

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
NORTH CAROLINA

Coastal Federal Credit Union v. Sherman Joseph aka Sherman
Sherwin Joseph, et al.

Coastal Federal Credit Union v. Joseph · No. 5:25-CV-556-BO · Decided March 27, 2026

SUMMARY

The United States District Court for the Eastern District of North Carolina grants Coastal Federal Credit Union's amended motion to remand a foreclosure action to Wake County Superior Court. The court concludes that the defendants' removal was untimely and that their extensive participation in the state-court proceedings waived any right to remove. The court rejects reliance on references to the Americans with Disabilities Act as a basis for federal-question jurisdiction and remands the action in its entirety.

CASE DETAILS

COURT	United States District Court for the Eastern District of North Carolina
WRITING FOR THE COURT	Terrence W. Boyle
JURISDICTION	United States District Court for the Eastern District of North Carolina
DECIDED	March 27, 2026
DOCKET	5:25-CV-556-BO
DISPOSITION	remanded
PROCEDURAL POSTURE	Defendants removed a North Carolina foreclosure action to federal court. The plaintiff moved to remand, arguing that removal was untimely and procedurally defective. The district court granted the amended motion and remanded the action to Wake County Superior Court.
STANDARD OF REVIEW	The court reviewed the propriety and timeliness of removal and whether remand was required under 28 U.S.C. § 1447(c).
PRECEDENTIAL VALUE	Unpublished federal district court opinion
PARTIES	DeNey Joseph, Sherman Joseph aka Sherman Sherwin Joseph, other defendants v. Coastal Federal Credit Union

TOPICS

civil procedure

foreclosure

waiver

default

motions to dismiss

PRACTICE AREAS

civil procedure

foreclosure

removal and remand

federal jurisdiction

QUESTIONS PRESENTED

1. Whether the defendants timely removed the foreclosure action under 28 U.S.C. §§ 1446(a) and 1446(b) (3).
2. Whether references to the Americans with Disabilities Act or ADA accommodations in a state-court order created a basis for federal removal jurisdiction.
3. Whether the defendants waived the right to remove by substantially litigating and pursuing defensive actions in state court before removal.

HOLDINGS

1. The removal was untimely because the defendants identified no amended pleading, motion, order, or other paper received from which removability first became ascertainable within the applicable thirty-day period.
2. The defendants waived their right to remove by engaging in substantial defensive action in state court for approximately six months before filing the notice of removal.

KEY QUOTATIONS

“That a state court order references the ADA or ADA accommodations provides no grounds for removal of a state court action.” (Discussion)

“Such intent can be demonstrated by “engaging in substantial defensive action in state court before filing a notice of removal.”” (Discussion)

“In other words, the Josephs participated in the state proceeding for six months before they removed the action to this Court. This constitutes waiver.” (Discussion)

FACTUAL BACKGROUND

The plaintiff filed a foreclosure action in Wake County Superior Court in April 2024, and the defendants were served by publication in August 2024. After default and entry of default judgment, the defendants appeared in the state action in January 2025 and pursued numerous motions, an appeal, stays, and an upset bid over the ensuing months. They removed the action to federal court on September 4, 2025, asserting that an August 2025 state-court order concerning Americans with Disabilities Act accommodations made the case removable.

PROCEDURAL HISTORY

Coastal Federal Credit Union commenced a foreclosure action in Wake County Superior Court on April 4, 2024. Defendants were served by publication in August 2024, appeared in the state proceeding in January 2025 after entry of default judgment, and filed multiple motions, an appeal, motions to stay, and an upset bid. They

removed the action on September 4, 2025, invoking 28 U.S.C. § 1443(1), federal-question jurisdiction, and the later-removable-case provision of 28 U.S.C. § 1446(b)(3). The federal court held that removal was untimely and waived by defendants' substantial participation in the state proceedings, and remanded the entire action, including the pending motion to dismiss.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The entire action, including the defendants' pending motion to dismiss, was remanded to the Superior Court for Wake County, North Carolina.

CASES CITED

- Korzinski v. Jackson, 326 F. Supp. 2d 704, 708 (E.D.N.C. 2004)
- Northrop Grumman Tech. Servs., Inc. v. DynCorp Int'l LLC, 865 F.3d 181, 186 (4th Cir. 2017)
- Northrop Grumman Tech. Servs., Inc. v. DynCorp Int'l LLC, 865 F.3d 181, 187 (4th Cir. 2017)
- Lovern v. Gen. Motors Corp., 121 F.3d 160, 163 (4th Cir. 1997)