

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

ROBERT WILLIAM WAZNEY, Pro-se (forced) - Petitioner

vs.

J P MORGAN CHASE BANK, N. A.
~~Sharon Renee Wazney a/d/a Sharon Renee Globassole~~ - Respondent

ON PETITION FOR A WRIT OF CERTIORARI

APPENDIX

ROBERT WILLIAM WAZNEY, Pro-se (forced)
990 Wisacky Hwy.
Bishopville, SC 29010
Indigent (forced)
Convict (forced)
Pro se (forced)
803-428-2800

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- Q (A.18 Req) Rule 18 'notice or error' requirement

18-6693 / 18A716 100 41

18A716 A
FILED: August 28, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6693
(3:18-cv-00921-HMH)

JP MORGAN CHASE BANK, N.A.

Plaintiff - Appellee

v.

ROBERT W. WAZNEY, a/k/a Robert William Wazney

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

18176 A
UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-6693

JP MORGAN CHASE BANK, N.A.,

Plaintiff - Appellee,

v.

ROBERT W. WAZNEY, a/k/a Robert William Wazney,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Henry M. Herlong, Jr., Senior District Judge. (3:18-cv-00921-HMH)

Submitted: August 23, 2018

Decided: August 28, 2018

Before DUNCAN and FLOYD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Robert Wazney, Appellant Pro Se. Nicholas Andrew Charles, Sarah Beth Nielsen, B. Rush Smith, III, NELSON MULLINS RILEY & SCARBOROUGH, LLP, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

180716 A
PER CURIAM:

Robert Wazney appeals from the district court's order adopting the report and recommendation of the magistrate judge and remanding the underlying foreclosure proceeding back to state court. We dismiss the appeal. Remand orders are generally "not reviewable on appeal or otherwise." 28 U.S.C. § 1447(d) (2012). The Supreme Court has explained that the appellate restrictions of "§ 1447(d) must be read in pari materia with § 1447(c), so that only remands based on grounds specified in § 1447(c) [*i.e.*, lack of subject matter jurisdiction and defects in removal procedures] are immune from review under § 1447(d)." *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 127 (1995). Whether a remand order is reviewable is not based on a district court's explicit citation to § 1447(c); "[t]he bar of § 1447(d) applies to any order invoking substantively one of the grounds specified in § 1447(c)." *Borneman v. United States*, 213 F.3d 819, 824-25 (4th Cir. 2000).

Here, the district court dismissed for lack of subject matter jurisdiction, citing § 1447(c). Accordingly, we lack jurisdiction to review the merits of the district court's order. Thus, we grant JP Morgan Chase Bank's motion to dismiss the appeal. We deny Wazney's motions for a stay pending appeal and for summary judgment, and we dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

FILED: October 30, 2018

18A716 B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6693
(3:18-cv-00921-HMH)

JP MORGAN CHASE BANK, N.A.

Plaintiff - Appellee

v.

ROBERT W. WAZNEY, a/k/a Robert William Wazney

Defendant - Appellant

O R D E R

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Duncan, Judge Floyd, and Senior
Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH CAROLINA
 COLUMBIA DIVISION

JP Morgan Chase Bank,)	
National Association,)	
)	
Plaintiff,)	C.A. No. 3:18-921-HMH-KFM
)	
vs.)	OPINION & ORDER
)	
Robert W. Wazney, #363679,)	
a/k/a Robert William Wazney,)	
)	
Defendant.)	

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Kevin F. McDonald, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 of the District of South Carolina.¹ The Defendant, proceeding pro se, filed a notice of removal, which purports to remove a mortgage foreclosure action filed by JP Morgan Chase Bank, National Association. In his Report and Recommendation, Magistrate Judge McDonald recommends that this case be remanded to the Court of Common Pleas for Sumter County, South Carolina because the court lacks subject matter jurisdiction.

The Defendant filed objections to the Report and Recommendation. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91,

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that the Defendant's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his arguments. Therefore, after a thorough review of the magistrate judge's Report and the record in this case, the court adopts Magistrate Judge McDonald's Report and Recommendation and incorporates it herein by reference.

It is therefore

ORDERED that this action is remanded to the Court of Common Pleas for Sumter County, South Carolina.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
May 14, 2018

NOTICE OF RIGHT TO APPEAL

Defendant is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

JP Morgan Chase Bank, National Association,) C/A No. 3:18-921-HMH-KFM
)
 Plaintiff,)
 vs.) **REPORT AND RECOMMENDATION**
)
 Robert W. Wazney, #363679,)
 a/k/a Robert William Wazney,)
)
 Defendant.)

Robert William Wazney¹ ("Defendant"), proceeding *pro se*, filed a notice of removal, which purports to remove a mortgage foreclosure action filed by JP Morgan Chase Bank National Association ("Plaintiff") in the Court of Common Pleas in Sumter County, South Carolina, Case No. 2016-CP-43-00733. (doc. 1-3). All pretrial proceedings in this matter were referred to this Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civ. Rule 73.02(B)(2)(e) (D.S.C.). Upon review, the court concludes that this case should be remanded *sua sponte* to the Sumter County Court of Common Pleas for lack of subject matter jurisdiction.

