

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. **EDCV 17-00999 JVS(SP_x)** Date July 24, 2017

Title **Davidson et al. v. Wells Fargo Bank, et al.**

Present: The James V. Selna
Honorable

Karla J. Tunis

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) Order Denying Plaintiffs' Motion to Remand

The Court, having been informed by the parties in this action that they submit on the Court's tentative ruling previously issued, hereby DENIES the Plaintiffs' Motion to Remand and rules in accordance with the tentative ruling as follows:

Plaintiffs Philip J. and Barbara A. Davidson (the "Davidsons") filed a motion to remand this case. (Mot. to Remand, Docket No. 14.) Defendant Wells Fargo Bank, N.A. ("Wells Fargo") opposed. (Opp'n, Docket No. 21.) Defendant Quality Loan Services ("Quality") did not. Subsequently, the Davidsons filed their First Amended Complaint ("FAC"). (FAC, Docket No. 22.) The Davidsons have not replied.

For the foregoing reasons, the Court **denies** the motion to remand.

I. Background

On April 28, 2017, the Davidsons filed their Complaint in the Riverside County Superior Court against Wells Fargo and Quality. (See id. at 4.) In the FAC, the Davidsons assert causes of action for (1) violation of California Civil Code § 2923.55; (2) violation of California Civil Code § 2923.6; (3) violation of California Civil Code § 2923.7; (4) violation of California Civil Code § 2924.10; (5) violation of the Consumer Credit Reporting Act, California Civil Code § 1785; (6) negligence; and (7) violation of California Business & Professional Code § 17200 et seq. (See id.) The Davidsons seek (1) a preliminary and permanent injunction, (2) general damages, (3) special damages, (4) an equitable accounting of indebtedness, (5) pre-judgement interest, (6) attorney's fees, and (7) costs of litigation. (See id.)

On May 16, 2017, Quality filed a Declaration of Non-Monetary Status ("DNMS").

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(Docket No. 4.) On May 19, 2017, Wells Fargo removed the case to this Court. (Docket No. 1.) Also on May 19, 2017, Quality filed its consent to removal. (Docket No. 4.)

On June 12, 2017, the Davidsons filed a motion to remand the case back to Riverside County Superior Court alleging that the Court lacks diversity jurisdiction because the parties are not completely diverse and the amount in controversy does not exceed \$75,000. (Mot. to Remand at 1.) Specifically, the Davidsons claim that no diversity exists between the parties, Quality is not a nominal defendant, and the amount in controversy does not exceed the jurisdictional limit of \$75,000. (See id.)

On July 3, 2017, Wells Fargo filed an opposition brief regarding the diversity issues and the amount in controversy. (Docket No. 21.)

II. Legal Standard

Under 28 U.S.C. § 1441(a), a defendant may remove a civil action from state court to federal court if the parties may have originally filed the case in federal court. City of Chicago v. Int'l Coll. of Surgeons, 522 U.S. 156, 163 (1997). Where removal is based on diversity, (1) the citizenship of the plaintiff must differ from the citizenship of all defendants and (2) the amount in controversy must exceed \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a). The Ninth Circuit has directed courts to “strictly construe the removal statute against removal jurisdiction,” so that any doubt as to the right of removal is resolved in favor of remanding the case to state court.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). Thus, the removing party bears the burden to demonstrate that removal was proper. Emrich v. Touche Ross & Co., 846 F.2d 1190, 1195 (9th Cir. 1988).

III. Discussion

Removal is proper if federal jurisdiction is proper. “For a case to qualify for federal jurisdiction under 28 U.S.C. § 1332(a), there must be complete diversity of citizenship between the parties opposed in interest.” Kuntz v. Lamar Corp., 385 F.3d 1177, 1181 (9th Cir. 2004) (citing Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806)).

A. The Davidsons are diverse from Wells Fargo Bank.

The Davidsons are citizens of the State of California. (See FAC ¶¶ 20–24.) They claim

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that Wells Fargo may also be a citizen of California. (Mot. to Remand at 6.) However, the Ninth Circuit has ruled that “Wells Fargo is a citizen only of South Dakota, where its main office is located.” Rouse v. Wachovia Mort., FSB, 747 F. 3d 707, 715 (9th Cir. 2014). The Davidsons rely on pre-Rouse case law to support the proposition that diversity does not exist between themselves and Wells Fargo. (See Mot. to Remand at 5–6.) Still, the Ninth Circuit clarified this issue in Rouse and found that Wells Fargo North America, the same entity being sued in this case, is a citizen of only South Dakota. See Rouse, 747 F. 3d at 715; (See FAC (referencing the defendant as Wells Fargo N.A.)) Because Wells Fargo is a citizen of only South Dakota and the Davidsons are citizens of California, the Davidsons are diverse with respect to Wells Fargo.

B. Quality is an agent and its citizenship should be disregarded.

1. Citizenship

The Ninth Circuit has held that an agent “cannot be held individually liable as a defendant unless [it] acts for [its] own personal advantage.” Mercado v. Allstate Ins. Co., 340 F.3d 824, 826 (9th Cir. 2003). As such, if a plaintiff does not allege that the agent is a dual agent or acted for its own personal advantage, then the agent has no individually liability and its citizenship does not destroy diversity jurisdiction. See, e.g. Nong v. Wells Fargo Bank, N.A., No. SACV 10-1538 JVS (MLG_x), 2010 U.S. Dist. LEXIS 131890 at *4 (C.D. Cal. Nov. 22, 2010).

