UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONSUMER FINANCIAL, PROTECTION BUREAU, et al.,

Plaintiffs,

v.

RD LEGAL FUNDING, LLC, et al.,

Defendants.

17-CV-890 (LAP)

Order

Loretta A. Preska, Senior United States District Judge:

Taking into account the parties' recent correspondence regarding the Court's subject matter jurisdiction over the remaining CFPA claims in this case, the Court hereby amends its ruling in the June 21, 2018 Order, (ECF No. 80), as follows. The conclusions of law in this order supersede and replace any legal conclusions to the contrary in the June 21, 2018 Order:

I. NYAG's CFPA Claims

In light of the Court's decision that the appropriate remedy for Title X's unconstitutional for-cause removal provision is invalidating Title X in its entirety, it follows that there is no statute for the NYAG to proceed under and no grant of authority to proceed. In sum, there is no basis for federal jurisdiction over NYAG's CFPA claims. Accordingly, these claims must be dismissed. Fed. R. Civ. P. 12(h)(3).

Given that there is no basis for federal jurisdiction in NYAG's CFPA causes of action, 28 U.S.C. § 1367(a) no longer serves as an appropriate procedural vehicle for this Court to exercise supplemental jurisdiction over NYAG's state law claims.

II. Federal Jurisdiction and NYAG's State Law Claims

NYAG argues that its state law claims raise issues involving the federal Anti-Assignment Act, thereby giving rise to federal question jurisdiction over these same claims. (See ECF No. 93). The Court concludes that there is no "substantial" federal issue embedded in NYAG's state law claims that would give rise to federal question jurisdiction over those same state law claims, notwithstanding the inapplicability of 28 U.S.C. § 1367(a). Pritika v. Moore, 91 F. Supp. 3d 553, 558 (S.D.N.Y. 2015).

"[C]ourts have typically found a substantial federal issue only in those exceptional cases that go beyond the application of some federal legal standard to private litigants' state law claims, and instead implicate broad consequences to the federal system or the nation as a whole." Pritika, 91 F. Supp. 3d at 558. Here, certain of NYAG's state law claims turn on alleged violations of the federal Anti-Assignment Act. See 31 U.S.C. § 3727; (Compl., Counts VI-XI.) The question of whether victims' purported assignment of their monetary awards from the September 11th Victim Compensation Fund ("VCF") violates the

Anti-Assignment Act does not "implicate broad consequences to the federal system or the nation as a whole." Pritika, 91 F. Supp. 3d at 558 (citing Smith v. Kan. City Title & Trust Co., 255 U.S. 180, 201 (1921)); see also Broder v. Cablevision Sys. Corp., 418 F.3d 187, 195 (2d Cir. 2005) (concluding that a federal issue is substantial if it implicates a "complex federal regulatory scheme"); In re Facebook, Inc., IPO Sec. and Derivative Litig., 922 F. Supp. 2d 475, 482-83 (S.D.N.Y. 2013) (holding that questions of whether NASDAQ, a national securities exchange, complied with its regulatory obligations under federal law and what duties NASDAQ had as a national securities exchange to "members of the investing public" involved a substantial federal interest).

The VCF touches and concerns the nation and federal system to the extent that it is funded through taxpayer dollars at the federal level. However, the question of what parties may do with their award money does not raise "broad consequences to the federal system or the nation." Pritika, 91 F. Supp. 3d at 558. The validity of the assignments of monetary awards from the VCF is a particularized issue that involves a discrete pool of individuals. The question of whether the Anti-Assignment Act prohibits victims from assigning their monetary awards from the VCF does not implicate constitutional issues and does not involve a determination of a federal agency's obligations under

federal law. Grable & Sons Metal Products, Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 315 (2005). In sum, the question that the Anti-Assignment Act raises in this case does not have the required "significan[ce] . . . to the federal system as a whole," Gunn v. Minton, 568 U.S. 251, 264 (2013). Accordingly, NYAG's state law claims do not present a "substantial" federal issue giving rise to federal jurisdiction.

An upset in the division of federal and state jurisdiction would also ensue if the Court exercised jurisdiction over NYAG's state law claims. Counts VI - XI in the Complaint are premised on New York consumer protection statutes that involve application of New York contract law and New York usury law. Principles of comity dictate that state courts should resolve questions of state law. Chenensky v. New York Life Ins. Co., 942 F. Supp. 2d 388, 395 (S.D.N.Y. 2013). New York courts have also proven that they are more than capable of deciding cases that implicate the Anti-Assignment Act. See, e.g., Leonard v. Whaley, 36 N.Y.S. 147 (Sup. Ct. 1985); Coastal Commercial Corp. v. Central Nat. Bank of Yonkers, 140 N.Y.S.2d 887 (Sup. Ct. 1955).

Accordingly, NYAG's remaining state law claims do not raise a "substantial" issue of federal law that justifies this Court's exercising jurisdiction over those claims. Grable, 545 U.S. at 313-14.

III. Supplemental Jurisdiction and NYAG's State Law Claims

The Court also declines to exercise supplemental jurisdiction over NYAG's state law claims under 28 U.S.C. § 1367(c)(3). In determining whether to exercise supplemental jurisdiction over remaining state law claims after the dismissal of all federal law causes of action, a district court must balance the objectives of "judicial economy, convenience, fairness, and comity." Kolari v. New York-Presbyterian Hosp., 455 F.3d 118, 122 (2d Cir. 2006) (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 (1988)). "[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state-law claims." Id. (quoting Cohill, 484 U.S. at 350 n.7).

In this case, each of these factors weighs in favor of denying supplemental jurisdiction. As discussed above, allowing New York state courts to resolve issues involving only New York law furthers "a proper respect for state functions" as comity requires. Chenensky, 942 F. Supp. 2d at 395 (S.D.N.Y. 2013) (quoting Levin v. Commerce Energy, Inc., 560 U.S. 413, 421 (2010)). The present posture of the case - mainly, the fact that no discovery has been conducted yet - also means that "neither party will be significantly inconvenienced or prejudiced if the plaintiff[] refile[s] in state court." Yong

Kui Chen v. Wai ? Café Inc., 10 Civ. 7254 (JCF), 2017 WL 3311228, at *4 (S.D.N.Y. Aug. 2, 2017). This Court has only decided RD Legal's motion to dismiss thus far, and therefore the state court would not be substantially duplicating extensive efforts that this Court has already undertaken to oversee the case. See Chenensky, 942 F. Supp. 2d at 392.

Accordingly, the Court declines to exercise supplemental jurisdiction over the NYAG's remaining state law claims.

IV. Conclusion

In summary, the Court amends its June 21, 2018 Order, (ECF No. 80), and concludes that:

(1) The proper remedy for the constitutional issue raised by Title X's for-cause removal provision is to invalidate Title X in its entirety;

(2) this remedy invalidates the statutory basis for NYAG's independent litigating authority under the CFPA and its CFPA claims in this case;

(3) for the reasons stated in point (2), the NYAG's CFPA claims must be dismissed for lack of federal jurisdiction, Fed. R. Civ. P. 12(h)(3);

(4) the NYAG's remaining state law claims do not present a "substantial question" of federal law giving rise to federal jurisdiction; and

(5) the Court declines to exercise supplemental jurisdiction over NYAG's remaining state law claims under 28 U.S.C. § 1367(c)(3).

For the foregoing reasons, all of the NYAG's state law claims are dismissed without prejudice to refiling in state court.

The Clerk of Court is directed to enter judgment (1) dismissing the NYAG's CFPA claims against Defendants without prejudice, and (2) dismissing the NYAG's state law claims without prejudice.

The Clerk of Court shall mark this action closed and all pending motions denied as moot.

SO ORDERED.

Dated: New York, New York
September 12, 2018

Loretta A. Preska

LORETTA A. PRESKA
Senior United States District Judge