

463 U.S. 1, 77 L.Ed.2d 420

**FRANCHISE TAX BOARD OF THE
STATE OF CALIFORNIA,
Appellant,**

v.

**CONSTRUCTION LABORERS VACA-
TION TRUST FOR SOUTHERN
CALIFORNIA et al.**

No. 82-695.

Argued April 19, 1983.

Decided June 24, 1983.

The California Franchise Tax Board levied against money held in trust for three union members by welfare benefit trust seeking to collect unpaid personal income tax. When trustees refused to pay over money owed, the State brought action for declaratory relief. The United States District Court for the Central District of California, Manuel L. Real, J., found that trust was not protected from levy, and the trust appealed. The Court of Appeals, Goodwin, Circuit Judge, 679 F.2d 1307, vacated and remanded, and appeal was taken. The Supreme Court, Justice Brennan, held that suit by state against welfare benefit trust seeking to collect taxes was not removable to federal court on basis of the question of whether the Employee Retirement Income Security Act preempted the state's power to levy on funds held in trust.

Vacated and remanded.

1. Removal of Cases ⇐11

The federal court does not have original jurisdiction over a case in which the complaint presents a state law cause of action, but also asserts that federal law deprives defendant of a defense he may raise or that a federal defense the defendant may raise is not sufficient to defeat the claim.

2. Removal of Cases ⇐25(1)

Under the well-pleaded complaint rule, a defendant may not remove a case where there is not diversity of citizenship between parties unless the plaintiff's complaint establishes that the case arises under federal law.

3. Removal of Cases ⇐19(1)

California Franchise Tax Board's first cause of action against welfare benefit trust stating that trust had failed to comply with certain tax levies issued under California law, thereby becoming liable for damages for such failure was not subject to removal since California law established a set of conditions, without reference to federal law, under which tax levy may be enforced, federal law became relevant only by way of defense to an obligation created entirely by state law, and both parties were residents of California. 28 U.S.C.A. § 1331; West's Ann.Cal.Rev. & T.Code § 18818.

4. Declaratory Judgment ⇐272

Federal courts do not have original jurisdiction, nor do they acquire jurisdiction on removal, when federal question is presented by complaint for a state declaratory judgment, and where, if plaintiff had sought federal declaratory judgment, federal jurisdiction would be barred by the United States Supreme Court decision in *Skelly Oil Co. v. Phillips Petroleum Co.* under which federal jurisdiction is lacking if, but for availability of federal declaratory judgment procedure, federal claim would arise only as a defense to state-created action.

5. Constitutional Law ⇐56

It is not beyond the power of Congress to confer a right to a declaratory judgment in a case or controversy arising under federal law without regard to *Skelly Oil's* particular application of the well-pleaded complaint rule.

6. Removal of Cases ⇐25(1)

California Franchise Tax Board's second cause of action against welfare benefit trust in which it contended that Employee Retirement Income Security Act preempted the state law and that trustees lacked power to honor levies and requiring that judgment be issued against parties' respective rights could not be removed to federal courts since situation presented by State's suit for declaration of validity of state law was sufficiently removed from spirit of ne-

cessity and careful limitation on federal district court jurisdiction to convince the Supreme Court that, until Congress informed it otherwise, such a suit was not within the district courts' original jurisdiction. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

7. Removal of Cases ⇐25(1)

A plaintiff may not defeat removal by omitting to plead necessary federal questions in a complaint.

8. Removal of Cases ⇐11

A suit by California Franchise Tax Board against welfare benefit trust seeking to collect taxes did not "arise under" the Employee Retirement Income Security Act of 1974 as State's right to enforce its tax levies is not an essential concern to the federal statute, and thus, action was not subject to removal to federal court. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

Syllabus *

Appellee Construction Laborers Vacation Trust for Southern California (CLVT) was established by an agreement between construction industry employer associations and a labor union to provide a mechanism for administering the provisions of a collective-bargaining agreement granting construction workers a yearly paid vacation. The trust qualifies as a "welfare benefit plan" within the meaning of § 3 of the Employee Retirement Income Security Act of 1974 (ERISA), and hence is subject to regulation under ERISA. Appellant California Franchise Tax Board filed a complaint in California state court against CLVT and its trustees, alleging two causes of action: (1) that CLVT had failed to comply with certain tax levies issued under a California statute, thereby becoming liable for damages for such failure, and (2) that, in view of the defendants' contention that ERISA pre-empted state law and that the

trustees lacked power to honor the levies, a judgment be issued declaring the parties' respective rights. CLVT removed the case to Federal District Court, which, after denying appellant's motion for remand to the state court, held that ERISA did not preempt the State's power to levy on the funds held in trust by CLVT. The Court of Appeals reversed.

Held: The case is not within the removal jurisdiction conferred by 28 U.S.C. § 1441. Pp. 2845 - 2856.

1(a) Where there is no diversity of citizenship between the parties, as in this case, the propriety of removal turns on whether the case falls within the original "federal question" jurisdiction of United States district courts under 28 U.S.C. § 1331 (1976 ed., Supp. V). Under the "well-pleaded complaint" rule, a defendant may not remove such a case to federal court unless the *plaintiff's* complaint establishes that the case "arises under" federal law within the meaning of § 1331, and it may not be removed on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the complaint and both parties admit that the defense is the only question truly at issue. Pp. 2845 - 2848.

(b) For appellant's first cause of action, a straightforward application of the well-pleaded complaint rule precludes original federal-court jurisdiction, and thus the cause of action was not removable. California law establishes a set of conditions, without reference to federal law, under which a tax levy may be enforced; federal law becomes relevant only by way of a defense to an obligation created entirely by state law, and then only if appellant has made out a valid claim for relief under state law. Pp. 2848 - 2849.

(c) Nor is appellant's second cause of action removable to federal court. Under the federal jurisdictional statutes, federal courts do not have original jurisdiction, nor do they acquire jurisdiction on removal,

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the

reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

nor the defendant's factual failure to comply are in dispute, and both parties admit that the only question for decision is raised by a federal pre-emption defense. Nevertheless, it has been correctly understood to apply in such situations.¹¹ As we said in *Gully*: "By unimpeachable authority, a suit brought upon a state statute does not arise under an act of Congress or the Constitution of the United States because prohibited thereby." *Id.*, at 116, 57 S.Ct., at 99.¹²

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Simply to state these principles is not to apply them to the case at hand. Appellant's complaint sets forth two "causes of action," one of which expressly refers to ERISA; if either comes within the original jurisdiction of the federal courts, removal was proper as to the whole case. See 28 U.S.C. § 1441(c). Although appellant's complaint does not specifically assert any particular statutory entitlement for the relief it seeks, the language of the complaint suggests (and the parties do not dispute) that appellant's "first cause of action" states a claim under Cal.Rev. & Tax.Code Ann. § 18818 (West Supp. 1983), see *supra*, at 2844, and its "second cause of action" states a claim under California's Declaratory Judgment Act, Cal.Civ.Proc.Code § 1060 (West 1980). As an initial proposition, then, the "law that creates the cause of action" is state law, and original federal jurisdiction is unavailable unless it appears that some substantial, disputed question of federal law is a necessary element of one of the well-pleaded state claims, or that one or the other claim is "really" one of federal law.

11. *E.g.*, *Trent Realty Associates v. First Federal Savings & Loan Assn.*, 657 F.2d 29, 34-35 (CA3 1981); *First National Bank of Aberdeen v. Aberdeen National Bank*, 627 F.2d 843, 850-852 (CA8 1980); *Washington v. American League of Professional Baseball Clubs*, 460 F.2d 654, 660 (CA9 1972); cf. *First Federal Savings & Loan Assn. of Boston v. Greenwald*, 591 F.2d 417, 422-423 (CA1 1979).

12. Note, however, that a claim of federal pre-emption does not always arise as a defense to a

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[3] Even though state law creates appellant's causes of action, its case might still "arise under" the laws of the United States if a well-pleaded complaint established that its right to relief under state law requires resolution of a substantial question of federal law in dispute between the parties. For appellant's first cause of action—to enforce its levy, under § 18818—a straightforward application of the well-pleaded complaint rule precludes original federal-court jurisdiction. California law establishes a set of conditions, without reference to federal law, under which a tax levy may be enforced; federal law becomes relevant only by way of a defense to an obligation created entirely by state law, and then only if appellant has made out a valid claim for relief under state law. See *supra*, at 2847-2848. The well-pleaded complaint rule was framed to deal with precisely such a situation. As we discuss 114 above, since 1887 it has been settled law that a case may not be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case.

Appellant's declaratory judgment action poses a more difficult problem. Whereas the question of federal pre-emption is relevant to appellant's first cause of action only as a potential defense, it is a necessary element of the declaratory judgment claim. Under Cal.Civ.Proc.Code Ann. § 1060 (West 1980), a party with an inter-

coercive action. See n. 20, *infra*. And, of course, the absence of original jurisdiction does not mean that there is no federal forum in which a pre-emption defense may be heard. If the state courts reject a claim of federal preemption, that decision may ultimately be reviewed on appeal by this Court. See, *e.g.*, *Fidelity Federal Savings & Loan Assn. v. De la Cuesta*, 458 U.S. 141, 102 S.Ct. 3014, 73 L.Ed.2d 664 (1982) (deciding pre-emption question at issue in *Trent Realty, supra*).