Quality is a citizen of California. (Mot. at 7; Opp’n at 2.) But the Davidsons only mention Quality in its role as an agent of Wells Fargo. (See, e.g., FAC ¶ 36 (“On 05 April 2017, QUALITY, at the direction of WELLS, recorded a NTS on Plaintiffs’ PROPERTY”).)

2. Privilege

In California, actions arising from a foreclosure are privileged, which prevents most damage claims against the trustees. See Cal. Civ. Code § 2924(d). Absent malice, “the trustee’s statutory duties in nonjudicial foreclosure are consistent with the type of communications from one interested party to another covered by the common interest privilege.” Kachlon v. Markowitz, 168 Cal. App. 4th 316, 339 (2008).

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3. Agency

In this case, the Davidsons sued Quality in its capacity as an agent of Wells Fargo. (FAC ¶¶ 3, 34, 36.) The Davidsons allege that Quality acted at the direction of Wells Fargo and do not allege the required individual liability or dual agency necessary for overcoming an agent status. (FAC ¶ 34, 36.) For example, the Davidsons claim that “[o]n 03 January 2017, QUALITY, at the direction of WELLS, recorded a NOD on Plaintiff’s PROPERTY while Plaintiff’s loan was in the active loan modification review process.” (Id. ¶ 34 (emphasis added).) The FAC lacks supporting facts for the conclusion that Quality acted as a dual agent or for its own advantage. (See id. ¶ 34, 36.) Therefore, Quality as an agent, and its presence in the case does not destroy this Court’s diversity jurisdiction. (See id.)

4. Foreclosure Proceedings

Additionally, the claims against Quality arise from foreclosure proceedings. (See FAC.) However, absent malice, California law makes the actions of a trustee in the performance of a non-judicial foreclosure privileged. See Cal Civ. Code § 2924(4); Kachlon 168 Cal. App. 4th at 339. Here, the Davidson’s have not alleged malice. (See FAC.) In the absence of malice, California privilege law applies to Quality’s actions as an agent; thus the citizenship of Quality is irrelevant.

Therefore, Quality’s presence does not destroy diversity jurisdiction because it acted as an agent.

C. Amount in Controversy

In the matter at issue, the amount in controversy exceeds \$75,000. Where removal is based on diversity, the amount in controversy must exceed \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a). The relief requested in a plaintiff’s complaint defines the amount in controversy: “the damage stated in the [plaintiff’s] declaration is the thing put in demand, and presents the only criterion to which, from the nature of the action, we can resort in settling the question of jurisdiction.” Wilson v. Daniel, 3 U.S. (3 Dall.) 401, 407 (1798). In actions where a party seeks injunctive relief, “the amount in controversy is measured by the value of the object of the litigation.” Cohn v. Petsmart, 281 F.3d 837, 840 (9th Cir. 2002) (citing Hunt v. Wash. State Apple Adver. Comm’n, 432 U.S. 333, 347 (1977)).

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In Cabriales v. Aurora Loan Services, the plaintiff challenged a foreclosure on nearly identical facts. The District Court for the Northern District of California denied plaintiff's motion to remand based on the amount in controversy requirement. Cabriales v. Aurora Loan Servs., No. C 10-161 MEJ, 2010 U.S. Dist. LEXIS 24726, at *8–10 (N.D. Cal. Mar. 2, 2010). The court found that although the plaintiff sought injunctive relief, the amount in controversy exceeded \$75,000. Id. The plaintiff obtained a loan from the defendant in the amount of \$465,000 and the parties presented no evidence that the property at issue was worth less than \$75,000. Id. The court concluded that the object of the litigation, the plaintiff's property, exceeded the required \$75,000 amount in controversy. Id.

Like the plaintiff in Cabriales, the Davidsons seek primarily injunctive relief. (FAC ¶ 14.) Although in their motion to remand, the Davidsons argue that they seek only a “an accounting, attorney fees and costs . . . [that] does not meet or exceed the \$75,000 in controversy requirement,” (Mot. to Remand at 12.) the amount in controversy is defined by the Davidsons' FAC, not the Davidsons' Motion to Remand. See Wilson v. Daniel, 3 U.S. at 407. The Davidsons' complaint demands injunctive relief, with a value measured by the worth of the Davidsons' property. (FAC ¶ 14.)

Furthermore, as in Cabriales, there is no evidence that the Davidsons' property is worth less than \$75,000. The only evidence before the court in regards to the value of the Davidsons' property is the value of the original loan, \$497,520. (FAC ¶ 7.) In addition, the Davidsons seek unlimited punitive damages. (Id. at ¶¶ 95, 99.) Punitive damages, “are part of the amount in controversy in a civil action.” Gibson v. Chrysler Corp., 261 F.3d 927, 945 (9th Cir. 2001).

The amount in controversy exceeds \$75,000 in this matter because the value of the Davidsons' property, the object of this litigation, exceeds \$75,000 and the Davidsons seek punitive damages.

IV. Conclusion

For the reasons stated above, the motion is **denied**.

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