

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JEFF SAMUELS,	§
Plaintiff	§
	§
	§
	§
vs.	§ Civil Action No. 4:23-cv-4687
	§
AVT TITLE SERVICES, LLC,	§
DEUTSCHE BANK NATIONAL TRUST CO., POWER DEFAULT SERVICES INC.	§

PLAINTIFF’S JEFF SAMUELS MOTION TO REMAND

TO THE HONORABLE JUDGE:

COMES NOW, Plaintiff JEFF SAMUELS hereby files his Motion for Remand and Incorporated Memorandum of Law. As grounds therefore, Plaintiff states as follows:

1. On or about September 1, 2023, Jeff Samuels filed Plaintiff’s Application for Temporary Restraining Order and Injunctive Relief in 234th Judicial District Court, Harris County, Texas in Cause No. 2023-59141.
2. On September 5, 2023, the trial court granted Plaintiff’s Application for Temporary Restraining Order and Injunctive Relief after posting a cash bond.
3. On September 20, 2023, Plaintiff’s attorney filed motion to withdraw as counsel.
4. On November 15, 2023, Defendant AVT filed an Original Answer and Verified Denial. On November 20, 2023, state trial court granted Attorney Errol Jones motion to withdraw. On November 30, 2023, 234th Judicial District Court signed a Docket Control/Scheduling Order in Cause No. 2023-59141.

5. On December 15, 2023, Defendant AVT filed an untimely Notice of Removal in state & federal court. *See* Defendants Notice of Removal (Dkt #1). Plaintiff filed his Motion for Remand within thirty (30) days of AVT's filing of its Notice of Removal. Therefore, this Motion for Remand is timely.

6. Jeff Samuels moves to remand on the basis that AVT and Power Default Service Inc were properly joined and lack of subject-matter jurisdiction.

I. UNTIMELY NOTICE OF REMOVAL

A. Standard Review-Notice of Removal.

7. Removal from state court is governed by 28 U.S.C. § 1441. Section 1441 allows a defendant to remove “any civil action brought in a state court of which the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441. The statute, which must be strictly construed, requires remand to state court if any doubt exists over whether removal is proper. *Abels v. State Farm Fire & Cas. Co.*, 770 F.2d 26, 29 (3d Cir. 1985).

8. It is the rule in the Fifth Circuit that in cases involving multiple defendants, the 30-day removal period begins to run as soon as the first defendant is served. *Getty Oil v. Insurance Co. of North America*, 841 F.2d 1254, 1262-63 (5th Cir.1988). All served defendants must join in the removal, and because the notice of removal must be filed within 30 days of service on the first defendant, all served defendants must join in the removal no later than 30 days from the day on which the first defendant is served. *Getty Oil*, 841 F.2d at 1254.

9. On September 1, 2023, Plaintiff filed and served his Application for Temporary Restraining Order and Injunctive Relief on Defendants. Defendant AVT’s Notice of Removal was due to be filed in federal court on or about September 25, 2023. *See* 28 U.S. Code § 1446(b).

Thus, Defendant ATV's notice of removal is untimely and so are Defendants Deutsche Bank National Trust Co., and Power Default Service, Inc. notice of removal are untimely. *See* 28 U.S. Code § 1446(b).

B. Standard Review-Removal Based on Federal Question.

10. Removal of a state court action on the basis of a federal question is appropriate if the suit could have been brought in federal district court, as “founded on a claim or right arising under the Constitution, treaties or laws of the United States.” 28 U.S.C. § 1441(b).

11. This federal jurisdiction only exists when a federal question is presented on the face of the plaintiff's properly pleaded complaint. *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908).

12. Under the “well-pleaded complaint” doctrine, Jeff Samuels is master of his claim and may avoid federal removal jurisdiction by exclusive reliance on state law. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, 96 L. Ed. 2d 318, 107 S. Ct. 2425 (1987). When a plaintiff's action is properly brought under state law, the defendant is not entitled to remove simply because federal law or principles of federal preemption will provide a defense, even a complete defense, to plaintiff's state law claims. *Id.* at 393.

