

NOT RECOMMENDED FOR PUBLICATION

No. 19-2183

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jan 08, 2021
DEBORAH S. HUNT, Clerk

DENNIS AKAAZUA,)
Plaintiff-Appellant,)
v.)
WALKER NOVACK LEGAL GROUP, LLC;)
IMPERIAL VALLEY PROPERTIES, LLC;)
BUCHER & CAMERON, LLP; MORTGAGE)
ELECTRONIC REGISTRATION SYSTEMS,)
INC.,)
Defendants-Appellees,)
and)
HOME LOAN CORPORATION; ALL STATE)
MORTGAGE; TM PROPERTY SOLUTIONS,)
LLC,)
Defendants.)

) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE WESTERN DISTRICT OF
) MICHIGAN

ORDER

Before: BOGGS, STRANCH, and BUSH, Circuit Judges.

Denis Akaazua, a Michigan resident proceeding pro se, appeals a district-court judgment dismissing his complaint against Walker Novak Legal Group, LLC; Home Loan Corporation; Imperial Valley Properties, LLC; Bucher & Cameron, LLP; Mortgage Electronic Registration Systems, Inc. ("MERS"); All State Mortgage; and TM Property Solutions, LLC. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Akaazua filed a complaint against the defendants in the Circuit Court of Kent County, Michigan, seeking a temporary restraining order and alleging violations of the Truth in Lending Act, 15 U.S.C. §§ 1601–1667f, conversion, fraud and conspiracy to commit fraud, slander of title, breach of contract, and intentional infliction of emotional distress. After the defendants removed the action to the United States District Court for the Western District of Michigan, the court denied Akaazua’s motion for a restraining order and his motion to remand. The district court then granted the motions to dismiss filed by Imperial Valley Properties and MERS because Akaazua’s failure to respond constituted a waiver of any argument that dismissal was improper, granted the motion to dismiss filed by Walker Novak and Bucher & Cameron because Akaazua failed to state a claim upon which relief could be granted, and dismissed the remaining defendants for failure to effectuate service. *Akaazua v. Walker Novak Legal Grp., LLC*, No. 1:19-cv-31, 2019 WL 4316130 (W.D. Mich. Sept. 12, 2019).

On appeal, Akaazua argues that the district court erred in denying his motion to remand and erred in granting the motions to dismiss filed by Imperial Valley Properties, Walker Novak, Bucher & Cameron, and MERS. Akaazua has forfeited review of any claims that he raised in the district court but did not raise in his appellate brief. *See Agema v. City of Allegan*, 826 F.3d 326, 331 (6th Cir. 2016).

We review de novo a district court’s denial of a motion to remand. *Music v. Arrowood Indem. Co.*, 632 F.3d 284, 286 (6th Cir. 2011). A civil case brought in state court may be removed to federal court if the action originally could have been brought in federal court. 28 U.S.C. § 1441(a). Because Akaazua’s complaint alleged violations of the Truth in Lending Act, his complaint was properly removed to the district court. Moreover, despite Akaazua’s assertions to the contrary, foreclosure actions are not admiralty claims, and the United States District Court for the Western District of Michigan is a federal district court. Accordingly, the district court did not err in denying the motion to remand.

We review de novo a district court’s dismissal of a complaint under Federal Rule of Civil Procedure 12(b)(6). *Winget v. JP Morgan Chase Bank, N.A.*, 537 F.3d 565, 572 (6th Cir. 2008).

No. 19-2183

- 3 -

The district court did not err in granting the motions to dismiss filed by Imperial Valley Properties and MERS because Akaazua's failure to respond constituted a waiver of any argument that the dismissal was improper. *See Allstate Ins. Co. v. Glob. Med. Billing, Inc.*, 520 F. App'x 409, 412 (6th Cir. 2013). Moreover, although Akaazua asserts that inclement weather prevented him from timely responding to the dismissal motions, there is no basis for treating a pro se litigant more generously than a represented litigant when a pro se litigant fails to comply with an easily understood deadline. *See In re Edwards*, 748 F. App'x 695, 700 (6th Cir. 2019). Finally, the district court did not err in dismissing the complaint as to Walker Novak and Bucher & Cameron because Michigan law provides that an attorney does not owe a legal duty to an adverse party, and Akaazua failed to allege that these defendants did anything other than represent Imperial Valley Properties in foreclosure proceedings. *See Tocco v. Richman Greer Prof'l Ass'n*, 553 F. App'x 473, 475 (6th Cir. 2013).

Accordingly, we **AFFIRM** the judgment of the district court.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DENNIS AKAAZUA,

Plaintiff,

Case No. 1:19-cv-31

v.

HON. JANET T. NEFF

WALKER NOVAK LEGAL GROUP, LLC, et
al.,

Defendants.

JUDGMENT

In accordance with the Opinion and Order entered this date:

IT IS HEREBY ORDERED that Plaintiff's claims against Defendants Walker Novak Legal Group, LLC; Imperial Valley Properties LLC; Bucher & Cameron, LLP; Mortgage Electronic Registration Systems, Inc are DISMISSED WITH PREJUDICE and Plaintiff's claims against Defendants Home Loan Corporation, All State Mortgage, and TM Property Solutions, LLC are DISMISSED WITHOUT PREJUDICE for failure to timely effect service.

Dated: September 12, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DENNIS AKAAZUA,

Plaintiff,

Case No. 1:19-cv-31

v.

HON. JANET T. NEFF

WALKER NOVAK LEGAL GROUP, LLC, et
al.,

Defendants.

OPINION AND ORDER

This matter is before the Court on Plaintiff's objections to three Reports and Recommendations of the Magistrate Judge. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Reports and Recommendations to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff, proceeding pro se, initiated this case in state court in December 2018, alleging violations of the federal Truth in Lending Act, as well as various state law provisions, arising from the foreclosure and pending sale of certain real property. Plaintiff named the following seven defendants: Walker Novak Legal Group, LLC (Walker); Home Loan Corporation; Imperial Valley Properties LLC (Imperial); Bucher & Cameron, LLP (Bucher & Cameron); Mortgage Electronic Registration Systems, Inc. (MERS); All State Mortgage; and TM Property Solutions, LLC. On January 14, 2019, Defendant MERS removed the action to this Court (ECF No. 1), indicating it had obtained consent to removal by Walker, Imperial, and Bucher & Cameron, the only co-

Defendants whom Plaintiff had served to date (*id.* at PageID.2). On January 22, 2019, Defendant Imperial filed a motion to dismiss (ECF No. 9), Defendants Bucher & Cameron and Walker jointly filed a motion to dismiss (ECF No. 10), and Defendant MERS filed a motion to dismiss (ECF No. 11). The matter was referred to the Magistrate Judge.

On March 6, 2019, the Magistrate Judge issued a Report and Recommendation (R&R) (ECF No. 21), recommending that the motions to dismiss filed by Defendants Imperial and MERS be granted. The Magistrate Judge reasoned that dismissal was appropriate because Plaintiff failed to respond to either motion (*id.* at PageID.426). Plaintiff filed an objection to the Report and Recommendation (ECF No. 23), representing that the weather prevented him from filing timely responses to Defendants' motions to dismiss (*id.* at PageID.436-437). The Court finds Plaintiff's objection unavailing and will approve and adopt the Magistrate Judge's Report and Recommendation (ECF No. 21) as the Opinion of the Court.

On June 21, 2019, the Magistrate Judge issued a second Report and Recommendation (ECF No. 35). The Magistrate Judge recommended that Plaintiff's Motion to Remand (ECF No. 18) be denied as his jurisdictional argument was "frivolous" (*id.* at PageID.508). The Magistrate Judge recommended that Plaintiff's motions to strike Defendants Bucher & Cameron and Walker's motion to dismiss (ECF Nos. 14 & 16) also be denied as "frivolous," although the Magistrate Judge considered the motions to strike as "responses" to Defendants Bucher & Cameron and Walker's motion to dismiss (R&R, ECF No. 35 at PageID.508). The Magistrate Judge recommended that Defendants Bucher & Cameron and Walker's motion to dismiss be granted, concluding that Plaintiff failed to state a plausible claim for relief against either Defendant (*id.* at PageID.508-509).

In his July 3, 2019 objections (ECF No. 36), Plaintiff did not object to the Magistrate Judge's resolution of his Motions to Strike or the Magistrate Judge's analysis of his claims against Defendants Bucher & Cameron and Walker. Plaintiff merely reiterates the jurisdictional argument he made in his motion to remand, without demonstrating any factual or legal error in the Magistrate Judge's analysis or conclusion. Accordingly, this Court will also approve and adopt the Magistrate Judge's Report and Recommendation (ECF No. 35) as the Opinion of the Court.

