

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

O
JS-6

**United States District Court
Central District of California**

MARK S. CORNWALL,
Plaintiff,
v.
BSI FINANCIAL SERVICES, INC., d/b/a
SERVIS ONE, INC.; ARLP TRUST 3;
and DOES 1–50, inclusive,
Defendants.

Case No. 2:15-CV-9850-ODW-AGR

**ORDER GRANTING MOTION TO
REMAND AND DENYING
DEFENDANT’S MOTION TO
DISMISS AS MOOT [7, 11]**

I. INTRODUCTION

Plaintiff Mark S. Cornwall (“Cornwall”) moves to remand this action to San Luis Obispo County Superior Court for lack of subject matter jurisdiction (Motion to Remand [“Remand Mot.”] 1–2, ECF No. 11.) and Defendant BSI Financial Services, Inc., doing business as Servis One (hereinafter “Servis One”), simultaneously moves to dismiss. (Motion to Dismiss [“Dismiss Mot.”], EFC No. 7.) In his remand motion, Plaintiff argues that Servis One has failed to establish diversity jurisdiction under 28 U.S.C. § 1332(a), as Defendant cannot show that the amount in controversy exceeds the jurisdictional minimum of \$75,000. (*Id.* 7–8.) In response, Servis One argues that the value of the object of the litigation satisfies the jurisdictional minimum. (Notice of Removal [“Notice”] 6, ECF No. 1.) For the reasons discussed below, the Court

1 finds that Servis One’s Removal does not meet the standards set forth by 28 U.S.C. §
2 1332(a), and without a basis for federal jurisdiction, the Court hereby **REMANDS**
3 this case and **DISMISSES** Defendant’s motion to dismiss as **MOOT**.¹
4

5 **II. FACTUAL BACKGROUND**

6 Plaintiff’s’ claims arise from a refinanced mortgage agreement between
7 Countrywide Home Loans, Inc. (“Countrywide”) and Plaintiff’s brother, Tod Tucker
8 Cornwall (“Borrower”) in the amount of \$500,000. (Complaint [“Compl.”] ¶ 9,
9 Notice, Ex. A, EFC No. 1.) In connection with the loan, Borrower executed a
10 promissory note secured by a deed of trust (“Deed”). *Id.* Cornwall claims that
11 Countrywide did not disburse the loan in full to Borrower.² (*Id.* ¶ 10.) According to
12 Cornwall, Borrower deeded the home, located at 51 Mannix Avenue, Cayucos,
13 California, (“Property”) to him on June 17, 2010. (*Id.* ¶¶ 2, 12.) Borrower passed
14 away in February 2011, and Cornwall alleges that the loan was current at the time of
15 Borrower’s death. (*Id.* ¶ 13.) Cornwall claims that he has lived on the Property since
16 June of 2010, and sets forth in his unjust enrichment claim that he has since invested
17 approximately \$58,000 into the Property. (*Id.* ¶¶ 12, 40.) Since its disbursement,
18 Countrywide sold and transferred the loan to several loan servicers, including Bank of
19 America Home Servicing, LP (“BA”). (*Id.* ¶¶ 11, 16, 21.) BA has since assigned the
20 Deed to Defendant ARLP Trust 3 (“ARLP”) (*Id.* ¶ 18.), and the loan’s current servicer
21 is Servis One, a Delaware corporation with its principal place of business in Texas.³
22 (*Id.* ¶ 21; Notice 5.)
23

24 ¹ After carefully considering the papers filed in support of and in opposition to the Motions, the
25 Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-
15.

26 ² Cornwall does not dispute the validity of this loan, as he waived his ability to do so in a previous
27 action. (Opposition to Motion to Remand [“Remand Opp’n”] 3, EFC No. 19.)

28 ³ In its Notice of Removal, Servis One offers citizenship and residency information for each
defendant, except for ARLP Trust 3—instead, Servis One offers the citizenship of Wilmington
Savings Fund Society, which is not a party to this suit. (Notice 5.)

1 Servis One contends that Cornwall’s suit at bar is merely an attempt to stall
2 foreclosure. (Dismiss Mot. 1.) Cornwall maintains that he has the money to pay the
3 mortgage, and is willing to do so, but needs an accounting to determine how much is
4 owed. (Opposition to Motion to Dismiss [“Dismiss Opp’n”] 2–3.) Cornwall alleges
5 that the current amount of indebtedness is unknown, and that the amounts due listed in
6 his mortgage statements vary erratically. (Compl. ¶ 26; Cornwall Decl. 6, Remand
7 Mot. Exs. I, J.) To illustrate his argument, Cornwall points to Servis One and its
8 predecessor’s own statements—the balance due jumped over \$36,000 in a two month
9 time period, from \$121, 232.15 to \$157,589.86. (Ex. I at 1–2.) Cornwall also asserts
10 that he made attempts outside of litigation to obtain an accounting without success.
11 (Remand Mot. 3, 5.)

12 On November 23, 2015, Cornwall filed this action in San Luis Obispo County
13 Superior Court. (Compl. 1.) Servis One removed the action to this Court on
14 December 22, 2015 on the basis of diversity jurisdiction under 28 U.S.C. § 1332.
15 (Notice 1.) On December 30, 2015, Servis One also moved to dismiss the Complaint.
16 (Dismiss Mot. 1.) On January 11, 2016, Plaintiff opposed Servis One’s Motion to
17 Dismiss and moved to remand this action. (Dismiss Opp’n 1; Remand Mot. 2–3.)
18 The Remand Motion is now before the Court for decision.

19 20 **III. LEGAL STANDARD**

21 Federal courts are courts of limited jurisdiction, having subject-matter
22 jurisdiction only over matters authorized by the Constitution and Congress. U.S.
23 Const. art. III, § 2, cl. 1; *e.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.
24 375, 377 (1994). A suit filed in state court may be removed to federal court if the
25 federal court would have had original jurisdiction over the suit. 28 U.S.C. § 1441(a).
26 But courts strictly construe the removal statute against removal jurisdiction, and
27 “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal
28 in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The

1 party seeking removal bears the burden of establishing federal jurisdiction. *Durham v.*
2 *Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006) (citing *Gaus*, 980 F.2d
3 at 566).

4 Federal courts have original jurisdiction where an action presents a federal
5 question under 28 U.S.C. § 1331, or has diversity of citizenship under 28 U.S.C. §
6 1332. A defendant may remove a case from a state court to a federal court pursuant to
7 the federal removal statute, 28 U.S.C. § 1441, on the basis of either federal question or
8 diversity jurisdiction. To exercise diversity jurisdiction, a federal court must find
9 complete diversity of citizenship among the adverse parties, and the amount in
10 controversy must exceed \$75,000, usually exclusive of interest and costs. 28 U.S.C. §
11 1332(a).

12 13 **IV. DISCUSSION**

14 The parties dispute whether the amount in controversy and diversity of
15 citizenship requirements have been satisfied. Servis One argues that the value of the
16 object of litigation is the Property itself and that the value is well over the
17 jurisdictional minimum. (Notice 6.) Servis one also indicates that Cornwall seeks
18 compensation for \$58,000 in improvements to the Property, and those improvements,
19 together with an undetermined amount of disgorgement, restitution, and special
20 damages, will satisfy the jurisdictional minimum. (*Id.*) Cornwall, in turn, argues that
21 Servis One's mere speculation cannot satisfy their burden in establishing that the
22 amount in controversy and diversity of citizenship requirements are met. (Remand
23 Opp'n 2.) Cornwall further argues that the object of this litigation is not the Property
24 itself, but rather the balance of the outstanding mortgage. (*Id.*) While Servis One
25 vigorously argues that Cornwall is merely trying to delay foreclosure, Cornwall
26 counters that, after an accurate accounting, he will make the necessary payments.
27 (*Id.*) This Court considers each element of diversity jurisdiction in turn.
28

1
2 **A. Amount in Controversy**

3 Where, as here, a plaintiff’s state court complaint does not specify a particular
4 amount of damages, the defendant has the burden of establishing, by a preponderance
5 of the evidence, that the amount in controversy exceeds the jurisdictional amount.
6 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). Therefore,
7 as the proponent of federal jurisdiction, Servis One bears the burden of showing that it
8 is “more likely than not” that the amount in controversy exceeds \$75,000. *Id.* at 398.
9 Defendants can meet this burden by offering facts that support the contention that the
10 amount in controversy exceeds the jurisdictional minimum, or producing evidence of
11 jury verdicts for damages awarded in cases with analogous facts. *Simmons v. PCR*
12 *Tech.*, 209 F. Supp. 2d 1029, 1033–34 (N.D. Cal. 2002). The removal statute is
13 strictly construed against removal jurisdiction. *Emrich v. Touche Ross & Co.*, 846
14 F.2d 1190, 1195 (9th Cir. 1988). Therefore, where doubt whether the right to removal
15 exists, a case should be remanded to state court. *Gaus v. Miles, Inc.*, 980 F.2d 564,
16 566 (9th Cir. 1992).

17
18 Cornwall’s Complaint does not specify the exact amount of damages he seeks;
19 his claims are instead for an accounting and related damages. (Compl. 10–12.) While
20 Cornwall does seek \$58,000 in damages under his unjust enrichment claim (Remand
21 Mot. 4.), that amount does not meet the jurisdictional minimum and Servis One has
22 not offered any specific evidence of disgorgement, restitution, or special damages that
23 may bring the amount in controversy past the jurisdictional threshold of \$75,000. (*See*
24 Notice 6.) As in *Gaus v. Miles, Inc.*, where “the plaintiff does not claim damages in
25 excess of the jurisdictional minimum and the defendant offers “no facts whatsoever”
26 to show that the amount in controversy exceeds the jurisdictional minimum, then the
27 defendant has not borne the burden on removal of proving that the amount in
28 controversy requirement is satisfied.” *Singer v. State Farm Mut. Auto. Ins. Co.*, 116

1 F.3d 373, 376 (9th Cir. 1997) (citing *Gaus*, 980 F.2d at 567). Just like the defendant
2 in *Gaus*, Servis One has not shown the amount in controversy to be satisfied. (*See*
3 Notice 6.) Therefore, without knowing the outstanding balance on the Property
4 mortgage, Servis One cannot meet its burden of showing that the amount in
5 controversy exceeds \$75,000.

6 While Plaintiff does not seek to invalidate the underlying mortgage, cases
7 seeking rescission likewise look to the mortgage to determine whether the amount in
8 controversy requirement is met. In such rescission actions, “some district courts in the
9 Ninth Circuit have relied on the amount of [the] indebtedness ..., while others have
10 looked to the fair market value of the property to determine whether the amount in
11 controversy requirement is met.” *Reyes v. Wells Fargo Bank, N.A.*, No. C–10–01667
12 JCS, 2010 WL 2629785, *5 (N.D. Cal. June 29, 2010). When considering the amount
13 of indebtedness, district courts in this circuit have disagreed as to whether the total
14 value of the loan or the plaintiff’s current indebtedness should be used to determine
15 the amount in controversy. *Compare Garcia v. Citibank, N.A.*, No. 2:09–CV–03387–
16 JAM–DAD, 2010 WL 1658569, *2 (E.D. Cal. Apr. 23, 2010) (“Here ... [t]he subject
17 loan amount was originally \$221,000.00, excluding interest. As such, if the contract
18 were rescinded, the value of relief would be at least \$221,000.00, which far exceeds
19 the requisite amount in controversy.”) *with Reyes*, 2010 WL 2629785 at *6
20 (“[D]ocuments attached to the Complaint indicate that the amount of unpaid debt on
21 the loan at the time of the trustee’s sale was \$460,946.68. Therefore, [the] method of
22 valuing the litigation puts this case over the \$75,000.00 amount in controversy
23 threshold.”).

