

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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M&I MARSHALL & ILSLEY BANK,

Plaintiff,

OPINION AND ORDER

10-cv-503-slc<sup>1</sup>

v.

JOHN ANDREW GLAVIN,  
a/k/a JOHN-ANDREW: GLAVIN,  
MONOGRAM CREDIT CARD BANK,  
WELLS FARGO BANK NEVADA, N.A.,  
CITIBANK, UNITED STATES OF AMERICA  
and WISCONSIN RIVER COOP SERVICES,

Defendants.

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Defendant John Andrew Glavin has filed a notice of removal to this court of a state mortgage foreclosure case filed in Circuit Court for Juneau County, Wisconsin. (Because this defendant is the primary one in this case, I will refer to him as defendant and the other defendants by name.) Plaintiff M&I Marshall and Ilsley Bank's motion to remand the case is now before the court. Dkt. # 5. Plaintiff moves for remand, asserting that defendant's

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<sup>1</sup>For the purposes of issuing this order, I am assuming jurisdiction over the case.

removal notice was defective in three respects: (1) this case does not meet the requirement for federal diversity jurisdiction under 28 U.S.C. §§ 1441(a) and 1332; (2) the matters asserted in the foreclosure action do not allege a federal question as required by 28 U.S.C. § 1441(b); and (3) defendant failed to file the notice of removal within 30 days of his receipt of the foreclosure summons and complaint as required by 28 U.S.C. § 1146(b). After reviewing the complaint, the notice of removal and the motion to remand, I will grant plaintiff's motion and remand the case to the Circuit Court for Juneau County.

First, plaintiff argues that the case does not meet the requirements for federal diversity jurisdiction because both plaintiff and defendant are citizens of Wisconsin and because the amount in controversy is less than \$75,000. Further, plaintiff argues, the notice of removal fails to properly establish federal jurisdiction under the federal question statute.

Generally, federal courts have the authority to hear two types of cases: (1) cases in which the plaintiff alleges a violation of his or her constitutional rights or rights established under federal law, 28 U.S.C. § 1331; and (2) cases in which a citizen of one state alleges a violation of his or her rights established under state law by a citizen of another state exceeding the sum or value of \$75,000, 28 U.S.C. § 1332.

Plaintiff's mortgage foreclosure case does not appear to fall under either of these categories and defendant does not explain why his case qualifies for removal, as is required under 28 U.S.C. § 1441(a). Tylka v. Gerber Products Co., 211 F.3d 445, 448 (7th Cir.

2000) (burden of establishing federal jurisdiction is on party seeking removal). Traditionally, federal district courts do not have federal jurisdiction under 28 U.S.C. § 1331 because mortgage foreclosure cases are relegated to state law, Hilgeford v. Peoples Bank, 776 F.2d 176, 179 (7th Cir. 1985); Hammond v. Kunard, 889 F. Supp. 1084, 1090 (C.D. Ill. 1994), unless they are brought by the federal government. In addition, it does not appear that diversity jurisdiction has been established. In its complaint, plaintiff alleges Wisconsin citizenship and asserts that defendant is also a citizen of Wisconsin. Although defendant does not address the status of plaintiff's citizenship, he states in his notice of removal, "I, John-Andrew: Glavin a real sovereign sentient man, a[m] a citizen of the Wisconsin Republic." Moreover, plaintiff alleges that the amount in controversy is less than \$75,000 and therefore does not meet the statutory minimum. Defendant does not address this issue.

Defendant's notice of removal has another problem. A petition that is not signed by all named defendants is defective unless the petition contains an acceptable explanation for the absence of co-defendants. Northern Illinois Gas Co. v. Airco Industrial Gases, 676 F. 2d 270, 272-73 (7th Cir. 1982). Defendant's notice of removal is defective because it lacks an explanation for the absence of co-defendants Monogram Credit Card Bank, Wells Fargo Bank Nevada, N.A., Citibank, United States of America and Wisconsin River Coop Services.

Usually I would give defendant a chance to clarify or correct these issues by showing that the parties are citizens of different states, explaining how this case meets the amount

in controversy requirement and amending the petition to include all named defendants. However, it is unnecessary to ask defendant to do so because there are additional flaws in defendant's notice of removal that are fatal to his attempt to remove this case.

Plaintiff points out that defendant failed to file the notice of removal within 30 days of his receipt of the foreclosure summons and complaint. According to the removal procedure set forth in 28 U.S.C. § 1446, all defendants must join in a removal petition and any removal motion must be filed within 30 days after receipt of the initial pleading. 28 U.S.C. § 1446(b); Northern Illinois Gas Co. v. Airco Industrial Gases, 676 F.2d 270, 272-73 (7th Cir. 1982). The certificate of personal service shows that defendant received the foreclosure summons and complaint on October 25, 2009. It was not until 10 months later, on August 31, 2010, that defendant filed the notice of removal.

Finally, there is another reason why remand must be ordered: this court may not exercise jurisdiction over this case under the Rooker-Feldman doctrine, which states that federal courts may not adjudicate claims that seek to invalidate judgments imposed by state courts. Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). Review of the state court records show that on April 14, 2010, the Circuit Court for Juneau County, Wisconsin, entered judgment against defendant in this case.

Accordingly, I will grant plaintiff's motion and order remand of this action to the

Circuit Court for Juneau County.

Because this case will be remanded, plaintiff requests that defendant bear the costs of litigating the removal and remand as authorized by 28 U.S.C. § 1447(c), which provides, “[a]n order remanding a case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of removal.” Generally, an award for costs in removal cases is justified when “the removing party lacked an objectively reasonable basis for seeking removal.” Wisconsin v. Amgen, 516 F.3d 530, 534 (7th Cir. 2008) (citing Martin v. Franklin Capital Corp., 546 U.S. 132 (2005)). In Lott v. Pfizer, Inc., 492 F.3d 789, 793 (7th Cir. 2007), the Court of Appeals for the Seventh Circuit held that a defendant had an objectively reasonable basis for removal “if clearly established law did not foreclose a defendant’s basis for removal . . .”

Defendant lacked an objectively reasonable basis for removing this case because the United States Code and case law make clear that a notice of removal must be filed within 30 days of receipt of the summons and complaint and that the Rooker-Feldman doctrine does not allow a federal court to invalidate judgments imposed by state courts. Accordingly, I conclude tentatively that defendant must reimburse plaintiff for its costs and attorneys fees incurred as a result of the removal, but I will give defendant a short opportunity to show why he should not be required to pay plaintiff’s just costs and any actual expenses.

ORDER

IT IS ORDERED that

1. Plaintiff M&I Marshall Ilesley Bank's motion to remand this action, dkt. # 5, is GRANTED. This case is REMANDED to the Circuit Court for Juneau County, Wisconsin.
2. Plaintiff's motion for costs and attorney fees, dkt. #5, is GRANTED.
3. Plaintiff may have until January 20, 2011, in which to submit an itemization of the actual expenses, including costs and attorney fees, it incurred in responding to defendant's notice of removal.
4. Defendant may have until February 3, 2011, to file an objection to any itemized costs and fees and to show why he should not be required to pay the fees and costs.
5. The clerk of court is directed to return the record to the Circuit Court for Juneau County, Wisconsin.

Entered this 10th day of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge