

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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CITIMORGAGE, INC.,

Case No. 12-CV-1516 (PJS/FLN)

Plaintiff,

v.

ORDER

RONALD NIEWOHNER,

Defendant.

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This matter is before the Court on defendant Ronald Niewohner's objection to the September 13, 2012 Report and Recommendation ("R&R") of Magistrate Judge Franklin L. Noel. Judge Noel recommends granting the motion of defendant Citimortgage, Inc. ("Citimortgage") to remand the case to the Minnesota District Court for Morrison County pursuant to 28 U.S.C. § 1447. ECF No. 5. The Court has conducted a de novo review, *see* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b), and agrees with the R&R that Niewohner's removal of the case to federal court was both inappropriate and untimely. The case is accordingly remanded to state court.

The R&R also recommends that the complaint be dismissed with prejudice. Citimortgage points out, and the Court agrees, that because the case is being remanded to state court, dismissal of Citimortgage's complaint would be improper. Therefore, the Court adopts the R&R in all respects except for the recommendation that the case be dismissed.

## ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, the Court OVERRULES defendant's objection [ECF No. 21] and ADOPTS IN PART the September 13, 2012 Report and Recommendation [ECF No. 19]. IT IS HEREBY ORDERED THAT:

1. Plaintiff's motion to remand to state court [ECF No. 5] is GRANTED.
2. The Clerk of Court is directed to remand this case to the Minnesota District Court for Morrison County.

Dated: October 5, 2012

s/Patrick J. Schiltz  
Patrick J. Schiltz  
United States District Judge