IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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PNC BANK, N.A., successor by merger
to National City Bank, successor by merger
to National City Bank of Indiana, a division
of which was FNMC,

Plaintiff,

OPINION AND ORDER

13-cv-21-bbc

v.

SHEILA M. SPENCER,

Defendant.

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In an order entered on March 25, 2012, I remanded this residential foreclosure action to the Circuit Court for Wood County, Wisconsin and granted plaintiff's request for an award of fees under 28 U.S.C. § 1447(c). A certified copy of the remand order was sent to Wood County court on March 26, 2012. Since then, plaintiff has filed an itemized request for fees and expenses, which is ready for decision. Dkt. #15. Also before the court is defendant Sheila M. Spencer's April 8, 2013 motion for reconsideration of the remand and the order allowing a fee to plaintiff. Dkt. #18.

I will deny defendant's motion for reconsideration and award plaintiff its costs and fees incurred in opposing the motion, because the court lacks jurisdiction to reconsider the remand order and defendant raises no meritorious arguments for reconsidering the decision awarding fees. However, I will reduce plaintiff's requested costs and fees because it offered

no explanation why many of its claimed fees and costs were necessary.

OPINION

I. Motion for Reconsideration

This court lacks jurisdiction to reconsider its remand order because this case has been remanded to state court already. Under 28 U.S.C. § 1447(d), "[a]n order remanding a case to the State court from which it was removed is not reviewable *on appeal or otherwise*, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 shall be reviewable by appeal or otherwise." (emphasis added). Although the Court of Appeals for the Seventh Circuit has not addressed this issue directly, it is well established that a federal district court loses jurisdiction once it mails a certified copy of its remand order under § 1447 to the state court. Shapiro v. Logistec USA, Inc., 412 F.3d 307, 311 (2d Cir. 2005); Seedman v. United States District Court for Central District of California, 837 F.2d 413, 414 (9th Cir.1988) (§ 1447(d) "has been universally construed to preclude not only appellate review but also reconsideration by the district court"); New Orleans Public Services, Inc. v. Majoue, 802 F.2d 166, 167 (5th Cir.1986) (per curiam); Boone Coal and Timber Co. v. Polan, 787 F.2d 1056, 1059-61 (6th Cir. 1986); Three J. Farms, Inc. v. Alton Box Board Co., 609 F.2d 112, 115 (4th Cir. 1979); Federal Deposit Insurance Corp. v. Santiago Plaza, 598 F.2d 634, 636 (1st Cir. 1979) (per curiam); see also 14C Wright & Miller, Federal Practice and Procedure 3d § 3740.

The policies behind this rule are obvious. First, removal is to be construed strictly.

Second, limiting review "prevent[s] delay in the trial of remanded cases by protracted litigation of jurisdictional issues." Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 336, 351 (1976). Third, such a rule furthers the interests of judicial economy and principles of comity.

> The action must not ricochet back and forth depending upon the most recent determination of a federal court. . . . [T]here is no more reason for a district court being able to review its own decision, and revoke the remand, than for an appellate court requiring it to do so. Both are foreclosed: nothing could be more inclusive than the phrase "on appeal or otherwise." The district court has one shot, right or wrong.

In re Providencia Development Corp., 406 F.2d 251, 252-53 (1st Cir. 1969). See also City of Valparaiso v. Iron Workers Local Union No. 395, 118 F.R.D. 466 (N.D. Ind. 1987).

The only exception to this rule is that a district court may retain jurisdiction to reconsider its remand order in those limited situations in which a court of appeals has jurisdiction to review the remand. J.O. v. Alton Community Unit School District 11, 909 F.2d 267, 273 (7th Cir. 1990) (declining to decide whether district court retained jurisdiction in situations in which defendant could not appeal remand order). Consistent with the text of § 1447, appellate review of remand orders is generally limited to cases involving removal in civil rights actions. Midlock v. Apple Vacations West, Inc., 406 F.3d 453, 456 (7th Cir. 2005). In Irish v. Burlington Northern Santa Fe Railroad Co., 632 F. Supp. 2d 871, 873-74 (W.D. Wis. 2009), this court held that the exception announced in J.O. applied when another statute, 28 U.S.C. § 1453, expressly authorized appellate review of remand orders.

Defendant has identified no statute that would authorize appellate review of the

remand order in her case. Therefore, this court lacks jurisdiction to consider defendant's motion for reconsideration of the remand order.

It is less clear whether this court retains jurisdiction to reconsider its order awarding fees to plaintiff under 28 U.S.C. § 1447(c). However, the Court of Appeals for the Seventh Circuit has held that an award of fees and expenses under 28 U.S.C. § 1447(c) is appealable although the remand order is not, Tenner v. Zurek, 168 F.3d 328, 329 (7th Cir. 1999), and that district courts retain jurisdiction to award fees after a remand to state court. Wisconsin v. Hotline Industries, Inc., 236 F.3d 363, 365 (7th Cir. 2000). Accordingly, the principle announced in J.O., 909 F.2d at 273, suggests that this court retains jurisdiction to hear defendant's motions for reconsideration of the award of fees under § 1447(c). 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)).

Defendant's argument for reconsideration of the fee award is that this court decided the motion for remand incorrectly. However, her "argument" is only a rehash of her previous arguments; she has not addressed the defects identified in the previous order. First, she asserts that she was entitled to remove on the basis of diversity, but she does not deny that she is a citizen of Wisconsin and therefore 28 U.S.C. § 1441(b)(2) bars her from removing the case on diversity grounds.

Second, she expands upon her argument that the court could exercise jurisdiction over the state foreclosure under 28 U.S.C. § 1334 ("the district courts shall have original but not

exclusive jurisdiction of all civil proceedings . . . related to cases under title 11"). She argues that she discovered in December 2010 that her mortgage was unsecured, so the equity in her home should have been an asset of the bankruptcy estate and the foreclosure is therefore "related to" her bankruptcy case. However, defendant's bankruptcy case was closed on July 31, 2010, and a district court does not have jurisdiction over a "related to" proceeding once the bankruptcy case had been dismissed. Chapman v. Currie Motors, Inc., 65 F.3d 78, 82 (7th Cir. 1995). Defendant cannot use "the guise of federal bankruptcy jurisdiction to keep a state action in federal court once the bankruptcy jurisdiction has lapsed." Matter of Import & Mini Car Parts, Ltd., Inc., 97 F.3d 1454 (7th Cir. 1996). Defendant filed a motion in the bankruptcy court to reopen the bankruptcy case. That motion was denied and is on appeal. Moreover, defendant's use of repeated procedural feints to delay the foreclosure that was properly before the state court warrants abstention under 28 U.S.C. § 1334(c).

Last, defendant has clarified her argument that removal was proper because the Federal Home Loan Mortgage Corporation ("Freddie Mac") is the real party in interest, explaining that she was relying on 28 U.S.C. § 1349 rather than 28 U.S.C. § 1452(f). The Court of Appeals for the Seventh Circuit has explained that district courts have federal question jurisdiction over cases in which a congressionally incorporated corporation is a party, if the federal government owns more than half of the corporation's stock. Aliotta v. National Railroad Passenger Corp., 315 F.3d 756, 758 (7th Cir. 2003) (citing 28 U.S.C. § 1349; Union Pacific Railroad Removal Cases, 115 U.S. 1 (1885); Osborn v. Bank of the

United States, 22 U.S. (9 Wheat.) 738, 6 L.Ed. 204 (1824)). Freddie Mac is a federal corporation and the federal government owns more than 50% of its stock. However, defendant fails to address the fundamental problem in her argument: Freddie Mac is not a party to this lawsuit. She continues to assert that the court must treat Freddie Mac as a party because it is the real party in interest but she has identified no legal authority for this proposition. Because defendant did not have an objectively reasonable argument supporting federal jurisdiction, it is appropriate to award plaintiff fees incurred in its motion to remand.

II. Plaintiff's Request for Fees

In response to the court's order allowing fees, plaintiff has filed a request in the amount of $4,655.00 in fees for 27 hours of work by local counsel and $6,232.50 for 27.7 hours of work by "national coordinating counsel." In addition, plaintiff requests $553.47 for costs incurred by local counsel.

I will award plaintiff the local counsel's costs and fees at counsel's regular rate of $175.00 per hour, but I will award fees only for twenty hours of work, which is more than sufficient to oppose the removal of a residential foreclosure action. I will not award plaintiff fees or costs for its "national coordinating counsel." As defendant points out, plaintiff has not explained why defendant needed national coordinating counsel to oppose a removal motion. From my review of the billing records, it appears that national counsel spent more than 16 hours revising the briefs drafted by local counsel and more than 5 hours discussing those drafts in teleconferences. Either this work was redundant or plaintiff should not have

requested fees for the time spent by local counsel. Plaintiff is not entitled to fees incurred for using national coordinating counsel.

III. Plaintiff's Request for Fees for the Motion for Reconsideration

Plaintiff has asked the court to award it the costs and fees it incurred in responding to defendant's motion for reconsideration. Section 1447 gives the district court discretion to award fees "to seek a fair allocation of all the costs of defending against an improper removal." Tenner, 168 F.3d at 329. Defendant's motion for reconsideration of the remand order was frivolous. Her counsel ignored the voluminous law stating that district courts lack jurisdiction to reconsider remand orders, made no good faith argument for changing existing law and offered no meritorious arguments for reconsidering the decision to award fees. City of Valparaiso, Ind., 118 F.R.D. at 470 (imposing sanctions under Fed. R. Civ. P. 11 for filing motion to reconsider remand order because court lacked jurisdiction to reconsider order). Therefore, I will award plaintiff the costs and fees it incurred in responding to the motion for reconsideration of the remand order and fee award.

ORDER

IT IS ORDERED that

1. The motion for reconsideration, dkt. #18, filed by defendant Sheila M. Spencer is DENIED.

2. Pursuant to 28 U.S.C. § 1447(c), plaintiff PNC Bank, N.A., is awarded $553.47 in

costs and $3,500.00 in fees incurred in filing its motion for remand.

2. Plaintiff's motion for costs and fees incurred in responding to the motion for reconsideration is GRANTED. Plaintiff may have until May 31, 2013 in which to file an itemized request for fees and costs; defendant may have until June 7, 2013, in which to object to the amount of fees and costs requested.

Entered this 23d day of May, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge