

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Wiley Y. Daniel

Civil Action No. 12-cv-03250-WYD-BNB

ROBBY A. ESKANOS,

Plaintiff,

v.

NATIONSTAR MORTGAGE, LLC, and
MORTGAGE SPECIALISTS INTERNATIONAL, LLC, a Texas Limited Liability
Company,

Defendants.

ORDER

THIS MATTER is before the Court on plaintiff, Robby A. Eskanos's, Motion To Remand [ECF No. 30]. For the reasons stated below, the motion is GRANTED and this action is REMANDED to the District Court for Grand County, Colorado.

BACKGROUND

On December 3, 2012, plaintiff, Robby A. Eskanos, filed a state court complaint [ECF No. 1-6] in the District Court for Grand County, Colorado, against Nationstar Mortgage, LLC, and Mike Bigby alleging numerous state law claims along with a claim under the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. § 1961, *et seq.* On December 13, 2012, Nationstar filed a Notice Of Removal [ECF No. 1] and removed the action to the United States District Court for the District of Colorado on the basis of federal question jurisdiction pursuant to 28 U.S.C. § 1331.¹ On January 27,

¹ Pursuant to 28 U.S.C. § 1331, "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

2013, Eskanos filed an Amended Complaint [ECF No. 17] in which he does not allege a RICO claim as he did in his state court complaint. On April 9, 2013, Eskanos filed a Motion To Remand [ECF No. 30] requesting this Court to remand this action because the basis for which subject matter jurisdiction existed upon removal, federal question jurisdiction, no longer as exists as Eskanos did not plead a RICO claim in his Amended Complaint [ECF No. 17]. Neither Nationstar nor MSI responded to Eskanos's motion.

ANALYSIS

A. Eskanos's Motion To Remand [ECF No. 30]

Eskanos requests that I remand this action to the District Court for Grand County, Colorado, because the original basis on which this Court exercised subject matter jurisdiction, federal question, no longer exists.

Eskanos's state court complaint [ECF No. 1-6] includes a RICO claim. See ECF No. 4, p. 7. Nationstar based its removal action on Eskanos's RICO claim. See ECF No. 1, p. 2, ¶ 3 ("This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, because the Complaint raises a federal question"). Eskanos's Amended Complaint [ECF No. 17] does not include a RICO claim nor does it include any claim that arises "under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Thus, federal question subject matter jurisdiction no longer exists.

As of Thursday, June 13, 2013, neither Nationstar nor MSI has responded to Eskanos's motion. Therefore, I treat Eskanos's motion as unopposed and as if Nationstar and MSI do not object to the relief Eskanos requests. Accordingly, there being no basis for subject matter jurisdiction and the defendants not asserting any such basis, I find that this Court lacks subject matter jurisdiction over Eskanos's claims and

this action is REMANDED to the District Court for Grand County, Colorado. See 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded”).

CONCLUSION

After careful consideration of the matter before this Court, it is ORDERED that plaintiff, Robby A. Eskanos’s, Motion To Remand [ECF No. 30] is **GRANTED**, and this action is **REMANDED** to the District Court for Grand County, Colorado. In light of this ruling, it is

FURTHER ORDERED that defendant Nationstar Mortgage, LLC’s, Motion To Dismiss First Amended Complaint Pursuant To Fed. R. Civ. P. 12(b)(6) [ECF No. 26] is **DENIED AS MOOT**. It is

FURTHER ORDERED that defendant, Mortgage Specialists International, Inc.’s Partial Motion To Dismiss Pursuant To Fed. R. Civ. P. 12(b)(6) [ECF No. 32] is **DENIED AS MOOT**.

Dated: June 13, 2013.

BY THE COURT:

/s/ Wiley Y. Daniel
Wiley Y. Daniel
Senior U. S. District Judge