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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LARRY BUSCH and KAREN BUSCH,	Case No. 11-CV-03192-EJD
Plaintiffs,	ORDER DENYING PLAINTIFFS’
v.	MOTION TO REMAND
CITIMORTGAGE, INC. et al.,	Re: Docket Item No. 14
Defendants.	

Presently before the Court is Plaintiffs’ Motion to Remand this action to state court. Having reviewed the written submissions for this matter, the Court finds it appropriate for decision without oral argument. See Civil L.R. 7-1(b). For the reasons set forth below, the motion is denied.

I. BACKGROUND

Plaintiffs filed a complaint in the Superior Court of California, County of Santa Cruz on June 17, 2011, for claims surrounding a pending mortgage foreclosure. The complaint names seven defendants: CitiMortgage, Inc., American Home Mortgage Servicing Inc. (“AHMSI”), Litton Loan Servicing, L.P., MTGLQ Investors, L.P., WL R/IVZ Resi NPL LLC, Invesco, and Resi Whole Loan IV LLC.

AHMSI removed the case to this Court on June 28, 2011, on the basis of diversity jurisdiction. Plaintiffs move to remand the case to state court for two reasons: first, that there is a lack of diversity to give rise to subject matter jurisdiction; and second, that the Court should refrain

1 from exercising any jurisdiction it does have under any of the doctrines of abstention.¹

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3 II. SUBJECT MATTER JURISDICTION

4 A district court has original jurisdiction over civil actions between citizens of different states
5 where the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). A corporation is a citizen of
6 both the state where it is incorporated and the state where it has its principal place of business. 28
7 U.S.C. § 1332(c)(1). A natural person (i.e., a human) is a citizen of her state of domicile. See Kantor
8 v. Wellesley Galleries, Ltd., 704 F.2d 1088 (9th Cir. 1983).

9 For diversity purposes, both Plaintiffs are citizens of California. Compl. ¶ 1. Plaintiffs
10 concede that the amount in controversy meets the statutory requirement for jurisdiction and do not
11 contest that no defendant is incorporated in California. Pls.’ Mot. at 8; Pls.’ Reply at 2. They argue
12 only that Defendants CitiMortgage, Inc. and AHMSI do a volume of business in California that
13 gives rise to citizenship of this state, thereby destroying the diversity on which federal jurisdiction is
14 based.

15 Quite simply, Plaintiffs have the law wrong. They ably argue that CitiMortgage and AHMSI
16 have a level of contact with California—i.e., volume of business, operations, and availment of state
17 laws—that confers on the Court general personal jurisdiction over the two corporations. But
18 personal jurisdiction and subject matter jurisdiction are separate inquiries. Corporate citizenship for
19 diversity purposes attaches only to the state of incorporation and the state of the company’s
20 *principal* place of business. AHMSI alleges in its Notice of Removal that its principal place of
21 business is in Texas. Notice of Removal ¶ 7. CitiMortgage alleges that its principal place of business
22 is in Missouri. McPhee Decl. ¶ 3. Plaintiffs offer no evidence that casts doubt on either assertion,
23 and it does not appear they will be able to do so.² Nor is remand proper, as they argue, in order to

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25 ¹ Plaintiffs also argued in their motion that remand was proper based on a defect in the
removal procedure, but their reply brief concedes that the defect has since been cured.

26 ² Plaintiffs attempt to rebut AHMSI’s allegation by citing the company’s website, which
27 states, “AHMSI is based in Coppell, Texas, with servicing operations in Irvine, Calif., Jacksonville,
28 Fla., and Pune, India.” The servicing operations in California might establish personal jurisdiction,
but the quoted language clearly supports AHMSI’s claim that its principal place of business is in
Texas.

1 give them the “opportunity to confirm” the Defendants’ allegations. Pls.’ Reply at 2. Defendants met
2 their burden of establishing a basis for jurisdiction, and Plaintiffs have failed to rebut.

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4 III. ABSTENTION

5 In the alternative, Plaintiffs ask the Court to refrain from exercising its jurisdiction under
6 federal abstention doctrines.

7 District courts have a “virtually unflagging obligation to exercise the jurisdiction given to
8 them.” Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976). Federal
9 courts have jurisdiction over diversity cases in order to ensure that citizens of different states can
10 adjudicate their disputes in a neutral forum. See Bank of United States v. Devaux, 9 U.S. (5 Cranch)
11 61, 87 (1809) (Marshall, C.J.).

12 In general, there are three reasons for a federal district court to abstain from deciding a case
13 over which it properly has jurisdiction, all of which are based in principles of comity: (1) to avoid
14 ruling on unclear state law, (2) to avoid interfering with pending state proceedings,³ and (3) to avoid
15 duplicative litigation.⁴ See Erwin Chemerinsky, *Federal Jurisdiction* chs. 12–14. The second and
16 third rationales apply only when there is pending litigation in both state and federal court; here, there
17 is only one action, and the question is where it should proceed—in state *or* federal court.

18 Abstention because of unclear state law is appropriate in a few separate circumstances.
19 Under Railroad Commission of Texas v. Pullman Co., a federal court must not decide a
20 constitutional issue when a clarification of state law might obviate the resolution of the
21 constitutional question. Federal courts also refrain from interpreting complex state administrative or
22 regulatory schemes. Burford v. Sun Oil Co., 319 U.S. 315 (1943). Finally, abstention is sometimes

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24 In response to CitiMortgage’s allegation, Plaintiffs state only that the company “controls and
25 services tens if not hundreds of thousands of loans in the State of California.” That statement, while
again relevant to personal jurisdiction, sheds no light on the subject matter jurisdiction issue of
corporate citizenship.

26 ³ See Younger v. Harris, 401 U.S. 37 (1971). Younger and its progeny outline when it is
27 appropriate for federal courts to enjoin separate state proceedings.

28 ⁴ See Colorado River, 424 U.S. 800 (1976). Colorado River and subsequent cases concern
what federal courts should do when an action in state court duplicates the federal case.

1 proper in a diversity case that both involves uncertain state law and implicates an important state
2 interest that is intimately involved with the government’s sovereign prerogative.⁵ La. Power & Light
3 Co. v. City of Thibodaux, 360 U.S. 25 (1959); Chemerinsky, Federal Jurisdiction, § 12.2.2.

4 Plaintiffs’ complaint raises no constitutional questions, and there is no extraordinary state
5 administrative scheme governing the claims. Plaintiffs primarily argue that the Court should abstain
6 from deciding this case because the case presents “issues of State, not Federal, concern,” some of
7 which, they assert, are issues of first impression. But Plaintiffs’ complaint advances no new legal
8 theories. It aims to apply longstanding California laws of fraud, breach of contract, negligence, and
9 wrongful foreclosure to its own necessarily unique set of facts. California law cannot be said to be
10 unclear on any of these points. This is especially true in relation to actions involving foreclosures,
11 which regularly come before California state and federal courts.

12 Plaintiffs note that all the cases cited by Defendant AHMSI in its argument against
13 abstention are distinguishable from this one because they involve primarily monetary damages, raise
14 issues of federal law, or simply rest on different facts. The distinction between monetary and
15 equitable damages is only relevant where there is a separate reason for abstaining. See Quakenbush
16 v. Allstate Ins. Co., 517 U.S. 706 (1996). The fact that the complaint raises no federal issues does
17 not support abstention, either. Congress’s grant of diversity jurisdiction is directed at cases involving
18 only state law claims. After all, if a complaint raises issues of federal law, a district court has federal
19 question jurisdiction over the federal claims and supplemental jurisdiction over any related state law
20 claims. 28 U.S.C. §§ 1331, 1367. Finally, every case arises on different facts; the persuasive value of
21 precedent exists when the legal principles that apply to the facts of one case can be analogized to the
22 facts of another.

23 There is no basis for the Court to decline to invoke the jurisdiction conferred upon it by
24 Congress. The exercise of jurisdiction will not upset California’s interest in establishing a coherent
25 policy in the state law regulation of foreclosures.

27 ⁵ One or the other is not enough. See Meredith v. Winter Haven, 320 U.S. 228 (1943)
28 (holding that “uncertain or difficult” state law is not sufficient to justify abstention); Allegheny
County v. Frank Mashuda Co., 360 U.S. 185 (1959) (no abstention where state law is clear).

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Good cause therefor appearing, **IT IS HEREBY ORDERED** that Plaintiff's Motion to Remand is DENIED.

Dated: August 17, 2011


EDWARD J. DAVILA
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

- 2 Caleb S Baskin csbaskin@baskingrant.com
- 3 Conrad V. Sison csison@lockelord.com
- 4 Daniel Anthony Solitro dsolitro@lockelord.com
- 5 Nathan C. Benjamin nathan@baskingrant.com
- 6 Pamela Dawn Simmons pamelaw@pamelaw.com
- 7 Peter James VanZandt pvanzandt@bledsoelaw.com
- 8 Regina Jill McClendon rjm@severson.com
- 9 Sally Weiss Mimms smimms@lockelord.com
- 10 Thomas Nathaniel Abbott tna@severson.com

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Dated: August 17, 2011

Richard W. Wieking, Clerk

**By: /s/ EJD Chambers
Elizabeth Garcia
Courtroom Deputy**