

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

PORTS AMERICA GULFPORT, INC.

CIVIL ACTION

VERSUS

NO. 22-455

HONORABLE RACHAEL JOHNSON,
ET AL.

SECTION “R” (1)

ORDER AND REASONS

Before the Court are two motions to dismiss, filed respectively by defendant Judge Rachael Johnson,¹ and intervenor-defendants Jeanne Gethers Ehlers and Lisa Gethers Armour.² Plaintiff Ports America Gulfport, Inc. (“Ports America”) opposes both motions.³ Also before the Court is Ports America’s *ex parte* motion for a voluntary partial dismissal of certain claims.⁴

For the foregoing reasons, the Court grants Ports America’s motion to dismiss certain claims, and grants defendant’s and intervenors’ motions to dismiss as to the remaining claim. The Court accordingly dismisses plaintiff’s complaint.

¹ R. Doc. 30.

² R. Doc. 21.

³ R. Docs. 29, 34 & 46.

⁴ R. Doc. 43.

I. BACKGROUND

Plaintiff Ports America is a defendant in a Louisiana state-court case, captioned *Ehlers, et al. v Ports America Gulfport, Inc.*, bearing case number 2021-2151. In the state case, plaintiffs allege that the decedent, on whose behalf they bring suit, contracted and died from mesothelioma as a result of exposure to asbestos while working as a longshoreman for Ports America.⁵ The state trial is set to begin on March 21, 2022.⁶ Ports America moved in state court for summary judgment, on the grounds that section 905(a) of the Longshore Harbor Workers’ Compensation Act (“LHWCA”) preempted plaintiffs’ state tort claims against it.⁷ On February 17, 2022, Judge Rachael Johnson denied Ports America’s motion.⁸

Five days later, Ports America filed suit against Judge Johnson in this Court, seeking declaratory and injunctive relief.⁹ Ports America asks this Court to: (1) “[d]eclare that the state tort remedies sought by [the state] plaintiffs . . . are in conflict with prevailing federal law,” and “are preempted and supplanted by the exclusive rights and remedies afforded by the

⁵ R. Doc. 13 at 1-2; R. Doc. 13-3 at 30 ¶ 2.B.7.

⁶ R. Doc. 13-4 (Notice of Trial).

⁷ R. Doc. 25 ¶ 17 (Amended Complaint).

⁸ *Id.*

⁹ R. Doc. 1.

LHCWA”; and (2) enjoin the state proceedings, and the enforcement of any final judgment rendered on the merits against Ports America.¹⁰

Ports America simultaneously moved for a preliminary injunction of the state proceedings, and of the enforcement of any final state-court judgment.¹¹ On March 11, 2022, the Court denied Ports America’s motion, finding that: (i) it had not shown a likelihood of success on the merits; (ii) it had not shown that it would suffer irreparable harm absent an injunction; and (iii) the public interest was not served by an injunction.¹²

On March 15, 2022, plaintiff filed a motion for voluntary partial dismissal of certain claims.¹³ It represents that, because the Court found in its preliminary-injunction order that Ports America could not show that it meets an exception to the Anti-Injunction Act, it seeks to dismiss its claims for injunctive and declaratory relief “directed towards the ongoing state court suit.”¹⁴ Ports America seeks to “reserve[] and retain[] its claims for prospective declaratory relief,” namely its request that this Court declare, “prospective[ly] only,” that “state tort remedies are preempted and

¹⁰ R. Doc. 25 at 14-15 (Amended Complaint).

¹¹ R. Docs. 3, 13 & 28.

¹² R.Doc. 39.

¹³ R. Doc. 43.

¹⁴ *Id.* at 1.

supplanted by the LHWCA with respect to claims brought by employers where the LHWCA is applicable.”¹⁵

Meanwhile, defendant and intervenors each move to dismiss plaintiff’s claims, citing, among other arguments, the Eleventh Amendment, judicial immunity, the Anti-Injunction Act, the *Younger* abstention doctrine, and the *Rooker-Feldman* doctrine.¹⁶ Plaintiff opposes both motions.

The Court considers the motions below.¹⁷

II. DISCUSSION

A. *Ex Parte* Motion to Dismiss Certain Claims

First, the Court grants Ports America’s *ex parte* motion for voluntary dismissal of certain claims.¹⁸ Recognizing that the Court found that the injunctive relief it seeks is unavailable, Ports America seeks to voluntarily dismiss its claims seeking relief that is “directed towards the ongoing state court suit.”¹⁹ In its supplemental memorandum in opposition to the motions to dismiss, Ports America explains that it intends to continue pursuing only its request that the Court “declare that the state tort remedies sought by

¹⁵ *Id.*

¹⁶ R. Docs. 21 & 30.

¹⁷ R. Docs. 29, 34 & 46.

¹⁸ R. Doc. 43.

¹⁹ *Id.* at 1.

plaintiff in [the state-court case] are preempted and supplanted by the exclusive rights and remedies afforded by the LHWCA, prospectively only.”²⁰ Accordingly, the Court construes Ports America’s *ex parte* motion as seeking dismissal of all other claims for relief, except the claim so identified.

The Court grants Ports America’s motion as construed, and dismisses all of Ports America’s claims except its request for a prospective declaration that the state tort remedies sought by the state plaintiffs are “preempted and supplanted” by the LHWCA. The Court considers this remaining claim below.

B. Claim for “Prospective” Declaratory Relief

To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead enough facts to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678. The Court must accept all well-pleaded facts as true and must draw all reasonable inferences in favor of the plaintiff. *Lormand v. U.S. Unwired, Inc.*, 565 F.3d

²⁰ R. Doc. 46 at 1 (quoting R. Doc. 25 at 15).

228, 239, 244 (5th Cir. 2009). But the Court is not bound to accept as true legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678.

Having dismissed plaintiff's other claims, the only claim still subject to defendant's and intervenors' motions to dismiss is Ports America's request that this Court prospectively declare that the state-court plaintiffs' state tort remedies are "preempted and supplanted by the exclusive rights and remedies afforded by the LHWCA."²¹ The Court finds that this claim must be dismissed as well.

In its order denying plaintiff's motion for a preliminary injunction, the Court found that the injunctive relief sought by Ports America was precluded by the Anti-Injunction Act, 28 U.S.C. § 2283, and that, therefore, the Court could not enjoin the ongoing state proceedings.²² In so finding, the Court cited *Texas Employers' Insurance Ass'n v. Jackson*, 862 F.2d 491, 498 (5th Cir. 1988), in which the Fifth Circuit rejected the proposition that the LHWCA's exclusivity provision satisfies the express-authorization exception to the Anti-Injunction Act. There, the Fifth Circuit explained that "nothing in section [905(a)] purports to grant anyone a right or remedy 'enforceable in a federal court of equity.'" *Id.* at 504. While section 905(a) "may indeed

²¹ R. Doc. 25 at 15; R. Doc. 46 at 1.

²² R. Doc. 39 at 3-6.

provide a basis for [the employer’s] claims that [the] state law claims are preempted by the LHWCA, . . . that does not suffice to avoid the bar of section 2283.” *Id.*

It is for these reasons, in part, that Ports America has now sought voluntary dismissal of its claims for injunctive relief directed at the state proceedings. However, in *Texas Employers*, the Fifth Circuit also considered the plaintiff-employer’s claim for *declaratory* relief. Specifically, the court addressed the employer’s “request for [a] declaratory judgment that the [state plaintiff’s] state suit claims were all invalid because [they were] preempted by the LHWCA.” *Id.* at 504-05. The Fifth Circuit rejected the claim, and held that, if injunctive relief is precluded by the Act, so too is declaratory relief. It explained that, “[t]o allow declaratory relief in these circumstances would be to transform section 2283 from a pillar of federalism reflecting the fundamental constitutional independence of the states and their courts, to an anachronistic, minor technicality, easily avoided by mere nomenclature or procedural sleight of hand.” *Id.* at 505.

