

JS-6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

MARCOS PEREZ,

Plaintiff,

v.

**CITIMORTGAGE, INC. AND DOES 1
TO 20, INCLUSIVE,**

Defendants.

Case No.: SACV 16-01239-CJC(DFMx)

**ORDER GRANTING PLAINTIFF'S
MOTION TO REMAND**

I. INTRODUCTION

Plaintiff Marcos Perez filed this action in state court against Defendant CitiMortgage, Inc. and Does 1-20, inclusive, for violations of Section 2923.6(c) of the California Homeowner Bill of Rights, negligence, cancellation of instruments, statutory

1 unfair competition under Cal. Bus. & Prof. Code § 17200 *et seq.*, intentional
2 misrepresentation, breach of the duty of good faith and fair dealing, promissory estoppel,
3 and quiet title. (*See* Dkt. 1, Exh. 2 [“Compl.”].) Defendant CitiMortgage, Inc.
4 (“CitiMortgage”) filed a notice of removal on July 5, 2016. (Dkt. 1.) Before the Court is
5 Plaintiff’s motion to remand. (Dkt. 12.) For the following reasons, the motion is
6 GRANTED, and the case is REMANDED to Orange County Superior Court.¹ As the
7 case will be remanded due to lack of subject matter jurisdiction, the Defendant’s pending
8 motion to dismiss is rendered MOOT. (Dkt. 8.)

9 10 **II. BACKGROUND**

11
12 In 2006, Perez borrowed \$524,368.59 from Citicorp Trust Bank, FSB, secured by a
13 Deed of Trust on his home. (Opp. at 2.) On January 13, 2003, Citibank N.A., the
14 successor in interest to Citicorp Trust Bank, FSB, assigned the Deed of Trust to
15 CitiMortgage. (*Id.*) On May 22, 2015, CitiMortgage assigned the Deed of Trust to U.S.
16 Bank National Association as Trustee. (*Id.*)

17
18 In December 2015, Perez asked CitiMortgage about foreclosure alternatives, and
19 was eventually encouraged to apply for a loan modification. (Compl. ¶ 6.) According to
20 the Complaint, CitiMortgage assured Perez that if he started the modification process and
21 his application was under review, CitiMortgage would not sell his home in a trustee sale.
22 (*Id.* ¶ 7.) Perez sent a modification application with supporting documentation to
23 CitiMortgage in December of 2015, and he followed up with a second application after
24 he was told, in response to his inquiries, that CitiMortgage did not receive his first

25
26
27
28

¹ Having read and considered the papers presented by the parties, the Court finds this matter appropriate
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
for September 12, 2016, at 1:30 p.m. is hereby vacated and off calendar.

1 application. (*Id.* ¶ 8.) Supporting documentation included “4506-T, Profit and Loss
2 statement [*sic*], bank Statements, 2013 Tax Return [*sic*], and 2014 Tax Returns.” (*Id.*)
3

4 After CitiMortgage asked for “new” documentation, Perez called CitiMortgage
5 representatives and then provided “hardship affidavits, Dood-Frank [*sic*], paystub for
6 non-borrower [*sic*], profit and loss (4 consecutive months of business bank statement)
7 [*sic*], 4506T, tax return [*sic*].” (*Id.* ¶ 9.) Perez called CitiMortgage again a few weeks
8 later, and was informed that CitiMortgage did not have his application. (*Id.* ¶ 10.)

9 According to the Complaint, a foreclosure sale was scheduled for March 7, 2016, despite
10 earlier assurances that the sale would not take place while his modification application
11 was under review. (*Id.*) Perez again sent his application to CitiMortgage on February 26,
12 2016. (*Id.* ¶ 11.)
13

14 On March 1, 2016, Perez spoke to a CitiMortgage representative who verified
15 receipt of his application and told him the foreclosure sale would be postponed after the
16 trustee had a few days to process the application. (*Id.*) When Perez called the trustee on
17 March 4, 2016, he was told that the foreclosure sale would still be taking place on March
18 7, 2016. (*Id.*) Perez called CitiMortgage representatives again on the morning of the
19 sale, and was told that it was “unfortunate” and there was nothing he could do to stop the
20 sale. (*Id.* ¶ 12.) Perez then filed for bankruptcy and his attorney attempted to negotiate
21 new terms for his loan. (*Id.* ¶ 13.) The Complaint does not state whether the sale took
22 place, but the briefing suggests that it has not. (*See Opp.* at 3; FAC ¶ 17.) CitiMortgage
23 representatives told Perez’s attorney that they would conduct a good faith loan
24 modification review and postpone foreclosure sales. (FAC ¶ 17.) Perez has attempted to
25 follow up with CitiMortgage since that time about the status of his modification
26 application without success. (*Id.*)
27 //

1 Perez filed this action in state court against CitiMortgage and Does 1-20, inclusive,
2 on May 31, 2016, (*See generally* Compl.), and CitiMortgage removed the case to federal
3 court on July 5, 2016 on the basis of diversity jurisdiction, (Dkt. 1). Perez subsequently
4 filed its motion to remand to state court on July 20, 2016. (Dkt. 12.) On July 12, 2016,
5 CitiMortgage also filed a motion to dismiss the Complaint. (Dkt. 8.)

6 7 **III. LEGAL STANDARD**

8
9 A civil action brought in a state court, but over which a federal court may exercise
10 original jurisdiction, may be removed by the defendant to a federal district court. 28
11 U.S.C. § 1441(a). “A suit may be removed to federal court under 28 U.S.C. § 1441(a)
12 only if it could have been brought there originally.” *Sullivan v. First Affiliated Sec., Inc.*,
13 813 F.2d 1368, 1371 (9th Cir. 1987); *Infuturia Global Ltd. v. Sequus Pharmaceuticals,*
14 *Inc.*, 631 F.3d 1133, 1135 n.1 (9th Cir. 2011) (“[A] federal court must have both removal
15 and subject matter jurisdiction to hear a case removed from state court.”). The burden of
16 establishing subject matter jurisdiction falls on the party seeking removal, and the
17 removal statute is strictly construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980
18 F.2d 564, 566 (9th Cir.1992) (“Federal jurisdiction must be rejected if there is any doubt
19 as to the right of removal in the first instance.”). A federal court can assert subject matter
20 jurisdiction over cases that (1) involve questions arising under federal law or (2) are
21 between diverse parties and involve an amount in controversy that exceeds \$75,000. 28
22 U.S.C. §§ 1331, 1332. If it appears that the federal court lacks subject matter jurisdiction
23 at any time prior to the entry of final judgment, the federal court must remand the action
24 to state court. 28 U.S.C. § 1447(c).

25 //

26 //

27 //

28 //

1 **IV. DISCUSSION**

2
3 At issue here is the amount in controversy. The parties agree that diversity exists,
4 as Perez is domiciled in California and CitiMortgage is a citizen of New York. (Mot. at
5 3; Opp. at 3.) The parties only dispute whether the amount in controversy exceeds
6 \$75,000. (Mot. at 3; Opp. at 3.) The Complaint does not allege an amount in
7 controversy, but seeks exemplary and punitive damages, economic and non-economic
8 damages, accounting of all amounts paid by and owed to Perez and to CitiMortgage,
9 equitable relief including rescindment of notices of default and efforts to restore Perez’s
10 credit, a declaration of the rights and duties of the parties, interest, and costs and
11 expenses. (Compl. at Prayer.)

12
13 Perez contends that he does not seek to rescind the loan, so neither the value of the
14 loan nor that of the property securing the loan should be counted as the amount in
15 controversy. (Mot. at 7.) Rather, Perez “seeks damages in an unspecified amount under
16 State based claims” in addition to his requests for injunctive relief. (Mot. at 7; Compl. at
17 Prayer.) CitiMortgage argues that in cases involving mortgage loans, the amount in
18 controversy may be established by the loan amount. (Opp. at 4.) Alternatively,
19 CitiMortgage states that because Perez seeks injunctive relief, including quiet title, the
20 amount in controversy is measured by the value of the object of the litigation—in this
21 case, the value of the property. (*Id.*) CitiMortgage also suggests that given “the original
22 amount of the loan and the unpaid balance on the loan, it is ‘more likely than not’ that the
23 amount in controversy exceeds \$75,000.” (*Id.*) Finally, CitiMortgage argues that
24 Plaintiff seeks exemplary damages, punitive damages, actual economic damages, non-
25 economic damages, interest, attorney’s fees, experts’ fees, costs, and disbursements, and
26 that “these amounts all count toward the jurisdictional amount.” (Opp. at 5.)

27 //

1 The Court is not persuaded by CitiMortgage’s arguments. “Courts have roundly
2 rejected the argument that the amount in controversy is the entire amount of the loan
3 where a plaintiff seeks injunctive relief to enjoin a foreclosure sale *pending a loan*
4 *modification.*” *Vergara v. Wells Fargo Bank, N.A.*, No. SACV 15-00058-JLS (RNBx),
5 2015 WL 1240421, at *2 (C.D. Cal. Mar. 17, 2015) (emphasis in original); *Jauregui v.*
6 *Nationstar Mortg. LLC*, No. EDCV 15-00382-VAP (KKx), 2015 WL 2154148, at *4
7 (C.D. Cal. May 7, 2015) (remanding an action where a plaintiff did not “challenge
8 entirely [the bank’s] right to collect on the outstanding loan amount,” but only sought to
9 temporarily enjoin foreclosure). For the same reason, even though Perez seeks injunctive
10 relief, the value of the property securing a loan is not an appropriate measure of the
11 amount in controversy in such a case. *See Duarte v. Wells Fargo Mortg.*, CV 16-0991-
12 GHK (JPRx), 2016 U.S. Dist. LEXIS 54341, at **10–11 (C.D. Cal. Apr. 21, 2016)
13 (holding that “neither the value of the [p]roperty nor the underlying loan should factor
14 into the amount-in-controversy calculation” when plaintiff did not seek to permanently
15 enjoin foreclosure). The Complaint seeks injunctive relief based on allegations that the
16 notices of default and foreclosure actions were improper in light of his pending loan
17 modification application. (*See* Compl. ¶ 17.) The Complaint does not seek to rescind the
18 loan or challenge CitiMortgage’s right to collect the outstanding loan amount. (*See*
19 *generally* Compl.) Therefore, the amount in controversy is not determined by the entire
20 loan amount, the unpaid balance on the loan, or the value of the property, because the
21 underlying loan is not at issue.

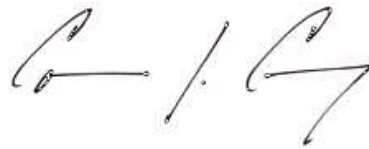
22
23 Certainly the amount in controversy here is not *nothing*. As another court in this
24 District has noted, when a plaintiff seeks to enjoin foreclosure pending a modification,
25 the amount in controversy might include the “costs to process the loan modification” and
26 “interest on the loan [which might accrue while] the relief [i]s pending.” *Olmos v.*
27 *Residential Credit Solutions, Inc.*, 92 F. Supp. 3d 954, 957 (C.D. Cal. 2015). But it is
28 CitiMortgage’s burden to establish subject matter jurisdiction by demonstrating that the

1 amount in controversy exceeds \$75,000. CitiMortgage has not done this. Apart from its
2 arguments that the amount in controversy should be determined by the loan amount, the
3 unpaid balance, or the value of the property, CitiMortgage only points to the fact that the
4 Complaint seeks fees, damages, and costs. (Opp. at 5.) However, CitiMortgage has not
5 demonstrated that these amounts, either independently or in addition to the plausible
6 value of the injunctive relief sought, will exceed \$75,000—CitiMortgage simply says that
7 they “count” toward the amount in controversy. It has accordingly failed to carry its
8 burden, and the Court finds that it lacks subject matter jurisdiction to adjudicate this
9 action. Plaintiff’s motion to remand is GRANTED and Defendant’s pending motion to
10 dismiss is rendered MOOT.

11
12 **V. CONCLUSION**

13
14 For the foregoing reasons, Plaintiff’s motion to remand is GRANTED. The case is
15 REMANDED to Orange County Superior Court. Defendant’s pending to dismiss, (Dkt.
16 8), is rendered MOOT.

17
18
19 DATED: September 2, 2016



20
21 CORMAC J. CARNEY
22 UNITED STATES DISTRICT JUDGE
23
24
25
26
27
28