

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FEDERAL NATIONAL MORTGAGE)	
ASSOCIATION,)	
)	
Plaintiff,)	
)	
vs.)	No. 13-2702-STA/tmp
)	
RICHARD RUMMO, JR.,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Before the court is plaintiff Federal National Mortgage Association's ("Fannie Mae") Motion to Remand, filed on October 3, 2013. (ECF No. 5.) To date, defendant Richard Rummo, Jr., who is proceeding *pro se*, has not filed a response to the motion, and the time for doing so pursuant to this court's Local Rules has expired. For the reasons below, it is recommended that Fannie Mae's motion be granted.

I. PROPOSED FINDINGS OF FACT¹

This action concerns a parcel of real property located at 6058 Surrey Hollow Cove, Bartlett, Tennessee 38134 (the "Property"). Richard Rummo, Jr. was the borrower on a deed of trust secured by the Property. On July 19, 2013, due to default under the loan

¹Because Rummo has not filed a response to the motion to remand, the court will adopt Fannie Mae's statement of facts set forth in its motion.

documents, the Property was sold at a foreclosure sale and purchased by Branch Banking and Trust Company ("BB&T"). Thereafter, BB&T assigned its interest in the Property to Fannie Mae, and a Trustee's Deed was executed conveying the Property to Fannie Mae.

On or about August 19, 2013, Fannie Mae filed an unlawful detainer action in General Sessions Court in Shelby County, Tennessee with Case Number 1641515 ("Underlying Lawsuit"). A copy of the detainer warrant is filed at ECF No. 1-5. In the Underlying Lawsuit, Fannie Mae specifically requested "POSSESSION ONLY" along with court costs, and did not ask for any further damages or make any claims for rent. The Underlying Lawsuit was set for hearing on Monday, September 9, 2013, at 1:30 p.m. On September 9, 2013, the Notice of Removal was filed in this matter by Rummo. While the Notice of Removal asserts that Fannie Mae violated numerous federal statutes, the Notice of Removal does not provide any factual allegations under any of the statutes cited. On the contrary, Rummo simply provides a list of the statutes allegedly violated, and upon which he claims removal is proper.

Rummo alleges that he was not provided with proper notice that his mortgage had been assigned or that it had been "assigned to a mortgage-backed securities pool"; that Fannie Mae failed to timely respond to a qualified written request and did not provide requested documentation; that Rummo "was not provided with the

required disclosures at closing and his income and expenditures were not properly verified"; and that Fannie Mae "failed to satisfy conditions precedent prior to the unlawful and invalid non-judicial foreclosure" of the Property. According to Fannie Mae, it had no involvement in the loan application, loan closing, loan servicing, or the foreclosure process.

II. PROPOSED CONCLUSIONS OF LAW

In removing an action to federal court, the defendant bears the burden of properly establishing federal jurisdiction. Eastman v. Marine Mech. Corp., 438 F.3d 544, 549 (6th Cir. 2006). "Federal courts are courts of limited jurisdiction. They possess only that power authorized by the Constitution and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994). "Ordinarily, a defendant may remove a state court case to federal court only if it could have been brought there in the first place; that is, if the federal court would have original jurisdiction over the case." Strong v. Telectronics Pacing Systems, Inc., 78 F.3d 256, 259 (6th Cir. 1996). For cases based on diversity jurisdiction, "where, as here, the face of the complaint does not establish that the amount in controversy requirement has been satisfied, the removing Defendants have 'the

burden of proving by a preponderance of the evidence that the amount in controversy more likely than not exceeds the jurisdictional amount.'" Durant v. Servicemaster Co., 147 F. Supp. 2d 744, 748 (E.D. Mich. 2001).

Absent claims of diversity jurisdiction, a court must determine if there is federal question jurisdiction under 28 U.S.C. § 1331. To determine if there is federal question jurisdiction, courts are guided by the well-pleaded complaint rule, which states that "federal jurisdiction exists only when a federal question is presented on the plaintiff's properly pleaded complaint." Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). If the federal question appears only as a defense, and not on the face of a well-pleaded complaint, the defense does not authorize removal to federal court. Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987). In addition, a federal counterclaim, even when compulsory, does not authorize removal: "[i]t follows that a counterclaim - which appears as part of the defendant's answer, not as part of the plaintiff's complaint - cannot serve as the basis for 'arising under' jurisdiction." Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc., 535 U.S. 826, 831 (2002); see also Vaden v. Discover Bank, 556 U.S. 49, 60 (2009) (stating that federal jurisdiction "cannot be predicated on an actual or anticipated defense . . . Nor can federal jurisdiction rest upon an actual or anticipated counterclaim. We so ruled, emphatically, in

[Holmes]”). State law causes of action do not fall within the original jurisdiction of the federal courts. Franchise Tax Board v. Construction Laborers Vacation Trust, 437 U.S. 1, 10 (1983).

Rummo has not filed an answer. In his Notice of Removal, he states that the basis for removal is “because Defendant [sic] claims arise under the laws of the United States. A case arises under federal law where the vindications of a right under state law necessarily turns on some construction of federal law.” Rummo makes no effort to claim diversity jurisdiction, and any claim of diversity jurisdiction under 28 U.S.C. § 1332(a) would fail in that the detainer warrant sought possession only (thus the amount in controversy does not exceed \$75,000.00). Additionally, Rummo is a citizen of Tennessee (according to his *in forma pauperis* application), and thus removal is also barred under 28 U.S.C. § 1441(b)(2). Accordingly, the court is left to review the removal only under the federal question standard.

Notwithstanding Rummo’s conclusory statements about his claims arising under the laws of the United States, it is clear that the “well-pleaded complaint” does not present any federal question at all. Document 1-5, filed with the Notice of Removal, is a one-page Detainer Warrant form used by Shelby County for simple forcible detainer or unlawful detainer actions. Such actions are brought pursuant to T.C.A. § 29-18-101 et seq. As such, those actions are state court actions. There is nothing on the face of the detainer

warrant which implicates a federal question. Consequently, under the well-pleaded complaint rule, the matter is not removable. "Removing defendants bear the burden of establishing federal subject-matter jurisdiction." Ahearn v. Charter Twp. Of Bloomfield, 100 F.3d 451, 453-54 (6th Cir. 1996). Because Rummo has not met this burden, this case should be remanded back to the General Sessions Court from which it was removed.

III. RECOMMENDATION

For the reasons above, it is recommended that Fannie Mae's Motion to Remand be granted.

Respectfully submitted,

s/ Tu M. Pham _____
TU M. PHAM
United States Magistrate Judge

November 19, 2013
Date

NOTICE

WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THIS REPORT AND RECOMMENDED DISPOSITION, A PARTY MAY SERVE AND FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS. A PARTY MAY RESPOND TO ANOTHER PARTY'S OBJECTIONS WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY. FED. R. CIV. P. 72(b)(2). FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.