

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

THE STATE OF DELAWARE,)	
)	C.A. No. N18C-01-144 RRC
Plaintiff,)	
)	
v.)	
)	
CINDY GONZALEZ,)	
)	
)	
Defendant.)	
)	

Submitted: July 9, 2018

Decided: July 19, 2018

On Plaintiff's Motion for Judgment on the Pleadings.

GRANTED.

MEMORANDUM OPINION

Oliver J. Cleary, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for Plaintiff.

John S. Whitelaw, Esquire, Community Legal Aid Society, Inc., Wilmington,
Delaware, Attorney for Defendant.

COOCH, R.J.

I. INTRODUCTION

On January 12, 2018, the State of Delaware filed a Complaint against Defendant Cindy Gonzalez for “fraudulently obtaining government benefits in violation of Delaware common law and the Delaware False Claims and Reporting Acts, 6 *Del. C.* §§ 1201, *et. seq* (‘DFCRA’).”¹ Defendant has acknowledged all allegations against her;² however, she asserts an affirmative defense of federal pre-emption that Plaintiff’s claim is “precluded by the provisions of the Food Stamp Act, 7 U.S.C. § 2011 *et seq.*”³

This pre-emption claim involves an issue of apparent first impression in this State. Pursuant to Superior Court Civil Rule 12(c), Plaintiff moves for judgment on the pleadings against Defendant. For the following reasons, this Court **GRANTS** Plaintiff’s Motion. Further, pursuant to *Del. C.* § 512 and Superior Court Civil Rule 132, this matter shall be referred to a Commissioner of the Superior Court for a hearing to determine the amount of fees and/or costs that are statutorily required under the Delaware False Claims and Reporting Act.

II. FACTS AND PROCEDURAL HISTORY

This action results from an Administrative Disqualification Hearing Decision issued on August 18, 2017.⁴ The Fair Hearing Officer found that “the allegations of fraud were established through clear and convincing evidence.”⁵ Specifically, the allegations of fraud in the matter below were that Defendant “falsified numerous documents by claiming [Defendant] lived alone and received no income when she lived with other household residents and did receive income.”⁶ Defendant did not appeal the decision. On January 12, 2018, Plaintiff filed a Complaint in this Court against Defendant alleging that “the Defendant violated the Delaware False Claims and Reporting Act 6 *Del. C.* §§ 1201 *et seq.* by using fraud to obtain food benefits from the State.”⁷

Plaintiff is seeking “monetary damages and civil penalties arising from fraudulently obtaining government benefits in violation of Delaware common law

¹ Pl.’s Compl. at 1.

² Pl.’s Mot. For J. on the Pleadings at 2.

³ Def.’s Answ. at 14; *See also* Pl.’s Mot. For J. on the Pleadings at 3.

⁴ Pl.’s Mot. For J. on the Pleadings at 2.

⁵ *Id.* at 6.

⁶ Pl.’s Compl. at 6.

⁷ Pl.’s Mot for J. on the Pleadings at 2.

and the Delaware False Claims and Reporting Act, 6 *Del. C.* §§ 1201, *et seq.* (“DFCRA”). Defendant admitted all factual allegations in the Answer, but raised an affirmative defense that “Plaintiff’s claims are barred by federal pre-emption and precluded by the provisions of the Food Stamp Act [].”⁸ Plaintiff then filed this instant motion for judgment on the pleadings.

III. THE PARTIES’ CONTENTIONS

A. *Plaintiff’s Contentions*

Plaintiff asserts that it “is entitled to Judgment on the Pleadings due to the absence of contrary legal rationale and the absence of questions of material fact.”⁹ Additionally, Plaintiff asserts that “Defendant is without legal basis to challenge the factual findings of the Fair Hearing Officer who issued a decision in this matter on August 18, 2017.”¹⁰ Plaintiff points out that Defendant admits the factual claims in the Complaint.¹¹

In response to Defendant’s argument regarding implied pre-emption, the Plaintiff asserts “[n]othing contained within the Response shows that the Food Stamp Act precludes the State from using state-level civil fraud remedies against those who commit fraud against the State.”¹² Plaintiff argues that the statute is a civil sanction for committing fraud against the State, and that as a consequence, the Department of Justice (DOJ) has jurisdiction. “Federal oversight of a different state agency’s welfare benefits distribution does not preclude the DOJ from enforcing civil fraud statutes.”

B. *Defendant’s Contentions*

Defendant asserts that “Plaintiff is not entitled to judgment on the pleadings because Plaintiff’s civil fraud action is barred under the doctrine of pre-emption.”¹³ The legal doctrine of pre-emption is grounded in the Supremacy Clause of the U.S.

⁸ Def.’s Answ. at 14.

⁹ Pl.’s Mot. For J. on the Pleadings at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² Pl.’s Reply in Support of its Mot. For J. on the Pleadings at 1.

¹³ Def.’s Resp. to Pl.’s Mot. For J. on the Pleadings at 1.

Constitution.¹⁴ Specifically, Defendant contends that Plaintiff's civil fraud action is "prohibited by implied conflict pre-emption, as it creates a direct conflict with federal law and thwarts Congressional purpose."¹⁵ Defendant clarifies and argues that the pre-emption in this matter is implied and not explicit.¹⁶

Defendant claims that "food stamp overpayments are federal debts"¹⁷ and that "the federal government sets boundaries within which states may exercise their enforcement authority[;]"¹⁸ however, "a state may not alter the federally-prescribed consequences for [Intentional Program Violations] by imposing greater financial penalties or longer disqualification periods."¹⁹ Last, Defendant claims that "Plaintiff does not have the authority to impose an alternate disqualification period. [Thus], Plaintiff's request for an injunction effectively imposes an additional eligibility requirement in violation of the [Food and Nutrition Service of the U.S. Dept. of Agriculture] and implementing regulations."²⁰

IV. STANDARD OF REVIEW

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings."²¹ "On such a motion, the Court must accept all well-pled facts in the complaint as true and construe all reasonable inferences in favor of the non-moving party."²² "The standard for a motion for judgment on the pleadings is 'almost identical' to the standard for a motion to dismiss."²³ The Court will grant a motion for judgment on the pleadings "when no material issues of fact exist, and the moving party is entitled to judgment as a matter of law."²⁴

¹⁴ Art. VI, cl. 2; See *Gade v. National Solid Wastes Management Ass'n*, 505 U.S. 88, 108 (1992). ("[A]ny state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield.").

¹⁵ Def.'s Resp. to Pl.'s Mot. For J. on the Pleadings at 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 1-2.

¹⁹ *Id.* at 2.

²⁰ *Id.* at 3.

²¹ Del. Super. Ct. Civ. R. 12(c).

²² *Blanco v. AMVAC Chem. Corp.*, 2012 WL 3194412, at *6 (Del. Super. Aug. 8, 2012).

²³ *Id.* (internal citations omitted).

²⁴ *Velocity Exp., Inc. v. Office Depot, Inc.*, 2009 WL 406807, at *3 (Del. Super. Feb. 4, 2009).

V. DISCUSSION

A. Plaintiff's Motion for Judgment on the Pleadings is Granted due to the Lack of Disputed Material Issues of Fact and the Absence of Conflict Between State and Federal Law.

Accepting all of the well-pled facts as true and construing all reasonable interferences in favor of Defendant, Plaintiff is entitled to judgment as a matter of law. “Normally factual statements in the pleadings are considered conclusive unless they are amended or withdrawn.”²⁵ After a review of the pleadings, it is apparent to the Court that there are no material issues of fact in dispute.

Plaintiff asserts that Defendant is without legal basis to challenge the decision made by the Fair Hearing Officer on August 28, 2017.²⁶ Defendant asserts that Plaintiff's civil fraud action is barred under the doctrine of implied pre-emption, which, Defendant asserts, “creates a direct conflict with federal law and thwarts Congressional purpose.”²⁷ This Court finds that no such implied conflict exists. The Federal Food Stamp Act does not preempt the Delaware False Claims Reporting Act because DCFRA is a statute enforcing civil sanctions.

Generally, there are two forms of implied conflict preemption: (1) “impossibility conflict” exists “when a party is subjected to two or more sets of regulation and cannot comply with both”²⁸ and (2) “frustration of federal objective” exists when the application of conflicting state law would “prevent or frustrate the accomplishment of a federal objective.”²⁹ If preemption is meant to prevent frustration of Congressional intent or objection, then the Federal Code section regarding additional civil and criminal penalties belies Defendant's assertion that Congress intended individual states to limit its enforcement of fraud. The relevant code section reads “[s]tate agencies shall also encourage State and local prosecutors

²⁵ *Ervin v. Vesnaver*, 2000 WL 1211201, at *2 (Del. Super. June 20, 2000) (citing 29A Am.Jur.2d, *Evidence*, § 775).

²⁶ Pl.'s Mot. For J. on the Pleadings at 2.

²⁷ Def.'s Resp. to Pl.'s Mot. For J. on the Pleadings at 1.

²⁸ Martin A. Kotler, *Tort Reform and Implied Conflict Preemption*, 44 J. Marshall L. Rev. 827, 863 (2011).

²⁹ *Id.*; see also *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873 (2000).

to recommend to the courts that a disqualification penalty as provided in section 6(b) of the Food Stamp Act be imposed **in addition to** any other civil or criminal penalties for such violations.”³⁰ Therefore, the federal code section referencing the available remedies under the Food Stamp Act contemplates additional remedies the state can seek in addition to an administrative disqualification hearing.

