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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

David Zandonatti,
Plaintiff,
vs.
Colorado Savings Banks; et al.,
Defendants.

No. CV 10-441-TUC-RCC
ORDER

On October 13, 2010, the Honorable Glenda E. Edmonds, United States Magistrate Judge, filed a Report and Recommendation (Recommendation). (Doc. 18). Magistrate Edmonds recommended that the Court deny Plaintiff’s Motion for Remand to State Court (Doc. 9), because this Court does have federal question jurisdiction and the notice of removal does not violate the unanimity rule.

Plaintiff filed objections to the Recommendation on October 29, 2010. (Doc. 19). Plaintiff argues that the Defendants were not unanimous in their request for removal, because all Defendants were served at the time of the Notice of Removal and the avowal of consent contained in the Notice is defective. Plaintiff also attached affidavits of service for Colorado Federal Savings Bank and Quality Loan Service Corp. (Doc. 19 Ex. 1).

Whether or not all Defendants were served prior to the Notice of Removal is immaterial, since all Defendants consented to removal. The Ninth Circuit Court of Appeals

1 addressed the issue of a the form of a co-defendant's consent to removal in Proctor v. Vishay
2 Intertechnology Inc., 584 F.3d 1208 (9th Cir. 2009). The Court adopted the reasoning of the
3 Sixth Circuit, holding that "[o]ne defendant's timely removal notice containing an averment
4 of the other defendant's consent and signed by an attorney of record is sufficient." Id. at
5 1225. Defendant EMC avowed in its Notice of Removal that "[u]ndersigned counsel's staff
6 has spoken to counsel for Colorado Federal and QLS, and confirmed that they consent to the
7 removal," and counsel of record for EMC signed the document. (Doc. 1). Therefore, all
8 Defendants joined in the removal, and the rule of unanimity was not violated.

9 The Court considers the Recommendation (Docket No.19) to be thorough and well-
10 reasoned. After a thorough and de novo review of the record, the Court will adopt the
11 Recommendation of Magistrate Judge Edmunds as to the issue of federal question
12 jurisdiction. As to the issue of unanimity, the Court, based on the discussion contained in
13 this order, will adopt the Recommendation's finding of unanimity. The Court will not adopt
14 the reasoning in the Recommendation as to the issue of unanimity. This is not because the
15 it is flawed, but because the additional evidence provided by Plaintiff requires the Court to
16 examine the issue anew. Accordingly,

17 **IT IS ORDERED** that the Court **adopts** Magistrate Judge Edmunds's Report and
18 Recommendation (Doc. 19), subject to the conditions outlined above.

19 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Remand (Doc. 9) is **denied**.

20 DATED this 16th day of November, 2010.

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Raner C. Collins
United States District Judge