24
25 Here, the value of the original loan was \$500,000. (Compl. ¶ 9.) However,
26 since Cornwall claims that the \$500,000 was never dispersed to Borrower, using it to
27 determine the amount in controversy would not only be unfair to Cornwall, but it
28 would be insensible. If the loan amount was in fact never dispersed, and this Court

1 chose to use the value of the loan, it would be akin to choosing a number at random to
2 determine the amount in controversy. Because Servis One will not share with this
3 Court, nor with Cornwall, an accounting showing any disbursements made on the
4 loan, we cannot use the value of the loan to determine the amount in controversy.
5 Similarly, the current amount of indebtedness is also unknown. (Compl. ¶ 26.) Servis
6 One is challenging Cornwall’s accounting action, and is also the only party that knows
7 the outstanding balance on the mortgage; the Court finds that Servis One cannot have
8 it both ways, and simultaneously swear that the debt exceeds \$75,000 while also
9 challenging any action that forces it to prove up that number. Therefore, because
10 doubt as to the jurisdictional minimum—and to the right of removal—exists, this case
11 should be remanded to state court. (*Gaus*, 980 F.2d at 566.)
12

13 **B. Diversity of Citizenship**

14 To establish the citizenship of a natural person for purposes of diversity
15 jurisdiction, a party must (a) be a citizen of the United States, and (b) be domiciled in
16 a state of the United States. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th
17 Cir. 2001). A corporation is deemed to be a citizen of every state and foreign state by
18 which it has been incorporated and of the state or foreign state where it has its
19 principal place of business. 28 U.S.C. § 1332(c)(1).
20

21 Here, it is undisputed that Cornwall is a citizen of California. (Notice 5;
22 Remand Mot. 4.) Furthermore, Cornwall does not dispute that Servis One is
23 incorporated in Delaware and that its principal place of business is in Texas. (Remand
24 Motion Reply 5, ECF No. 21.) However, Defendant’s Notice of Removal fails to
25 allege the citizenship of ALRP, and instead lists the deed trustee as Wilmington
26 Savings Fund Society, FSB. (Notice 5.) Wilmington is not named as a party to this
27 action, and therefore its citizenship is of no consequence. Without knowing the
28 citizenship of each named defendant, the Court cannot ensure complete diversity. The

1 Supreme Court “ha[s] consistently interpreted § 1332 as requiring complete diversity:
2 In a case with multiple plaintiffs and multiple defendants, the presence in the action of
3 a single plaintiff from the same State as a single defendant deprives the district court
4 of original diversity jurisdiction over the entire action.” *Exxon Mobil Corp. v.*
5 *Allapattah Servs., Inc.*, 545 U.S. 546, 553 (2005). Therefore, without satisfying the
6 diversity elements for each party, including ALRP, Servis One’s removal action must
7 again fail. (Notice 5.)
8
9

10 **V. CONCLUSION**

11 For the reasons discussed above, the Court finds that there is no subject matter
12 jurisdiction over this action under 28 U.S.C. § 1332. Accordingly, the Court
13 **GRANTS** Plaintiff’s Remand Motion and **DENIES** Defendant’s Motion to Dismiss
14 as **MOOT**. (ECF No. 11.) This action shall be remanded to the San Luis Obispo
15 County Superior Court, case number 15-CV-0625. The Clerk of the Court shall close
16 this case.

17 **IT IS SO ORDERED.**

18
19 March 4, 2016

20
21 
22 _____
23 **OTIS D. WRIGHT, II**
24 **UNITED STATES DISTRICT JUDGE**
25
26
27
28