

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LEWIS GILES, JR.

CIVIL ACTION

VERSUS

NO. 20-1128

BAYVIEW LOAN SERVICING,
ET AL.

SECTION "R" (2)

ORDER AND REASONS

Before the Court is plaintiff's motion for leave to amend his complaint.¹ Because plaintiff has the right to amend his complaint as a matter of course, the Court grants the motion.

On March 6, 2020, plaintiff Lewis Giles filed a petition in Louisiana state court against various defendants, including Bayview Loan Servicing, LLC.² Plaintiff's one-page complaint generally alleged that Bayview had engaged in a "wrongful foreclosure" and plaintiff therefore sought \$2,720,500 in damages.³ Bayview removed this matter to federal court⁴ and filed a motion to dismiss plaintiff's complaint for failure to state a claim.⁵

¹ R. Doc. 24.

² See R. Doc. 1-2.

³ *Id.* at 1 ¶¶ 1, 2.

⁴ R. Doc. 1.

⁵ R. Doc. 20.

Two days later, plaintiff moved for leave to file an amended complaint.⁶ Plaintiff also filed various other motions, including a demand for a jury trial,⁷ a motion for “document verification,”⁸ and a motion for declaratory judgment.⁹

The Federal Rules of Civil Procedure give plaintiff the right to amend his complaint once as a matter of course “21 days after service of a motion under Rule 12(b), (e), or (f).” Fed. R. Civ. P. 15(a)(1)(B). Bayview moved to dismiss plaintiff’s original complaint on May 4, 2020.¹⁰ In the certificate of service, Bayview certified that a copy of the motion had been served “to all pro se parties via U.S. Mail, properly addressed and postage prepaid.”¹¹ Service of a motion by mail “is complete upon mailing.” Fed. R. Civ. P. 5(b)(2)(C). Therefore, plaintiff had the right to amend his complaint as a matter of course within 21 days of May 4, 2020. Because he moved to amend his complaint on May 6, 2020, the Court grants plaintiff’s motion to amend. Further, Bayview’s motion to dismiss plaintiff’s original complaint is denied as moot.

⁶ R. Doc. 24.

⁷ R. Doc. 18.

⁸ R. Doc. 21.

⁹ R. Doc. 23.

¹⁰ R. Doc. 20.

¹¹ R. Doc. 20-1 at 4.

Bayview makes clear in its motion that it believes that plaintiff's amended complaint should be dismissed for failure to state a claim. Bayview may therefore file a motion to dismiss plaintiff's amended complaint, or inform the Court it does not wish to file such a motion, on or before **June 17, 2020**. Any response from plaintiff to any such motion to dismiss shall be filed no later than **June 26, 2020**. Any reply shall be filed no later than **July 1, 2020**.

With the exception of the documents discussed above, the Court's previous order¹² prohibiting filings remains in effect. Filings from Giles or Bayview shall not be allowed until the Court addresses any amended motion to dismiss. The submitted dates for plaintiff's various motions¹³ are continued to July 29, 2020.

For the foregoing reasons, the Court GRANTS plaintiff's motion for leave to amend, and DENIES Bayview's motion to dismiss plaintiff's original complaint as moot.

New Orleans, Louisiana, this 10th day of June, 2020.


SARAH S. VANCE
UNITED STATES DISTRICT JUDGE

¹² R. Doc. 25.

¹³ R. Docs. 12, 19, 21, 22, 23.