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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE ex rel. KAMALA D. HARRIS, as Attorney General, etc., Plaintiff and Appellant, v. PAC ANCHOR TRANSPORTATION, INC., et al., Defendants and Respondents.	B220966 (Los Angeles County Super. Ct. No. BC397600)

APPEAL from a judgment of the Superior Court of Los Angeles County, Elizabeth A. White, Judge. Reversed.

Edmund G. Brown, Jr., and Kamala D. Harris, Attorneys General, Dane R. Gillette, Chief Assistant Attorney General, Mark J. Breckler, Senior Assistant Attorney General, Jon M. Ichinaga and Satoshi Yanai, Deputy Attorneys General, for Plaintiff and Appellant.

Sands Lerner, Neil S. Lerner and Arthur A. Severance for Defendants and Respondents.

Plaintiff and appellant State of California appeals from a judgment following an order granting judgment on the pleadings in favor of defendants and respondents Alfredo Barajas and Pac Anchor Transportation, Inc. The State contends the Federal Aviation Administration Authorization Act (FAAAA) (49 U.S.C. § 14501 et seq.) does not preempt this action under California's unfair competition law (UCL) (Bus. & Prof. Code, § 17200 et seq.) based on alleged violations of California labor and unemployment insurance laws. We agree the State's unfair competition action is not related to a price, route, or service of a motor carrier with respect to the transportation of property, and therefore, the action is not preempted by the FAAAA. We reverse.

FACTS

Pac Anchor is a trucking company in Long Beach, California. Barajas is an owner of Pac Anchor, where he works as a manager and truck dispatcher. Pac Anchor has contracts with shipping companies to transport shipping containers from the ports of Los Angeles and Long Beach to locations in Southern California, including warehouses and railroad freight depots.

Barajas owns 75 trucks. He recruits drivers, then leases his trucks and the drivers to Pac Anchor. Barajas and Pac Anchor classify the drivers as independent contractors. As a result, Barajas and Pac Anchor do not obtain workers' compensation insurance, withhold state disability insurance or income taxes, pay unemployment insurance or employment training fund taxes on behalf of the drivers, reimburse business expenses, insure payment of the state minimum wage, or provide itemized written statements of hours and pay to the drivers.

The drivers do not invest any capital, however, or own the trucks that they drive. They use trucks, tools, and equipment furnished by Barajas and Pac Anchor. The drivers are employed for extended periods of time, but can be discharged without cause. The drivers take all their instructions from Barajas and Pac Anchor. They are not skilled workers and do not have substantial control over operational details. The drivers do not

have other customers or their own businesses. The drivers do not have Department of Transportation operating authority or other necessary permits and/or licenses to independently engage in the transport of cargo. They are an integrated part of Barajas's and Pac Anchor's trucking business, because they perform the core activity of delivering cargo.

PROCEDURAL HISTORY

On September 5, 2008, the State filed a complaint against Barajas and Pac Anchor for violation of the UCL. The complaint alleged that Barajas and Pac Anchor misclassified drivers as independent contractors and, as a result, "illegally lowered their costs of doing business." Specifically, Barajas and Pac Anchor violated the UCL "by engaging in acts of unfair competition including, but not limited to, the following: [¶] a. Failing to pay unemployment insurance taxes as required by Unemployment Insurance Code [section] 976; [¶] b. Failing to pay Employment Training Fund taxes as required by Unemployment Insurance Code [section] 976.6; [¶] c. Failing to withhold State Disability Insurance taxes as required by Unemployment Insurance Code [section] 984; [¶] d. Failing to withhold State income taxes as required by Unemployment Insurance Code [section] 13020; [¶] e. Failing to provide workers' compensation as required by Labor Code [section] 3700; [¶] f. Failing to provide employees with itemized written statements as required by Labor Code [section] 226 and to maintain and provide employees with records required by [California Industrial Welfare Commission (IWC)] Wage Order [No.] 9, subsection 7; [¶] g. Failing to reimburse employees for business expenses and losses as required by Labor Code [section] 2802; [and] [¶] h. Failing to ensure payment at all times of California's minimum wage as required by Labor Code [section] 1194 and [IWC] Wage Order 9, subsection 4." As a result of these practices, Barajas and Pac Anchor "have obtained an unfair advantage over its competitors, deprived employees of benefits and protections to which they are entitled under California law, harmed their truck driver employees, harmed the general public, and

deprived the State . . . of payments for California state payroll taxes." The State sought restitution, civil penalties, and injunctive relief.

