

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DONNA J. HUBERT,

Plaintiff,

v.

Case No. 10-13831

Hon. Lawrence P. Zatkoff

PNC BANK, NATIONAL
ASSOCIATION,

Defendant.

_____ /

ORDER GRANTING DEFENDANT’S MOTION FOR RECONSIDERATION

This matter is before the Court on Defendant’s motion for reconsideration [dkt 7]. Pursuant to E.D. Mich. L.R. 7.1(g)(2), no response is permitted. The Court finds that the facts and legal arguments are adequately presented in Defendant’s papers such that the decision process would not be significantly aided by oral argument. Therefore, pursuant to E.D. Mich. L.R. 7.1(f)(2), it is hereby ORDERED that the motion be resolved on the brief submitted. For the reasons set forth below, Defendant’s motion for reconsideration is GRANTED.

Local Rule 7.1(g)(3) governs motions for reconsideration, stating that “the court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication.” E.D. Mich. L.R. 7.1(g)(3). The same subsection further states, “the movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that correcting the defect will result in a different disposition of the case.” *Id.* A defect is palpable when it is obvious, clear, unmistakable, manifest, or plain. *Mktg. Displays, Inc. v. Traffix Devices, Inc.*, 971 F. Supp. 262, 278 (E.D. Mich.

1997).

On October 6, 2010, the Court issued an order [dkt 5] remanding Plaintiff's state law claims, (declining to exercise supplemental jurisdiction over them) to the Oakland County Circuit Court and retaining jurisdiction over Plaintiff's federal claims based on federal question jurisdiction. Defendant asserts in its motion for reconsideration that the Court also has diversity jurisdiction over Plaintiff's case, and therefore, the Court should retain jurisdiction over Plaintiff's state law claims.

Pursuant to 28 U.S.C. § 1332, a district court shall have original jurisdiction over all civil actions where the matter in controversy exceeds \$75,000 and is between citizens of different states. If the action is first filed in state court, a defendant can remove the action by way of 28 U.S.C. § 1441(a): "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed . . . to the district court of the United States."

On September 24, 2010, Defendant removed Plaintiff's case from the Oakland County Circuit Court. Plaintiff's complaint alleges the following counts:

- Count I Injunctive Relief (based on state law)
- Count II Violation of Mich. Comp. Laws § 600.3205c
- Count III Violations of RESPA (12 U.S.C. §§ 2601-2617)
- Count IV Violation of Home Affordable Modification Program
- Count V Intentional Misrepresentation
- Count VI Promissory Estoppel
- Count VII Unfair Competition

First, Plaintiff is a citizen of the State of Michigan, and Defendant is a citizen of the State of Pennsylvania, as Defendant's headquarters is located in Pittsburgh, Pennsylvania. *See Wachovia*

Bank, N.A. v. Schmidt, 546 U.S. 303, 307 (2006) (holding that a national bank is a citizen of the state where its main office, as designated in its articles of association, is located). Second, Plaintiff is seeking damages in excess of \$75,000. Therefore, this action falls within the Court's diversity jurisdiction, meaning removal based on federal question jurisdiction and diversity of citizenship was proper.

Accordingly, IT IS HEREBY ORDERED that Defendant's motion for reconsideration [dkt 7] is GRANTED and the Court retains jurisdiction over Plaintiff's state-law claims (Counts I, II, V, VI, and VII).

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: October 22, 2010

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on October 22, 2010.

S/Marie E. Verlinde
Case Manager
(810) 984-3290