

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

THE NECEDAH BANK,

Plaintiff,

OPINION AND ORDER

11-cv-587-slc¹

v.

DEAN C. HENNING, MARIE HENNING,
UNITED STATES OF AMERICA and
PARKER COMMUNITY CREDIT UNION,

Defendants.

Defendants Dean and Marie Henning have filed a notice of removal of a state foreclosure action filed in the Circuit Court for Adams County, Wisconsin. In the underlying complaint, plaintiff The Necedah Bank alleges that defendants² failed to make payments on their mortgage on various pieces of real estate. Plaintiff has filed a motion to remand the case. I conclude that removal was untimely and that the case 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. In order to remove an action from state to federal court,

¹ For the purpose of issuing this order, I am assuming jurisdiction over this case from Magistrate Judge Stephen Crocker.

² For the sake of clarity I will refer to Dean and Marie Henning as “defendants” and will refer to the other defendants by name if necessary.

a defendant must file a notice of removal within 30 days after service of the complaint. 28 U.S.C. § 1446(b). “The purpose of the 30-day limitation is twofold.” Wilson v. Intercollegiate Collegiate Conference Athletic Ass’n, 668 F.2d 962, 965 (7th Cir. 1982). First, “to deprive the defendant of the undeserved tactical advantage that he would have if he could wait and see how he was faring in state court before deciding whether to remove the case to another court system.” Id. Second, “to prevent the delay and waste of resources involved in starting a case over in a second court after significant proceedings, extending over months or even years, may have taken place in the first court.” Id.

The materials provided by the parties and the Wisconsin Circuit Court Access electronic database, <http://wcca.wicourts.gov>, make it clear that defendants filed their notice of removal too late. Defendant Dean Henning was served with the complaint on April 30, 2011, and defendant Marie Henning was served with the complaint on May 3, 2011. Yet they did not file their notice of removal until August 19, 2011.

Defendants argue that the 30-day limitation does not apply to this case because the court can exercise diversity jurisdiction over the case. Defendants are incorrect; the 30-day limitation applies to removals regardless whether the underlying ground for removal is original jurisdiction or diversity jurisdiction. In any case, defendants have no basis for alleging that diversity jurisdiction exists; their claim that they are “sovereign citizens” of the “Wisconsin Republic” and thus “American Nationals” rather than citizens of the state of Wisconsin has been rejected repeatedly by courts. E.g., United States v. Hilgeford, 7 F.3d 1340, 1342 (7th Cir. 1993) (argument that individual is sovereign citizen of state who is not

subject to jurisdiction of United States and not subject to federal taxing authority is “shop worn” and frivolous).

Because this case 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 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”

Defendants 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. Accordingly, I conclude that defendants must reimburse plaintiff for its costs and attorney fees incurred as a result of the removal. Defendants will be given a chance to object to the amount that claims as itemized expenses, but not to raise any new objections to the decision that they are liable for the expenses.

ORDER

IT IS ORDERED that

1. Plaintiff The Necedah Bank's motion to remand this action, dkt. #3, is GRANTED. This case is REMANDED to the Circuit Court for Adams County, Wisconsin.

2. Plaintiff's motion for costs and attorney fees, dkt. #3, is GRANTED.

3. Plaintiff may have until February 13, 2012, in which to submit an itemization of the actual expenses, including costs and attorney fees, it incurred in responding to defendants' notice of removal.

4. Defendants may have until February 23, 2012, to file an objection to any itemized costs and fees.

5. The clerk of court is directed to return the record to the Circuit Court for Adams County, Wisconsin.

Entered this 7th day of February, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge