

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANNABELLA BRITTAIN,)	Case No. 09-2953 SC
)	
Plaintiff,)	ORDER GRANTING MOTION TO
)	<u>REMAND</u>
v.)	
)	
ONEWEST BANK, FSB, formerly known)	
as INDYMAC BANK, FSB; QUALITY LOAN)	
SERVICE CORP.; MORTGAGE ELECTRONIC)	
REGISTRATION SYSTEMS, INC.; and)	
DOES 1 through 25, inclusive,)	
)	
Defendants.)	
)	

I. INTRODUCTION

Plaintiff filed this action in Superior Court of the State of California for the County of San Mateo, alleging fourteen causes of action. See Notice of Removal ("NOR"), Docket No. 1, Ex. A ("Compl."). The Complaint included allegations that Defendants had violated a number of federal statutes, including the Real Estate Settlement Procedures Act ("RESPA") and its implementing regulations, as well as the Truth in Lending Act ("TILA") and its implementing regulations. Id. ¶¶ 8, 18, 26, 61, 66, 91-92, 97. Defendants thereafter removed this action to federal court, citing the federal questions raised by Plaintiff's federal causes of action. NOR ¶ 3.

After removal to this Court, Defendant Onewest Bank, FSB

1 ("Onewest") filed a motion to dismiss, and this Court dismissed
2 much of Plaintiff's Complaint. Docket No. 17. Plaintiff
3 thereafter submitted her First Amended Complaint ("FAC"). Docket
4 No. 21. In the FAC, Plaintiff has scrubbed from her allegations
5 the many references to federal statutes and regulations, which had
6 been so liberally peppered throughout her original Complaint. The
7 Court notes that complete diversity between the parties is lacking.

8 Onewest has filed another Motion to Dismiss, which is fully
9 briefed. Docket Nos. 24, 28, 29. After the Motion to Dismiss was
10 briefed, but before the hearing date, Plaintiff filed a Motion to
11 Remand. Docket No. 35. Neither Onewest nor any other Defendant
12 has submitted an opposition to the Motion to Remand. The Motion to
13 Remand therefore stands unopposed. This Court concludes that it is
14 well founded, and for this reason, Plaintiff's Motion to Remand is
15 GRANTED. This Court has no jurisdiction to grant Onewest's Motion
16 to Dismiss, and for this reason, the Motion to Dismiss is DENIED.

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18 **II. LEGAL STANDARD**

19 District courts have original jurisdiction over cases that
20 arise under the Constitution, laws, or treaties of the United
21 States. 28 U.S.C. § 1331; See also U.S. Const. art. III, § 2,
22 cl.1. For a case to be removable as a federal question, it must be
23 a case that could have been brought in a district court because it
24 raises substantial federal questions under 28 U.S.C. § 1331.
25 However, "[i]f at any time before final judgment it appears that
26 the district court lacks subject matter jurisdiction, the case
27 shall be remanded." 28 U.S.C. § 1447(c).

28 When all federal causes of action have been dismissed and no

1 other basis for original jurisdiction exists, or when an amended
2 complaint does not present a federal question, the district court
3 has discretion to decline supplemental jurisdiction over the
4 remaining claims. See Id. §§ 1367(c), 1447(c); Cal. Dep't of Water
5 Res. v. Powerex Corp., 533 F.3d 1087, 1091 (9th Cir. 2008);
6 Albingia Versicherungs A.G. v. Schenker Int'l Inc., 344 F.3d 931,
7 938 (9th Cir. 2003). When deciding whether to retain jurisdiction
8 under these circumstances, a district court's discretion is
9 informed by considerations "of economy, convenience, fairness, and
10 comity." See Acri v. Varian Assocs., Inc., 114 F.3d 999, 1001 (9th
11 Cir. 1997) (en banc) (citing United Mine Workers of Am. v. Gibbs,
12 383 U.S. 715, 726-27 (1966)).

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14 **III. DISCUSSION**

15 **A. The FAC Presents No Federal Question**

16 The first question is whether remand is permissible; i.e.,
17 whether this suit still involves a substantial federal question
18 over which this Court may assert original jurisdiction. Under the
19 well-pleaded complaint rule, "federal jurisdiction exists only when
20 a federal question is presented on the face of the plaintiff's
21 properly pleaded complaint." Caterpillar, Inc. v. Williams, 482
22 U.S. 386, 391 (1987). Because a plaintiff is "the master of the
23 complaint," she "may, by eschewing claims based on federal law,
24 choose to have the cause heard in state court." Id. at 398-99. It
25 appears that this is what occurred in this instance, as the FAC
26 does not include a single facial federal claim within its seven
27 causes of action, even though Plaintiff previously asserted claims
28 under various federal statutes.

1 An "independent corollary to the well-pleaded complaint rule"
2 is that "once an area of state law has been completely preempted,
3 any claim purportedly based on that preempted state law is
4 considered, from its inception, a federal claim, and therefore
5 arises under federal law." Id. at 392. Subject matter
6 jurisdiction may therefore still exist where a plaintiff has
7 "artfully pled" a federal claim as a state claim. "Artful pleading
8 exists where a plaintiff articulates an inherently federal claim in
9 state law terms." Brennan v. Southwest Airlines Co., 134 F.3d
10 1405, 1409 (9th Cir. 1998). Several of Plaintiff's causes of
11 action, such as his second cause of action for fraud, his ninth
12 cause of action for reformation, and his tenth cause of action for
13 breach of the broker's duty to disclose, could also be pled as
14 colorable federal claims. However, the fact that the federal
15 claims would have been closely related to the state claims does not
16 give a district court federal question jurisdiction when only state
17 claims are pursued. Instead, the "dispositive question" is whether
18 or not a federal statute provides the exclusive cause of action for
19 the claims at issue. Beneficial Nat'l Bank v. Anderson, 539 U.S.
20 1, 9 (2003). This Court, and numerous other courts, have
21 previously concluded that neither TILA nor RESPA completely preempt
22 state law claims of the type contained in the FAC. See, e.g.,
23 Bartolome v. Homefield Fin. Inc., No. 09-7258, 2009 U.S. Dist.
24 LEXIS 122148, *4-11 (C.D. Cal. Dec. 11, 2009); Montes v. HomeEq
25 Servicing, No. 09-5871, 2009 U.S. Dist. LEXIS 95402, *16 (C.D. Cal.
26 Sept. 29, 2009); U.S. Nat'l Ass'n v. Almanza, No. 09-0028, 2009
27 U.S. Dist. LEXIS 6896, *5 n.1 (E.D. Cal. 2009); Fardella v. Downey
28 Savs. & Loan Ass'n, No. 00-4393, 2001 U.S. Dist. LEXIS 6037, *6-7

1 (N.D. Cal. May 8, 2001). The Court finds no basis for concluding
2 that Plaintiff has "artfully pled" around any necessary federal
3 claims.

4 A substantial federal question might also exist where "the
5 claim is necessarily federal in character, or where the right to
6 relief depends on the resolution of a substantial, disputed federal
7 question." Lippitt v. Raymond James Fin. Servs., Inc., 340 F.3d
8 1033, 1041-42 (9th Cir. 2003) (citations omitted). This may occur
9 where a substantial issue of federal law must be resolved to
10 address a plaintiff's state causes of action. Grable & Sons Metal
11 Prods., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 313 (2005).
12 However, courts have typically resisted jurisdiction where
13 interpreting a federal law is not necessary to resolving a
14 plaintiff's claim, such as where a plaintiff's causes of action
15 rest on several alternative theories, some of which need not
16 implicate federal law in any way. See, e.g., Lippitt, 340 F.3d at
17 1042-43; Baker v. BDO Siedman, L.L.P., 390 F. Supp. 2d 919, 921
18 (N.D. Cal. 2005) (finding no jurisdiction where plaintiff could
19 recover under alternate and independent theory); see also Ortega v.
20 HomEq Servicing, No. 09-2130, 2010 U.S. Dist. LEXIS 4591, *16-18
21 (C.D. Cal. Jan 11, 2010) (collecting cases). This is the case in
22 the current dispute, as Plaintiff pleads numerous alternative
23 theories of recovery under each cause of action that could
24 potentially implicate a federal question.

25 The Court finds that none of Plaintiff's remaining claims
26 necessarily require resolution of questions of federal law.
27 Because either Plaintiff has dropped or "the district court has
28 dismissed all claims over which it has original jurisdiction," this

1 Court "may decline to exercise supplemental jurisdiction" over the
2 remaining claims. See 28 U.S.C. § 1367(c).

3 **B. Whether Continued Jurisdiction Is Appropriate**

4 Having concluded that this case no longer presents any
5 substantial federal questions to anchor jurisdiction in this Court,
6 the Court must next consider whether the factors "of economy,
7 convenience, fairness, and comity" warrant remand or the continued
8 exercise of supplemental jurisdiction. See Acri, 114 F.3d at 1001.
9 "[I]n the usual case in which all federal-law claims are eliminated
10 before trial, the balance of [these] factors . . . will point
11 toward declining to exercise jurisdiction over the remaining state-
12 law claims." Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350
13 n.7. (1988).

14 In this instance, the interests of convenience and fairness
15 weigh neither for nor against remand. The Superior Court in San
16 Mateo is not remote from this Court, and both courts are at least
17 competent to address the legal issues involved in this dispute.
18 See Bader v. Elecs. for Imaging, Inc., 195 F.R.D. 659, 662 (N.D.
19 Cal. 2000) ("[W]hile a change from federal to state court might
20 create a tactical disadvantage to defendants, that is not legal
21 prejudice.").

22 The consideration of comity, however, weighs strongly in favor
23 of remand. "Needless decisions of state law should be avoided both
24 as a matter of comity and to promote justice between the parties,
25 by procuring for them a surer-footed reading of applicable law."
26 Gibbs, 383 U.S. at 726. Where there are no remaining federal
27 issues of jurisdictional import, the state's interest in resolving
28 disputes over its own law is a compelling incentive to remand.

1 This is especially true where, as here, Plaintiff's allegations are
2 entangled in various issues of statutory law, including the
3 statutory scheme surrounding California's non-judicial foreclosure
4 proceedings. Each of Plaintiff's claims are best adjudicated by a
5 California court, and this Court risks overstepping by retaining
6 jurisdiction of a case in which the federal interest is now
7 minimal.

8 The issue of economy cuts both ways. On the one hand, Onewest
9 currently has a motion to dismiss that is fully briefed. Remand
10 would surely delay resolution of this motion. In addition, this
11 Court has already addressed Onewest's earlier motion to dismiss,
12 and is therefore acquainted with the original allegations.

13 On the other hand, this suit remains in its nascent stages.
14 Plaintiff has so altered his theories of recovery that the analysis
15 of the FAC would bear little resemblance to analysis of the
16 original complaint; consequently, legal analysis of most of
17 Plaintiff's claims will now need to begin at square one, regardless
18 of the forum. In addition, the resources of the parties will also
19 not be unreasonably taxed upon remand, as Onewest should be able to
20 simply refile its pending motions without a substantial increase in
21 costs. Having concluded that this matter is now best suited for
22 resolution in state court, this Court is hesitant to expend any
23 additional resources on these motions, or play any greater role in
24 shaping the dispute as it moves into its next stages. The interest
25 of economy therefore weighs in favor of remand.

26 Finally, the Court notes that Plaintiff's Motion to Remand
27 remains unopposed. Defendants have failed to present any
28 compelling reason why this Court should choose to retain

1 jurisdiction over what is now clearly a dispute over state law
2 issues. This Court finds that the interests of comity and judicial
3 economy support remand of this suit to the Superior Court of San
4 Mateo County. The Court therefore declines to exercise continued
5 supplemental jurisdiction over this matter.

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7 **IV. CONCLUSION**

8 This Court finds that the First Amended Complaint lacks any
9 substantial question of federal law, and that this dispute now
10 involves only state law issues. Having considered the interests of
11 economy, convenience, fairness, and comity, this Court concludes
12 that to exercise supplemental jurisdiction would be imprudent, and
13 that remand is appropriate. Onewest's Motion to Dismiss is DENIED
14 WITHOUT PREJUDICE for this reason. Plaintiff's unopposed Motion to
15 Remand is GRANTED. This action is to be REMANDED to the Superior
16 Court of California, in and for the County of San Mateo.

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18 IT IS SO ORDERED.

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20 Dated: March 11, 2010

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UNITED STATES DISTRICT JUDGE

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