

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

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ASSOCIATED BANK, N.A.,

Plaintiff,

v.

HELGA SWATZAK, CHRISTOPHER SWATZAK  
and BROOKE MOONSOOR,

Defendants.

OPINION and ORDER

12-cv-244-bbc

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ASSOCIATED BANK, N.A.,

Plaintiff,

v.

HELGA SWATZAK, CHRISTOPHER SWATZAK  
and BROOKE MOONSOOR,

Defendants.

OPINION and ORDER

12-cv-245-bbc

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Defendants Helga and Christopher Swatzak have filed notices of removal in each of the above-captioned state court foreclosure cases. Plaintiff Associated Bank has filed motions to remand each of the cases and for costs and attorney fees. I conclude that both cases must be remanded.

Under 28 U.S.C. § 1446(c)(4), a district court is to examine a notice of removal to determine whether it appears from its face and any attached exhibits that an order for

summary remand must be issued. An action may be removed from state to federal court if the federal district court would have had original jurisdiction over the complaint had it been filed originally in the federal court. 28 U.S.C. § 1441. In determining whether removal is proper under § 1441, a district court must construe the removal statute narrowly and resolve any doubts regarding subject matter jurisdiction in favor of remand. Doe v. Allied-Signal, Inc., 985 F.2d 908, 911 (7th Cir. 1993); Illinois v. Kerr-McGee Chemical Corp., 677 F.2d 571, 576 (7th Cir. 1982). The party seeking removal has the burden of establishing federal jurisdiction, Tylka v. Gerber Products Co., 211 F.3d 445, 448 (7th Cir. 2000). Generally, federal courts have jurisdiction, that is, “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 state law claim against a citizen of another state that amounts to more than \$75,000. 28 U.S.C. § 1332.

In its timely motions to remand, plaintiff argues that defendants have not shown that this court can exercise jurisdiction over the cases. There is no question that plaintiff is correct concerning case no. 12-cv-244-bbc, a foreclosure action removed from the Circuit Court for Dane County. Plaintiff’s foreclosure claim is a state law question rather than a federal one. Defendants’ argument that “the mortgage is owned by the Federal Government through Fannie Mae” and invocation of other federal constitutional and statutory provisions does not change the nature of plaintiff’s claim, because “[f]ederal jurisdiction depends on the allegations of the complaint rather than on issues that come in later.” Thomas v. Shelton, 740 F.2d 478, 482 (7th Cir. 1984); see also, e.g., Vaden v. Discover Bank, 556 U.S. 49, 60

(2009) (jurisdiction may not be "predicated on an actual or anticipated defense"). Nor do defendants make any attempt, either in their notice of removal or in a responsive brief (indeed, they failed to file a responsive brief even after receiving two extensions of time from the court) to show that the parties are diverse.

It is less clear how to address case no. 12-cv-245-bbc. The parties seem to agree that this case originated as a foreclosure action in the Circuit Court for La Crosse County (which is supported by my independent review of the Wisconsin electronic circuit court database), but defendants failed to include a copy of the complaint in that action and plaintiff does not address this issue in its motion to remand. Because it is defendants' burden to establish federal jurisdiction, I conclude that it is appropriate to remand this case as well, particularly given that it is virtually certain that the impediments to removal in case no. 12-cv-244-bbc are also present in this case.

Because these cases will be remanded, plaintiff requests that defendants bear the costs of litigating the removal and remand as authorized by 28 U.S.C. § 1447(c), which provides that "[a]n order remanding the 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 . . . ."

As discussed above, clearly established law makes it clear that defendant had no basis for removing these cases. Accordingly, I conclude that defendants must reimburse plaintiff for its costs and attorney fees incurred as a result of the removals. Defendants will be given a chance to object to the amount plaintiff claims as itemized expenses.

## ORDER

IT IS ORDERED that

1. Plaintiff Associated Bank's motions to remand these cases are GRANTED. Case no. 12-cv-244-bbc is REMANDED to the Circuit Court for Dane County. Case no. 12-cv-245-bbc is REMANDED to the Circuit Court for La Crosse County.
2. Plaintiff's motions for costs and attorney fees in these cases are GRANTED.
3. Plaintiff may have until November 13, 2012, in which to submit an itemization of the actual expenses, including costs and attorney fees, it incurred in responding to defendants' notices of removal.
4. Defendants may have until November 27, 2012, to file an objection to plaintiff's itemization of costs and fees.

Entered this 30th day of October, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge