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JS-6

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

CAREY M. AINLEY,

Plaintiff,

v.

PHH MORTGAGE,

Defendant.

Case No.: SACV 17-01476-CJC(JCGx)

**ORDER *SUA SPONTE* REMANDING
CASE FOR LACK OF SUBJECT
MATTER JURISDICTION**

I. INTRODUCTION

On July 27, 2017, Plaintiff Carey M. Ainley filed this action related to her mortgage in Orange County Superior Court against Defendant PHH Mortgage (“PHH”) and Does 1–10 inclusive. (Dkt. 1 [“Notice of Removal”], Ex. A [“Compl.”].) Defendant

1 PHH removed the case to this Court on August 28, 2017, invoking diversity jurisdiction.
2 (Notice of Removal.) Specifically, Defendant PHH alleged that Plaintiff is a citizen of
3 California, PHH is a citizen of New Jersey, and the amount in controversy is \$550,000 –
4 the value of the loan Plaintiff obtained from Defendant. (*Id.* ¶¶ 4–5, 12.)
5

6 **II. BACKGROUND**

7

8 Plaintiff obtained a loan in the amount of \$550,000 from PHH Mortgage in April
9 2007. (Dkt. 9 [Defendant’s Request for Judicial Notice, hereinafter “RJN”] Ex. 1.)¹ The
10 loan was secured by a Deed of Trust on the real property located at 17802 La Entrada
11 Drive, Yorba Linda, CA 92886. (*Id.*; Compl. at 2.) Upon default of the loan, Plaintiff
12 entered into a loan modification agreement in April 2011. (RJN Ex. 2.) Plaintiff
13 defaulted on the modified loan. (Compl. ¶ 26.)
14

15 Plaintiff applied for a loan modification review in 2016, and alleges that “Plaintiff
16 and Defendant orally agreed to undergo through a loan modification in good faith.” (*Id.* ¶
17 15.) Plaintiff submitted the requested documents to Defendant but received no denial or
18 acceptance from the review “within a reasonable time” and her loan modification remains
19 pending with PHH. (*Id.* ¶¶ 19, 21–23, 32, 34–37.) Plaintiff alleges that PHH orally
20 instructed her to continue to be in default on the mortgage. (*Id.* ¶¶ 20, 25–26.) Plaintiff
21 also alleges that her single point of contact with PHH has changed numerous times, that
22 PHH shut down online access to her account, and that PHH has made robo-calls to her
23 about the default. (*Id.* ¶¶ 28–30.) Plaintiff makes a variety of other allegations about
24 PHH’s conduct during the loan modification review process. (*See generally Id.*) Plaintiff
25 was then told that PHH put her loan in foreclosure. (*Id.* ¶ 31.)
26

27
28 ¹ Defendant’s request for judicial notice, (Dkt. 9), is GRANTED. The documents are matters of public record that are “not subject to reasonable dispute because [they] . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” See Fed. R. Evid. 201

1 Plaintiff asserts four causes of action against PHH: (1) violation of California
2 Business and Professions Code § 17200 and the California Homeowner Bill of Rights,
3 (*id.* at ¶¶ 46–78), (2) violation of the covenant of good faith and fair dealing under oral
4 agreement, (*id.* ¶¶ 79–101), (3) negligence, (*id.* ¶¶ 102–34), and (4) actual fraud and/or
5 misrepresentation, (*id.* ¶¶ 135–48). Plaintiff seeks damages in the amount of \$55,000
6 which includes “but [is] not limited to, damages to her credit history, her ability to
7 borrow money, emotional distress, legal fees, court filing fees, and litigation related cost
8 and expenses.” (*Id.* ¶¶ 3, 64, 101, 140.) Defendant alleges that Plaintiff seeks to enjoin
9 any future foreclosure sale based on paragraph 4 of the Complaint: “Even though the
10 non-judicial foreclosure is currently not pending, Plaintiff needs the Court ruling that
11 such a foreclosure will not occur, because there is a high likelihood that such a
12 foreclosure may be initiated at any time.” (*Id.* ¶ 4.) Plaintiff includes “Injunctive and
13 Equitable Relief” in paragraph 1 of her Complaint, (*id.* ¶ 1), but no request for injunctive
14 relief appears in the Prayer for Relief, (*id.* at Prayer).

15 16 **III. LEGAL STANDARD**

17
18 A civil action brought in a state court, but over which a federal court may exercise
19 original jurisdiction, may be removed by the defendant to a federal district court. 28
20 U.S.C. § 1441(a). “A suit may be removed to federal court under 28 U.S.C. § 1441(a)
21 only if it could have been brought there originally.” *Sullivan v. First Affiliated Sec., Inc.*,
22 813 F.2d 1368, 1371 (9th Cir. 1987); *Infutura Global Ltd. v. Sequus Pharmaceuticals,*
23 *Inc.*, 631 F.3d 1133, 1135 n.1 (9th Cir. 2011) (“[A] federal court must have both removal
24 and subject matter jurisdiction to hear a case removed from state court.”). The burden of
25 establishing subject matter jurisdiction falls on the party seeking removal, and the
26 removal statute is strictly construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980
27 F.2d 564, 566 (9th Cir. 1992) (“Federal jurisdiction must be rejected if there is any doubt
28 as to the right of removal in the first instance.”). A federal court can assert subject matter

1 jurisdiction over cases that (1) involve questions arising under federal law or (2) are
2 between diverse parties and involve an amount in controversy that exceeds \$75,000. 28
3 U.S.C. §§ 1331, 1332. If it appears that the federal court lacks subject matter jurisdiction
4 at any time prior to the entry of final judgment, the federal court must remand the action
5 to state court. 28 U.S.C. § 1447(c).

6 7 **III. DISCUSSION**

8
9 At issue here is the amount in controversy. Diversity of citizenship exists, as
10 Plaintiff is domiciled in California and PHH is a citizen of New Jersey. The dispute is
11 whether the amount in controversy exceeds \$75,000. PHH alleges that the amount in
12 controversy is the original principal of the loan, \$550,000, “as the Complaint concerns
13 the sale” of Plaintiff’s property. (Notice of Removal ¶ 12.) On the other hand, despite
14 the passing reference to injunctive relief and the phrase “Plaintiff needs the Court ruling
15 that such a foreclosure will not occur,” the Complaint clearly indicates the amount in
16 controversy is \$55,000. Moreover, Plaintiff’s claims center on PHH’s handling of her
17 requested loan modification, not on PHH’s foreclosure on her property (which there is no
18 evidence to indicate foreclosure has commenced) or on the prospective sale of her
19 property.

20
21 “Courts have roundly rejected the argument that the amount in controversy is the
22 entire amount of the loan where a plaintiff seeks injunctive relief to enjoin a foreclosure
23 sale *pending a loan modification.*” *Vergara v. Wells Fargo Bank, N.A.*, No. SACV 15-
24 00058-JLS (RNBx), 2015 WL 1240421, at *2 (C.D. Cal. Mar. 17, 2015) (emphasis in
25 original) (holding the amount in controversy was not the amount of the loan at issue
26 where the plaintiff sought “‘a true and significant loan modification,’ damages for
27 Defendants’ alleged violations of state law, an injunction enjoining Defendants from
28 conducting any further foreclosure action, attorneys’ fees, and costs.”); *see also Jauregui*

1 v. *Nationstar Mortg. LLC*, No. EDCV 15-00382-VAP (KKx), 2015 WL 2154148, at *4
2 (C.D. Cal. May 7, 2015) (remanding an action where a plaintiff did not “challenge
3 entirely [the bank’s] right to collect on the outstanding loan amount,” but only sought to
4 temporarily enjoin foreclosure); *Cheng v. Wells Fargo Bank, N.A.*, No. SACV10–1764–
5 JLS (FFMx), 2010 WL 4923045, at *2 (C.D. Cal. Dec.2, 2010) (“[T]he primary relief
6 sought by plaintiff is a temporary delay of the foreclosure proceedings, and the amount of
7 the loan at issue would therefore not be a relevant measure of damages.”) Plaintiff seeks
8 relief in light of PHH’s alleged actions while considering Plaintiff’s pending loan
9 modification review. At most, Plaintiff requests a delay in the foreclosure proceedings
10 on her property.²

11
12 The value of the property securing a loan is not the appropriate measure of the
13 amount in controversy in this case. The Complaint clearly seeks monetary damages in
14 the amount of \$55,000. The Complaint does not seek to rescind the loan or challenge
15 PHH’s right to collect the outstanding loan amount. (*See generally* Compl.) If the
16 Complaint is construed to seek injunctive relief, Plaintiff alleges that the Notice of
17 Default was improper in light of her pending loan modification application. (*Id.* ¶ 17.)
18 Therefore, the amount in controversy is not determined by the entire loan amount, the
19 unpaid balance on the loan, or the value of the property, because the underlying loan is
20 not at issue. The amount in controversy is Plaintiff’s claim for \$55,000 in damages,
21 which does not meet the requirements for diversity jurisdiction.

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23 PHH’s cited case law is inapposite to the facts of this case. (Notice of Removal ¶
24 13.) The cited cases involved actions where “the primary purpose of a lawsuit is to
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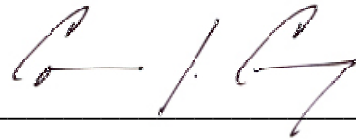
26 ² Moreover, if the Court construes paragraph 3 to be a request for injunctive relief is it unclear whether
27 Plaintiff seeks temporary or permanent injunctive relief. *See Duarte v. Wells Fargo Mortg.*, CV 16-
28 0991-GHK (JPRx), 2016 U.S. Dist. LEXIS 54341, at *10–11 (C.D. Cal. Apr. 21, 2016) (holding that
“neither the value of the [p]roperty nor the underlying loan should factor into the amount-in-controversy
calculation” when plaintiff did not seek to permanently enjoin foreclosure).

1 enjoin a bank from selling or transferring property” and thus “the property is the object of
2 the litigation. *Reyes v. Wells Fargo Bank, N.A.*, No. C-10-01667JCS, 2010 WL 2629785,
3 at *4 (N.D. Cal. June 29, 2010) (collecting cases). Such cases concern where the plaintiff
4 seeks “injunctive relief to prevent or undo the lender’s sale of the property.” *Id.* at *5.
5 None of Plaintiff’s allegations can be construed as requesting injunctive relief to prevent
6 or undo PHH’s sale of the property, and PHH points to none.

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8 **III. CONCLUSION**

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10 Because the removal was improper, the Court *sua sponte* REMANDS the action.
11 Defendant’s motion to dismiss currently pending before the Court is DENIED AS
12 MOOT.³

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16 DATED: October 27, 2017



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18 CORMAC J. CARNEY
19 UNITED STATES DISTRICT JUDGE
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28 ³ The hearing on PHH’s motion to dismiss set for November 6, 2017, at 1:30 p.m. is hereby vacated and
off calendar.