United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ARNOLD LEONG,

Plaintiff,

v.

WARREN HAVENS,

Defendant.

Case No. 20-cv-05236-JST

ORDER GRANTING MOTION TO REMAND

Re: ECF No. 9

Before the Court is Plaintiff Arnold Leong's motion to remand to the Alameda County Superior Court. ECF No. 9. The Court will grant the motion.

The facts of this long-running dispute are well known to the parties and to the Court, and the Court states only those facts necessary to the resolution of this motion. This case involves a dispute over various spectrum licenses held by two entities controlled and managed by Defendant Warren Havens. The case was originally filed in 2002 in state court. It is now before this Court on Havens's fourth notice of removal: he has removed the case to federal court, and the Court has remanded the case back to state court, three times already. ECF No. 1; *see also* Case No. 4:15-cv-02463-YGR, ECF No. 1; Case No. 4:18-cv-03603-JST, ECF No. 1; Case No. 4:18-cv-05751-JST, ECF No. 1. Thus, the present matter is not, as Havens claims, a "new" case.

On July 29, 2020, Havens removed the case to federal court twice, causing the Clerk to list the case under two different case numbers. ECF No. 1; Case No. 4:20-cv-05234-JST, ECF No. 1. On August 13, 2020, Case No. 4:20-cv-05236 was reassigned to the undersigned. ECF No. 13. On August 20, 2020, Case No. 4:20-cv-05234 was reassigned to the undersigned. Case No. 4:20-cv-05234, ECF No. 11. By separate order dated today, the Court consolidated both cases under the above-captioned case number. ECF No. 69.

Leong moved to remand the case on August 12, 2020. ECF No. 9. On September 8, 2020 Havens timely filed an opposition, ECF No. 44, and then filed an untimely "second version" the following day, ECF No. 45. Leong replied on September 15, 2020. ECF No. 48.

"[A]ny civil action brought in a [s]tate court of which the district courts of the United States have original jurisdiction, may be removed by [a] defendant . . . to [a federal] district court[.]" 28 U.S.C. § 1441(a). "A defendant may remove an action to federal court based on federal question jurisdiction or diversity jurisdiction." *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009) (citing 28 U.S.C. § 1441). If the district court determines that it lacks jurisdiction, the action must be remanded back to state court. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 134 (2005). There is a "strong presumption" against finding removal jurisdiction, which "means that the defendant always has the burden of establishing that removal is proper." *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992) (citation omitted). The Court "resolves all ambiguity in favor of remand to state court." *Hunter*, 582 F.3d at 1042 (citation omitted).

This case must be remanded because it is the same case which this Court has already remanded several times, and because none of the factors giving rise to jurisdiction have changed. Havens argues that Leong's petition to confirm the arbitration award "is[,] under statute[,] a new action after a[] legal proceeding was completed in a private arbitration." ECF No. 1 at 2. Havens points to no authority, statutory or otherwise, to support this argument, and the law is to the contrary: "a petition filed subsequent to an arbitration award is not a separate proceeding for purposes of removal." *Anderson Plant LLC v. Batzer Constr., Inc.*, Case No. 3:15-cv-01966-CRB, 2015 WL 4572294, at *4 (N.D. Cal. July 29, 2015) (citation omitted). The Court's many prior remand orders continue to compel remand here.

Nonetheless, the Court briefly addresses Havens's arguments in favor of federal jurisdiction. ECF Nos. 1, 44, 45. First, he claims the Court can exercise diversity jurisdiction pursuant to 28 U.S.C. § 1332 because Havens is a resident of California, Leong is a resident of Nevada, and "[t]he legal entities named as respondents in the alleged-valid Award are not parties in the . . . state court petition since they are under the control of a State-Court Receiver ordered by the Court to have no role in the arbitration that is the sole subject of the Petition Action." ECF

No. 1 at 8. In the alternative, Havens states that because "LLCs are treated under the 'partnership mode,'" and because Leong and Havens are the only partners of the Defendant LLC entities, there is therefore complete diversity. *Id.* at 9. Havens is incorrect on both fronts.

Diversity jurisdiction "requires complete diversity of citizenship; each of the plaintiffs must be a citizen of a different state than each of the defendants." *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001).[1] That the entity defendants are in receivership does not change their status as parties to the action. Further, Havens is correct that the LLCs acquire the citizenship of their partners, Havens and Leong. This fact does not help Havens, however, since Leong, the Plaintiff, shares citizenship with the legal entities, as Defendants. *See Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) ("[L]ike a partnership, an LLC is a citizen of every state of which its owners/members are citizens.").

Second, Havens argues that the Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 under the theory that the subject of Plaintiff's claims is within "the exclusive jurisdiction of the Federal Communications Commission under the Federal Communications Act of 1934." ECF No. 1 at 10. He also states that "complete preemption" as well as "[e]xpress and field preemption apply." *Id.* at 11. "A state cause of action invokes federal question jurisdiction only if it 'necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.'" *Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 674 (9th Cir. 2012) (quoting *Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005)). The judges of this court have previously rejected Havens's federal question argument more than once and found that there is no federal question jurisdiction because the underlying complaint "brings only state law claims." Case No. 4:18-cv-03603-JST, ECF No. 50 at 6; *see also* Case No. 4:15-cv-02463-YGR, ECF No. 27 at 13-15 (holding that the matter was "fundamentally a state court dispute" and remanding). Havens offers no reason for the Court to reach a different result now, and the Court again rejects this argument.

[1] In addition, the amount in controversy must exceed $75,000. 28 U.S.C. § 1332(a).

Third, Havens argues that federal jurisdiction exists pursuant to 9 U.S.C. § 205 because the case is "based upon certain nationwide FCC radio-spectrum licenses and businesses with the licenses under the New York Convention [Convention on the Recognition and Enforcement of Foreign Arbitral Awards]." ECF No. 1 at 4-5. "An arbitration agreement or arbitral award 'falls under' the Convention if it 'aris[es] out of a legal relationship, whether contractual or not, which is considered as commercial,' provided that if the relationship is entirely between U.S. citizens, it must involve property or performance abroad or have some other reasonable relation with a foreign country." *LaPine v. Kyocera Corp.*, No. C 07-06132 MHP, 2008 WL 2168914, at *3 (N.D. Cal. May 23, 2008) (quoting 9 U.S.C. § 202). A party must satisfy a four-part test to show that an agreement falls within the parameters of the Convention: "(i) is there is an agreement in writing within the meaning of the Convention; (ii) does the agreement provide for arbitration in the territory of a signatory of the Convention; (iii) does the agreement arise out of a legal relationship, whether contractual or not, that is considered commercial; and (iv) is a party to the agreement not an American citizen, or does the underlying commercial relationship have some reasonable relation to one or more foreign states." *Miller v. Tri Marine Fish Co.*, Case No. LA CV16-02203 JAK (SSx), 2016 WL 3545523, at *7 (C.D. Cal. June 28, 2016).

As the Court has observed in rejecting this argument previously, the arbitration agreement here simply does not meet this test. The arbitration relationship is between United States citizens and Havens has not demonstrated that the arbitration agreement dispute involves "property or performance abroad." *See LaPine*, 2008 WL 2168914, at *3. The fact that the licenses which form part of the dispute can reach beyond the borders of the United States does not make them "property located abroad," nor does potential future service of the subject licenses create a "reasonable relation with one or more foreign states." *Cf.* 9 U.S.C. § 202. Havens's claims – that the "subject FCC licenses and licensed-based businesses" "envisage performance" or have a "reasonable relation" with a foreign state because they are subject to FCC rules, because some of the licenses authorize service in Canada and Mexico, and because the authorized frequencies can travel distances beyond U.S. borders, ECF No. 1 at 5-7 – do not change these essential facts. The case is not subject to the Convention and therefore Section 205 does not support Havens's

continued attempts at removal.

CONCLUSION

For the foregoing reasons, Havens has again failed to meet his burden to show that removal is proper. This action is therefore REMANDED to Alameda County Superior Court.

IT IS SO ORDERED.

Dated: October 9, 2020

JON S. TIGAR
United States District Judge

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