

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

BEAUFORT DIVISION

Albert Russell Clay,)	
)	C/A No. 9:08-1369-MBS
Plaintiff,)	
)	
vs.)	ORDER
)	
Countrywide Home Loans,)	
)	
Defendant.)	
_____)	

Plaintiff Albert Russell Clay brought this action pro se, asserting that Defendant Countrywide Home Loans violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq., in various respects. Plaintiff seeks monetary damages and has filed a motion for preliminary injunction (Entry 3).

This matter is before the court on Defendant’s motion to dismiss filed June 4, 2008 (Entry 21). By order filed June 6, 2008, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Plaintiff was advised of the dismissal procedures and the possible consequences if he failed to respond adequately. Plaintiff filed no response to Defendant’s motion. However, on August 21, 2008, Plaintiff filed a motion for summary judgment (Entry 36) and motion to amend complaint (Entry 37). On August 21, 2008, Plaintiff also filed a “request for removal of action from state court” (Entry 38), with respect to a foreclosure action in which he is the defendant. Defendant filed a response to Plaintiff’s motion for summary judgment on September 3, 2008. On November 3, 2008, Defendant filed a joint response to Plaintiff’s motions to amend complaint and to remove action from state court.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pretrial handling. On December 19, 2008, the Magistrate Judge issued a Report and Recommendation in which he recommended that Defendant's motion to dismiss be granted, Plaintiff's motion for summary judgment be denied, and the case be dismissed, with prejudice. Plaintiff filed no 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). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. Accordingly, Defendant's motion to dismiss (Entry 21) is **granted**; Plaintiff's motion for summary judgment (Entry 36) is **denied**, and the case dismissed, with prejudice. Plaintiff's motion for preliminary injunction (Entry 3), motion to amend complaint (Entry 37) are **denied as moot**. Plaintiff's motion to remove case from state court also is **denied**. As a home state defendant, Plaintiff is prohibited from removing the foreclosure action on the basis of diversity

jurisdiction. See 28 U.S.C. § 1441(b).

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

January 28, 2009.

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.