13. Additionally, the well-pleaded complaint rule bars a defendant from removing an action based on a counterclaim. Indeed, “a counterclaim--which appears as part of defendant's answer, not as part of the plaintiff's complaint--cannot serve as the basis for ‘arising under’ jurisdiction.” *Warren G. Kleban Eng'g Corp. v. Caldwell*, 490 F.2d 800, 802 n. 1 (5th Cir.1974) (noting that 1447(c) imposes a duty on district courts to inquire, on their own initiative, whether they have jurisdiction over a removed suit).

14. Here, Plaintiff filed an Application for Temporary Restraining Order and Injunctive Relief. *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 27-28, 103 S.Ct. 2841, 2856, 77 L.Ed.2d 420 (1983). Plaintiff's foreclosure complaint in state court seeks exclusively state law remedies. There are no federal questions implicated by the relief requested. Further, nor did Plaintiff conceal federal questions that would have been clear in a well-pleaded complaint. *See* Plaintiff's Application.

15. To the extent the Defendants may seek to allege that various defenses or counterclaims may arise under federal law, those defenses and counterclaims are irrelevant as to whether the complaint can be removed on the basis of a federal question. As no federal question exists, Defendant cannot remove this matter on the basis of federal question jurisdiction.

C. Standard Review- Removal Based on Diversity of Citizenship.

16. Plaintiff herein incorporates the preceding paragraphs. Similarly, as there is no federal question present, there is also no diversity of citizenship here, and this Court should remand this action to state court. "When a complaint does not raise a question of federal law, a district court may properly exercise subject matter jurisdiction only if the amount in controversy exceeds the value of \$75,000 and diversity exists among the adverse parties." *See* 28 U.S.C. § 1441(b).

17. In their Notice of Removal, Defendant AVT admits that they "are citizens of Texas." *See Notice of Removal at page 4* (Section B). By their own admission, there is no doubt that Defendants are citizens of Texas. Because they are clearly citizens of Texas and because Defendants' underlying foreclosure action was brought in Harris County Court, Texas, Defendants cannot remove this case based on diversity jurisdiction. As such, Section 1441(b)(2)

plainly dictates that the action may not be removed and remand is not only appropriate, but required.

18. Permitting the Defendants to litigate this case in federal court would open the federal courts to malpractice, breach of duty, and similar state law claim in which the allegation is that the defendant gave fraudulent or negligent promise based on an unreasonable or otherwise faulty interpretation of federal law. *See Plaintiff Application for Temporary Order* (Loan Modification Process); see also *Snook v. Deutsche Bank AG*, 410 F.Supp.2d 519 (S.D. Tex. 2006).

CONCLUSION

18. Defendants have not presented a single legitimate basis for the removal of this matter. Plaintiff Jeff Samuels is the master of his claim and chose state court. Defendants cannot and do not change that fact. Rather, it seems clear that Defendants only purpose in removing this action is to cause unnecessary delay and needless increase to the cost of litigation. Plaintiff therefore urges that the removal was interposed. For the foregoing reasons, both under statutory law and on policy grounds, this Court should remand this case to the 234th Judicial District, Harris County, Texas.

Respectfully submitted,

Jeff Samuels
14810 Winding Waters Drive
Cypress, TX 77429
Pro Se

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon counsel of record pursuant to the Federal Rules of Civil Procedure on January 15, 2024, as indicated below:

EMILY STROOPE
State Bar No. 24070692

ALEXIS DEL RIO
State Bar No. 24120796

**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.**
5956 Sherry Lane, 20th Floor
Dallas, Texas 75225
Telephone: (713) 650-9700
Facsimile: (713) 650-9701
estroope@bakerdonelson.com
adelrio@bakerdonelson.com

