

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

VICTOR SHIRIAEV and MARY
SWARTZ,

Plaintiffs,

v.

Case No: 2:17-cv-530-FtM-29CM

WELLS FARGO BANK, N.A.,
ROBERT WUNKER, TEPHAINE D.
WHITMORE, SUSAN W. FINDLEY,
NALIRI SINGH, JERRET I.
BERFOND, SARAH M. BARBACCIA,
CHRISTOPHER R. KASPER, and
ALDRIDGE CONNORS LLP,

Defendants.

ORDER

This matter comes before the Court on review of the file. On September 26, 2017, Mary Swartz and Victor Shiriaev, who identify themselves as "petitioners", filed a Notice of Removal (Doc. #1) purporting to remove Wells Fargo, N.A. v. Shiriaev, et al., Case No. 10-CA-54593, initiated on April 23, 2010 in the Lee County Circuit Court to federal court. Petitioners argue that the Notice is timely filed within 30 days of a motion filed in Circuit Court that alerted "petitioners" to a federal issue.

This is not the first attempt at removal of this case by these petitioners. On July 18, 2017, Victor Shiraev and Mary Swartz attempted to remove this same case. See Wells Fargo, N.A. v.

Shiriaeve & Swartz, Case No. 2:17-cv-404-FTM-29MRM (M.D. Fla. 2017). With the first attempt, petitioners failed to provide a copy of any form of Complaint. The Court issued an Opinion and Order remanding the matter on this basis, and also for lack of jurisdiction, and other deficiencies. (Id., Doc. #4.) In this case, petitioners provided a Complaint entitled "Plaintiffs' Original Complaint - Civil RICO" (Doc. #2) against Wells Fargo, N.A., and others. This is not Complaint from the removed case, and is in fact a Complaint by petitioners against the plaintiff in the state court case. If plaintiffs wish to initiate a Complaint in federal court, they may do so in a new case with a civil cover sheet. However, their own Complaint would not be a removal from the state court action. This case will also be remanded.

Recognizing that Mary Swartz and Victor Shiriaeve are proceeding unrepresented, the Court will take this opportunity to caution petitioners that further attempts to remove Case No. 10-CA-54593 could result in sanctions. Under Federal Rule of Civil Procedure, a party may be sanctioned for filing a pleading with no reasonable legal or factual basis, or if the filing is for an improper purpose such as harassment. Thomas v. Evans, 880 F.2d 1235, 1240 (11th Cir. 1989) (noting that Rule 11 also applies to *pro se* parties). Further, "[c]ourts have the inherent authority to control the proceedings before them, which includes the

authority to impose "reasonable and appropriate" sanctions." Martin v. Automobili Lamborghini Exclusive, Inc., 307 F.3d 1332, 1335 (11th Cir. 2002) (citing Malautea v. Suzuki Motor Co., Ltd., 987 F.2d 1536, 1545 (11th Cir.1993)). To exercise this power, the Court must make a finding of bad faith, which may be demonstrated by a "continual and flagrant abuse of the judicial process." Id. at 1336. See also Byrne v. Nezhat, 261 F.3d 1075, 1121 (11th Cir. 2001) (a finding of bad faith is appropriate if a party "raises a frivolous argument, or argues a meritorious claim for the purpose of harassing an opponent"). The Court will not impose sanctions at this time but anticipates no further attempts to remove Case No. 10-CA-54593.

Accordingly, it is hereby

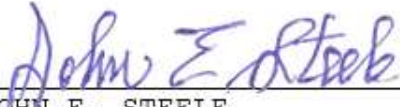
ORDERED:

1. Mary Swartz and Victor Shiriaev's Affidavits of Indigency, construed as requests to proceed *in forma pauperis* (Doc. #) are **DENIED** as the Court finds that it does not have jurisdiction.
2. Mary Swartz and Victor Shiriaev's Emergency Motion to Enforce the Notice of Removal (directed to 20th Judicial Circuit Court in and for Lee County) (Doc. #6) filed on September 28, 2017 is **DENIED** as moot.

3. The Clerk is **directed** to remand the case to the Circuit Court of the Twentieth Judicial Circuit, in and for Lee County, Florida, and to transmit a certified copy of this Order to the Clerk of that Court.

4. The Clerk is further **directed** to terminate all pending motions and deadlines, and to close the case.

DONE and ORDERED at Fort Myers, Florida, this 28th day of September, 2017.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Victor Shiriaev
May Swartz
Counsel of Record