

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

BANK OF NEW YORK MELLON,	)	Civ. No. 12-00292 SOM-BMK
	)	
Plaintiff,	)	FINDINGS AND
	)	RECOMMENDATION THAT
vs.	)	PLAINTIFF’S MOTION TO
	)	REMAND BE GRANTED
ERNESTO S. NAVARRO, et al.	)	
	)	
	)	
Defendants.	)	
_____	)	

FINDINGS AND RECOMMENDATION THAT PLAINTIFF’S MOTION TO REMAND BE GRANTED

Before the Court is Plaintiff Bank of New York Mellon’s motion to remand this action to state court. (Doc. # 10.) Defendants did not file an opposition to the motion. After careful consideration of the motion, the supporting memoranda, and the arguments of counsel, the Court FINDS and RECOMMENDS that the motion be GRANTED.

The Court concludes that removal is improper because it lacks subject matter jurisdiction over the case. Removal based on diversity jurisdiction is improper because 28 U.S.C. § 1441(b)(2) provides that a “civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as

defendants is a citizen of the State in which such action is brought.” The notice of removal lists Defendant Ernesto S. Navarro’s address as a Hawaii residence. (Doc. # 1 at 1.) The Complaint also alleges that Defendants reside in Lahaina, Hawaii. (Doc. # 1, Ex. 3 at 2, ¶ 1.) Additionally, the Court lacks federal question jurisdiction because Plaintiff’s complaint is a foreclosure action, and does not assert any federal claims. Defendants have not filed an opposition asserting that they reside elsewhere or that Plaintiff’s complaint alleges federal claims. Therefore, the Court FINDS and RECOMMENDS that Plaintiff’s motion to remand be GRANTED because the Court lacks subject matter jurisdiction over the case.

DATED: Honolulu, Hawaii, September 7, 2012.

IT IS SO FOUND AND RECOMMENDED.



/S/ Barry M. Kurren  
Barry M. Kurren  
United States Magistrate Judge

Bank of New York Mellon v. Ernesto S. Navarro, et al., Civ. No. 12-00292 SOM-BMK,  
FINDINGS AND RECOMMENDATION THAT PLAINTIFF’S MOTION TO REMAND BE  
GRANTED