Barajas and Pac Anchor filed a motion for judgment on the pleadings on August 21, 2009. After a hearing on September 22, 2009, the trial court found the action was preempted by the FAAAA for three reasons. First, the court concluded that the holding of *Fitz-Gerald v. SkyWest, Inc.* (2007) 155 Cal.App.4th 411 (*Fitz-Gerald*) required finding all UCL causes of action against motor carriers preempted by the FAAAA. Second, the court found that requiring Barajas and Pac Anchor to treat its truck drivers as employees would increase the motor carrier's operational costs, and therefore, the action related to the motor carrier's prices, routes, and services. Third, the court concluded that the action threatened to interfere with the forces of competition by discouraging independent contractors from competing in the trucking market. The court entered an order granting judgment on the pleadings on October 13, 2009, and entered judgment in favor of Barajas and Pac Anchor on October 14, 2009. The State filed a timely notice of appeal.

DISCUSSION

Standard of Review

"A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. (Code Civ. Proc., § 438, subd. (c)(3)(B)(ii).) A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review. [Citations.] All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law; judicially noticeable matters may be considered. [Citations.]" (*Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672.)

Federal Preemption Principles

"The supremacy clause of the United States Constitution establishes a constitutional choice-of-law rule, makes federal law paramount, and vests Congress with the power to preempt state law. (U.S. Const., art. VI, cl. 2; *Cipollone v. Liggett Group, Inc.* (1992) 505 U.S. 504, 516; *Jevne v. Superior Court* (2005) 35 Cal.4th 935, 949.) There are four species of federal preemption: express, conflict, obstacle, and field. [Citation.]" (*Viva! Internat. Voice For Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935, fns. omitted.)

"First, express preemption arises when Congress 'define[s] explicitly the extent to which its enactments pre-empt state law. [Citation.] Pre-emption fundamentally is a question of congressional intent, [citation], and when Congress has made its intent known through explicit statutory language, the courts' task is an easy one.' [Citations.] Second, conflict preemption will be found when simultaneous compliance with both state and federal directives is impossible. [Citations.] Third, obstacle preemption arises when '"under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."' [Citations.] Finally, field preemption, i.e., 'Congress' intent to pre-empt all state law in a particular area,' applies 'where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation.' [Citations.]" (*Viva! Internat. Voice For Animals v. Adidas Promotional Retail Operations, Inc.*, *supra*, 41 Cal.4th at p. 936.)

Express Preemption Provision of the FAAAA

The FAAAA preempts state and local regulation relating to the prices, routes or services of motor carriers with respect to the transportation of property. (49 U.S.C. § 14501(c).) Specifically, section 14501(c) of title 49 of the United States Code provides in pertinent part: "(1) . . . Except as provided in paragraphs (2) and (3), a State . . . may

not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property."

As part of the deregulation of motor carriers, Congress believed it was necessary to eliminate non-uniform state regulations which had caused "'significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology, and curtail[ed] the expansion of markets.' H.R. Conf. Rep. No. 103-677, at 86-88 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1715, 1758-60." (*Californians for Safe & Competitive Dump Truck Transp. v. Mendonca* (9th Cir. 1998) 152 F.3d 1184, 1187 (*Mendonca*).)

The preemption provision of the FAAAA is identical to the preemption provision of the Airline Deregulation Act of 1978 (ADA) to "'even the playing field' between air carriers and motor carriers. [H.R. Conf. Rep. No. 103-677, *supra*,] at 85, 1994 U.S.C.C.A.N. at 1757, 1759." (*Mendonca*, *supra*, 152 F.3d at p. 1187.)

The preemption clauses of the FAAAA and the ADA are interpreted broadly and expansively. (*Mendonca*, *supra,* 152 F.3d at p. 1188, fn. 5.) "The phrase 'related to' in this general preemption provision is 'interpreted quite broadly.' [Citation.] Thus, '"[a] state or local regulation is related to the price, route, or service of a motor carrier if the regulation has more than an indirect, remote, or tenuous effect on the motor carrier's prices, routes, or services."' [Citations.]" (*CPF Agency Corp. v. Sevel's 24 Hour Towing Service* (2005) 132 Cal.App.4th 1034, 1044.)

