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OPINION OF THE UNITED STATES COURT
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(MARCH 14, 2025)

No. 24-13607

Non-Argument Calendar

DO NOT PUBLISH

CHRISTY POON-ATKINS,
P.E., CALVIN ATKINS

Plaintiffs-Consol Defendants

Consol

Counter Claimants-Appellants

GEOSAM CAPITAL US
(GEORGIA) LLC,

versus

Consol
Plaintiff,

RIVERSPRINGS AT
ALCOVY HOMEOWNERS
ASS'N, INC.

Defendant-Consol Plaintiff Consol Counter
Defendant-Appellee,

GEOSAM CAP. US. GA

Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Georgia
D.C. Docket No. 1:24-cv-02207-JPB

Before JILL PRYOR, NEWSOM, and KIDD, Circuit
Judges.

PER CURIAM:

24-13607

Christy Poon-Atkins and Calvin Atkins, proceeding *pro se*, appeal from the district court's October 23, 2024, order remanding three consolidated cases to Georgia state court. The appellees filed a motion to dismiss this appeal for lack of jurisdiction.

We lack jurisdiction to review the district court's order because it remanded two of the cases based on procedural defects raised in Geosam Capital US (Georgia) LLC's timely motion to remand and remanded the third case for lack of subject matter jurisdiction. See 28 U.S.C. § 1447(c), (d); *MSP Recovery Claims, Series LLC v. Hanover Ins. Co.*, 995 F.3d 1289, 1294 (11th Cir. 2021) (explaining that, under the statute, remand orders for which review is barred include those based on motions to remand because of procedural defects filed within 30 days of the removal and those based on a lack of subject matter jurisdiction); *Whole Health Chiropractic & Wellness, Inc. v. Humana Med. Plan, Inc.*, 254 F.3d 1317, 1319 (11th Cir. 2001) (explaining that remand orders are only reviewable if they are based on grounds other than those specified in § 1447(c)). Additionally, the appellants did not invoke 28 U.S.C. §§ 1442 or 1443 in their notices of removal. See 28 U.S.C. § 1447(d); *BP P.L.C. v. Mayor of Balt.*, 141 S. Ct. 1532, 1538 (2021).

Accordingly, the appellees' motion is GRANTED, and this appeal is DISMISSED. All other pending motions are DENIED as moot.

ORDER OF THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT
(MAY 13, 2025)

No. 24-13607

CHRISTY POON-ATKINS, P.E.,
CALVIN ATKINS

Plaintiffs-Consol Defendants

Consol

Counter Claimants-Appellants

GEOSAM CAPITAL US (GEORGIA) LLC,
Consol Plaintiff,

versus

RIVERSPRINGS AT ALCOVY
HOMEOWNERS ASS'N, INC.

Defendant-Consol Plaintiff Consol Counter
Defendant-Appellee,

GEOSAM CAP. US. GA

Defendant-Appellee.

24-13607

Appeal from the United States District Court
For the Northern District of Georgia
D.C. Docket No. 1:24-cv-02207-JPB

ORDER:

The motion of Christy Poon-Atkins to stay the issuance of the mandate pending a petition for writ of certiorari is DENIED.

DAVID J. SMITH

Clerk of the United States Court of
Appeals for the Eleventh Circuit

ENTERED FOR THE CT. – BY DIRECTION

ORDER OF THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT
(APRIL 21, 2025)

No. 24-13607

CHRISTY POON-ATKINS,
P.E., CALVIN ATKINS

Plaintiffs-Consol Defendants
Consol Counter Claimants-Appellants

GEOSAM CAPITAL US
(GEORGIA) LLC,

Consol Plaintiff,

versus

RIVERSPRINGS AT ALCOVY
HOMEOWNERS ASS'N, INC.

