

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
AMAZON.COM, INC., :
:
Plaintiff, :
:
- against - :
:
ATTORNEY GENERAL LETITIA JAMES, in :
her official capacity as the Attorney General of :
the State of New York, :
:
Defendant. :
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MEMORANDUM
DECISION AND ORDER

21-cv-767 (BMC)

COGAN, District Judge.

Plaintiff Amazon.com commenced this action for declaratory and injunctive relief. It contends that the New York Attorney General’s attempts to subject Amazon to state oversight of certain activities are preempted by federal law. The Attorney General moved to dismiss the action for lack of subject matter jurisdiction and for failure to state a claim; Amazon moved for summary judgment. For the reasons explained below, the Attorney General’s motion to dismiss is granted. In light of the Court’s decision to grant the Attorney General’s motion, there is no need to resolve Amazon’s motion.

BACKGROUND¹

Amazon is an online retailer that operates a fulfillment center in Staten Island, New York. In 2020, Amazon terminated the employment of two associates at its Staten Island fulfillment center for violating Amazon’s COVID-19-related health and safety rules and directives.

¹ Unless otherwise noted, the below facts are taken from plaintiff’s amended complaint and are assumed to be true for purposes of this motion. See Kolbasyuk v. Capital Mgmt. Servs., LP, 918 F.3d 236, 239 (2d Cir. 2019).

Purportedly in response to Amazon's actions, the Attorney General launched an investigation of Amazon's COVID-19 response.

Sometime after the commencement of its investigation, the Attorney General threatened to sue Amazon if it did not immediately agree to a list of demands. In response to the Attorney General's threat, Amazon commenced this action to seek a declaration that the Attorney General lacks the authority to regulate (i) workplace safety responses to COVID-19 and (ii) claims of retaliation against workers who protest working conditions. Amazon contends that it is entitled to such a declaration because these two areas are preempted by federal law (namely, the Occupational Safety and Health Act and the National Labor Relations Act). Amazon also seeks an injunction against the Attorney General to prevent her from purporting to exercise regulatory authority over the same two areas, again on the grounds of federal preemption.

Four days after Amazon commenced this action, the Attorney General filed suit against Amazon in state court. See Complaint, People of the State of New York v. Amazon.com, Inc., Index No. 450362/2021, ECF No. 1 (N.Y. Sup. Ct. N.Y. Cty.). Amazon removed that case to the United States District Court for the Southern District of New York, but it was subsequently remanded back to state court. See People of the State New York v. Amazon.com, Inc., No. 21-cv-1417, 2021 WL 3140051 (S.D.N.Y. July 26, 2021).² The case is currently pending in state court.

² The Court may and does take judicial notice of this separate litigation between the parties only "to establish the fact of such litigation and related filings." Int'l Star Class Yacht Racing Ass'n v. Tommy Hilfiger U.S.A., Inc., 146 F.3d 66, 70 (2d Cir. 1998) (quoting Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc., 969 F.2d 1384, 1388 (2d Cir. 1992)).

DISCUSSION

The Attorney General has moved to dismiss for lack of subject matter jurisdiction (Fed. R. Civ. P. 12(b)(1)) and for failure to state a claim (Fed. R. Civ. P. 12(b)(6)). Amazon moves for summary judgment (Fed. R. Civ. P. 56). Because the Attorney General has raised a lack of subject matter jurisdiction, the Court begins its analysis there. Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998) (describing the “requirement that jurisdiction be established” as a “threshold matter”).

I. Subject Matter Jurisdiction

“A district court properly dismisses an action under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction if the court ‘lacks the statutory or constitutional power to adjudicate it.’” Cortlandt St. Recovery Corp. v. Hellas Telecommunications, S.a.r.l., 790 F.3d 411, 416-17 (2d Cir. 2015) (quoting Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000)). “When deciding whether to grant a 12(b)(1) motion to dismiss, the court ‘accepts as true all the factual allegations in the complaint and must draw all reasonable inferences in favor of the plaintiff.’” Cayuga Indian Nation of New York v. Vill. of Union Springs, 293 F. Supp. 2d 183, 187 (N.D.N.Y. 2003) (quoting Lunney v. United States, 319 F.3d 550, 554 (2d Cir. 2003)). The burden for establishing the existence of subject matter jurisdiction lies with the plaintiff asserting it, who must do so by a preponderance of the evidence. Makarova, 201 F.3d at 113.

“Under the well-pleaded complaint rule, federal subject matter jurisdiction typically exists only when the plaintiff’s well-pleaded complaint raises issues of federal law.” Montefiore Med. Ctr. v. Teamsters Loc. 272, 642 F.3d 321, 327 (2d Cir. 2011) (internal quotations omitted). Generally, “a complaint seeking a declaratory judgment is to be tested, for purposes of the well-pleaded complaint rule, as if the party whose adverse action the declaratory judgment plaintiff apprehends had initiated a lawsuit against the declaratory judgment plaintiff.” Fleet Bank, Nat’l

Ass'n v. Burke, 160 F.3d 883, 886 (2d Cir 1998). In the instant case, the declaratory judgment plaintiff – Amazon – seeks a declaration that the Attorney General’s actions are improper because they are preempted by federal law and fall within the jurisdiction of federal agencies. Reversing the positions of the parties (as is the case in the pending state action) would result in Amazon’s federal preemption argument being raised as a defense to the Attorney General’s state law claims. Such a case is not one in which federal subject matter jurisdiction exists.

Montefiore Med. Ctr., 642 F.3d at 327 (the well-pleaded complaint rule is not satisfied “when federal preemption might be invoked as a defense to liability”).³

However, in cases where the plaintiff seeks an injunction in addition to a declaratory judgment, federal subject matter jurisdiction may be found as long as the case does not require the interpretation of state law. Fleet Bank, 160 F.3d at 888-89 (citing Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96 n.14 (1983)). As the Second Circuit explained,

the Supreme Court has consistently recognized federal jurisdiction over declaratory- and injunctive-relief actions to prohibit the enforcement of state or municipal orders alleged to violate federal law A party is not required to pursue “arguably illegal activity . . . or expose itself to criminal liability before bringing suit to challenge” a statute alleged to violate federal law.

Friends of the E. Hampton Airport, Inc. v. Town of E. Hampton, 841 F.3d 133, 144-45 (2d Cir. 2016) (quoting Knife Rights, Inc. v. Vance, 802 F.3d 377, 385 (2d Cir. 2015)) (holding that plaintiffs who were threatened with escalating fines and other sanctions under the local laws

³ There is an exception to this rule involving complete preemption, but “[t]he Supreme Court has only found three statutes to have the requisite extraordinary preemptive force to support complete preemption.” Sullivan v. Am. Airlines, Inc., 424 F.3d 267, 272 (2d Cir. 2005) (listing the three statutes: § 301 of the Labor–Management Relations Act (LMRA), 29 U.S.C. § 185; § 502(a) of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1132(a); and §§ 85 and 86 of the National Bank Act, 12 U.S.C. §§ 85-86). The dispute between Amazon and the Attorney General does not involve any of these three statutes, so the complete preemption exception is not triggered in this case.

could invoke federal jurisdiction to enjoin enforcement on the ground that the laws were enacted in violation of a federal statute's procedural prerequisites).

Here, the Amended Complaint seeks a declaration regarding federal – not state – law. Specifically, the Amended Complaint “seeks a declaration that, as applied to the facts of this case, the state laws that the [Attorney General] seeks to enforce are preempted by federal law [namely, the Occupational Safety and Health Act and the National Labor Relations Act] and an injunction against the [Attorney General]’s ongoing misuse of those laws against Amazon.” This requires an interpretation of federal law and whether it preempts state law; it does not require interpreting the meaning or scope of state law.

In briefing, the Attorney General focuses on paragraphs in the Amended Complaint that discuss her abilities under state law, but those paragraphs are immaterial as to the subject matter jurisdiction issue – they could be removed from the Amended Complaint without altering the relief sought or the relevant analysis for determining the existence of subject matter jurisdiction. In other words, although Amazon includes contentions about the Attorney General exceeding her authority under state law, its requested relief does not require interpreting state law to determine whether or not she actually is. Rather, the only question Amazon puts before the Court through its requested relief is whether state law (regardless of whether the Attorney General is acting in conformity with it or not) is preempted by federal law.

If, on the other hand, Amazon also sought an injunction on the ground that the Attorney General is acting outside the scope of her legal authority under state law (by, for example and as alleged, failing to first secure a finding from the state Labor Commissioner that a dangerous condition exists at Amazon’s Staten Island facility), then Amazon would be raising a question of state law that would need to be resolved. For the reasons set forth in Fleet Bank, finding

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