

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Willie Lovett,)	
)	C/A No. 3:12-1816-MBS-SVH
Plaintiff,)	
)	
vs.)	ORDER
)	
Deutsche Bank National Trust Company,)	
et al.,)	
)	
Defendants.)	
_____)	

On July 2, 2012, Plaintiff Willie Lovett, proceeding pro se, filed the within complaint in which he alleges causes of action for fraud, negligence, to quiet title, and for an accounting, all arising out of a mortgage on Lovett’s property located at 2344 Rolling Hills Road, Columbia, South Carolina (the “Property”). Lovett seeks damages and declaratory and injunctive relief. Also on July 2, 2012, Lovett filed a notice of removal with respect to a foreclosure complaint against him filed by Deutsche Bank National Trust Company in the Court of Common Pleas for Richland County, South Carolina. The subject of the foreclosure complaint is the Property. See Deutsche Bank v. Lovett, C/A No. 3:12-1819-JFA-SVH. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., both matters were referred to United States Magistrate Judge Shiva V. Hodges for pretrial handling.

On August 20, 2012, Defendant Real Time Resolutions, Inc. (“RTR”) filed a motion to dismiss based on abstention and res judicata. By order filed August 20, 2012, in accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Lovett was advised of the dismissal procedure and the possible consequences of failing to respond adequately. On September 4, 2012, Defendant EMC Mortgage Company (“EMC”) filed a motion to dismiss based on abstention, res judicata, and

lack of standing. A second Roseboro order was issued on September 5, 2012. On September 11, 2012, Lovett filed a motion to consolidate the within action with the foreclosure complaint. RTR and EMC filed responses in opposition to Lovett's motion to consolidate on September 28, 2012. On October 3, 2012, Lovett filed a response in opposition to EMC's motion to dismiss. Lovett filed a response in opposition to RTR's motion to dismiss on October 17, 2012, to which RTR filed a reply on November 16, 2012.

On February 11, 2013, the Honorable Joseph F. Anderson, Jr. remanded the foreclosure complaint to the Court of Common Pleas. On February 12, 2013, the Magistrate Judge issued a Report and Recommendation in which she rejected RTR and EMC's claims of res judicata. The Magistrate Judge determined, however, that the within action duplicates the foreclosure complaint, a contemporaneous state proceeding. The Magistrate Judge therefore recommended that the court abstain from exercising jurisdiction pursuant to Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976), and that the within action be stayed pending the outcome of the foreclosure proceedings. The Magistrate Judge further noted that the Anti-Injunction Act, 28 U.S.C. § 2283, forbids the injunctive and declaratory relief sought by Lovett. Finally, the Magistrate Judge recommended that the motion to consolidate be denied in light of Judge Anderson's order remanding the foreclosure complaint. No party filed objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with

instructions. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. RTR and EMC’s motions to dismiss (ECF Nos. 29, 32) are **granted** to the extent they seek the court to abstain from exercising jurisdiction. The within action is administratively stayed pending resolution of the foreclosure complaint in the Court of Common Pleas for Richland County, South Carolina. Lovett’s motion to consolidate (ECF No. 37) is **denied** as moot. **RTR and EMC shall file a status report every 90 days until the foreclosure complaint is resolved, commencing 90 days from the date of entry of this order.**

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Senior United States District Judge

Columbia, South Carolina

March 6, 2013.