Defendant-Consol Plaintiff Consol Counter
Defendant-Appellee,

GEOSAM CAP. US. GA

Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Georgia
D.C. Docket No. 1:24-cv-02207-JPB

Before JILL PRYOR, NEWSOM, and KIDD,
Circuit Judges

PER CURIAM:*

*The Petition for Panel Rehearing filed by
Appellants Christy Poon-Atkins and Calvin
Atkins is DENIED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
(OCTOBER 23, 2024)

ORDER

CHRISTY POON-ATKINS, P.E.
et al,

Plaintiffs,
vs.

GEOSAM CAP. U.S. (GEORGIA)
LLC, et al.,

Defendants

CIVIL
ACTION NO.:
1:22-CV-02207-
JPB

This matter is before the Court on several pending motions, including: Christy Poon-Atkins, P.E.'s and Calvin D. Atkins's (together, "Homeowners" or "Atkinses") Motion for Default Judgment as a Matter of Law for Justified Relief from a Judgment or Order [Doc. 2]; Homeowners' Motion for Permission to File Electronically as a Pro Se Party [Doc. 4]; Geosam Capital US (Georgia) LLC's Motion to Remand and Brief in Support and Response to Motion for Default Judgment [Doc. 7]; Homeowners' Motion for Relief [Doc. 9]; Homeowners' Motion for Joinder [Doc. 10]; Homeowners' Motion for Default Judgment as a Matter of Law [Doc. 25]; Riversprings at Alcovy Homeowners Association, Inc.'s Motion to Remand and Brief in Support and Response to Motion for Default Judgment [Doc. 27]; and Homeowners' Motion for Sanctions [Doc. 29].

This Court finds as follows:

BACKGROUND

This case arises out of Homeowners' claims that Riversprings at Alcovy Homeowners Association, Inc. ("Riversprings HOA") and Geosam Capital US (Georgia) LLC ("Geosam Capital") infringed upon Homeowners' property rights. The instant case is the consolidation of three federal cases, each of which the Court will discuss in turn. See [Doc. 5].

A. Overview of the Underlying Facts

Homeowners allege that in late 2020, they received a "Notice of Change in Condition" letter from the Gwinnett County Department of Planning and Development and Geosam Capital ("Notice Letter"). [Doc. 1, p. 8]. Homeowners claim that the Notice Letter informed them about plans to encroach upon their rights to hold and possess a perpetual fifty-foot drainage easement located across the exterior of their property. Id. at 9. After receiving the Notice Letter, Homeowners allege that they sent a response letter dated October 30, 2020, to Geosam Capital and to the Gwinnett County Department of Planning and Development objecting to the proposed change. Id. Homeowners also claim that they sent a letter to Riversprings HOA reiterating their objections to the proposed change and citing a covenant which Homeowners purport binds Riversprings HOA and prevents it from allowing the alleged encroachment on Homeowners' easement rights. Id. Broadly, Homeowners express concerns that reducing their easement to the drainage ditch

behind their home will devalue their property and potentially cause harmful flooding. *Id.* at 10–11.

B. Homeowners' Gwinnett County Superior Court Case, Which Became Federal Case No. 1:24-cv-02207

On June 22, 2022, Homeowners, proceeding *pro se*, filed suit against Geosam Capital and Riversprings HOA in the State Court of Gwinnett County, Georgia, alleging harm to their property interests stemming from the above incident (Civil Action No. 22-C-03435-S4) (“Homeowners v. Geosam Capital, et al.”). In their complaint, Homeowners requested \$150,000 in compensatory damages as well as punitive damages stemming from Geosam Capital’s and Riversprings HOA’s “heinous actions that stripped away the [Atkinses’] homeownership enjoyment” *Id.* at 12. Homeowners’ case was eventually transferred to the Superior Court of Gwinnett County and later dismissed with prejudice.¹ Thereafter, Homeowners filed an appeal with the Georgia Court of Appeals, and the appellate court affirmed the lower court’s dismissal of Homeowners’ claims (Case No. A23A1135). Homeowners then filed a petition for certiorari with the Supreme Court of Georgia, which the Georgia Supreme Court denied on March 19, 2024 (Case No. S24C0337).

On May 20, 2024, Homeowners filed a Notice

¹ When Homeowners v. Riversprings HOA, et al. was transferred to the Superior Court of Gwinnett County, it was designated as Civil Action No. 22-A-09497-10.

of Removal whereby they removed Homeowners v. Riversprings HOA, et al. to this Court. [Doc. 1]. Upon removal, the Clerk designated Homeowners v. Riversprings HOA, et al. as federal Case No. 1:24-cv-02207. The same day, Homeowners also filed their Motion for Default Judgment as a Matter of Law for Justified Relief from a Judgment or Order [Doc. 2]. In their motion, Homeowners request that this Court set aside Gwinnett County Superior Court's judgment against them and impose default judgment against Geosam Capital and Riversprings HOA. See *id.* Homeowners base their arguments on O.C.G.A. § 9-11-55 and upon a claim that the Gwinnett County Superior Court lacked jurisdiction to adjudicate Homeowners' claims. See *id.*

C. Geosam Capital's Gwinnett County Superior Court Case, Which Became Federal Case No. 1:24-cv-02208

On October 7, 2022, Geosam Capital filed suit against Homeowners in the Superior Court of Gwinnett County, Georgia, bringing claims for slander of title pursuant to O.C.G.A. § 59-9-11, injunctive relief and attorney's fees (Case No. 22-A-08764-10) ("Geosam Capital v. Homeowners"). See [Case No. 1:24-cv-02208, Doc. 1, pp. 27–33]. On May 20, 2024, Homeowners filed their Notice of Removal as to Geosam Capital v. Homeowners, seeking to remove the case "pursuant to 28 U.S.C. §§ 1331, 1358, 1403, 1441, 1446, 1447." *Id.* at 1. Once removed to this Court, Geosam Capital v. Homeowners became federal Case No. 1:24-cv-02208. After they removed the case to federal

court, Homeowners filed an answer and a motion to dismiss the complaint and a motion for permission to file electronically. See [Civil Action No. 1:24-cv-02208, Doc. 2]; [Civil Action No. 1:24-cv-02208, Doc. 4].

D. Riversprings HOA's Gwinnett County Superior Court Case, Which Became Federal Case No. 1:24-cv-02209

Finally, Riversprings HOA also filed suit against Homeowners on January 4, 2024, seeking assessments, late charges, interest, attorney's fees, costs and expenses pursuant to the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Riversprings and the Bylaws for Riversprings at Alcovy Homeowners Association, Inc. (Case No. 24-C-00060-S7) ("Riversprings HOA v. Homeowners"). [Civil Action No. 1:24-cv-02209, Doc. 1, pp. 33-36]. On the same day that they removed the two cases discussed above, Homeowners also filed a Notice of Removal as to Riversprings HOA v. Homeowners. See [Civil Action No. 1:24-cv-02209, Doc. 1]. Once Homeowners removed the case, the Clerk designated Riversprings HOA v. Homeowners as federal Case No. 1:24-cv- 02209. After they removed the case, Homeowners filed an answer, a motion to dismiss the complaint and a motion for permission to file electronically. See [Civil Action No. 1:24-cv-02209, Doc. 2]; [Civil Action No. 1:24-cv-02209, Doc. 3]; [Civil Action No. 1:24-cv-02209, Doc. 5].

E. History of the Consolidated Case

On May 23, 2024, this Court entered an order consolidating the following cases: 1:24-cv-02207

(Homeowners v. Riversprings HOA, et al.); 1:24-cv-02208 (Geosam Capital v. Homeowners); and 1:24-cv-02209 (Riversprings HOA v. Homeowners). [Doc. 5]. The next day, Homeowners filed a Motion for Permission to File Electronically as a Pro Se Party. [Doc. 4]. Thereafter, Geosam Capital filed its Motion to Remand and Brief in Support and Response to Motion for Default Judgment ("Geosam Capital's Motion to Remand"). [Doc. 7].

