

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HSBC BANK, USA	:	
	:	
v.	:	CIVIL ACTION NO.
	:	3:04cv547 (SRU)
HENRY NORLEY, DEBORAH NORLEY,	:	
and HSBC BANK, USA	:	

ORDER OF REMAND

HSBC Bank, USA ("HSBC") sued Henry and Deborah Norley (the "Norleys") in Connecticut Superior Court to foreclose on a judgment lien on the Norley's real property. The state court complaint also names HSBC as a defendant due to the fact that HSBC has a second lien on the property. The complaint sets forth two counts, both seeking foreclosure under Connecticut law. No federal cause of action is pleaded.

The Norleys were served with the Summons and Complaint on February 11, 2004. On March 23, 2004, the Norleys removed the case to federal court by filing a notice of removal, which was docketed in this court on April 2, 2004. On April 5, 2004, HSBC filed a motion to remand (doc. # 4), asserting that the notice of removal was untimely, that this court lacks subject matter jurisdiction, and that the Norleys failed to comply with the procedural requirements for removal set forth in 28 U.S.C. § 1446. For the reasons set forth below, the motion to remand is granted.

Remand is required for several reasons. First, this action is not eligible for removal, unless federal question jurisdiction is apparent on the face of the complaint, because at least one of the defendants is a citizen of the State of Connecticut. Under 28 U.S.C. § 1441(b), an action not arising

under federal question jurisdiction "shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." Because Deborah Norley is a citizen of Connecticut for diversity purposes, the action is not removable unless the complaint raises a federal question. As discussed below, the complaint in this case does not raise a federal question; this case is therefore ineligible for removal.

Second, the notice of removal was untimely. Under 28 U.S.C. § 1446(b), the Norleys had only thirty days from receipt of the complaint to file their notice of removal. Service of the complaint was made on February 11, 2004, yet the notice of removal was not filed until March 23, 2004, well over thirty days later. HSBC timely objected to the untimeliness of the notice of removal. See 28 U.S.C. § 1447(c).

Third, the court lacks subject matter jurisdiction over this case. Under the "well pleaded complaint" rule, no federal claim has been pleaded in the complaint. Franchise Tax Board of California v. Construction Laborers Vacation Trust, 463 U.S. 1, 27-28 (1983). Although the Norleys seem to suggest that they will be making federal law claims against HSBC and possibly also its counsel, David W. Rubin, a federal issue that may yet be raised in an answer, affirmative defense or counterclaim is not sufficient to support removal of state law claims. See Phillips Petroleum Co. v. Texaco, Inc., 415 U.S. 125, 127-28 (1974). Thus, the court lacks federal question jurisdiction.

Nor is there the complete diversity of citizenship required to support diversity jurisdiction. Wisconsin Dep't of Corrections v. Schacht, 524 U.S. 381, 388 (1998). Because HSBC is properly both a plaintiff and a defendant in this foreclosure action, complete diversity is necessarily destroyed.

An order remanding a case to state court "may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447(c). Here

HSBC has sought costs and fees in the amount of \$1,080. Although the removal was improper for several reasons, I decline to award costs or fees because the removing defendants are acting pro se, and may not have understood the limitations on removal.

For the foregoing reasons, the motion to remand (doc. # 4) is granted. The clerk is instructed to mail a certified copy of this order to the clerk of the Superior Court for the Judicial District of Danbury and to close this file.

So ordered this 7th day of April 2004 at Bridgeport, Connecticut.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge