seq." (Def.'s Resp. at 3.) [FN1] Defendant relies on 28 U.S.C. § 1337(a), which provides, "The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies." According to Defendant, the Great Lakes Pilotage Act ("GLPA") is an act regulating commerce and Plaintiff's complaint should be deemed to "arise under" the GLPA because the agreement upon which Plaintiff bases her suit was entered into pursuant to the GLPA and will require significant interpretation of the GLPA. The court disagrees.

FN1. Defendant does not argue that diversity jurisdiction, 28 U.S.C. 1332, exists.

In general, the GLPA sets forth requirements for pilots navigating vessels in the waters of the Great Lakes and all connecting and tributary waters. *See* 46 U.S.C. §§ 9301(b) & 9302. The Act also authorizes the Secretary of Transportation to set regulatory standards of competency for such pilots, 46 U.S.C. § 9303, and permit the formation of a pool by a voluntary association of registered pilots "to provide for efficient dispatching of vessels and rendering of pilotage services." *Id.* at § 9304. The Act also states that the Secretary may "require coordination on a reciprocal basis with similar pool arrangements authorized by the appropriate agency of Canada." *Id.* In this case, the Great Lakes Pilotage Authority was the Lakes Pilots Association's reciprocal party in Canada.

*3 After a thorough review of the GLPA, the court is convinced that the statute, and any interpretation thereunder, will not be dispositive of Plaintiff's cause of action. The GLPA sets forth general standards for pilots and envisions agreements between reciprocal Canadian and American pilot associations to assist in the efficient rendering of pilot services. It does not, however, specify the manner in which pilots are to be transported to and from vessels in the Great Lakes waterways. In other words, nothing in the GLPA would assist the court in determining whether the pilot boat, the J.W. WESTCOTT II, rendered adequate services or breached its duties to those onboard. Although, the Pilot Transportation Agreement between Westcott and Defendant states that it was created to assist Defendant in satisfying the requirements set forth in the GLPA, the

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parties do not argue that the Westcott's services were governed by the GLPA, nor is the contract mandated by the GLPA. As Plaintiff states, "[E]ven though the pilots onboard the Westcott vessel were in transport to the Sidsel Knutsen to perform activities which may have been governed by the GLPA, the adequacy of the Westcott transportation is in no way governed by the GLPA." (Pl.'s Reply at 3 (footnote omitted).) Accordingly, the court concludes that Plaintiff's claims do not require interpretation of the GLPA, let alone "arise under" the GLPA. See *Zimmerman v. Conrail*, 550 F.Supp. 84, 86 (S.D.N.Y.1982) ("mere fact that a federal law regulating commerce may be tangentially related to a cause of action is insufficient to satisfy 28 U.S.C. § 1337(a), conferring district courts with original jurisdiction of 'any civil action or proceeding arising under any Act of Congress regulating commerce...." '). [FN2]

FN2. The court is not convinced by Defendant's reliance on the conclusion reached in *Kassam Courier Service, Inc. v. Maersk, Inc.*, No. 02-20879, 2002 WL 31962177, *1 (S.D.Fla. Oct. 23, 2002). There, the court concluded that the service contract upon which the plaintiff's claims were based was governed by the Shipping Act, and thus 28 U.S.C. § 1337 conferred original jurisdiction upon the district court. *Id.* The Shipping Act, however, is unique in that it expressly "applies to agreements by or among ocean common carriers to ... discuss and agree on any other matter related to service contracts," 46 U.S.C. § 1703(a)(7), and "[b]y plain implication if not by express provision, ... afford[s] carriers the right to recover the lawful charges specified in the tariffs they are required to file with the Federal Maritime Commission," *Maritime Serv. Corp. v. Sweet Brokerage De Puerto Rico, Inc.*, 537 F.2d 560, 562 (1st Cir.1976). The GLPA has no similar provisions, and thus cannot be said to create or contemplate a cause of action such as the one presently before the court. See *Iowa v. First of Omaha Serv. Corp.*, 401 F.Supp. 439, 443 (S.D.Iowa 1975) ("At its broadest, Sec. 1337 should be read as creating federal causes of action arising directly out of 'Acts of Congress.'" ') (emphasis added).

III. CONCLUSION

IT IS ORDERED that Plaintiff's "Motion for Remand" [Dkt. # 2] is GRANTED. This matter is REMANDED to Wayne County Circuit Court.

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(Dec. 23, 2003)

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