Thereafter, Homeowners filed their Motion for Relief [Doc. 9], their Motion for Joinder [Doc. 10] and their Motion for Default Judgment as a Matter of Law [Doc. 27] on June 21, 2024. Then, on June 27, 2024, Riversprings HOA filed its Motion to Remand and Brief in Support and Response to Motion for Default Judgment ("Riversprings HOA's Motion to Remand"). [Doc. 27]. Finally, on July 10, 2024, Homeowners filed their Motion for Sanctions. [Doc. 29]. These matters are all ripe for review.

ANALYSIS

At the outset, the Court will address Geosam Capital's and Riversprings HOA's respective Motions to Remand because, if the Court finds that remand is appropriate, all other pending motions will be rendered moot. See [Doc. 7]; [Doc.27].

Under 28 U.S.C. § 1441(a), any civil case filed in state court may be removed to federal court by a defendant if the case could have originally been filed in federal court. When a case is removed, the party seeking removal bears the burden of establishing federal jurisdiction by a

preponderance of the evidence at the time the notice of removal is filed. Leonard v. Enter. Rent a Car, 279 F.3d 967, 972 (11th Cir. 2002). Notably, “[b]ecause removal jurisdiction raises significant federalism concerns, federal courts are directed to construe removal statutes strictly.” Griffith v. Wal-Mart Stores E., L.P., 884 F. Supp. 2d 1218, 1221 (N.D. Ala. 2012) (quoting Univ. of S. Ala. v. Am. Tobacco Co., 168 F.3d 405, 411 (11th Cir. 1999)).

A. Geosam Capital’s Motion to Remand

The Court will first address Geosam Capital’s Motion to Remand. In its motion, Geosam Capital requests that this Court remand Homeowners v. Riversprings HOA, et al. and Geosam Capital v. Homeowners because: (1) Homeowners’ removal was untimely as to both cases; (2) Homeowners cannot remove Homeowners v. Riversprings HOA, et al.—a case in which they are the plaintiffs—to federal court; and (3) Homeowners failed to include a short and plain statement of the grounds for removal. See [Doc. 7].

First, as to the untimeliness of removal, 28 U.S.C. § 1446(b)(1) requires that “[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant . . . of a copy of the initial pleadings setting forth the claim for relief upon which such action or proceeding is based.....” Here, Homeowners filed Homeowners v. Riversprings HOA, et al. on June 22, 2022. [Doc. 1, p. 14]. It was not until May 20, 2024, almost two years later, that Homeowners filed their Notice of Removal. See id. As such, removal of

Homeowners v. Riversprings HOA, et al. was untimely and this Court must remand the case. As to the second case, Geosam Capital v. Homeowners, Homeowners filed the case in Gwinnett County Superior Court on October 7, 2022. [Case No. 1:24-cv-02208, Doc. 1, p. 33]. Once again, Homeowners removed the case to federal court on May 20, 2024, over a year and a half later. *Id.* at 5. As such, Homeowners' removal of Geosam Capital v. Homeowners was also untimely, and this Court must remand the case.²

1. Geosam Capital's Request for Costs and Fees Related to Removal

In its motion to remand, Geosam Capital also moved under 28 U.S.C. § 1447(c) for costs and expenses, including attorney's fees, incurred as a result of the removal. [Doc. 7, pp. 5–7]. Where a

² Further, as to Homeowners v. Riversprings HOA, et al., a case in which Homeowners are the plaintiffs, they cannot remove the case to federal court, nor can they properly seek appellate review of the state court's decision before this Court. See Davis v. Florida, No. 8:10-CV-0860, 2010 WL 2025874, at *1 (M.D. Fla. Apr. 26, 2010) (finding that a *pro se* plaintiff could not remove her own action—which had already been dismissed with prejudice in state court—to federal court) (citing Riguad v. Broward Gen. Med. Ctr., 346 F. App'x 453, 454 (11th Cir. 2009)); see also 28 U.S.C. § 1441 (providing that a defendant—and, by implication, not a plaintiff—may remove a civil action to federal court); Williams v. Marks, No. 3:22-cv-519, 2022 WL 18767960, at *3 (M.D. Fla. Oct. 5, 2022) (considering plaintiffs' removal of their own case from state court after the state case was dismissed with prejudice and noting that, to the extent the removal was an attempt to appeal the state court's dismissal, the federal district court “does not have jurisdiction to hear appeals of state court decisions”).

court grants a party's motion to remand, § 1447(c) allows courts to "require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." In Martin v. Franklin Capital Corporation, the United States Supreme Court clarified the purpose of an award of fees under § 1447(c), noting that:

The appropriate test for awarding fees under § 1447(c) should recognize the desire to deter removals sought for the purpose of prolonging litigation and imposing costs on the opposing party, while not undermining Congress' basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied.

546 U.S. 132, 140 (2005). Further, the Supreme Court in Martin held that "absent unusual circumstances, attorney's fees should not be awarded when the removing party has an objectively reasonable basis for removal." Id. at 136. However, "[t]he purpose of § 1447(c) is not to punish defendants for improper removal, but to compensate plaintiffs for expenses associated with obtaining a remand order." HSBC Mortg. Servs., Inc. v. Williams, No. 1:07-CV-2863, 2007 WL 4303725, at *2 (N.D. Ga. Dec. 10, 2007) (citing Publix Supermarkets, Inc. v. United Food & Com. Workers Int'l Union AFL-CIO & CLC, 900 F. Supp. 419, 422 (M.D. Fla. 1995)). Further, district courts "retain discretion to consider whether unusual circumstances warrant a departure from the rule in a given case." Martin, 546 U.S. at 141; see also Lost Mountain

Homeowners Ass'n, Inc. v. Rice, 248 F. App'x 114, 115 (11th Cir. 2007) (reviewing a district court's award of attorney's fees pursuant to § 1447(c) under an abuse of discretion standard).

Here, Geosam Capital seeks an award of fees in relation to Homeowners' removal of Homeowners v. Riversprings HOA, et al. and Geosam Capital v. Atkinses. [Doc. 7, pp. 5–7]. As an initial matter, the Court notes that Geosam Capital failed to provide any indication of the amount of costs and expenses it seeks under the statute, thus allowing the Court no opportunity to assess whether such an award is “just” and providing Homeowners no opportunity to object to the reasonableness of the amount requested or the methods of calculation. See Chakravarty v. Sims, No. 1:22-CV-3177, 2022 WL 17544385, at *1 (N.D. Ga. Sept. 30, 2022) (refusing to award attorney's fees and costs under § 1447(c) against a *pro se* party that did not have an opportunity to object as to the fees or rates assessed against it). Moreover, although Homeowners' removal as to both cases was far from timely, in both notices of removal, Homeowners referenced 28 U.S.C. § 1331—which provides federal courts with original jurisdiction for cases arising under federal law. See [Doc. 1, p. 3]; [Case No. 1:24-cv-02208, Doc. 1, p.4]. In their notices of removal, Homeowners claimed that Geosam Capital was infringing upon their property rights in violation of the United States Constitution. Despite the many defects in Homeowners' removals, the Court finds that Homeowners at least attempted to make a good faith allegation of federal subject matter jurisdiction, especially given their *pro se*

status. As such, the Court finds that an assessment of costs and expenses is not appropriate here. See MSP Recovery Claims, Series LLC v. Hanover Ins. Co., 995 F.3d 1289, 1296 (11th Cir. 2021) (noting that “[t]here is no presumption in favor of awarding attorney’s fees and costs under Section 1447(c)” and upholding a district court’s denial of fees where the fee-seeking party did not allege that the removing party made “factual misrepresentations . . . frivolous legal arguments, or anything similar that might have rendered their removals objectively unreasonable”); HSBC Mortg. Servs., Inc., 2007 WL 4303725 at *3 (refusing to grant an award of attorney’s fees against a *pro se* litigant proceeding “without the benefit of legal training or counsel” and where the party made a “good faith assertion of a colorable argument for federal jurisdiction”); SNF Prop., LLC v. Seoane, No. 8:20-cv-1896, 2020 WL 6194190, at *2 (M.D. Fla. Oct. 22, 2020) (refusing to award costs and fees against a *pro se* party where it did not appear that the party removed the case for improper purposes and noting that “leniency must be given to parties proceeding *pro se*”); Konduar Cap. Corp. v. Gaspareto, No. 3:12-cv-750, 2012 WL 6765728, at *3 (M.D. Fla. Nov. 14, 2012) (refusing to award costs and fees against a *pro se* party under § 1447(c) and collecting cases finding the same).

