See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of Appeals 4th Cir. Rule 32.1.

United States Court of Appeals, Fourth Circuit.

Rochell TALLEY, Plaintiff - Appellant,
v.
OCWEN LOAN SERVICING, LLC; BWW Law Group, LLC, Defendants - Appellees.

No. 18-1777

Submitted: November 29, 2018
Decided: December 3, 2018

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Timothy J. Sullivan, Magistrate Judge. (8:18-cv-00052-TJS)

Attorneys and Law Firms

Rochell Talley, Appellant Pro Se. Eric Matthew Hurwitz, William T. Mandia, STRADLEY RONON STEVENS & YOUNG, LLP, Cherry Hill, New Jersey; Adam Marc Kaplan, BWW LAW GROUP, LLC, Rockville, Maryland, for Appellees.

Before AGEE, WYNN, and DIAZ, Circuit Judges.

Opinion

Dismissed in part and affirmed in part by unpublished per curiam opinion.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Rochell Talley seeks to appeal the district court's order of June 6, 2018 dismissing his civil action and its order of July 2, 2018 denying his motion for an extension of time to file a motion to reconsider. We grant appellee's motion to dismiss the appeal of the June 6, 2018 order for lack of jurisdiction because the notice of appeal was not timely filed.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214, 127 S.Ct. 2360, 168 L.Ed.2d 96 (2007).

The district court's order was entered on the docket on June 6, 2018. The notice of appeal was filed on July 9, 2018. Because Talley failed to file a timely notice of appeal or obtain an extension or reopening of the appeal period, we dismiss the appeal in part with respect to that order. As to the order of July 2, 2018, we affirm in part for the reasons stated by the district court. *Talley v. Ocwen Loan Servicing*, LLC, No. 8:18-cv-00052-TJS (D. Md. July 2, 2018). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED IN PART, AFFIRMED IN PART

Case No. TJS-18-0052

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

July 2, 2018

Case No. TJS-18-0052

ROCHELL TALLEY, Plaintiff,
v.
OCWEN LOAN SERVICING, LLC, et al.,
Defendants

ORDER

Pending before the Court is self-represented Plaintiff Rochell Talley's ("Talley") "Motion for Leave to [File] Response to Court's Decision" ("Motion") (ECF No. 38). In the Motion, Talley requests that he be given leave to file another motion detailing the "major concerns" that he has with the Court's previous decisions of June 6, 2018 (ECF Nos. 34, 35, 36 & 37). The Federal Rules of Civil Procedure do not provide an avenue for litigants to "respond" to a Court's entry of summary judgment in favor of an opposing party in the manner that Talley proposes. For this reason, the Court assumes that Talley intends to file a motion to alter or amend judgment under Fed. R. Civ. P. 59(e) or a motion for relief from judgment under Fed. R. Civ. P. 60(b).

Construing Talley's Motion as a motion to extend the time to file a motion to alter or amend

judgment under Rule 59(e), or alternatively as a motion for relief from a judgment under Rule 60(b), the Motion will be **DENIED**. The Court "must not extend the time to act" under Rule 59(e) or 60(b). Fed. R. Civ. P. 6(b)(2); *see also Alston v. MCI Commc'ns Corp.*, 84 F.3d 705, 706 (4th Cir. 1996) (explaining that a district court is "without power to enlarge the time period for filing a Rule 59(e) motion"). Accordingly, any motion to alter or amend the judgment must be filed no later than 28 days after the entry of judgment. Fed. R. Civ. P. 59(e). Any motion for relief from judgment must be filed "within a reasonable time" and in some circumstances "no more than a year after the entry of the judgment." Fed. R. Civ. P. 60(c); *see also* Fed. R. App. P. 4 (noting that a motion for relief under Rule 60 affects the time to file an appeal only if it is filed no later than 28 days after the judgment is entered).

The Clerk of Court is directed to mail a copy of this Order to Talley at the address on file with the Court.

Timothy J. Sullivan
United States Magistrate Judge

United States District Court, D. Maryland.

Rochell TALLEY, Plaintiff,
v.
OCWEN LOAN SERVICING, LLC, et al.,
Defendants.

Case No. TJS-18-0052

Signed 06/06/2018

Attorneys and Law Firms

Rochell Talley, Upper Marlboro, MD, pro se.
Michelle Hope Badolato, Stradley Ronon Stevens & Young, LLP, Cherry Hill, NJ, Adam Marc Kaplan, Bww Law Group LLC, Rockville, MD, for Defendants.