The issue before us in this case is whether the State's unfair competition action relates to "a price, route, or service" provided by Barajas and Pac Anchor.

Relevant Cases Applying the Preemption Standard

Three relevant federal court cases have interpreted and applied the preemption provisions of the ADA and the FAAAA. In *Morales v. Trans World Airlines, Inc.* (1992) 504 U.S. 374, 383 (*Morales*), the United States Supreme Court considered whether enforcement of certain fare advertising guidelines through state consumer protection laws

was preempted by the ADA. The *Morales* court held that "[s]tate enforcement actions having a connection with, or reference to, airline 'rates, routes, or services' are pre-empted under [the ADA]." (*Id.* at p. 384.) The court found that the guidelines were indisputably related to fares. (*Id.* at pp. 387-388.) Therefore, the court held that the fare advertising guidelines were preempted by the ADA. (*Id.* at p. 391.)

The United States Supreme Court further developed the scope of the ADA preemption in *American Airlines, Inc. v. Wolens* (1995) 513 U.S. 219 (*Wolens*). The plaintiffs in *Wolens* had filed class action lawsuits for breach of contract and violation of state consumer protection and deceptive business practices laws, based on changes to American Airlines' frequent flyer program. (*Id.* at pp. 224-225.) "Plaintiffs' claims relate to 'rates,' *i.e.*, American's charges in the form of mileage credits for free tickets and upgrades, and to 'services,' *i.e.*, access to flights and class-of-serve upgrades unlimited by retrospectively applied capacity controls and blackout dates." (*Id.* at p. 226.) The *Wolens* court held that the plaintiffs' claims under the state consumer protection law amounted to enforcement of a law related to air carrier rates, routes, or services and, therefore, were preempted. (*Id.* at p. 228.) However, common-law remedies for breach of contract were not a requirement imposed under state law, and therefore, the plaintiffs' breach of contract claims based on the airline's voluntary contractual commitments were not preempted. (*Id.* at pp. 228-229.)

In *Mendonca*, *supra*, 152 F.3d at page 1189, the Ninth Circuit held that enforcement of California's Prevailing Wage Law (CPWL) (Lab. Code, §§ 1770-80) was not preempted by the FAAAA. CPWL requires contractors and subcontractors awarded public works contracts to pay workers the prevailing wages. (Lab. Code, § 1771.) A group of motor carriers argued that CPWL directly affected "prices, routes, or services," because rates were based on costs, performance factors, and conditions, including prevailing wage requirements. (*Mendonca, supra*, at p. 1189.) The appellate court concluded that although the wage law was "related to" the motor carrier's prices, routes, and services in a sense, the effect was "no more than indirect, remote, and tenuous."

(*Ibid.*) CPWL did not frustrate "the purpose of deregulation by *acutely* interfering with the forces of competition." (*Ibid.*)

Division Six of this appellate district similarly found in *Fitz-Gerald, supra,* 155 Cal.App.4th at page 423, that actions to enforce California's minimum wage laws and labor laws governing meal and rest breaks are not preempted by the ADA. Specifically, the *Fitz-Gerald* court concluded the plaintiffs' causes of action for unpaid minimum wages under Labor Code section 1194, unpaid meal and rest breaks, unpaid overtime, and waiting time penalties under Labor Code section 203 were not preempted by the ADA. (*Fitz-Gerald, supra,* at p. 415.) The *Fitz-Gerald* court found that although state minimum wage laws ultimately result in higher fares, fewer routes, and less service, the connection was too tenuous for preemption to apply. (*Id*. at p. 423, fn. 7.) "If the rule was otherwise, 'any string of contingencies is sufficient to establish a connection with price, route or service, [and] there will be no end to ADA preemption. [Citation.]' [Citation.]" (*Id*. at p. 423.)

The court in *Fitz-Gerald* also held, however, that the ADA bars causes of action under the UCL. (*Fitz-Gerald, supra*, 155 Cal.App.4th at p. 423.) We disagree with *Fitz-Gerald's* cursory citation to *Morales* and *Wolens* to support the conclusion that all state unfair business practices statutes are preempted by the ADA. Where a cause of action is based on allegations of unlawful violations of the State's labor and unemployment insurance laws, we see no reason to find preemption merely because the pleading raised these issues under the UCL, as opposed to separately stated causes of action. We respectfully disagree with *Fitz-Gerald's* contrary conclusion as to preemption of causes of action under the UCL.