Last, on August 26, 2019, Plaintiff filed objections to the Magistrate Judge's third Report and Recommendation (ECF No. 37), which recommends dismissal of the three unserved entities: Home Loan Corporation, All State Mortgage and TM Property Solutions, LLC. Plaintiff asserts that he served all three entities on February 3, 2019 and that his proof of service is "missing on the Docket entries" (ECF No. 38 at PageID.519). Plaintiff "requests an explanation on such negligence" (*id.*). Plaintiff amended his objection on August 27, 2019 to clarify that the "negligence [was] allegedly inflicted by the recording State clerk(s)" (ECF No. 39 at PageID.523). Plaintiff does not attach to his objection or his amended objection any copies of documents demonstrating service before removal of this case on January 14, 2019; on February 3, 2019; or any date. Further, as noted by the Magistrate Judge (R&R, ECF No. 37 at PageID.516), Plaintiff did not request an extension of time to effect service on these entities, nor does the Court discern good cause to grant any such extension. Plaintiff's objection is unavailing, and the Court will therefore approve and adopt the Magistrate Judge's Report and Recommendation (ECF No. 37) as the Opinion of the Court.

Because this Opinion and Order resolves all pending claims, Plaintiff's objections to various discovery matters (ECF Nos. 22, 33 & 34) will be denied as moot and a Judgment will enter. *See* FED. R. CIV. P. 58.

Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 23) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 21) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant Imperial Valley Properties LLC's Motion to Dismiss (ECF No. 9) is GRANTED for the reasons stated in the Report and Recommendation (ECF No. 21).

IT IS FURTHER ORDERED that Defendant Mortgage Electronic Registration Systems, Inc.'s Motion to Dismiss (ECF No. 11) is GRANTED for the reasons stated in the Report and Recommendation (ECF No. 21).

IT IS FURTHER ORDERED that the Objections (ECF No. 36) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 35) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's motions to strike (ECF Nos. 14 & 16) are DENIED for the reasons stated in the Report and Recommendation (ECF No. 35).

IT IS FURTHER ORDERED that Plaintiff's Motion to Remand (ECF No. 18) is DENIED for the reasons stated in the Report and Recommendation (ECF No. 35).

IT IS FURTHER ORDERED that Defendants Bucher & Cameron, LLP and Walker Novak Legal Group, LLC's motion to dismiss (ECF No. 10) is GRANTED for the reasons stated in the Report and Recommendation (ECF No. 35).

IT IS FURTHER ORDERED that the Objections (ECF Nos. 38 & 39) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 37) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Objections (ECF Nos. 22, 33 & 34) are DENIED AS MOOT.

Dated: September 12, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DENNIS AKAAZUA,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:19-cv-31

WALKER NOVAK
LEGAL GROUP, et al.,

Defendants.

REPORT AND RECOMMENDATION

This action arises out of the foreclosure and sale of certain real property. On or about December 11, 2018, Plaintiff initiated an action in state court against seven entities. On January 14, 2019, the matter was removed to this Court. Plaintiff has failed, however, to effect service on the following Defendants: (1) Home Loan Corporation; (2) All State Mortgage; and (3) TM Property Solutions LLC. Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Plaintiff's claims against these Defendants be **dismissed for failure to timely effect service**.

While Plaintiff initiated this action in state court, upon removal to this Court the Federal Rules of Civil Procedure must apply. *See* Fed. R. Civ. P. 81(c)(1). Federal Rule of Civil Procedure 4(c) indicates that “[a] summons must be served with a copy of the complaint.” The time frame within which service must be effected is articulated in Rule 4(m), which provides that if service of the summons and complaint is not made upon a defendant within 90 days after the filing of the complaint, “the court - on motion or on its own initiative after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” *See*

also, Abel v. Harp, 122 Fed. Appx. 248, 250 (6th Cir., Feb. 16, 2005) (“[a]bsent a showing of good cause to justify a failure to effect timely service, the Federal Rules of Civil Procedure *compel* dismissal”) (emphasis added).

CONCLUSION

This matter was removed to this Court on January 14, 2019. More than six months have passed and Plaintiff has still failed to effect service on the three entities identified above. Plaintiff has not requested an extension of time to effect service on these Defendants nor does the Court discern good cause to grant any such extension. Considering Plaintiff’s lack of diligence, the undersigned recommends that Plaintiff’s claims against Defendants (1) Home Loan Corporation; (2) All State Mortgage; and (3) TM Property Solutions LLC be **dismissed without prejudice for failure to timely effect service**.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court’s order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Dated: August 14, 2019

/s/ Ellen S. Carmody
ELLEN S. CARMODY
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DENNIS AKAAZUA,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:19-CV-31

WALKER NOVAK
LEGAL GROUP, et al.,

Defendants.