MEMORANDUM OPINION

Timothy J. Sullivan, United States Magistrate Judge

Pending before the Court is self-represented Plaintiff Rochell Talley's ("Talley") "Motion to Move or Return Civil Action No. CAE17-38277 Back to the Circuit Court for Prince George's County, Maryland" ("Motion") (ECF No. 21), which will be construed as a motion to remand pursuant to 28 U.S.C. § 1447.[1] Having considered the submissions of the parties (ECF Nos. 21, 30, 31 & 32), I find that a hearing is unnecessary. *See* Loc. R. 105.6. For the reasons set forth below, the Motion will be denied.

I. Background

Talley filed this lawsuit in the Circuit Court for Prince George's County, Maryland, on November 28, 2017. (ECF No. 2.) Although the Complaint is difficult to understand, Talley asserts that his sole claim is for quiet title, and that he does not seek monetary damages. (*See* ECF Nos. 21 & 32.) On January 5, 2018, Defendant Ocwen Loan Servicing, LLC ("Ocwen") removed the case to this Court pursuant to 28 U.S.C. § 1441 on the basis of federal question and diversity jurisdiction. (ECF No. 1.) On January 26, 2018, Talley filed his Motion. (ECF No. 21.) Talley argues that this case must be remanded to the Circuit Court for Prince George's County because the real property that is the subject of Talley's quiet title claim is located in Prince George's County, and because the amount in controversy does not exceed $75,000. (ECF Nos. 21 & 32.)

II. Propriety of Removal

A defendant may remove a case from state court to federal court in instances where the federal court is able to exercise original jurisdiction over the matter. 28 U.S.C. § 1441. Federal courts have original jurisdiction over primarily two types of cases: (1) those involving federal questions under 28 U.S.C. § 1331, and (2) those involving citizens of different states where the amount in controversy exceeds $75,000.00, exclusive of interests and costs, pursuant to 28 U.S.C. § 1332(a). The party "removing a case to federal court bears the burden of establishing the court's subject-matter jurisdiction over the case." *Bartels by & through Bartels v. Saber Healthcare Grp., LLC*, 880 F.3d 668, 680 (4th Cir. 2018). Because "removal jurisdiction raises significant federalism concerns," it is strictly construed.

Mulcahey v. Columbia Organic Chemicals Co., 29 F.3d 148, 151 (4th Cir. 1994). If federal jurisdiction is doubtful, remand is required. *Id.* This standard reflects the reluctance of federal courts "to interfere with matters properly before a state court." *Quintana v. J.P. Morgan Chase Bank, N.A.*, No. DKC-14-1586, 2015 WL 1321436, at *1 (D. Md. Mar. 23, 2015).

Because Ocwen removed this case to federal court, it bears the burden of establishing the Court's subject matter jurisdiction.[2] Ocwen argues that this Court has subject matter jurisdiction because Talley's claim arises under the laws of the United States, *see* 28 U.S.C. § 1331, and because there is complete diversity of the parties and the amount in controversy exceeds $75,000, *see* 28 U.S.C. § 1332.

III. Federal Question

Federal district courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. In deciding whether a plaintiff's claim arises under federal law, courts "ordinarily ... look no further than the plaintiff's [properly pleaded] complaint in determining whether a lawsuit raises issues of federal law capable of creating federal-question jurisdiction under 28 U.S.C. § 1331." *Pinney v. Nokia, Inc.*, 402 F.3d 430, 442 (4th Cir. 2005). If federal law creates the cause of action, removal is unquestionably proper. *Mulcahey*, 29 F.3d at 151. Otherwise, "there is only federal jurisdiction when Plaintiff's claim raises 'a federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.' " *Papadopoulos v. EagleBank*, No. GJH-17-2177, 2017

WL 6550672, at *2 (D. Md. Dec. 21, 2017) (quoting *Grable & Sons Metal Products, Inc. v. Darue*, 545 U.S. 308, 314 (2005)). Federal courts may exercise federal question jurisdiction over state law claims that "turn on substantial questions of federal law" and require the "experience, solicitude, and hope of uniformity that a federal forum offers," but this represents a "special and small category" of federal question jurisdiction. *Papadopoulos*, 2017 WL 6550672, at *2 (internal citations omitted). The Supreme Court articulated a four-prong test in *Grable* for determining whether this standard is met. The federal issue must be: "(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn v. Minton*, 568 U.S. 251, 258 (2013) (quoting *Grable*, 545 U.S. at 313-14).

