

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 ROBERT HARDIE, *et al.*,

9 Plaintiffs,

10 v.

11 COUNTRYWIDE HOME LOANS  
12 SERVICING LP,

13 Defendant.

Case No. C08-1286RSL

ORDER DENYING  
MOTION TO REMAND

14  
15 This matter comes before the Court on plaintiffs' motion to remand this case to King  
16 County Superior Court. By order dated December 8, 2008, the Court denied plaintiffs' motion  
17 to remand the entire case and requested supplemental briefing on plaintiffs' alternate request that  
18 the Court remand their claim for an injunction under Washington's Consumer Protection Act  
19 ("CPA"). Plaintiffs contended that the Court should remand their request for an injunction under  
20 the CPA because they lack standing to pursue that relief in federal court, and the claim could be  
21 time barred if they had to refile it in state court. The Court requested supplemental briefing  
22 regarding (1) the statute of limitations for a request for an injunction under the CPA, and (2)  
23 whether federal adjudication of the request for an injunction would result in forfeiture of that  
24 claim such that it should be remanded pursuant to *Lee v. American Nat'l Ins. Co.*, 260 F.3d 997,  
25 1006-07 (9th Cir. 2001).

26  
ORDER DENYING MOTION TO REMAND

1 In *Lee*, the Ninth Circuit left open the question of whether it is proper to remand a  
2 nonjusticiable state-law claim. The court suggested that where a plaintiff “might forfeit an  
3 otherwise viable state-law claim because that claim was part of a removed diversity case which  
4 was subsequently determined to be beyond the federal court’s power to decide, a result which  
5 might militate in favor of remanding, rather than dismissing, nonjusticiable state-law claims.”  
6 *Lee*, 260 F.3d at 1006-07. However, where dismissal of claims in federal court “provides no  
7 obstacle to [plaintiffs] refileing them in state court” viable state-law claims generally need not be  
8 remanded. *Id.* at 1006.

9 In this case, as defendant noted in its supplemental briefing, plaintiffs are not in danger of  
10 forfeiting their CPA claim. The Court will adjudicate that claim. Rather, they are concerned  
11 that the running of the statute of limitations could bar them from obtaining one form of relief –  
12 an injunction – if they have to refile the claim in state court. The *Lee* case, however, did not  
13 address that situation. Nor have plaintiffs cited any authority to support their position that the  
14 Court should remand a portion of a claim to preserve a remedy. Furthermore, if the Court were  
15 to remand the request for an injunction, this Court and King County Superior Court would  
16 simultaneously consider plaintiffs’ CPA claim. Doing so would waste judicial resources, lead to  
17 inconsistent results, and prejudice defendant.

18 Moreover, plaintiffs have not provided any relevant authority to show that their request  
19 for an injunction would be time barred if dismissed and refiled.<sup>1</sup> Instead, it appears that the  
20 statute of limitations is tolled during the pendency of this action. If the Court were to dismiss  
21 the request for an injunction, it appears that plaintiffs could refile the claim.<sup>2</sup>


---

23  
24 <sup>1</sup> Rather, plaintiffs have cited out of district authority that is not persuasive in this  
25 circumstance.

26 <sup>2</sup> Because of the tolling of the statute of limitations, the Court need not decide the  
applicable statute of limitations at this time.

1 For all of the foregoing reasons, plaintiffs' motion to remand (Dkt. # 16) is DENIED.

2  
3 Dated this 28th day of January, 2009.

4  
5   
6 Robert S. Lasnik  
7 United States District Judge  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26