Accordingly, the Court **DENIES IN PART** Geosam Capital’s Motion for Remand [Doc. 7] insofar as it requests an award of fees and costs, but **GRANTS IN PART** the motion as to its request for remand.

B. Riversprings HOA's Motion to Remand

Now, the Court turns to Riversprings HOA's Motion to Remand. As an initial matter, this Court has already determined above that remand is appropriate as to Homeowners v. Geosam Capital, et al. As such, the Court will only address Riversprings HOA's Motion to Remand insofar as the motion requests that this Court remand Riversprings HOA v. Homeowners.

Homeowners removed Riversprings HOA v. Homeowners on May 20, 2024. See [Case No. 1:24-cv-02209, Doc. 1]. However, Riversprings HOA did not file its Motion to Remand until June 27, 2024. See [Doc. 27]. Under 28 U.S.C. § 1447(c), “[a] motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after filing of the notice of removal” As such, Riversprings HOA's Motion to Remand was not timely and this Court cannot remand Riversprings HOA v. Homeowners based on the procedural arguments set forth in the untimely motion. See In re Bathesda Mem'l Hosp., Inc., 123 F.3d 1407, 1410–11 (11th Cir. 1997) (finding that a district court “acted outside of its statutory authority by remanding for a procedural defect after thirty days of the notice of removal”); Advanced Bodycare Sols., LLC v. Thioine Int'l, Inc., 524 F.3d 1235, 1237 n. 1 (11th Cir. 2008) (finding that untimely removal was a “procedural” defect in removal, rather than a “jurisdictional” one); see also Whitfield v. Mia-Dade Cnty. Police Dep't, 535 F. App'x 772, 774 (11th Cir. 2013) (finding that a district court erred by granting an untimely motion to remand

based on a procedural defect).

C. Subject Matter Jurisdiction

However, the Court's inquiry does not end with the arguments set forth in Riversprings HOA's Motion to Remand. In every case, federal courts must assess whether they have subject matter jurisdiction to entertain an action. See 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."); see also Univ. of S. Ala., 168 F.3d at 410-11 (noting that "removal jurisdiction is no exception to a federal court's obligation to inquire into its own jurisdiction" and finding that remand is mandatory when a court determines that it lacks subject matter jurisdiction, regardless of whether there are other motions pending before the court).

Here, Homeowners state in their Notice of Removal as to Riversprings HOA v. Homeowners that they are removing the action from state court "pursuant to 28 U.S.C. §§ 1331, 1358, 1403, 1441, 1446, 1447." [Case No. 1:24-cv-02209, Doc. 1, p. 1]. Further, Homeowners argue that Geosam Capital and Riversprings HOA have "wrongfully forced unlawful infringement on [their] Constitutionally protected property interests for over two (2) years." Id. Homeowners also assert that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441.

Federal district courts are courts of limited jurisdiction. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 84 (1998) (noting that when a federal court lacks subject matter jurisdiction it

“cannot proceed at all, but can only note the jurisdictional defect and dismiss the suit”). There are two main types of federal subject matter jurisdiction: federal question jurisdiction and diversity of citizenship jurisdiction. See 28 U.S.C. §§ 1331, 1332. As to the former, § 1331 provides that “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” The Supreme Court has further added that, when assessing federal question jurisdiction, courts must follow the “well-pleaded complaint” rule, which provides that federal jurisdiction only exists when a federal question is presented on the face of the state court plaintiff’s properly-pleaded complaint. See Okla. Tax Comm’n v. Graham, 489 U.S. 838, 840–41 (1989). In other words, the basis for federal question jurisdiction can only arise from the plaintiff’s complaint, not from the defendant’s answer, defenses or counterclaims. Moreover, “[b]ecause removal jurisdiction raises significant federalism concerns, federal courts are directed to construe removal statutes strictly. Indeed, all doubts about jurisdiction should be resolved in favor of remand to state court.” Univ. of S. Ala., 168 F.3d at 411 (internal citation omitted).

Here, examining the state court complaint in Riversprings HOA v. Homeowners, it is clear that Homeowners’ allegations of federal question jurisdiction fail in light of the well-pleaded complaint rule. Riversprings HOA’s state court complaint seeks assessments, late charges, interest, attorney’s fees, costs and expenses pursuant to the Declaration of Protective

Covenants, Conditions, Restrictions and Easements for Riversprings and the Bylaws for Riversprings at Alcovy Homeowners Association, Inc. [Civil Action No. 1:24-cv- 02209, Doc. 1, pp. 33-36]. These claims arise entirely from contracts between Riversprings HOA and Homeowners, which are matters of state law, and thus fail to invoke federal question jurisdiction. See Diaz v. Sheppard, 85 F.3d 1502, 1505 (11th Cir. 1996) ("As a general rule, a case arises under federal law only if it is federal law that creates the cause of action."). Although, in their Notice of Removal, Homeowners cite several federal statutes and claim that Riversprings HOA's actions encroach upon their Constitutional rights, under the well-pleaded complaint rule, such claims are not considered for purposes of assessing federal question jurisdiction. See Merrell Dow Pharm. Inc. v. Thompson, 478 U.S. 804, 808 (1986) ("A defense that raises a federal question is inadequate to confer federal jurisdiction."). Therefore, this Court cannot exercise jurisdiction over Riversprings HOA v. Homeowners on the basis of federal question jurisdiction.

Moreover, Homeowners did not allege, and the Court does not find, that diversity of citizenship can serve as a basis for federal subject matter jurisdiction in Riversprings HOA v. Homeowners. In its complaint, Riversprings HOA alleges that it "is a nonprofit corporation incorporated under the laws of the State of Georgia" and that Homeowners are both "Georgia resident[s]" [Case No. 1:24-cv-02209, Doc. 1, p. 33]. "Defendants may remove an

action on the basis of diversity of citizenship if there is complete diversity between all named plaintiffs and all named defendants, and no defendant is a citizen of the forum State.”³ Lincoln Prop. Co. v. Roche, 546 U.S. 81, 84 (2005). Here, to the extent that the Court can assess citizenship of the parties based on the record before it, the rule does not appear to be met because Homeowners reside in Georgia and have lived in Georgia for the past 14 years, while Riversprings HOA is incorporated under the laws of Georgia.⁴ Therefore, this Court cannot exercise federal subject matter jurisdiction over Riversprings HOA v. Homeowners based on diversity of citizenship.

Accordingly, because the Court finds that it lacks federal subject matter jurisdiction over Riversprings HOA v. Homeowners, this case should also be remanded to the Superior Court of Gwinnett County, Georgia. Further, because this

³ In addition to the other defects in Homeowners’ removal, a removal based on diversity of citizenship would also be improper because Homeowners appear to be citizens of the forum state. See Lincoln Prop. Co. v. Roche, 546 U.S. 81, 84 (2005).

⁴ To determine whether the complete diversity rule is met, federal courts look to the citizenship of the parties, rather than mere residence. See Taylor v. Appleton, 30 F.3d 1365, 1367 (11th Cir. 1994) (“Citizenship, not residence, is the key fact that must be alleged in the complaint to establish diversity for a natural person.”). For purposes of diversity jurisdiction, citizenship is equivalent to domicile, which “requires both residence in a state and ‘an intention to remain there indefinitely’” Travaglio v. Am. Exp. Co., 735 F.3d 1266, 1269 (11th Cir. 2013) (quoting McCormick v. Aderholt, 293

Court finds that all the consolidated cases in the instant action should be remanded, the pending motions remaining in this action are denied as moot.

CONCLUSION

For the foregoing reasons, Defendant Geosam Capital US (Georgia) LLC's Motion to Remand [Doc. 7] is **GRANTED IN PART** as to remand and **DENIED IN PART** as to its request for costs and fees. Further, Defendant Riversprings at Alcovy's Motion to Remand and Brief in Support and Response to Motion for Default Judgment [Doc. 27] is **GRANTED**. This action is **REMANDED** to the Superior Court of Gwinnett County, Georgia.

As such, the following motions are **DENIED** as **MOOT**: Homeowners' Motion for Default Judgment as a Matter of Law for Justified Relief

F.3d 1254, 1258 (11th Cir. 2002)). Although neither Homeowners nor Riversprings HOA allege that Homeowners are citizens of Georgia, Homeowners do assert in their original 2022 Gwinnett State Court complaint that they have "been residents of the River[s]prings Community for more than twelve years with vested property interest" in their home located at 1866 Alcovy Trials Drive, Dacula, GA 30019. [Doc. 1, p. 11]. Given that—across three parties and three underlying state court actions—there is no allegation that Homeowners reside in or are citizens of any other state, the Court finds that there is, at best, insufficient information to assess Homeowners' citizenship and, potentially, sufficient evidence to find that Homeowners are citizens of the State of Georgia, which would run afoul of the complete diversity rule. Either way, the Court cannot find, based on the record before it, that the complete diversity requirement is satisfied.

from a Judgment or Order [Doc. 2]; Homeowners' Motion for Permission to File Electronically as a Pro Se Party [Doc. 4]; Homeowners' Motion for Relief [Doc. 9]; Homeowners' Motion for Joinder [Doc. 10]; Homeowners' Motion for Default Judgment as a Matter of Law [Doc. 25]; and Homeowners' Motion for Sanctions [Doc. 29]. The Clerk is **DIRECTED** to close this case.

SO ORDERED this 23rd day of October, 2024.

/s/ J.P. BOULEE
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHRISTY POON-ATKINS,
P.E. et al,

Plaintiff,

v.

RIVER SPRINGS AT
ALCOVY HOMEOWNERS
ASS'N, INC., et al.,

Defendants.

CIVIL
ACTION NO.:
1:22-CV-
02207-JPB

GEOSAM CAPITAL US
(GEORGIA)LLC,
Plaintiff,

v.

CHRISTY POON-ATKINS,
P.E. et al,
Defendants.

CIVIL
ACTION NO.:
1:22-CV-
02208-JPB

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
(MAY 23, 2024)

RIVER SPRINGS AT
ALCOVY HOMEOWNERS
ASS'N, INC., et al.,
Plaintiff,
v.
CALVIN ATKINS, et al,
Defendants.

CIVIL
ACTION NO.:
1:22-CV-
02209-JPB

ORDER

Because consolidation is proper under Federal Rule of Civil Procedure 42(a), the Court hereby **ORDERS** the Clerk to consolidate Poon-Atkins, P.E. et al v. River Springs at Alcovy Homeowners Ass'n, Inc. et al., No. 1:24-CV-02207-JPB with Geosam Capital US (Georgia) LLC v. Christy Poon-Atkins et al., No. 1:24-CV-02208-JPB and Riversprings at Alcovy Homeowners Association, Inc. v. Atkins et al., No. 1:24-CV-02209-JPB. The Clerk is further **ORDERED** to close Geosam Capital US (Georgia) LLC v. Christy Poon-Atkins et al., No. 1:24-CV-02208-JPB and Riversprings at Alcovy Homeowners Association, Inc. v. Atkins et al., Case No. 1:24-CV-02209-JPB. All future filings shall occur only in 1:24-CV-02207-JPB.

SO ORDERED this 23rd day of May, 2024.

/s/ J.P. BOULEE
United States District Judge