

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**CITIGROUP GLOBAL MARKETS
REALTY CORP.,**

Plaintiff,

v.

RONALD BROWN et al,

Defendant.

Case No. 2:14-cv-2173

Judge Peter C. Economus

MEMORANDUM OPINION AND ORDER

This matter is before the Court for consideration of Defendants', Ronald and Tonya Brown ("the Browns"), Notice of Removal (ECF No. 2) and Emergency Motion to Extend or Impose a Stay (ECF No. 4). For the reasons that follow, the Court **DENIES** the Browns motion (ECF No. 4) and **REMANDS** this case for lack of subject matter jurisdiction.

I. Background

On December 2, 2008, Citigroup Global Markets Realty Corp filed this mortgage foreclosure action in the Court of Common Pleas of Delaware County, Ohio, as Case No. 08-CVE-12-1598. On February 23, 2010, the Browns first attempted to remove Case No. 08-CVE-12-1598 to this Court. See Case No. 2:10-cv-165. On March 15, 2010, United States District Judge James L. Graham issued an order remanding this case to the Court of Common Pleas based upon his finding that this Court lacked subject matter jurisdiction. See Case No. 2:10-cv-165.

On December 11, 2013, the Browns again attempted to remove this case. See Case No. 2:13-cv-1232. On September 23, 2014, the undersigned dismissed Case No. 2:12-cv-1232 for lack of subject matter jurisdiction.

In the matter before this Court, the Browns have filed a Notice of Removal. (ECF No. 2.) This is the Browns third attempt to remove this mortgage foreclosure case. The Browns have also filed an Emergency Motion to Extend or Impose a Stay. (ECF No. 4.)

II. Analysis

The Court will first address the Browns' Notice of Removal. The Court finds that removal is improper because it does not have subject matter jurisdiction over this matter. Defects in subject matter jurisdiction are never waived and may be raised at any time, even on appeal. *Curry v. U.S. Bulk Transport, Inc.*, 462 F.3d 536, 539–40 (6th Cir.2006). “The Supreme Court confirms that the removal statutes permit a district court to remand sua sponte where the removing defendant has not carried its burden of establishing removal jurisdiction.” *Leys v. Lowe's Home Centers, Inc.*, 601 F. Supp. 2d 908, 910 (W.D. Mich. 2009) (quoting *Wisconsin DOC v. Schacht*, 524 U.S. 381, 392 (1998)). Indeed, failure to remand sua sponte in the absence of clear subject-matter removal jurisdiction can be reversible error. See *Probus v. Charter Comms., LLC*, 234 Fed. Appx' 404, 406 (6th Cir.2007) (district court erred by failing to remand sua sponte for lack of diversity removal jurisdiction).

This is the Browns third attempt to remove this case from state court. When the Browns first tried to remove this case, Judge Graham determined that no federal question jurisdiction existed under the well-pleaded complaint rule. Case No. 2:10-cv-165. Judge Graham pointed out that this action, on its face, did not “raise any claims that arise under federal law.” Case No. 2:10-cv-0165 at 2. Judge Graham noted that the availability of a “federal defense does not alter the well-pleaded complaint rule,” under which a “complaint states a federal question only when ‘a right or immunity created by the Constitution or laws of the United States [is] an element, and an essential one, of plaintiff’s cause of action.’” *Id.* at 2 (quoting *Gully v. First Nat’l Bank*, 299

U.S. 109 (1936)). The second time the Browns tried to remove this case, the undersigned determined that no federal question jurisdiction existed under any of the exceptions to the well-pleaded complaint rule. Case No. 2:13-cv-1232.

In the case sub judice, the Browns have made no new arguments as to why the Court has removal jurisdiction over this action. (ECF No. 2.) The Court finds that the Browns still do not raise any claims that arise under federal law. Therefore, the Browns have failed to meet their burden of establishing removal jurisdiction.

For the reasons discussed above, the Court **REMANDS** this case to the Court of Common Pleas, Delaware County, Ohio. Furthermore, the Court **DENIES** as **MOOT** the Browns' Emergency Motion to Extend or Impose a Stay. (ECF No. 4.)

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE