

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

KELLY ZHRATKA,

Plaintiff,

v.

Case No. 2:20cv208

U.S. BANK NATIONAL ASSOCIATION,

and

TRUSTEE SERVICES OF VIRGINIA, LLC,

Defendants.

ORDER

This matter comes before the court on the Defendants, U.S. Bank National Association ("U.S. Bank") and Trustee Services of Virginia, LLC, ("Trustee Services") (collectively, "Defendants"), Motions to Dismiss Plaintiff's Complaint. ECF Nos. 5, 15. The Plaintiff, Kelly Zahratka, opposes the Motions to Dismiss and seeks a remand to the Norfolk Circuit Court. ECF No. 7.

After briefing on the Motions, on June 9, 2020, this court referred the Motion to United States Magistrate Judge Douglas E. Miller pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b), to conduct necessary hearings, including evidentiary hearings, if necessary, and to submit to the undersigned district judge proposed findings of fact, if applicable, and recommendations for the disposition of the Motions to Dismiss and Motion to Remand. ECF No. 24.


The Magistrate Judge filed the Report and Recommendation ("R&R"), on July 27, 2020. ECF No. 26. The R&R recommends denying the Motion to Remand, ECF No. 7; granting U.S. Bank's Motion to Dismiss, ECF No. 15; granting in part and denying in part Trustee Services' Motion to Dismiss, ECF No. 5; and dismissing the Complaint, ECF No. 1, Exhibit A, with leave to amend Counts Three and Four. By copy of the R&R, the parties were advised of their right to file written objections to the findings and recommendations made by the Magistrate Judge. See R&R at 32-23. The Plaintiff and Defendant U.S. Bank filed Objections to the R&R on August 10, 2020, and August 21, 2020. ECF Nos. 27, 28.

The court, having reviewed the record in its entirety and having examined the Objections and made de novo findings with respect thereto, does **ADOPT AND APPROVE IN FULL** the findings and recommendations set forth in the R&R of the United States Magistrate Judge, filed on July 27, 2020, ECF No. 26. Accordingly, the Plaintiff's Motion to Remand, ECF No. 7, is **DENIED**. Defendant U.S. Bank's Motion to Dismiss, ECF No. 15, is **GRANTED**. Defendant, Trustee Services' Motion to Dismiss, ECF No. 5, is **DENIED AS MOOT** as to Counts One, Two, and Three of the Complaint, and **GRANTED** as it relates to Count Four. Accordingly, Counts One and Two of the

Complaint are **DISMISSED WITH PREJUDICE**, and Counts Three and Four are **DISMISSED WITHOUT PREJUDICE** with leave to amend, within twenty-one (21) days of the entry of this Order.

The Clerk is **DIRECTED** to send a copy of this Order to counsel for all parties.

IT IS SO ORDERED.



Rebecca Beach Smith
Senior United States District Judge

REBECCA BEACH SMITH
SENIOR UNITED STATES DISTRICT JUDGE

August 27, 2020