

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NICOLA NUCCI,

Plaintiff,

-against-

PHH MORTGAGE CORPORATION and
COMMERCE BANK, N.A.,

Defendants.
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NICHOLAS G. GARAFIS, United States District Judge.

On April 29, 2014, TD Bank, N.A. (successor to named Defendant Commerce Bank, N.A.) removed this quiet title action from New York Supreme Court, Kings County.¹ (Not. of Removal (Dkt. 1).) On May 12, 2014, pro se Plaintiff Nicola Nucci filed a motion to remand the action to state court. (Mot. to Remand (Dkt. 7).) On July 21, 2014, Defendant PHH Mortgage Corp. (“PHH”)—which had not appeared in this case prior to that date—filed a letter requesting an extension of time to respond to Plaintiff’s motion to remand. (July 21, 2014, Ltr. (Dkt. 14).) On August 15, 2014, Plaintiff filed a brief in further support of his motion to remand. (Pl. Reply (Dkt. 17).) On September 3, 2014, PHH filed an opposition to Plaintiff’s motion to remand (Mem. of Law in Opp’n to Pl. Mot. for Remand (Dkt. 23)) and a sur-reply in further opposition to the motion to remand (Sur-Reply Mem. of Law in Further Opp’n to Pl. Mot. for Remand (Dkt. 25)). By Order dated September 3, 2014, the court referred the motion to remand to Magistrate Judge Robert M. Levy for a Report and Recommendation (“R&R”) pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b)(1). (See Order (Dkt. 27))

¹ Plaintiff subsequently stipulated to the dismissal of his claims against TD Bank, N.A. (See Stip. of Dismissal Between Pl. and TD Bank, N.A. (Dkt. 10).) PHH Mortgage Corp. is the only remaining Defendant in this action.

at 3.) The parties thereafter filed additional briefing before Judge Levy. (See Pl. Reply (Dkt. 28); Dec. 2, 2014, PHH Ltr. Br. (Dkt. 29).)

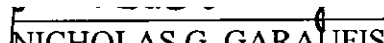
On March 4, 2015, Judge Levy issued an R&R recommending that the court deny Plaintiff's motion to remand. (R&R (Dkt. 30).) No party has objected to Judge Levy's R&R, and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). (See also R&R at 5 ("Any objections to this Report and Recommendation must be filed with the Clerk of Court . . . within fourteen days. Failure to file objections within the specified time waives the right to appeal the district court's order.")) Therefore, the court reviews the R&R for clear error. See Gesualdi v. Mack Excavation & Trailer Serv., Inc., No. 09-CV-2502 (KAM) (JO), 2010 WL 985294, at *1 (E.D.N.Y. Mar. 15, 2010); La Torres v. Walker, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000); cf. 28 U.S.C. § 636(b)(1). Finding no clear error, the court ADOPTS IN FULL the R&R, and accordingly, DENIES Plaintiff's motion to remand. See Porter v. Potter, 219 F. App'x 112 (2d Cir. 2007) (summary order).

The court previously denied as premature PHH's motion requesting a pre-motion conference in anticipation of filing a motion to dismiss the Complaint. (See Sept. 3, 2014, Order at 3.) The court ordered that PHH's time to answer or otherwise respond to the Complaint would extend until fourteen days following entry of an Order deciding Plaintiff's motion to remand. (Id.) Accordingly, within fourteen (14) days of the date of entry of this Order, PHH shall file an Answer to the Complaint or shall renew its request for a pre-motion conference in anticipation of filing a motion to dismiss the Complaint.

SO ORDERED.

Dated: Brooklyn, New York
March 26, 2015

s/Nicholas G. Garaufis


NICHOLAS G. GARAUFIS
United States District Judge