Here, Ports America seeks a “prospective” declaratory judgment that the state-court plaintiffs’ state tort claims are preempted by the LHWCA. But the Fifth Circuit’s reasoning in *Texas Employers* persuades this Court that such declaratory relief is not available. And this is a sensible result: as the

Supreme Court explained in *Samuels v. Mackell*, “ordinarily a declaratory judgment will result in precisely the same interference with and disruption of state proceedings that the long-standing policy limiting injunctions was designed to avoid.” 401 U.S. 66, 72 (1971). For instance, the Declaratory Judgment Act permits a district court to enforce a declaratory judgment by granting “[f]urther necessary or proper relief,” 28 U.S.C. § 2202, such as the issuance of an injunction. In this sense, “declaratory relief . . . has virtually the same practical impact as a formal injunction would.” *Samuels*, 401 U.S. at 72. Indeed, Ports America concedes that it contemplates such a scenario, when it states that “this Court might issue declaratory relief instead of and/or in addition to injunctive relief . . . , and then injunctive [relief] under § 1983 . . . might appropriately follow if the declaratory decree is subsequently violated.”²³ It is clear that granting plaintiff’s requested declaratory relief, even fashioned as “prospective only,” would have the effect of impermissibly interfering with the ongoing state proceedings. Quite plainly, it is for precisely this purpose that Ports America brought this action in the first place—to enlist a federal court to help it prevail on its LHWCA preemption claim in the pending state suit. Entertaining this maneuver would amount to a “perversion of the purpose of declaratory judgment

²³ R. Doc. 34 at 11.

legislation” by allowing it to be “used to anticipate the result of litigation pending in another forum.” *Tex. Empls.’ Ins. Ass’n*, 862 F.2d 506 (quoting *H.J. Heinz Co. v. Owens*, 189 F.2d 505, 508 (9th Cir. 1951), *cert. denied*, 342 U.S. 905 (1952)).

Accordingly, for the purposes of the Anti-Injunction Act, the Court finds no reason to treat plaintiff’s claims for declaratory relief any differently than its claims for injunctive relief. *See id.* at 508 (“[W]here a state proceeding exists that was pending at the time suit was filed in federal court[,], the federal court should ordinarily decline to render either declaratory or injunctive relief.” (quoting *Perez v. Ledesma*, 401 U.S. 82, 117, (1971) (Brennan, J., concurring in part)); *Chandler v. O’Bryan*, 445 F.2d 1045, 1058 (10th Cir. 1971), *cert. denied*, 405 U.S. 964 (1972) (“[W]here an injunction is improper under § 2283, declaratory relief should not be given . . .”). Because a denial of declaratory relief “prevents the emasculat[i]on of section 2283 and accommodates the concerns of comity and federalism which underlie it,” *Tex. Empls.’ Ins. Ass’n*, 862 F.2d at 508, the Court grants defendant’s and intervenors’ motions to dismiss, and dismisses Ports America’s remaining claim for declaratory relief.

Having found that the relief that Ports America seeks is unavailable, the Court need not reach movants’ other arguments. The Court finds that

the Anti-Injunction Act, the Fifth Circuit's decision *Texas Employers*, the Supreme Court's decision in *Samuels v. Mackell*, and fundamental principles of comity and federalism collectively compel the dismissal of plaintiff's claim for declaratory relief.

All of plaintiffs' claims have thus been dismissed. The Court therefore dismisses plaintiff's complaint.

III. CONCLUSION

For the foregoing reasons, the Court GRANTS plaintiff's motion for voluntary dismissal of certain claims,²⁴ and GRANTS defendant's²⁵ and intervenors'²⁶ motions to dismiss, insofar as they seek dismissal of plaintiff's claim for prospective declaratory relief. Plaintiff's complaint is hereby DISMISSED.

New Orleans, Louisiana, this 17th day of March, 2022.



SARAH S. VANCE
UNITED STATES DISTRICT JUDGE

²⁴ R. Doc. 43.

²⁵ R. Doc. 30.

²⁶ R. Doc. 21.