BACKGROUND

On April 4, 2018, the defendant filed a "Notice of Removal" in this court. In the Notice of Removal, the defendant alleges, *inter alia*, that this case was originally filed on April 22, 2016, by Plaintiff in the Sumter County Court of Common Pleas relating to a foreclosure under case number 2016-DR-43-00733 (doc. 1 at 1). The state records provided do not contain a copy of the plaintiff's complaint, however, the records provided

¹ The defendant is a prisoner, however, the instant action is filed as a non-prisoner matter.

show that the Master in Equity granted the plaintiff's Motion for Summary Judgment, and issued an Order and Judgment of Foreclosure and Sale on January 10, 2017 (doc. 1-3 at 14). The state court records further reflect that the defendant's appeal was dismissed on February 28, 2018 (doc. 1-3 at 14-15, 34). The defendant filed this notice of removal on April 4, 2018 (doc. 1).

DISCUSSION

Federal courts are courts of limited jurisdiction. A defendant in a case in a state court may remove that case to a federal district court only if the state court action could have been originally filed in a federal district court. 28 U.S.C. § 1441. Generally, a case can be originally filed in a federal district court if there is diversity of citizenship under 28 U.S.C. § 1332 or there is so-called "federal question" jurisdiction under 28 U.S.C. § 1331. Various federal courts have held that the removal statutes are to be construed against removal jurisdiction, and in favor of remand. See, e.g., *Cheshire v. Coca-Cola Bottling Affiliated, Inc.*, 758 F.Supp. 1098, 1102 (D.S.C.1990) (collecting cases); see also *In re Blackwater Sec. Consulting*, 460 F.3d 576, 583 (4th Cir.2006) ("The party seeking removal bears the burden of demonstrating that removal jurisdiction is proper."). Federal courts are courts of limited jurisdiction, "constrained to exercise only the authority conferred by Article III of the Constitution and affirmatively granted by federal statute." *In re Bulldog Trucking, Inc.*, 147 F.3d 347, 352 (4th Cir.1998).

Applicable case law and statutory law, including 28 U.S.C. § 1447, provide that subject-matter jurisdiction cannot be conferred by estoppel, waiver, or consent. As a result, even if a plaintiff fails to object to a Notice of Removal within thirty days after the

Notice of Removal is filed, a federal district court should still remand the case to state court if there is no federal subject matter jurisdiction evident from the face of the notice of removal and any state court pleadings provided. *Ellenburg v. Spartan Motor Chassis, Inc.*, 519 F.3d 192 (4th Cir.2008). Thus, *sua sponte* remand is available under appropriate circumstances.

In the Removal Petition, the defendant suggests that removal is proper because "the court has federal question jurisdiction" over the alleged claims. (doc. 1 at 5). He also asserts that the court has supplemental jurisdiction over any state or common law claims alleged (*Id.*).

There is no federal jurisdiction over a complaint that "merely states a cause of action for enforcement of a promissory note and foreclosure of the associated security interest in real property." *Burbage v. Richburg*, 417 F. Supp. 2d 746, 749 (D.S.C. 2006); *McNeely v. Moab Tiara Cherokee Kituwah Nation Chief*, 2008 WL 4166328 (W.D.N.C 2008) (nothing in "simple foreclosure action of real property . . . suggests the presence of a federal question"). As such, removal of this case under federal question jurisdiction is improper.

To the extent the defendant seeks to remove this civil action based on the court's supplemental jurisdiction under 28 U.S.C. § 1337, the court may not exercise supplemental jurisdiction if the court does not have original jurisdiction. 28 U.S.C. § 1337(a). As previously set forth, the defendant has not set forth a basis such that the court has original jurisdiction to entertain this civil action.²

² Further it appears that removal of this case was improper. Defendant attempts to remove this case almost two years after the initial complaint was filed. Therefore, it is

RECOMMENDATION

For the foregoing reasons, the undersigned recommends this matter be remanded to the Court of Common Pleas of Sumter County, South Carolina, for lack of subject matter jurisdiction.

IT IS SO RECOMMENDED.

s/ Kevin F. McDonald
United States Magistrate Judge

April 13, 2018
Greenville, South Carolina

The defendant's attention is directed to an important notice on the next page.

well past the 30-day period imposed by 28 U.S.C. § 1446(b). See *FHC Options, Inc. v. Sec. Life Ins. Co. of Am.*, 993 F. Supp. 378, 380 (E.D. Va. 1998) ("[The] failure to comply with the 30-day limit is grounds for immediately remanding a removed case to state court [.]") (citing *N. Ill. Gas Co. v. Airco, Inc.*, 676 F.2d 270, 273 (7th Cir. 1982)).

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

**Additional material
from this filing is
available in the
Clerk's Office.**