

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

WEKESA O. MADZIMOYO,

Plaintiff,

v.

THE BANK OF NEW YORK  
MELLON TRUST COMPANY, N.A.,  
formerly known as The Bank of New  
York Trust Company, N.A., JP  
MORGAN CHASE BANK, NA,  
GMAC MORTGAGE, LLC,  
MCCURDY & CANDLER, L.L.C.,  
and ANTHONY DEMARLO,  
Attorney,

Defendants.

CIVIL ACTION FILE

NO. 1:09-CV-02355-CAP-GGB

**ORDER**

This case is before the Court on Plaintiff Wekesa O. Madzimoyo's ("Plaintiff's") Motion to Remand to State Court (Doc. 9). Plaintiff filed this lawsuit in the Superior Court of DeKalb County, Georgia bringing federal and state claims relating to a mortgage loan he received for property at 852 Brafferton Place, Stone Mountain, Georgia 30083. Defendants subsequently removed the case to this Court, and Plaintiff filed the instant motion to remand. For the reasons below, Plaintiff's Motion to Remand to State Court (Doc. 9) is **DENIED**.

**I. Procedural History**

On July 3, 2009, the law firm McCurdy & Candler, L.L.C. sent Plaintiff an initial communication letter pursuant to the Fair Debt Collection Practices Act. (Doc. 1-2 at 39). On the same date, Anthony DeMarlo with the law firm McCurdy & Candler, L.L.C. sent Plaintiff a Notice of Foreclosure Sale. (Doc. 1-2 at 40).

On July 17, 2009, Plaintiff filed in the Superior Court of Dekalb County, Georgia a document titled "Affidavit of Notice of Demand for Cease and Desist of Foreclosure Procedures." (Doc. 1-2 at 20). In this document Plaintiff demanded that Defendants cease and desist all foreclosure procedures set for the property at 852 Brafferton Place, Stone Mountain, Georgia 30083. (Id. at 21). Plaintiff also demanded that "all parties and associates named and unnamed . . . provide verification of their authority as agent, attorney, debt collector, lender, note holder, services, investor, trustee, attorney in fact, etc." (Id.). Plaintiff stated that this information was requested pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA") and the Truth in Lending Act, 15 U.S.C. § 1601 et seq. ("TILA"). (Id.). Plaintiff also stated that failure to respond to his demand would constitute Defendants' agreement that they waive all claims against him. (Id. at 24).

On July 29, 2009, Plaintiff filed an Emergency Petition for Temporary Restraining Order to Stop Foreclosure. (Id. at 3). Plaintiff noted that none of the

Defendants had provided the verification he sought. (Id. at 4). That same day, a Dekalb County Superior Court judge granted Plaintiff's petition for a temporary restraining order and restrained Defendants from proceeding with the scheduled foreclosure on the property on August 4, 2009. (Id. at 50).

On August 27, 2009, Defendants removed the case to this Court on the basis of federal question jurisdiction. (Doc. 1). Plaintiff subsequently filed the instant motion to remand (Doc. 9).

## **II. Discussion**

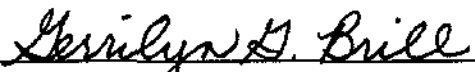
"A defendant may remove a case to federal court only if the district court would have had jurisdiction over the case had the case been brought there originally." Kemp v. Int'l Bus. Machs. Corp., 109 F.3d 708, 711 (11th Cir. 1997) (citing 28 U.S.C. § 1441). Thus, "[o]nly state-court actions that originally could have been filed in federal court may be removed," and, "[a]bsent diversity of citizenship, federal-question jurisdiction is required." Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987); see also 28 U.S.C. § 1441(b). Under the Judicial Code, district courts have federal-question jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." Caterpillar, 482 U.S. at 392 n.6 (quoting 28 U.S.C. § 1331). Accordingly, for removal to be proper, one or more of the plaintiff's state court claims must have arisen under federal law.

Here, Plaintiff brings two claims that arise under federal laws, specifically his claims under the FDCPA and TILA. Defendants' removal of this case from the Superior Court of DeKalb County, Georgia is thus proper pursuant to federal-question jurisdiction. Id. Accordingly, Plaintiff's Motion to Remand to State Court (Doc. 9) is **DENIED.**

**III. Conclusion**

For the above reasons, Plaintiff's Motion to Remand to State Court (Doc. 9) is **DENIED.**

IT IS SO ORDERED this 18th day of March, 2010.

  
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GERRILYN G. BRILL  
UNITED STATES MAGISTRATE JUDGE

**Orders on Motions**

1:09-cv-02355-CAP-GGB Madzimoyo v. The Bank of New York Mellon Trust Company, N.A. et al  
4months, SUBMMG

**U.S. District Court****Northern District of Georgia****Notice of Electronic Filing**

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**Case Name:** Madzimoyo v. The Bank of New York Mellon Trust Company, N.A. et al

**Case Number:** 1:09-cv-2355

**Filer:**

**Document Number:** 13

**Docket Text:**

**ORDER DENYING [9] Motion to Remand to State Court. Signed by Magistrate Judge Gerrilyn G. Brill on 3/18/2010. (adg)**

**1:09-cv-2355 Notice has been electronically mailed to:**

D. Brian O'Dell bodell@babco.com, chancock@babco.com, tperkins@babco.com

Frank Reid Olson folson@mccurdyandcandler.com

John Dale Andrie jandrie@mccurdyandcandler.com

**1:09-cv-2355 Notice has been delivered by other means to:**

Wekesa O Madzimoyo  
852 Brafferton Place  
Stone Mountain, GA 30083

The following document(s) are associated with this transaction:

**Document description:**Main Document

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66723227d64a5564df0f337f39c9ff0942ce17c27b09f619a7f207dbeece6]]