Talley's sole claim is for quiet title pursuant to Md. Code, Real Prop. § 14-108. Ocwen argues that because Talley alleges that it violated the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601-1667f, and related federal regulations, this case arises under federal law. Under the first prong of the *Grable* test, a federal issue is necessarily raised "only when *every* legal theory supporting the claim requires the resolution of a federal issue." *Dixon v. Coburg Dairy, Inc.*, 369 F.3d 811, 816 (4th Cir. 2004). "[I]f the plaintiff can support his claim with even one theory that does not call for an interpretation of federal law, his claim does not 'arise under' federal law for purposes of § 1331." *Id.* Under the third prong of the *Grable* test, "[w]hether a federal issue is sufficiently substantial turns on the degree to which federal law must be in the forefront of the case and not collateral, peripheral or remote." *Packett v. University of Maryland Med. Ctr.*,

No. RDB-17-1630, 2017 WL 5903759, at *5 (D. Md. Nov. 30, 2017) (internal quotation marks omitted). Determining whether a federal issue is sufficiently substantial requires sensitivity to "whether the existence of federal judicial power is both appropriate and pragmatic." *Id.* (quoting *Ormet Corp. v. Ohio Power Co.*, 98 F.3d 799, 807 (4th Cir. 1996)). The court "must determine whether the dispute is one that Congress intended federal courts to resolve, taking into account the historical reasons for establishing federal courts." *Ormet*, 98 F.3d at 807.

In Maryland, a quiet title action enables a plaintiff possessing real property to challenge the validity of a defendant's claim "to hold any lien encumbrance" on that same property, provided that there is not already a pending lawsuit to enforce the lien. *Mickerson v. Am. Brokers Conduit*, No. TDC-17-1106, 2018 WL 1083640, at *4 (D. Md. Feb. 28, 2018) (citing Md. Code, Real Prop. § 14-108(a)). To prevail in a quiet title action, a plaintiff must make two showings. First, the "plaintiff must show that the defendant with a competing claim has an interest that is 'actually defective, invalid, or ineffective.' " *Deibler v. Quicken Loans, Inc.*, No. TDC-15-2286, 2016 WL 393308, at *3 (D. Md. Feb. 1, 2016) (quoting *Kasdon v. G. W Zierden Landscaping, Inc.*, 541 F. Supp. 991, 995 (D. Md. 1982)). Second, the plaintiff must show "a valid claim of entitlement to the property at issue," which requires the plaintiff to establish "possession of the property and legal title by clear proof." *Id.* (internal quotation marks omitted).

I find that Talley's claim does not turn on substantial questions of federal law for two reasons. First, although Talley's Complaint refers to the TILA and related federal regulations, it is not clear that

every legal theory supporting his claim requires a resolution of federal law. Second, the federal issues that do arise from the allegations in Talley's Complaint are not sufficiently substantial. The resolution of Talley's quiet title claim will not turn on an interpretation of federal law. Talley's numerous references to the TILA and related federal regulations are "collateral, peripheral, [and] remote" to what must be decided to resolve his claim. *See McKenna v. Wells Fargo Bank, N.A.*, 693 F.3d 207, 211 (1st Cir. 2012) (finding no federal question jurisdiction despite complaint's "passing reference to the federal TILA" when the claims were all styled as state-law claims); *Low v. Vantagesouth Bank*, No. 13-3396-BHH, 2014 WL 8239419, at *6 (D.S.C. July 16, 2014), *report and recommendation adopted*, 2015 WL 1275396 (D.S.C. Mar. 18, 2015) (finding that a dispute regarding a violation of TILA disclosure requirements did not involve a substantial federal question); *Whittington v. U.S. Bank Nat. Ass'n*, No. 12-03167-MGL, 2013 WL 2285943, at *10 (D.S.C. May 23, 2013) (finding no federal question jurisdiction where complaint made only passing reference to the TILA). Accordingly, I find that removal was not proper on the basis of federal question jurisdiction.

IV. Diversity

District courts have jurisdiction over civil actions "where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between citizens of different states." 28 U.S.C. § 1332(a)(1). For diversity jurisdiction to exist there must be complete diversity, meaning that "no party shares common citizenship with any party on the other side."

