

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ONE WEST BANK, FSB,

Plaintiff,

-against-

MEMORANDUM & ORDER
16-CV-3126 (SJF)(AKT)

JACK LEVINE a/k/a/ JACK M. LEVINE, RICK LEVINE, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as Nominee for IndyMac Bank, FSB, Commissioner of Taxation and Finance Civil Enforcement – CO – ATC, “JOHN DOE”, “RICHARD ROE”, JANE DOE”, “CORA COE”, “DICK MOE” and “RUBY POE”, the Six defendants last named in quotation marks being intended to designate tenants or occupants in possession of the herein described premises or portions thereof, if any there be, said names being fictitious, their true name being unknown to plaintiff,

**FILED
CLERK**

6/22/2016 4:19 pm

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

Defendants.

-----X
FEUERSTEIN, District Judge:

In or about June 26, 2012, One West Bank, FSB (“plaintiff”), commenced this action against defendants, Jack Levine a/k/a/ Jack M. Levine (“J. Levine”), Rick Levine (“R. Levine”), Mortgage Electronic Registration Systems, Inc., as nominee for IndyMac Bank, FSB, Commissioner of Taxation and Finance Civil Enforcement - CO - ATC, “John Doe”, “Richard Roe”, “Jane Doe”, “Cora Coe”, “Dick Moe” and “Ruby Poe” (collectively, “defendants”) in the Supreme Court of the State of New York, County of Suffolk (“state court”), seeking a judgment of foreclosure on the real property known as 233 Moriches Avenue, Mastic New York (the “premises”). See Notice of Removal at 3-10, Docket Entry, (“DE”) [1]. According to the state

court docket, judgment of foreclosure was entered on February 12, 2015, and the sale of the premises is scheduled for June 23, 2016.¹

On June 15, 2016, J. Levine, acting pro se, filed a Notice of Removal removing the action to this Court pursuant to 28 U.S.C. § 1441 on the basis that this Court has original jurisdiction under 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d). See Petition for Removal at 1, DE [1]. The Notice of Removal was not accompanied by an application to proceed in forma pauperis, nor has J. Levine remitted the \$400 filing fee to the Court. Nonetheless, given that remand is clearly warranted for the reasons that follow, and so as to not further delay this action to address the filing fee issue, the action is remanded to the state court pursuant to 28 U.S.C. § 1447(c).

I. DISCUSSION

The removal statute provides that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a). The procedure for effecting removal requires the defendant to file in the district court “a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and other papers served upon such defendant or defendants in such action.” 28 U.S.C. § 1446(a). As to the timing of removal, §1446(b) makes clear that removal shall be filed:

¹ The Court takes judicial notice of the information maintained on the public electronic docket for the New York State Unified Court System, Suffolk Civil Supreme Index No. 019244/2012. See <https://iapps.courts.state.ny.us> (last visited on June 22, 2016).

within 30 days after the receipt by the defendant, through service or process or otherwise, of a copy of the initial pleading setting forth the claim for relief . . . or within 30 days after the service of the summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever is shorter.

28 U.S.C. § 1446(b). In addition, subsection (b)(2)(A) provides that “[w]hen a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action. 28 U.S.C. § 1446(b)(2)(A).

“[S]tatutory procedures for removal are to be strictly construed,” *Syngenta Crop. Prot., Inc. v. Henson*, 537 U.S. 28, 32, 123 S. Ct. 366, 154 L. Ed. 2d 368 (2002), and any doubts must be resolved against “removability” “out of respect for the limited jurisdiction of the federal courts and the rights of the states” *In re Methyl Tertiary Butyl Ether (“MTBE”) Prods. Liab. Litig.*, 488 F.3d 112, 124 (2d Cir. 2007) (quotations and citation omitted). “[T]he burden is on the removing party to prove that it has met the requirements for removal.” *Ulysse v. AAR Aircraft Component Servs.*, 841 F. Supp. 2d 659, 666 (E.D.N.Y. 2012) (quotations and citation omitted).

J. Levine’s attempt at removal fails on several grounds. This case was filed in state court almost four (4) years ago, and thus was removed well beyond the thirty (30) day period prescribed by 28 U.S.C. § 1446(b)(1). Thus, regardless of whether the notice of removal invokes this Court’s federal question jurisdiction, there is no basis in law for J. Levine’s attempt to remove this action to federal court long after the statutory thirty-day time period has expired. Moreover, J. Levine has not attached a copy of “all process, pleadings, and other papers” served upon him in the state court case as is required by 28 U.S.C. § 1446(a). Finally, J. Levine does not indicate whether R. Levine and/or the other defendants “joins in or consents” to the removal of this action as the Notice of Removal is signed only by J. Levine.

II. CONCLUSION

For the foregoing reasons, this action is sua sponte remanded to the state court pursuant to 42 U.S.C. § 1447(c). See *Mitskovski v. Buffalo & Fort Erie Pub. Bridge Auth.*, 435 F.3d 127, 131 (2d Cir. 2006) (recognizing that a district court may sua sponte remand a case for a procedural defect within thirty (30) days of the filing of the Notice of Removal); accord *Hamilton v. Aetna Life & Cas. Co.*, 5 F.3d 642, 644 (2d Cir. 1993).

The Clerk of the Court shall: (1) mail a certified copy of this Order to the clerk of the Supreme Court of the State of New York, County of Suffolk County, pursuant to 42 U.S.C. § 1447(c); (2) close this case; and, (3) pursuant to Rule 77(d)(1) of the Federal Rules of Civil Procedure, serve notice of entry of this Order upon all parties as provided in Rule 5(b) of the Federal Rules of Civil Procedure and record such service on the docket.

SO ORDERED.

/s/
Sandra J. Feuerstein
United States District Judge

Dated: June 22, 2016
Central Islip, New York