

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED COMPANIES LENDING CORPORATION, Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
ALTHEA V. HANKINS, Defendant	:	NO. 04-3944

Gene E.K. Pratter, J.

Memorandum Opinion

15 November 2004

On October 21, 2004, this Court entered an Order remanding this matter to the Court of Common Pleas for Montgomery County, Pennsylvania (Docket No. 7). Defendant Hankins filed her notice of appeal of that Order on November 3, 2004 (Docket No. 9). This Memorandum Opinion is prepared pursuant to Local Rule of Appellate Procedure 3.1, which authorizes the District Court to present a written opinion with respect to an order that has been appealed.

FACTUAL BACKGROUND

This case arose from a mortgage foreclosure proceeding that was initiated in the Court of Common Pleas of Montgomery County, Pennsylvania, by Plaintiff United Companies Lending Corporation (“United”) against Dr. Althea V. Hankins. Upon the default by Dr. Hankins of a note and mortgage dated May 7, 1996, United initiated the foreclosure proceedings on March 20, 2000. According to the state court docket, Dr. Hankins was served with United’s complaint on March 30, 2000. The same docket also reflects that Dr. Hankins filed an answer to the complaint on April 13, 2000. The mortgage foreclosure action continued in the Montgomery County Court of

Common Pleas over the course of the next three years, culminating in the sale of the subject real property at a Montgomery County Sheriff's Sale on August 25, 2004.

On August 19, 2004, Dr. Hankins filed, as a pro se party, a Notice of Removal of the state court case to this Court. (Docket No. 1). On August 27, 2004, Dr. Hankins filed, again as a pro se party, a Motion for Preliminary Injunction, apparently seeking an order that United "cease and desist from taking any further action to sell, evict or to collect, as a result of the illegal foreclosure sale on August 25, 2004." (Docket No. 3). In an attempt to better understand the circumstances surrounding the Preliminary Injunction Motion, the Court attempted to initiate a teleconference between Dr. Hankins and counsel for United on August 31, 2004. During that conversation, Dr. Hankins advised the Court that she was, in fact, represented by an attorney named Monroe Parker, and that Dr. Hankins preferred for Mr. Parker to address the Court's questions. The Court immediately terminated the teleconference and made arrangements for a second teleconference with Mr. Parker and counsel for United on September 1, 2004. In speaking with Mr. Parker briefly, the Court was advised by him that he was "helping out" with Dr. Hankins' claim.¹ At time of the scheduled call, Mr. Parker telephoned the Court and advised that Dr. Hankins wished to "stay" the Preliminary Injunction Motion.

On September 1, 2004, the Court instructed counsel for both parties to file legal memoranda addressing, among other matters, the propriety of removal of the case to federal court. Counsel were required to submit their respective filings on or before September 8, 2004, and a

¹ After the initial contact with Mr. Parker, it appeared to the Court that Mr. Parker is neither licensed to practice law in Pennsylvania nor has an office within the Commonwealth. Subsequent submissions to the Court from Mr. Parker were sent only from various addresses outside of the Commonwealth, including Alpharetta, Georgia and Garland, Texas.

teleconference regarding the filings was scheduled to take place on September 9, 2004. (Docket No. 4). On September 8, 2004, United filed its “Brief in Response to Defendant, Althea V. Hankins Petition for Removal and Motion for Preliminary Injunction” (the “United Brief”). (Docket No. 5). According to the certificate of service, the United Brief was served on Mr. Parker, as Dr. Hankins’ attorney.

On September 9, 2004, without entering an appearance in the matter, Mr. Parker submitted a document to the Court entitled “Propriety of Removal”. The “Propriety of Removal” submission was not formally filed. Mr. Parker also notified the Court in writing that due to a recent oral surgery, he was unable to speak for three days and could not, therefore, participate in the scheduled teleconference.

In its Brief, United argued, inter alia, that removal of the foreclosure matter to federal court was not appropriate because Dr. Hankins filed her Notice of Removal well beyond the statutory time frame permitting removal of state actions to federal court. At the conclusion of its Brief, United requested dismissal of the Notice of Removal.

Based upon United’s request to dismiss the Notice of Removal, supported by the assertions in the United Brief, the Court entered an Order on September 16, 2004 that the United Brief would be considered as a Motion for Remand to the Court of Common Pleas of Montgomery County (the “September 9 Order”). (Docket No. 6). In the September 9 Order, the Court instructed Dr. Hankins that she would be afforded an opportunity to oppose remand and should file and serve a written opposition brief, if she so chose, on or before October 8, 2004. Moreover, the Court advised Dr. Hankins that she should consider retaining Pennsylvania licensed counsel to represent

her in the matter. The September 9 Order was served on both Dr. Hankins and Mr. Parker.

However, until the filing of the Notice of Appeal, no further papers were filed by or on behalf of Dr. Hankins.

DISCUSSION

Pursuant to 28 U.S.C. § 1446(b), a removing defendant must file a notice of removal of a civil action “within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based”. A party opposing removal of a case to federal court may move the court to remand the case to state court. 28 U.S.C. § 1447(c). Such a motion must be filed within thirty days after the filing of the notice of removal. Id.

In the instant case, it is clear that Dr. Hankins filed her notice of removal on August 27, 2004 – well beyond thirty days from the date that she received the initial pleading in the case. Indeed, Dr. Hankins’ removal efforts were more than four years after she answered the complaint in the foreclosure action. United filed its opposition to removal on September 9, 2004 – well within the thirty-day time frame within which it could oppose remand. In consideration of the fact that Dr. Hankins is a pro se party, and in the spirit that pro se parties are to be afforded some leeway to correct procedural defects, the Court allowed Dr. Hankins thirty days within which to respond to United’s opposition to removal.² Despite this opportunity, Dr. Hankins did not

² Moreover, both Dr. Hankins and Mr. Parker represented to the Court that despite having filed her notice of removal as a pro se party, Dr. Hankins would be represented by Mr. Parker in this matter. According to the document he submitted to the Court, Mr. Parker is an attorney practicing in Alpharetta, Georgia. There is no indication that Mr. Parker is licensed in Pennsylvania.

respond at all to United's Brief. Likewise, neither Dr. Hankins nor Mr. Parker responded to the Court's other efforts to elicit any information that might explain either Dr. Hankins four years' delay or her unusual pleadings. Because more than four years had passed between service on Dr. Hankins of the initial pleading in this matter and as a result of United's timely filed opposition to removal of the matter to federal court, the Court concluded that the case should be remanded to the Court of Common Pleas for Montgomery County, Pennsylvania, for final disposition of any remaining issues. An appropriate Order was entered October 21, 2004 (Docket No. 7).

Gene E.K. Pratter
United States District Judge

November 15, 2004