

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CLISTA M. STEVENS,)
)
 Plaintiff)
)
 v.) 1:13-cv-00121-GZS
)
 BANK OF AMERICA CORPORATION,)
 et al.,)
)
 Defendants)

RECOMMENDED DECISION¹
RE: MOTION TO REMAND (ECF NO. 34)

On February 8, 2013, Clista Stevens, on her own behalf and purportedly on behalf of a deceased party, Lawrence M. Curtis, Sr., filed a complaint in Franklin County Superior Court against eighteen separate defendants. (See State Court Record, ECF No. 21-1.) The ten removing defendants received copies of the complaint on approximately March 13, 2013 (Notice of Removal, ECF No. 1, ¶ 2). The case was removed to this court on April 2, 2013. At the time of the removal, two of the defendants had not yet been served nor been sent a copy of the complaint. (Id. ¶¶ 5-6.) Apparently they still have not been served. The remaining six defendants were either served in hand or received written notice of the complaint and have all consented to removal. (Id. ¶¶ 3-4, 7-8.) Removal is made pursuant to 28 U.S.C. § 1331, federal question jurisdiction, because the complaint on its face brings claims arising under the laws of the United States, namely the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 et seq., the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., and regulations promulgated in accordance

¹ There is some debate about a magistrate judge’s authority to enter a final order on a motion to remand. The foolproof approach appears to be that I should offer the Court a recommendation on the motion. See, e.g., Vogel v. U. S. Office Prods. Co., 258 F.3d 509, 517 (6th Cir. 2001) (agree[ing] with the Third and Tenth Circuits that remand motions are the functional equivalents of dispositive motions); Unauthorized Practice of Law Comm. v. Gordon, 979 F.2d 11, 13 (1st Cir. 1992) (identifying the issue but seeing no need “to enter the fray at th[e] time”).

with the Home Ownership Equity Protection Act, 12 C.F.R. §§ 226.32 et seq. Plaintiff states these claims in paragraphs 30, 44, 99, 101, 120, 124, 125, 186-88, and 195 of her complaint, among others. (Complaint, ECF No. 1-1.)

Legal Standards Re: Motion to Remand

Generally, a defendant may remove a state court action to federal court if there is a basis for federal jurisdiction. 28 U.S.C. § 1441(a). Pursuant to 28 U.S.C. § 1446(b), the defendants have thirty days from the date of receipt of the complaint to file their notice of removal in this court. Where there are multiple defendants case law has grafted onto 28 U.S.C. § 1446(b) the requirement that all defendants must consent to removal. Esposito v. Home Depot USA, Inc., 590 F.3d 72 (1st Cir. 2009); 28 U.S.C. § 1446. Under the removal statute, a defendant in a state court action “may remove the action to federal court so long as the plaintiff could have originally filed the action in federal court.” Esposito, 590 F.3d at 75. A plaintiff can bring an action in federal court by asserting federal question jurisdiction, such as the violation of a federal statute which creates a private right of action. When removal is contested, the removing defendant “has the burden of establishing that the court has subject matter jurisdiction over the case.” Amoche v. Guarantee Trust Life Ins. Co., 556 F.3d 41, 48 (1st Cir. 2009).

An amendment to a complaint after removal designed to eliminate a federal question will not defeat federal jurisdiction. Ching v. Mitre Corp., 921 F.2d 11, 13 (1st Cir. 1990). The district court in this situation has discretion to weigh the interest in exercising jurisdiction, alongside the interests of economy, convenience, fairness, and comity. Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350, 353 (1988); 28 U.S.C. § 1441(c). Among the factors the court should consider is whether the plaintiff has engaged in manipulative tactics by deleting the federal claims. Carnegie-Mellon Univ., 484 U.S. at 357.

Discussion

In this case, federal question jurisdiction plainly exists based on the allegations in the complaint. Stevens seeks more than a million dollars in actual and statutory damages based on alleged violations of state and federal statutes and common law. (See Compl. at ¶ 59.) The complaint includes numerous allegations of violations of federal statutes with respect to the disputed mortgage, including:

- (a) RESPA (Compl. ¶¶ 30, 44, 101, 124-125, 186-88, 195);
- (b) TILA (Id. ¶¶ 99, 124, 195);
- (c) FDCPA (Id. ¶¶ 120-121); and
- (d) HOEPA (Id. ¶¶ 125, 195).

These claims arise under federal statutes and are more than sufficient for this court to exercise subject matter jurisdiction. See Mims v. Arrow Fin. Sers., Inc., 565 U.S. ____, 132 S. Ct. 740, 748 (2012) (“[T]here is no serious debate that a federally created claim for relief is generally a ‘sufficient condition for federal-question jurisdiction.’”) (citing Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg., 545 U.S. 308, 317 (2005)).

Stevens’s motion to remand does not cite to any procedural defects in the removal. The removal was timely filed, the unanimity requirement has been met, and she concedes that she cites to and relies upon numerous federal statutes. (Mot. to Remand at 3.) Her major argument in support of her motion appears to be based upon some misunderstanding of federalism and runs like this: “all Maine statues with a corresponding federal statue (*sic*) (and since they are all codified from federal Statues) would have to be decided in federal courts nullifying the need for state courts.” (Id.)² It appears from the tenor of her motion to remand that Stevens is trying to

² Stevens also makes a reference to lack of complete diversity (Mot. to Remand at 5, ¶ 11), but diversity jurisdiction has not been invoked by defendants.

argue that she asserted her causes of action under state law and the citations to federal laws were simply surplusage on her part. While her complaint is certainly not a model of clarity, no reasonable reading of it would conclude other than that she was asserting claims under various federal laws.

Nor has Stevens sought to amend her complaint to assert only state law claims. Were she to do so at this late juncture, after the expense and effort that has been devoted to getting this case to its current posture, I believe that the rule of Ching v. Mitre Corp., 921 F.2d at 13, would be applicable.

Conclusion

Based upon the foregoing, I recommend that the Motion to Remand be denied.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof. A responsive memorandum shall be filed within fourteen (14) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

July 1, 2013

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

STEVENS et al v. BANK OF AMERICA
CORPORATION et al
Assigned to: JUDGE GEORGE Z. SINGAL
Referred to: MAGISTRATE JUDGE MARGARET J.
KRAVCHUK
Demand: \$1,200,000
Case in other Franklin County Superior Court, 13-
court: 00004
Cause: 15:1601 Truth in Lending

Date Filed: 04/02/2013
Jury Demand: None
Nature of Suit: 371 Truth in Lending
Jurisdiction: Federal Question

Plaintiff

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V.

Defendant

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Defendant

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