Mayes v. Rapoport, 198 F.3d 457, 461 (4th Cir. 1999). Diverse parties also "must be real and substantial parties to the controversy. Thus, a federal court must disregard nominal or formal parties and rest jurisdiction only upon the citizenship of real parties to the controversy." *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 460 (1980). A "nominal party" is a party with "no immediately apparent stake in the litigation either prior or subsequent to the act of removal." *Hartford Fire Ins. Co. v. Harleysville Mut. Ins. Co.*, 736 F.3d 255, 260 (4th Cir. 2013). Determining nominal party status is a "practical inquiry, focused on the particular facts and circumstances of a case." *Id.*

For purposes of diversity jurisdiction, Talley is a citizen of Maryland, Ocwen is a citizen of Delaware and Florida, and BWW is a citizen of Maryland. (ECF No. 30 at 9.) Ocwen argues that BWW is a nominal party. It states that that BWW is named in Talley's Complaint only "because certain attorneys from BWW are the substitute trustees appointed to foreclose on the mortgage loan" that is secured by the subject property. (*Id.*) Talley does not address Ocwen's arguments regarding BWW's nominal party status.

Talley does not assert any claims for monetary damages against BWW or seek any relief to which BWW is a real party in interest. Instead, Talley seeks to declare the Deed of Trust for the subject property "null and void" and to declare the promissory note for the mortgage loan at issue "fully discharged." (ECF No. 2 at 15 & 21.) BWW does not own the subject property and has no interest in Talley's mortgage loan. BWW will not be directly affected by the outcome of this case and appears to have been included in Talley's Complaint only because of its position as substitute trustee.[3] *See Hartford Fire*, 736 F.3d at 261; *Monton v.*

Am.'s Servicing Co., No. 11-678, 2012 WL 3596519, at *5 (E.D. Va. Aug. 20, 2012) (noting that "the status of a substitute trustee hinges on the nature of the actions allegedly taken by the trustee, if any, and the type of relief sought against the trustee, if any"); *Quintana v. J.P. Morgan Chase Bank, N.A.*, No. DKC-14-1586, 2015 WL 1321436, at *4 (D. Md. Mar. 23, 2015) (finding that a substitute trustee was not a nominal party because he had a "real and tangible stake" in the outcome of the case, and was the subject of a plaintiff's claims for monetary and injunctive relief). For these reasons, I conclude that BWW is a nominal party.

Talley argues that diversity jurisdiction cannot serve as a basis for removal because he does not seek monetary damages. (ECF No. 32 at 2.) But in quiet title actions, "the amount in controversy is the value of the whole of the real estate to which the claim extends." *Hughes v. Wells Fargo Bank, N.A.*, 617 Fed.Appx. 261, 265–66 (4th Cir. 2015) (quoting *Peterson v. Sucro*, 93 F.2d 878, 882 (4th Cir. 1938)). It is undisputed that the value of the subject property exceeds $75,000. (*See* ECF No. 30 at 10.) For this reason, I conclude that the amount in controversy exceeds $75,000, exclusive of interests and costs.

Because there is complete diversity between the real parties to the controversy and the amount in controversy exceeds $75,000, exclusive of interest and costs, the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. Accordingly, I find that removal was proper on the basis of diversity jurisdiction.

V. Conclusion

For the reasons set forth above, the Court finds that this case was properly removed to this Court on the basis of diversity jurisdiction. Because the Court has subject matter jurisdiction, removal is proper and Talley's Motion is **DENIED**.
A separate Order follows.

Footnotes

1This case was referred to me for all proceedings, pursuant to 28 U.S.C. § 636(c) and Local Rule 301.4, on January 31, 2018. (ECF No. 24.)
2Defendant BWW Law Group, LLC ("BWW") adopts as its own the arguments raised by Ocwen in its response to the Motion. (ECF No. 31.) For brevity, the Court will only refer to Ocwen's arguments.
3The only allegations in the Complaint pertinent to BWW concern its status as a substitute trustee (ECF No. 2 at 4), in which role it received Talley's "Notice of Default ... for lack of proof of claim," to which BWW did not respond (*id.* at 8).

Filed: 02/04/2019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 18-1777 (8:18-cv-00052-TJS)

ROCHELL TALLEY

Plaintiff - Appellant v.
OCWEN LOAN SERVICING, LLC; BWW LAW GROUP, LLC

Defendants - Appellees

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc. Entered at the direction of the panel: Judge Agee, Judge Wynn, and Judge Diaz.

For the Court

/s/ Patricia S. Connor, Clerk