

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Green Tree Servicing LLC v. Dillard

88 F. Supp. 3d 399 (D.N.J. 2015) · Decided February 27, 2015

SUMMARY

The court granted Green Tree Servicing LLC's unopposed motion to remand a New Jersey mortgage foreclosure action removed by pro se defendants. It held that the state-law foreclosure complaint did not present a federal question and that federal defenses or counterclaims could not establish removal jurisdiction; the case was remanded to the New Jersey Superior Court.

CASE DETAILS

COURT	United States District Court for the District of New Jersey
WRITING FOR THE COURT	Jerome B. Simandle
JURISDICTION	New Jersey
DECIDED	February 27, 2015
DISPOSITION	remanded
PROCEDURAL POSTURE	Defendants removed a New Jersey mortgage-foreclosure action to federal court, and Plaintiff moved unopposed to remand for lack of subject matter jurisdiction.
STANDARD OF REVIEW	The court independently evaluated whether subject matter jurisdiction existed and was required to remand if jurisdiction was lacking under 28 U.S.C. § 1447(c).
PRECEDENTIAL VALUE	Published federal district court opinion

TOPICS

subject matter jurisdiction

foreclosure

mortgages

civil procedure

federalism

PRACTICE AREAS

civil procedure

federal jurisdiction

mortgage foreclosure

QUESTIONS PRESENTED

1. Whether the state-law mortgage-foreclosure complaint presented a federal question sufficient to support removal under 28 U.S.C. § 1331.

2. Whether anticipated federal defenses or federal counterclaims could create federal-question jurisdiction under the well-pleaded complaint rule.
3. Whether Plaintiff's challenge based on the rule of unanimity was timely under 28 U.S.C. § 1447(c).

HOLDINGS

1. The complaint did not present a federal question because it relied exclusively on state law and pleaded no claim under the FDCPA, the Consumer Credit Cost Disclosure Act, or any other federal statute. The federal court therefore lacked subject matter jurisdiction and was required to remand the action.
2. Defendants could not create federal jurisdiction by asserting federal defenses or counterclaims to Plaintiff's state-law foreclosure complaint.
3. Plaintiff waived its procedural challenge based on the rule of unanimity by raising it more than 30 days after removal.

KEY QUOTATIONS

"Absent diversity of citizenship, however, proper removal requires that the underlying state court complaint present a question of federal law." (401)

"Nor can Defendants create federal jurisdiction by asserting federal defenses and/or counterclaims to Plaintiffs state law foreclosure Complaint." (402)

FACTUAL BACKGROUND

Defendants executed a \$190,000 note secured by New Jersey real property, and the note was ultimately assigned to Green Tree Servicing. Defendants allegedly stopped making payments in December 2011. Green Tree filed a state-law mortgage-foreclosure complaint, and Defendants removed it based on anticipated or asserted federal issues involving the FDCPA and the Consumer Credit Cost Disclosure Act.

PROCEDURAL HISTORY

Green Tree Servicing filed a mortgage-foreclosure complaint in the Superior Court of New Jersey, Chancery Division, Camden County. Defendants removed the action on the asserted basis of federal-question jurisdiction, contending that anticipated federal defenses or counterclaims involving the FDCPA and federal consumer-credit law created jurisdiction. The District of New Jersey granted Plaintiff's motion to remand, remanded the case to state court, and directed the Clerk to close the federal case.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The action was remanded to the Superior Court of New Jersey, Chancery Division, Camden County, under Docket No. CAM-F-042641-14. The Clerk was directed to close the federal case.

CASES CITED

- Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987)
- Beneficial National Bank v. Anderson, 539 U.S. 1, 6 (2003)
- Rivet v. Regions Bank of Louisiana, 522 U.S. 470, 475 (1998)
- Merrell Dow Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804, 813 (1986)
- Bank of New York Mellon Trust Co., N.A. v. Poczobut, No. 13-3303, 2013 WL 4012561, at *2 (D.N.J. Aug. 5, 2013)
- HSBC Bank USA, N.A. v. Brown, No. 13-7439, 2014 WL 5361933, at *2 (D.N.J. Oct. 21, 2014)
- Wells Fargo Bank, N.A. v. Mastoris, No. 13-5008, 2013 WL 6154531, at *4-*6 (D.N.J. Nov. 22, 2013)
- Lewis v. Rego Co., 757 F.2d 66, 68 (3d Cir. 1985)
- Ramos v. Quien, 631 F. Supp. 2d 601, 609 (E.D. Pa. 2008)
- McMullin v. Harleysville Insurance Co., Inc., No. 14-7537, 2015 WL 586007, at *1 n.2 (D.N.J. Feb. 11, 2015)
- Gola v. City of Philadelphia, No. 09-5037, 2011 WL 2313147, at *2 n.1 (E.D. Pa. June 13, 2011)
- New Jersey Department of Environmental Protection v. Exxon Mobil Corp., 381 F. Supp. 2d 398, 401-02 (D.N.J. 2005)

OPINION

SIMANDLE, J.

ORDER FOR REMAND JEROME B. SIMANDLE, Chief Judge. This matter comes before the Court by way of Plaintiff Green Tree Servicing, LLC's (hereinafter, "Plaintiff") unopposed motion to remand this action to the Superi- or Court of the State of New Jersey, Chancery Division, Camden County.¹ [Docket Item 6.] Plaintiff filed the initial state court Complaint for Mortgage Foreclosure on October 8, 2014.

[Docket Item 1.] In the three Count Complaint, Plaintiff alleges that, on. February 19, 2008, Rhonda D. Dillard and Joseph Karl Dillard (hereinafter, "Defendants") executed a note ultimately assigned to Plaintiff, in the amount of \$190,000 and secured by real property located in Chesilhurst, New Jersey. (See Compl. at 1-2.) Plaintiff alleges, however, that Defendants have, since December 1, 2011, failed to make payments in accordance with the note, despite various written demands.

(Id. at 4.) Plaintiff therefore seeks to foreclose Defendants' interests in the mortgaged premises, to obtain immediate possession of the property, and to proceed with the foreclosure action despite any "gap in the chain of assignments." (Compl. at 5-8.)

On December 29, 2014, pro se Defendants removed this action to this federal Court on the basis of federal question jurisdiction under 28 U.S.C. § 1331 [Docket Item 1], and Plaintiffs unopposed motion to remand followed. [Docket Item 6.]

In the pending motion, Plaintiff argues that the Court lacks subject matter jurisdiction over this action, because Plaintiffs Complaint sounds exclusively under state law.² (See PL's Br. at 3⁴.) Plaintiff therefore ⁴⁰¹insists that this action must be remanded (see *id.*), and pro se Defendants have filed no opposition. Pursuant to 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." If, however, "at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c).

Absent diversity of citizenship,³ however, proper removal requires that the underlying state court complaint present a question of federal law. See *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987). Because the plaintiff acts as "master of the claim," a court looks to the face of a complaint in accordance with the "well-pleaded complaint" rule in order to determine whether the action rests upon a federal claim.

Caterpillar Inc. v. Williams, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987); *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6, 123 S.Ct. 2058, 156 L.Ed.2d 1 (2003); *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475, 118 S.Ct. 921, 139 L.Ed.2d 912 (1998).

For that reason, however, "a case may not be removed to federal court on the basis of a federal defense," even if the plaintiffs complaint anticipates such defense. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987). Nor does the presence of a federal issue in a state claim automatically confer federal jurisdiction. See *Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804, 813, 106 S.Ct.

3229, 92 L.Ed.2d 650 (1986). Here, Defendants' sole basis for removal is, in essence, that Plaintiff constitutes a debt collector under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. (hereinafter, the "FDCPA") and/or that Plaintiffs conduct has, in some respect, violated the Consumer Credit Cost Disclosure Act, 15 U.S.C. §§ 1601 et seq. (hereinafter, the "CCCD").

(See generally Defs.' Notice of Removal; Defs.' Amended Notice of Removal.) As a result, Defendants insist that federal question jurisdiction exists over Plaintiffs claims, because the litigation will purportedly require the consideration of disputed federal ⁴⁰²questions, particular given the supremacy of federal law. (See generally *id.*) Nevertheless, the face of Plaintiffs Complaint contains no FDCPA or CCCDA claims, nor relies upon any other federal statute.

