

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

BY  CLERK
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GEORGE FELLER & WILLOW FELLER,)
)
Plaintiffs,)
v.)
NARARAGANSETT INDIAN TRIBAL)
HISTORIC PERSERVATION OFFICE,)
)
Defendant.)

Civil Action, 5:16-cv-00061-gwc

MOTION TO REMAND CASE PURSUANT TO 28 U.S.C. § 1447(c)

NOW COME the Plaintiffs by and through their attorney, Frederick M. Glover, Esq., and hereby move the Honorable Court to remand this action back to the Vermont Superior Court because this Court lacks jurisdiction over this case.

On March 7, 2016, Defendant filed a Notice of Filing of Notice of Removal and a Notice of Removal seeking to remove Plaintiffs' foreclosure action filed in the Vermont Superior Court, Civil Division, Rutland Unit concerning real property located in the Town of Wallingford, Vermont. Defendant's Notice of Removal alleges at Paragraph 4 that this Court has original jurisdiction pursuant to 28 U.S.C. § 1331. Defendant filed a copy of Plaintiffs' foreclosure Complaint with this Court as Exhibit A to its Notice of Removal.

Plaintiffs' foreclosure Complaint alleges that the parties are from different states and that the Promissory Note underlying the Mortgage Deed is in the principal amount of \$30,000. Plaintiffs' Complaint is based on Vermont Law and specifically 12 V.S.A.,

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Chapter 172 entitled: Foreclosure of Mortgages and Vermont Rule of Civil Procedure 80.1 entitled: Foreclosure of Mortgages and Judgment Liens.

MEMORANDUM OF LAW

The Defendant has presented no federal question as required by 28 U.S.C. § 1331 to support its request for removal to this Court. The facts of this matter are similar to those found in *Countrywide Home Loans, Inc. v. Young*, No. 2:13-CV-50 (D. Vt. filed April 4, 2013). In *Countrywide*, Defendants Young attempted to remove a Vermont state court foreclosure action to the United States District Court for the District of Vermont under 28 U.S.C. § 1446. Judge Sessions discussed the need of Defendants to establish original federal jurisdiction under either 28 USC § 1331, by presenting a federal question, or by diversity jurisdiction under 28 USC § 1332. Specifically, Judge Sessions stated:

The federal removal statute permits a state court defendant to remove to federal court “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(a). The original jurisdiction of federal courts is limited. *See Keene Corp. v. United States*, 508 U.S. 200, 207 (1993). As a consequence, “removal jurisdiction exists in a given case only when that jurisdiction is expressly conferred on the courts by Congress.” *Fed. Ins. Co. v. Tyco Int’l Ltd.*, 422 F. Supp. 2d 357, 367 (S.D.N.Y. 2006)(internal quotation marks and citation omitted). Federal subject matter jurisdiction is available when a “federal question” is presented, or when plaintiffs and defendants are citizens of different states and the amount in controversy exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332. ... Here, Countrywide’s foreclosure complaint does not cite any provision of federal law, nor does it suggest any form of federal cause of action. Indeed, the state court proceeding against Ms. Young appears to be a standard foreclosure action based entirely upon state law. Consequently, there is no basis for federal question jurisdiction.

Countrywide Home Loans, Inc. v. Young, at Page 2.


Judge Sessions also found that diversity jurisdiction did not exist because Defendant Young was a resident of Vermont. Here, the Plaintiffs are residents of South

Carolina and the Defendant is based in Rhode Island. However, 28 U.S.C. § 1332(a) requires that the amount in controversy exceed "the sum or value of \$75,000, exclusive of interest and costs" in addition to the parties being from different states. In this case, the maximum amount that could be in controversy is \$30,000, the amount of the underlying Promissory Note upon which Plaintiffs' foreclosure action is based.

Since Defendant has failed to present a federal question of law or establish an amount in controversy in excess of \$75,000, this matter should be remanded to state court.

WHEREFORE, Plaintiffs respectfully request that this Court remand this case to the Vermont Superior Court, Rutland Unit, Civil Division, award to Plaintiffs their costs, expenses and reasonable attorney fees as allowed by 28 U.S.C. § 1447(c) and for such other relief as the Court deems proper and just.

Dated at Ludlow, County of Windsor and State of Vermont this 28th day of March, 2016.



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