

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR
OSCEOLA COUNTY, FLORIDA**

CASE NO.: 2016 CA 000916

U.S. BANK, NATIONAL ASSOCIATION AS LEGAL TITLE
TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST,
Plaintiff,

Vs.

VALERIA TAVERAS, ELIEZER TAVERAS, et. al.,
Defendants

**ORDER ON PLAINTIFF'S MOTION TO PROCEED WITH HEARING SET ON
AUGUST 23, 2023 AND FOR SANCTIONS**

THIS CAUSE having come before the Court, on August 23, 2023, on Plaintiff's, *Motion to Proceed with Hearing Set on August 23, 2023 and for Sanctions*, and the Court having reviewed the Notice, record and otherwise being duly advised on the premises finds as follows:

1. On the eve of the Court Ordered hearing the Taveras' filed a Notice of Removal, attempting to remove this matter to the Federal Court despite previously attempting to do so in 2019.

2. Mr. Taveras' essentially admits that the Removal was solely filed for the purpose of stopping the August 23rd hearing and delaying this case, as it states:

In good faith, not only to comply with the Rule but also with the rule of ethics (although not attorneys) to impede the opposing party's unnecessary expenses to travel to Kissimmee, FL to the Hearing, on August 22, 2023, Defendants filed in this Court their Notice of Filing Notice of Removal, emailed a copy to all parties, including Plaintiff c/o its attorneys, and a copy to the Judge's assistant, asking her to forward a copy to Chad K. Alvaro, who was presiding judge, and giving a courtesy reminder of the State Court lack of jurisdiction, so that all parties would have enough time to change their schedule.

3. Based on the Notice of Removal, the Taveras failed to appear for the hearing despite proper notice.

4. Plaintiff sought to proceed with the hearing, noting that the removal was improper as it was the second time the Taveras' attempted to remove this action.

5. The Taveras' first attempt at removal was on July 17, 2019, where they sought to remove this matter based on diversity and federal question. The Federal Court remanded the matter on September 11, 2019.

6. The Court specifically found that the Taveras' "have failed to demonstrate by a preponderance of the evidence that the Court has jurisdiction over this action." The Federal Court noted that diversity and federal question was not present in this action in 2019. Further the Court noted that the removal was untimely.

7. Since 2019 this posture of the case has not changed to create diversity or a federal question. It is axiomatic that for the federal court to have original jurisdiction over an action, "[t]he grounds for removal must inhere in the plaintiff's claim, rather than be based on a defense or counterclaim." 14C CHARLES ALAN WRIGHT, ARTHUR R. MILLER, EDWARD H. COOPER & JOAN E. STEINMAN., FEDERAL PRACTICE AND PROCEDURE § 3721 (4th ed.2009). A removing defendant may not create jurisdiction by raising a federal question defensively except in very limited circumstances, such as where state law has been completely preempted by federal law. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392–94, 107 S. Ct. 2425, 96 L.Ed.2d 318 (1987).

8. The Taveras bear the burden of establishing federal jurisdiction. *Adventure Outdoors, Inc. v. Bloomberg*, 552 F.3d 1290, 1294 (11th Cir. 2008). Any doubt as to propriety of

removal should be resolved in favor of remand to state court. *Butler v. Polk*, 592 F.2d 1293, 1296 (5th Cir. 1979).

9. The Court, after reviewing the latest removal finds that both removals are based on the same grounds. Additionally, the Taveras' know, or should have known, that this second removal would also be untimely.

10. Therefore, this removal does not divest this Court jurisdiction pursuant to *Hunnewell v. Palm Beach County*, 786 So. 2d 4 (Fla. 4th DCA 2000). In *Hunnewell* the Fourth DCA reviewed whether a second removal action, which was improper resulted in the orders entered by the Trial Court to be void.

11. The Fourth DCA followed well-reasoned Florida Supreme Court precedent, in *Wilson v. Sandstrom*, 317 So.2d 732, 740 (Fla.1975), where the Supreme Court held that “[w]hen removal is shown to be improper the State court's actions are not void.” *Wilson* cited with approval the United States Supreme Court's decision in *Metropolitan Casualty Ins. Co. v. Stevens*, 312 U.S. 563, 61 S.Ct. 715, 85 L.Ed. 1044 (1941), for the proposition that proceedings subsequent to removal “are valid if the suit was not in fact removable.” *Wilson*, 317 So.2d at 740–41 (emphasis added).’ See *Perez v. Federal National Mortgage Association*, 200 SO. 3d 157 (Fla. 5th DCA 2016)(holding cases involving multiple filings of removal petitions, a state court retains jurisdiction to act when the federal court subsequently denies a removal petition which is based on the same grounds as a previously denied removal petition)

12. The facts of this case are substantially similar to *Hunnewell*, *Wilson* and *Perez*. Further, the Court notes Federal Courts have condoned this language as seen in *Bank of New York Mellon Tr. Co., N.A. v. Johnson*, 1:10-CV-00221-SPM, 2010 WL 5426783, at *4 (N.D. Fla. Nov. 24, 2010), report and recommendation adopted sub nom. *Bank of New York Mellon Tr. Co. NA v.*

Johnson, 1:10-CV-221-SPM/GRJ, 2010 WL 5426784 (N.D. Fla. Dec. 27, 2010), where the Court found:

This case presents a textbook example of a removal where the removing party had no basis, whatsoever, for removal, let alone an objectively reasonable basis. There is a complete absence of any argument to support either federal question jurisdiction or diversity jurisdiction. Moreover, in addition to the fact that the removal was filed two years too late, and is untimely, the Defendants' failed attempt to remove a year ago was rejected by this Court because Defendants "consistently made no attempt whatsoever to support federal jurisdiction," a statement equally applicable to Defendants' removal this time. It is apparent that the only reason Defendants removed this action was to delay the state foreclosure action. Consequently, because there is absolutely no objectively reasonable basis for removal Plaintiff's request for fees and expenses is due to be granted.

13. Based on the forgoing the Court retains jurisdiction to enter rulings and hold hearings despite the existence of the removal.

It is thereupon **ORDERED AND ADJUDGED** as follows:

14. Plaintiff's Motion to Proceed is **GRANTED**.

15. Plaintiff's request for sanctions related solely to the improper removal is hereby **DENIED**.

DONE AND ORDERED.

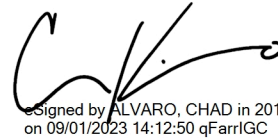


Signed by ALVARO, CHAD in 2016 CA 000916 MF
on 09/01/2023 14:12:50 qFarrIGC

Chad K. Alvaro, Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed with the Florida Courts e-filing Portal, which guarantees service to all those in the Service List, either via Notices of Electronic Filing generated by the e-Portal system. The Court further Orders the Moving Party, and if no Moving Party, the Plaintiff, to IMMEDIATELY serve a true and correct copy of this Order to all parties/counsel(s) of record, for whom service is not included in E-file service and file proof of such service with the Clerk of the Court.



Signed by ALVARO, CHAD in 2016 CA 000916 MF
on 09/01/2023 14:12:50 qFarrIGC

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