The State's UCL Action

The State contends its action under the UCL is not preempted by the FAAAA, because it is not related to the price, route or service of any motor carrier. We agree.

The UCL defines "unfair competition" as "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law (Bus. & Prof. Code, § 17500 et seq.)]." (Bus. & Prof. Code, § 17200.) "The UCL's purpose is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services. [Citation.]" (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949 (*Kasky*).) "'Because Business and Professions Code section 17200 is written in the disjunctive, it establishes three varieties of unfair competition—acts or practices which are *unlawful, or unfair, or fraudulent.*' [Citation.]" (*Shvarts v. Budget Group, Inc.* (2000) 81 Cal.App.4th 1153, 1157, emphasis added.)

"An 'unlawful' business practice or act within the meaning of the UCL 'is an act or practice, committed pursuant to business activity, that is at the same time *forbidden by law.* [Citation.]' [Citation.] The California Supreme Court has explained that '[b]y proscribing "any unlawful" business practice, "[Business and Professions Code] section 17200 'borrows' violations of other laws and treats them as unlawful practices" that the unfair competition law makes independently actionable. [Citation.]' [Citation.]" (*Bernardo v. Planned Parenthood Federation of America* (2004) 115 Cal.App.4th 322, 351-352.) "In addition, under [Business and Professions Code] section 17200, 'a practice may be deemed unfair even if not specifically proscribed by some other law.' [Citation.]" (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1143.)

The State's action against Barajas and Pac Anchor under the UCL is based on alleged violations of statutory obligations concerning employees. Specifically, the State alleges violations of certain laws governing minimum labor standards, including Labor Code section 1194 (requiring the payment of California's minimum wage), Labor Code section 226 (requiring issuance of itemized wage statements to employees), Labor Code section 2802 (requiring reimbursement of employee expenses), Labor Code section 3700 (requiring employers to secure workers' compensation insurance or receive certification to self-insure), and certain laws governing generally applicable state payroll tax requirements, including Unemployment Insurance Code section 976 (requiring

contributions to the State Unemployment Fund), Unemployment Insurance Code section 976.6 (requiring contributions to the State Employment Training Fund), Unemployment Insurance Code section 984 (requiring employee contributions to the State Disability Fund, which employers must withhold from employee wages under Unemployment Insurance Code section 986), and Unemployment Insurance Code section 13020 (requiring employers to withhold income taxes from employee wages).

"'States possess broad authority under their police powers to regulate the employment relationship to protect workers within the State. Child labor laws, minimum and other wage laws, laws affecting occupational health and safety . . . are only a few examples.' [Citation.] State laws requiring that employers contribute to unemployment and workmen's compensation funds, laws prescribing mandatory state holidays, and those dictating payment to employees for time spent at the polls or on jury duty all have withstood scrutiny. [Citation.]" (*Metropolitan Life Ins. Co. v. Massachusetts* (1985) 471 U.S. 724, 756.)

In this case, the State's action to enforce Barajas's and Pac Anchor's statutory obligations as an employer is not related to Pac Anchor's prices, routes, or services, even though it may remotely affect the prices, routes, or services that the motor carrier provides. Case law supports finding that the effect of California's minimum wage law (Lab. Code, § 1194) on a motor carrier's prices, routes, and services is too tenuous for preemption under the FAAAA. (See *Fitz-Gerald, supra,* 155 Cal.App.4th at p. 423 [connection of minimum wage law to higher fares, fewer routes, and less service is tenuous]; *Mendonca*, *supra*, 152 F.3d at p. 1189 [California's prevailing wage law applicable to public works contractors is not preempted by the FAAAA].) Other California labor and unemployment insurance provisions that Barajas and Pac Anchor allegedly violated have a similarly indirect and tenuous connection to Pac Anchor's prices, routes, and services. We hold that the State's UCL action based on Barajas's and Pac Anchor's alleged violations of generally applicable state laws governing an employer's relationship with employees is not an action related to the price, route, or service of a motor carrier and, therefore, not preempted by the FAAAA.

DISPOSITION

The judgment is reversed. Costs on appeal are awarded to appellant State of California.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.