

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

R. TORRES, etc.,)	
)	
Plaintiff,)	
)	
v.)	No. 10 C 5799
)	
WACHOVIA MORTGAGE CORP., etc.,)	
et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

This action, originally assigned to the calendar of this Court's colleague Honorable William Hart but then transferred to this Court's calendar by random assignment after Judge Hart declined to hear it, had come to this federal court via a Notice of Removal ("Notice") by Wachovia Mortgage, FSB ("Wachovia") from the Circuit Court of Cook County. This memorandum order is issued sua sponte because of an obvious flaw in the removal papers.

Notice ¶3 confirms that Wachovia received service of the Complaint on August 13, 2010, a date assertedly within the 30-day period before the removal. But Wachovia's counsel have obviously failed to master the children's mnemonic that begins "Thirty days hath September...", because the September 13 Notice was filed 31 days after August 13.

Because that defect is not jurisdictional, this Court cannot remand the action sua sponte pursuant to 28 U.S.C. §1447(c). But because pro se plaintiff R. Torres has just as much right to

maintain this action in the state court if he so wishes as Wachovia had to remove it on diversity grounds, this Court will await the previously set 9 a.m. October 19, 2010 status hearing to see determine whether Torres wishes to raise the question of untimeliness of the removal so as to call for the remand of the case.



Milton I. Shadur
Senior United States District Judge

Date: October 4, 2010