

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

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

Plaintiff,

v.

Case No.: 6:23-cv-1493-WWB-EJK

VALERIA TAVERAS, ELIEZER  
TAVERAS, REUNION RESORT &  
CLUB OF ORLANDO MASTER  
ASSOCIATION, INC., BANK OF  
AMERICA, N.A, UNKNOWN TENANT  
NO. 1 and UNKNOWN TENANT NO. 2,

Defendants.

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**ORDER**

THIS CAUSE is before the Court on Plaintiff's Motion to Remand and for Sanctions (Doc. 7) and Defendants' Response (Doc. 20). For the reasons set forth below, Plaintiffs' Motion will be granted.

**I. BACKGROUND**

Plaintiff U.S. Bank's predecessor-in-interest initiated this foreclosure action against Defendants Valeria and Eliezer Taveras in April 2016 in state court. (Doc. 15, ¶ 13). In November 2018, Defendants moved to Madrid, Spain. (*Id.* ¶ 20; Doc. 23 at 6). Defendants attempted to remove the action to this court in 2019, but the case was remanded on Plaintiff's motion. *U.S. Bank, Nat'l Ass'n v. Taveras*, No. 6:19-cv-1307-Orl, 2019 WL 11505056, at \*3 (M.D. Fla. Sept. 11, 2019). Plaintiff filed an amended complaint on August 23, 2022. (Doc. 15, ¶ 27). Defendants were served a copy of the amended

complaint via e-mail the same day, (*id.* ¶ 28), and removed the case to this Court on August 21, 2023, (Doc. 1). Plaintiff now seeks to remand, arguing the removal is untimely and there is no basis for diversity or federal question jurisdiction. (*See generally* Doc. 7). Plaintiff also seeks sanctions against Defendants in the form of an award of fees and costs related to defending the removal. (*Id.* at 8).

## II. LEGAL STANDARDS

“[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed . . . to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a). Pursuant to 28 U.S.C. § 1332(a), a district court may have original jurisdiction where both “the matter in controversy exceeds the sum or value of \$75,000” and the parties are “citizens of different States.” Absent diversity jurisdiction, a district court may have original jurisdiction where the complaint alleges claims “arising under the Constitution, law, or treaties of the United States.” 28 U.S.C § 1331. “Because removal jurisdiction raises significant federalism concerns, federal courts are directed to construe removal statutes strictly.” *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 411 (11th Cir. 1999). Any doubt as to “jurisdiction should be resolved in favor of remand to state court.” *Id.* A defendant seeking to remove a case bears the burden of proving that the federal district court has original jurisdiction. *Williams v. Best Buy Co.*, 269 F.3d 1316, 1319 (11th Cir. 2001).

“The substantive jurisdictional requirements, however, are not the only hurdles that a removing defendant must clear. There are also procedural requirements regarding the timeliness of removal.” *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 756 (11th Cir.

2010). A defendant may not remove a case “on the basis of jurisdiction conferred by [§ 1332] more than [one] year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.” 28 U.S.C. § 1446(c)(1).

### III. DISCUSSION

Plaintiff first argues this action should be remanded because there is no diversity of citizenship between the parties. Although Defendants are United States citizens, they are domiciled in Spain. (Doc. 15, ¶ 20; Doc. 23 at 6). “Citizenship is equivalent to ‘domicile’ for the purposes of diversity jurisdiction.” *McCormick v. Aderholt*, 293 F.3d 1254, 1257 (11th Cir. 2002). “U.S. citizens domiciled abroad are neither ‘citizens of a State’ under § 1332(a) nor ‘citizens or subjects of a foreign state’ and therefore are not proper parties to a diversity action in federal court.” *Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330, 1341 (11th Cir. 2011) (quoting *Newman–Green, Inc. v. Alfonzo–Larrain*, 490 U.S. 826, 828–29 (1989)). “In order to be a citizen of a State within the meaning of the diversity statute, a natural person must both be a citizen of the United States *and* be domiciled within the State.” *Newman–Green*, 490 U.S. at 828. The Court may not exercise diversity jurisdiction over this action.

Plaintiff next argues the Notice of Removal was untimely filed nearly eight years after this action commenced. Section 1446(c)(1) bars removal on the basis of diversity jurisdiction more than one year after an action commences, “unless the district court finds that the plaintiff has acted in bad faith to prevent a defendant from removing the action.” Defendants respond by alleging that one of the foreclosure plaintiffs misled them about the nature of the case and thus acted in bad faith to prevent removal. (Doc. 1, ¶¶ 40–46;

Doc. 20 at 6). Defendants fail to elaborate as to the nature of this alleged deception or to support their argument with citation to the record or relevant authorities. Defendants' argument as to bad faith is thus waived. See *W. Sur. Co. v. Steuerwald*, No. 16-61815-CV, 2017 WL 5248499, at \*2 (S.D. Fla. Jan. 17, 2017) ("It is axiomatic that arguments not supported and properly developed are deemed waived."); see also *U.S. Steel Corp. v. Astrue*, 495 F.3d 1272, 1287 n.13 (11th Cir. 2007) (noting that the court need not consider "perfunctory and underdeveloped" arguments and that such arguments are waived); *Resolution Tr. Corp. v. Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995). Because the Notice of Removal was filed more than one year after the commencement of this action, removal is not available on the basis of diversity jurisdiction.

Plaintiff finally argues there is no federal claim in the Complaint to support federal question jurisdiction under 28 U.S.C. § 1331. Defendants allege in the Notice of Removal and their Response that Plaintiff's foreclosure claims are "completely pre-empted" by federal law, specifically the Fair Debt Collection Practices Act ("**FDCPA**"), 15 U.S.C. §1692 *et seq.*, and thus arise under federal law. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392–94 (1987). Again, Defendants do not expand this argument beyond one conclusory sentence, so the argument is waived. *Steuerwald*, 2017 WL 5248499, at \*2; *Resolution Tr.*, 43 F.3d at 599. Regardless, such a conclusory argument is insufficient to establish the FDCPA has "completely pre-empted" Plaintiff's state law claim. There is thus no basis for this Court to exercise jurisdiction under 28 U.S.C. § 1331. Because Defendants have failed to establish any basis for this Court's subject matter jurisdiction over this case, remand to state court is appropriate. *Williams*, 269 F.3d at 1319.

The only issue remaining is Plaintiff's request for sanctions against Defendants. "An order remanding the case 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). A court may award attorney's fees under § 1447(c) "only where the removing party lacked an objectively reasonable basis for seeking removal. Conversely, when an objectively reasonable basis exists, fees should be denied." *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 141 (2005). Where there is a "complete absence of any argument to support either federal question jurisdiction or diversity jurisdiction," a court may award fees and expenses. *Bank of N.Y. Mellon Tr. Co. v. Johnson*, No. 1:10-cv-00221, 2010 WL 5426783, at \*4 (N.D. Fla. Nov. 24, 2010).

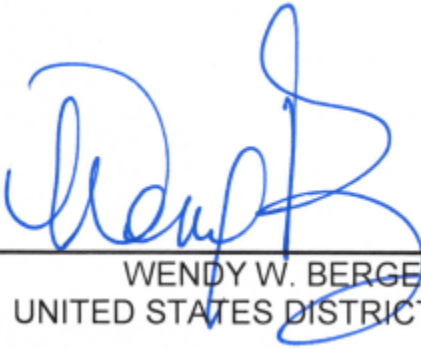
Defendants already attempted to remove this case once before in 2019. In granting Plaintiff's 2019 motion to remand, Magistrate Judge Embry J. Kidd plainly stated that because Defendants were domiciled in Spain, they were "not proper parties to a diversity action in federal court." *Taveras*, 2019 WL 11505056, at \*2 (quotation omitted). Magistrate Judge Kidd likewise restated the principal that to invoke federal question jurisdiction, the federal claim must appear on the face of a well-pleaded complaint. *Id.* at \*3. Thus, not only have Defendants failed to adequately develop their arguments for removal jurisdiction, but they are also aware those arguments are meritless. Considering Defendants' arguments in context of their earlier attempted removal, the Court concludes there is no objectively reasonable basis for removal. Plaintiff's request for fees and expenses will be granted.

#### **IV. CONCLUSION**

For the reasons set forth herein, it is **ORDERED** and **ADJUDGED** as follows:

1. Plaintiff's Motion to Remand and for Sanctions (Doc. 7) is **GRANTED**.
2. This case is **REMANDED** to the Circuit Court of the Ninth Judicial Circuit, in and for Osceola County, Florida.
3. The Court retains jurisdiction solely to resolve the issue of fees and costs and does not retain jurisdiction in any other respect. The parties shall confer in a good-faith effort to resolve the reasonable attorney's fees and costs and shall notify the Court if an agreement has been reached. If the parties cannot agree on the amount, then Plaintiff shall move for assessment of these fees and costs on or before **November 3, 2023**.
4. The Clerk is directed to terminate all other pending motions and close this case.

**DONE AND ORDERED** in Orlando, Florida on October 11, 2023.



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WENDY W. BERGER  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record  
Unrepresented Parties