(See generally Compl.) Rather, Plaintiffs Complaint relies exclusively upon state law, and therefore provides no basis for federal question jurisdiction. (See generally *id.*) Nor can Defendants create federal jurisdiction by asserting federal defenses and/or counterclaims to

Plaintiffs state law foreclosure Complaint. See *Bank of N.Y. Mellon Trust Co., N.A. v. Poczobut*, No. 13-3303, 2013 WL 4012561, at *2 (D.N.J.

Aug. 5, 2013). Indeed, the well-pleaded complaint rule limits the jurisdictional inquiry to the claims and theories specifically alleged in the complaint. See *id.* Consequently, because the face of Plaintiffs Complaint identifies no federal question, this Court lacks subject matter jurisdiction, irrespective of Defendants' reliance upon a federal defense and/or assertion of a federal counterclaim.

(See Defs.' Notice of Removal) Accordingly, Plaintiffs motion to remand will be granted, and this action will be remanded to the state court for lack of subject matter jurisdiction. See *HSBC Bank USA, N.A. v. Brown*, No. 13-7439, 2014 WL 5361933, at *2 (D.N.J. Oct. 21, 2014) (remanding a foreclosure action for lack of subject matter jurisdiction); *Wells Fargo Bank, N.A. v. Mastoris*, No. 13-5008, 2013 WL 6154531, at *4-*6 (D.N.J.

Nov. 22, 2013) (same); *Bank of N.Y. Mellon Trust Co., N.A. v. Poczobut*, No. 13-3303, 2013 WL 4012561, at *2 (D.N.J. Aug. 5, 2013) (same); *Bank of N.Y. Mellon Trust Co., N.A.*, 2013 WL 4012561, at *2 (same). Consequently, for good cause shown, IT IS this 27th day of February, 2015, hereby ORDERED that Plaintiffs motion to remand [Docket Item 6] shall be, and hereby is, GRANTED; and it is further ORDERED that this action be REMANDED to the Superior Court of New Jersey, Chancery Division, Camden County, Docket No. CAM-F-042641-14; and it is further ORDERED that, the Clerk of Court shall CLOSE this case upon the docket..

The deadline to file opposition expired on February 17, 2015.. Plaintiff also argues that Defendants violated the rule of unanimity by removing this action to federal district court without first obtaining the consent of the other defendants. (See PL's Br. at. 4.) A violation of the rule of unanimity, however, constitutes a procedural defect subject to waiver if the plaintiff fails to object within 30 days.

See 28 U.S.C. § 1447(c); *Lewis v. Rego Co.*, 757 F.2d 66, 68 (3d Cir.1985). Here, Defendants removed this action on December 29, 2014; Plaintiff, however, did not raise any rule of unanimity issue until February 3, 2015, 36 days following removal. Such delay waived Plaintiff's *401ability to challenge Defendants' removal on procedural grounds. See *Lewis*, 757 F.2d at 68.

In so concluding, the Court follows the weight of authority finding the three day extension under Federal Rule of Civil Procedure 6(d) ineffective "to extend the § 1447(c) time period." *Ramos v. Quien*, 631 F.Supp.2d 601, 609 (E.D.Pa.2008); see also *McMullin v. Harleysville Ins. Co., Inc.*, No. 14-7537, 2015 WL 586007, at *1 n. 2 (D.N.J. Feb. 11, 2015); *Gola v. City of Phila.*, No. 09-5037, 2011 WL 2313147, at *2 n. 1 (E.D.Pa.

June 13, 2011) (same); *N.J. Dep't of Env'tl. Prot. v. Exxon Mobil Corp.*, 381 F.Supp.2d 398, 401-02 (D.N.J.2005) (same). The Court therefore rejects Plaintiff's procedural argument as a basis to

remand this action.. Defendants, do not allege, nor could they allege, that diversity jurisdiction under 28 U.S.C. § 1332 provides an independent basis for removal. Critically, 28 U.S.C. § 1441(b)(2) provides that "[a] civil action otherwise removable solely on the basis of [diversity jurisdiction] may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which the action is brought." 28 U.S.C. § 1441(b)(2).

Here, there is no dispute that Plaintiff initially filed this action in New Jersey state court, and that Defendants constitutes citizens of that state. (See Compl. at 3; Defs.' Notice of Removal (identifying Defendants' New Jersey citizenship).) Removal on the basis of diversity jurisdiction is therefore barred under 28 U.S.C. § 1441(b)(2).