

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SAMEH DIDES

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Civil Action No. WMN-12-2989

v.

OCWEN LOAN SERVICES, LLC

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MEMORANDUM

Plaintiff filed this action in the District Court for Anne Arundel County, Maryland, on or about September 13, 2012. The allegations in the Complaint, in their entirety, are as follows: "Illegally charging fees and illegally reporting to the [Bureau] causing loss of Business and continuous [harassment] by Phone requesting that [illegible writing] all fee[s] and pay for compensation." ECF No. 2. By checking a box, Plaintiff indicated that this was a "contract" action and he claims as damages "\$20,000 plus interest." Id.

Defendant is a mortgage loan servicer and services the loan held by Plaintiff on behalf of the current note holder. See Removal Petition, ECF No. 1 at 1. On that basis, Defendant makes the assumption that Plaintiff was attempting to assert a claim under the federal Fair Debt Collection Act and/or the federal Fair Credit Reporting Act. Asserting federal question

jurisdiction, Defendant timely removed the action to this Court on October 10, 2012.

Defendant then filed a motion to dismiss. ECF No. 7. As grounds, Defendant argues that the allegations in the Complaint lack sufficient specificity or factual content to state a claim or to permit Defendant to appropriately respond. Plaintiff filed a response to the motion to dismiss, ECF No. 12, in which he states that he telephoned defendant's counsel and explained the nature of his claim. He also provided some additional detail concerning the factual basis for his claim - that Defendant did not credit him for a payment he claims that he made and that Defendant failed to pay his property taxes despite there being adequate funds in the escrow account to do so. What Plaintiff may have told Defendant's counsel on the telephone or stated in his opposition, however, are not part of the Complaint and cannot be considered by the Court in deciding the motion to dismiss.

Plaintiff also filed a "Motion to Return to Maryland District Court," ECF No. 13, that the Court treats as a motion to remand. That motion was filed on December 3, 2012. In that motion, Plaintiff repeats some of the allegations made in his response to the motion to dismiss and also argues that his is a contract action governed by state and not federal law. He also suggests that escrow accounts and credit bureaus are regulated

by state and not federal law. Defendant opposed the motion to remand, noting that it was not filed within 30 days as required under 28 U.S.C. § 1447(c). Defendant also argues that Plaintiff's motion to remand adds allegations concerning escrow accounts which might implicate yet another federal statute, the Real Estate Settlement Procedures Act.

The Court will deny Plaintiff's motion to remand at this time. While the precise nature of his claim is not clear, it appears from the allegations in the Complaint that he could be attempting to assert claims under federal statutes. If so, the removal would be proper.

The Court will also grant Defendant's Motion to Dismiss. While the federal pleading standard requires simply a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a), the complaint must contain "enough facts to state a claim for relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). The Complaint must contain more than "labels and conclusions." Id. at 555. Here, the allegations in the Complaint are nothing more than vague assertions of accounting, reporting and harassment that are somehow "illegal."

The Court will dismiss the action, without prejudice to Plaintiff's filing of an Amended Complaint within fourteen days of the date of this Memorandum and Order, should Plaintiff chose

to do so. Once Plaintiff clarifies his claims, the Court can re-evaluate whether those claims arise under federal law, as they appear to, or under state law. See Shilling v. Northwestern Mut. Life Ins. Co., 423 F. Supp. 2d 513, 520-21 (D. Md. 2006) (holding that remand was appropriate after the plaintiff amended complaint to remove federal claim). The Court also notes that, where remand is sought based upon a lack of federal subject matter jurisdiction, the timeliness of a motion to remand is of no moment. If this Court does not have subject matter over the claims asserted, it can remand the action sua sponte. Ellenburg v. Spartan Motors Chassis, Inc., 519 F.3d 192, 196 (4th Cir. 2008).

A separate order will issue.

_____/s/_____
William M. Nickerson
Senior United States District Judge

DATED: January 14, 2013