REPORT AND RECOMMENDATION

This matter is before the Court on Defendants' Corrected Motion to Dismiss, (ECF No. 10), Plaintiff's Motions to Strike, (ECF No. 14, 16), and Plaintiff's Motion to Remand, (ECF No. 18). Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Defendants' Motion to Dismiss be **granted**, Plaintiff's Motions to Strike be **granted in part and denied in part**, and Plaintiff's Motion to Remand be **denied**.

BACKGROUND

This action arises out of the foreclosure and sale of real property located at 931-933 Alexander Street, SE, Grand Rapids, Michigan. On or about December 11 2018, Plaintiff initiated an action in state court against the following entities: (1) Walker Novak Legal Group, LLC; (2) Home Loan Corporation; (3) Imperial Valley Properties LLC; (4) Bucher & Cameron, LLP; (5) Mortgage Electronic Registration Systems, Inc. (MERS); (6) All State Mortgage; and (7) TM Property Solutions LLC. (ECF No. 1-1 at PageID.23-43). Plaintiff alleges violations of the federal Truth in Lending Act, as well as various state law provisions. On January 14, 2019, the matter was removed to this Court. Defendants Walker Novak and Bucher & Cameron now move to dismiss Plaintiff's claims.

Plaintiff moves the Court to remand this matter to state court.

ANALYSIS

I. Motion to Remand (ECF No. 18)

In their Notice of Removal, Defendants indicated that they were removing this matter to “the United States District Court for the Western District of Michigan, Southern Division.” (ECF No. 1 at PageID.2). Plaintiff argues that this matter must be remanded to state court because the venue identified by Defendants “is the incorrect federal court.” Plaintiff argues that there exists a distinction between a “United States District Court” and a “district court of the united states.” According to Plaintiff, the present case is properly removable only to a “district court of the united states,” but not to a “United States District Court.” Plaintiff concludes, therefore, that because Defendants removed this matter to a “United States District Court,” remand is required. Plaintiff’s argument is frivolous and is not supported by any authority cited by Plaintiff or known to this Court. Accordingly, the undersigned recommends that Plaintiff’s motion to remand be denied.

II. Motions to Strike (ECF No. 14 and 16)

Plaintiff responded to the present motion to dismiss filed by Defendants Walker Novak or Bucher & Cameron by filing two separate motions to strike. To the extent Plaintiff seeks to strike Defendants’ motion to strike, the undersigned recommends that such be denied as frivolous. The Court will, however, consider Plaintiff’s motions as responses to Defendants’ motion to dismiss.

III. Motion to Dismiss

In his complaint, Plaintiff makes no factual allegations against Defendants Walker Novak or Bucher & Cameron which, if proven, state a claim for relief. Plaintiff merely alleges that Defendants represented an entity, Imperial Valleys Properties, LLC, to which Plaintiff’s mortgage was

allegedly assigned and which ultimately foreclosed on the property in question. Such simply fails to state a claim. *See Fed. R. Civ. P. 12(b)(6); Ashcroft v. Iqbal*, 556 U.S. 662, 677-79 (2009); *Frazier v. Michigan*, 41 Fed. Appx. 762, 764 (6th Cir., July 22, 2002) (“a complaint must allege that the defendants were personally involved in the alleged deprivation of federal rights”); *Conlin v. Mortgage Electronic Registration Systems, Inc.*, 2011 WL 6440705 at *1 (E.D. Mich., Dec. 16, 2011) (“a plaintiff does not have a cause of action against foreclosure counsel”, but must instead seek relief from the individual or entity whom counsel represents). Accordingly, the undersigned recommends that Defendants’ motion to dismiss be granted.

CONCLUSION

For the reasons articulated herein, the undersigned recommends that Plaintiff’s Motion to Remand, (ECF No. 18), be **denied**; Plaintiff’s Motions to Strike, (ECF No. 14, 16), be **granted in part and denied in part**, and Defendants’ Corrected Motion to Dismiss, (ECF No. 10), be **granted**.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court’s order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Dated: June 21, 2019

/s/ Ellen S. Carmody
ELLEN S. CARMODY
U.S. Magistrate Judge