*Attorneys for Defendants PHH Mortgage
Corporation, Power Default Services, Inc., and
Deutsche Bank National Trust Company, as
Trustee for FFMLT TRUST 2004-FF3, Mortgage
Pass-Through Certificates, Series 2004-FF3*

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JEFF SAMUELS,	§
Plaintiff	§
	§
	§
	§
vs.	§ Civil Action No. 4:23-cv-4687
	§
AVT TITLE SERVICES, LLC,	§
DEUTSCHE BANK NATIONAL TRUST CO., POWER DEFAULT SERVICES INC.	§

PLAINTIFF’S ORDER MOTION TO REMAND

On this day _____, 2024

Courts GRANTS Plaintiff’s Motion for Remand.

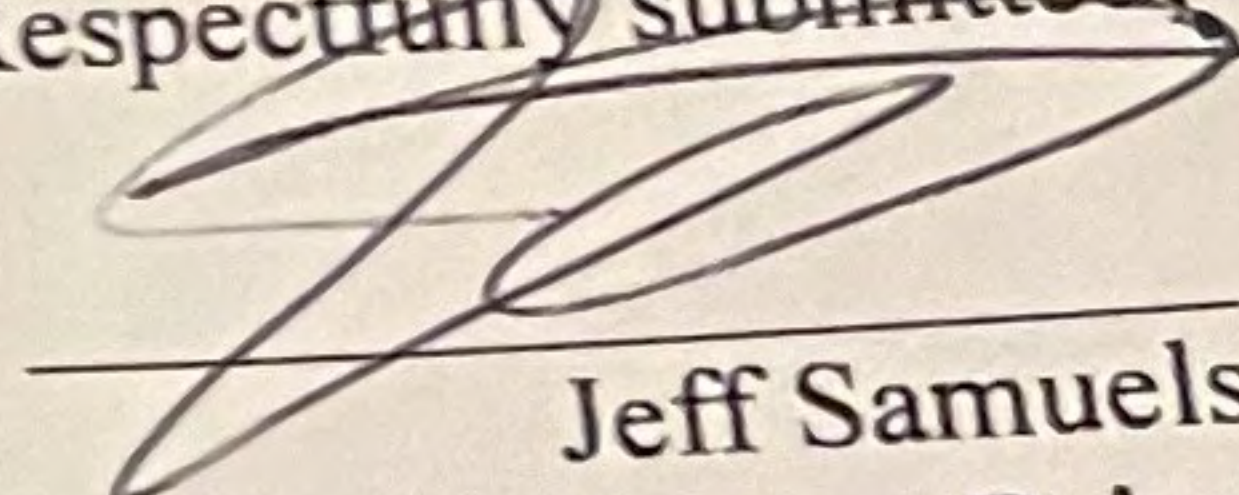
Judge Signature

18. Permitting the Defendants to litigate this case in federal court would open the federal courts to malpractice, breach of duty, and similar state law claim in which the allegation is that the defendant gave fraudulent or negligent promise based on an unreasonable or otherwise faulty interpretation of federal law. *See Plaintiff Application for Temporary Order (Loan Modification Process)*; see also *Snook v. Deutsche Bank AG*, 410 F.Supp.2d 519 (S.D. Tex. 2006).

CONCLUSION

18. Defendants have not presented a single legitimate basis for the removal of this matter. Plaintiff Jeff Samuels is the master of his claim and chose state court. Defendants cannot and do not change that fact. Rather, it seems clear that Defendants only purpose in removing this action is to cause unnecessary delay and needless increase to the cost of litigation. Plaintiff therefore urges that the removal was interposed. For the foregoing reasons, both under statutory law and on policy grounds, this Court should remand this case to the 234th Judicial District, Harris County, Texas.

Respectfully submitted,


Jeff Samuels
14810 Winding Waters Drive
Cypress, TX 77429
Pro Se

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon counsel of record pursuant to the Federal Rules of Civil Procedure on January 15, 2024, as indicated below:

EMILY STROOPE
State Bar No. 24070692