

Defendants claim that this action was properly removed to this court because this court has "original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States. . . ." 28 U.S.C. § 1441(b). "The presence or absence of federal question jurisdiction is governed by the well-pleaded complaint rule. That rule provides that federal question jurisdiction exists only when the plaintiff's own cause of action is based on federal law, . . . , and only when plaintiff's well-pleaded complaint raises issues of federal law. . . ." Marcus v. AT&T Corp., 138 F.3d 46, 52 (2d Cir. 1998) (citations omitted). "Under the well-pleaded complaint rule, the plaintiff is the master of the complaint, free to avoid federal jurisdiction by pleading only state claims even where a federal claim is also available." Id.

The Court of Appeals for the Second Circuit has held that, where the plaintiff has the option of asserting a claim under either federal or state law, and the complaint does not manifestly state whether the plaintiff intends to rely on state or federal law, the plaintiff's intentions are relevant to determining whether remand to state court is warranted. See Vitarroz Corp. v. Borden, Inc., 644 F.2d 960, 964 (2d Cir. 1981). In Vitarroz, the Court of Appeals held that, because the plaintiff never contested removal of the action to federal court, "the [district court] was entitled to conclude that the plaintiff

was willing to see its trademark infringement claim treated as one based on federal law." Id. In so holding, however, the Court of Appeals stated that a different result would have been mandated had the plaintiff promptly posed an objection to removal to federal court. See id.

Applying the reasoning of the Court of Appeals as set forth in Vitarroz, this case must be remanded to the Superior Court. The complaint, which mentions certain federal anti-discrimination statutes in passing, does not expressly state that plaintiffs intend to state a claim under these statutes, nor does it specifically claim relief under federal law. Because the complaint is ambiguous, plaintiffs' intentions are relevant to determining whether remand is mandated. Here, plaintiffs' intentions are clear. The CHRO has promptly moved to remand the case to the Superior Court. Significantly, the CHRO also points out that, by operation of state statute, Conn. Gen. Stat. § 46a-89(b), it lacks the authority to bring an action in federal court on behalf of a relator. All evidence indicates that plaintiffs intended to restrict their claims to state law. Therefore, because plaintiffs exclusively rely upon state law, there is no subject matter jurisdiction over the claims set forth in the complaint.

For these reasons, the CHRO's motion to remand (dkt. # 23) is **GRANTED**, and this action is **REMANDED** to the Superior Court of the State of Connecticut, Judicial District of New Haven, forthwith. The Clerk of the Court shall close this file.

So ordered this ____ day of December, 2003.

/s/

DOMINIC J. SQUATRITO
UNITED STATES DISTRICT JUDGE