The cases cited by the parties are analogous at best; neither party has cited a case squarely on point regarding this implied pre-emption issue from any other jurisdiction. It may be that no such case exists, as the parties suggest. However, in resolving this matter, *U.S. v. Byrd* is instructive.³¹ In *Byrd*, the Government filed suit in federal court for violation of the False Claims Act based on defendant’s illegal redemption of food stamps. As Plaintiff states, “[t]he issue of preemption did not arise in *Byrd*; but it is difficult to understand why the government could not bring a state False Claims Act claim against the Defendant but could bring a federal False Claims Act against the Defendant.”³²

Plaintiff relies on 7 C.F.R. § 271.4(b) to substantiate that federal regulations delegate the authority to pursue collection efforts to state agencies.³³ The regulation is set forth below.

7 C.F.R. § 271.4(b):

(b) Claims delegation.

[Food and Nutrition Service of the U.S. Dept. of Agriculture] delegates to the State agency, subject to the standards in § 273.18, the authority to determine the amount of, and settle, adjust, compromise or deny all or part of any claim which results from fraudulent or nonfraudulent overissuances to participating households.³⁴

7 C.F.R. § 271.4(b) speaks to the ability of state agencies to pursue collection efforts. This Court finds this regulation to be squarely on point in this matter and finds the language of this regulation to be quite persuasive. However, this does not address the conflict the Defendant suggests.³⁵

Defendants rely on language within 7 U.S.C. § 2015(b)(2) to assert that such language precludes the State of Delaware from seeking an additional remedy in this

³⁰ 7 C.F.R. § 273.16(g)(1)(ii) (emphasis added).

³¹ *U.S. v. Byrd*, 100 F. Supp.2d 342 (E.D.N.C. 2000).

³² Pl.’s Mot. For J. on the Pleadings at 5.

³³ *Id.* at 3.

³⁴ 7 C.F.R. § 271.4(b).

³⁵ Def.’s Resp. at 4.

Court as the language in 7 U.S.C. § 2015(b)(2) supposedly runs counter to the language of 7 C.F.R. § 273.16(g)(1)(ii). Both laws are set forth below.

7 U.S.C. § 2015(b)(2):

Each State agency shall proceed against an individual alleged to have engaged in such activity either by way of administrative hearings, after notice and an opportunity for a hearing at the State level, or by referring such matters to appropriate authorities for civil or criminal action in a court of law.³⁶

7 C.F.R. § 273.16(g)(1)(ii):

State agencies are encouraged to refer for prosecution under State or local statutes those individuals suspected of committing intentional Program violation, particularly if large amounts of [Food Stamp] benefits are suspected of having been obtained by intentional Program violation, or the individual is suspected of committing more than one act of intentional Program violation. The State agency shall confer with its legal representative to determine the types of cases which will be accepted for possible prosecution. State agencies shall also encourage State and local prosecutors to recommend to the courts that a disqualification penalty as provided in section 6(b) of the Food and Nutrition Act of 2008 be imposed in addition to any other civil or criminal penalties for such violations.³⁷

7 C.F.R. § 273.16 speaks directly to the federal Food Stamp administrative disqualification. The State of Delaware, in seeking a civil penalty against Defendant in this Court, is following the guidance of the federal food stamp regulations pursuant to 7 C.F.R. § 273.16(g)(1)(ii) and such relief sought is not “directly conflict[ing] with binding federal law” as Defendant claims.³⁸

Defendant’s reliance on the suggestive language of the disqualification regulation for Intentional Program Violations in 7 C.F.R. § 273.16 does not mandate this Court’s dismissal of the State’s action following an administrative hearing. Defendant cites to 7 C.F.R. § 273.16(1)(1) for the proposition “[t]he State agency *should* conduct administrative disqualification hearings in cases in which the State agency *believes* the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system[.]”³⁹ Defendant fails to rebut such circumstances when, as apparently here, a “State agency believes the facts of [an]

³⁶ 7 U.S.C. § 2015(b)(2)

³⁷ 7 C.F.R. § 273.16(g)(1)(ii)

³⁸ Def.’s Resp. at 4.

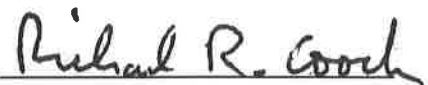
³⁹ *Id.* (emphasis added).

individual case” do, in fact, “warrant civil or criminal prosecution” through the courts.⁴⁰

VI. CONCLUSION

The Court finds that Plaintiff is entitled to judgment on the pleadings. There are no issues of material fact. In fact, Defendant has admitted to the conduct alleged in the Complaint.⁴¹ Accordingly, Plaintiff’s Motion for Judgment on the Pleadings is **GRANTED**. Pursuant to Del. C. § 512 and Superior Court Civil Rule 132, the matter shall be referred to a Commissioner of the Superior Court for a hearing to determine the amount of all fees and/or costs owed by Defendant pursuant to 6 Del. C. §1201(a).⁴²

IT IS SO ORDERED.


Richard R. Cooch, J.

cc: Prothonotary

⁴⁰ *See Id.*

⁴¹ Pl.’s Mot. For J. on the Pleadings at 1.

⁴² Defendant’s request for separate briefing on the number of counts Plaintiff claims will be addressed by the Commissioner.