

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

HUNTINGDON VALLEY CLUB : CIVIL ACTION
CONDOMINIUM ASSOCIATION :
 :
 v. :
 :
 PENNSYLVANIA HOUSING FINANCE :
 AGENCY, et al. : NO. 04-4770

MEMORANDUM AND ORDER

McLaughlin, J.

January 10, 2005

Huntingdon Valley Club Condominium Association brought this action to quiet title in the Court of Common Pleas against 78 lien and judgment holders to clear liens or other encumbrances held by the defendants on individual units within the condominium. The plaintiff seeks to sell land and condominium units that were damaged by hurricanes. The plaintiff is attempting to take advantage of funds available from a grant by the Federal Emergency Management Agency.

The action was removed to federal court by the Federal Home Loan Mortgage Corporation ("Freddie Mac") pursuant to 12 U.S.C. § 1452(f). The other defendants did not join in or consent to the removal.

The plaintiff has filed a motion to remand, claiming that Freddie Mac failed to comply with the removal procedures set forth in 28 U.S.C. § 1446. In the alternative, the plaintiff

contends that because the claims against Freddie Mac are "separate and independent" from the non-removable state law claims against the other defendants, the Court should either remand the entire action or retain only the removable federal claim and remand the separate state law claims. Freddie Mac opposes total or partial remand. The Court will deny the plaintiff's motion.¹

Huntingdon contends that the Court should remand this matter because Freddie Mac failed to follow the procedures for removal as set forth in 28 U.S.C. § 1446.² Specifically, Huntingdon asserts that Freddie Mac was required to obtain the consent of all other defendants to this action.

Freddie Mac claims that it has the "unfettered and

¹ Defendant Wells Fargo Home Mortgage filed an opposition to the motion to remand in which it requests the Court to exercise its power to join as defendants those parties in a separate action currently pending in the Court of Common Pleas. The Court will deny that request at this time and will discuss the issue with counsel at the upcoming status conference.

² Freddie Mac's first argument in opposition to remand is that the motion was not timely filed. All parties agree that the plaintiff's motion to remand had to be filed within 30 days after the filing of the notice of removal. See 28 U.S.C. § 1447(c). Freddie Mac's notice of removal was filed on October 12, 2004. Freddie Mac contends that the motion to remand should have been filed thirty calendar days later, on November 11, 2004. Huntingdon filed its motion on November 12, 2004. As Huntingdon explains in its reply brief, the motion to remand was timely because November 11, 2004, fell on a federal holiday, Veteran's Day. Federal Rule of Civil Procedure 6(a) provides that, if the last day of a computed period falls on a Saturday, Sunday, or legal holiday, that day is not counted in the computation. In that situation, the period runs until the following day.

unilateral right" to remove this action pursuant to 12 U.S.C.

§ 1452(f). That statute provides, in full:

Actions by and against [Freddie Mac]; jurisdiction; removal of actions

Notwithstanding section 1349 of Title 28 or any other provision of law, (1) [Freddie Mac] shall be deemed to be an agency included in sections 1345 and 1442 of such Title 28; (2) all civil actions to which [Freddie Mac] is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value; and (3) any civil or other action, case or controversy in a court of a State, or in any court other than a district court of the United States, to which [Freddie Mac] is a party may at any time before the trial thereof be removed by [Freddie Mac], without the giving of any bond or security, to the district court of the United States for the district and division embracing the place where the same is pending, or, if there is no such district court, to the district court of the United States for the district in which the principal office of [Freddie Mac] is located, by following any procedure for removal of causes in effect at the time of such removal.

12 U.S.C. § 1452(f).

Huntingdon and Freddie Mac agree that 12 U.S.C. § 1452(f) applies in this situation. The parties attempt to support their respective positions by focusing on different subsections under that statute.

Freddie Mac contends that this issue should be resolved by reference to the first subsection of section 1452(f) which states that Freddie Mac shall be deemed an agency of the United States under 28 U.S.C. § 1442. Although the Third Circuit has

not addressed the issue, every court of appeals to have considered the issue has decided that a federal officer or agency may unilaterally remove an entire case to federal court under § 1442, regardless of whether other defendants join in the removal notice. See, e.g., Akin v. Ashland Chem. Co., 156 F.3d 1030, 1034 (10th Cir. 1998); Doe v. Kerwood, 969 F.2d 165, 168 (5th Cir. 1992); Ely Valley Mines, Inc. v. Hartford Accident and Indem. Co., 644 F.2d 1310, 1314-15 (9th Cir. 1981); Bradford v. Harding, 284 F.2d 307, 310 (2d Cir. 1960); see also 14C Wright, Miller & Cooper, FEDERAL PRACTICE AND PROCEDURE § 3727, at 166-68 (3d ed. 1998).

Section 1442(a) provides, in pertinent part, that “[a] civil action. . . commenced in a State court against any of the following persons may be removed *by them*” to the appropriate United States district court. 28 U.S.C. § 1442(a) (emphasis added). Subsection (1) of the statute reveals that the language “any of the following persons” includes “[a]ny officer of the United States or any agency thereof, or person acting under him.” 28 U.S.C. § 1442(a)(1). In comparison, the general removal provision, 28 U.S.C. § 1441, provides for the removal of a case from State court “by the defendant or the defendants.” 28 U.S.C. § 1441(a). As the Second Circuit stated in Bradford v. Harding, “even the most literal reading [of § 1442] would permit the federal officer alone to remove.” 284 F.2d at 310.

Further, Congress' intent to provide a federal forum to protect federal interests and authority from interference by individual States would be frustrated if a plaintiff could force a federal officer or agency to litigate in state court simply by joining multiple defendants who might be unwilling to join in the removal petition. See Akin, 156 F.3d at 1034; Bradford, 284 F.2d at 310; see also 14C Wright, Miller & Cooper, FEDERAL PRACTICE AND PROCEDURE § 3727, at 136 (3d ed. 1998). The Court decides, therefore, that a federal officer or agency may remove unilaterally under 28 U.S.C. § 1442.

Huntingdon does not appear to dispute this point; but rather it contends that the issue should be resolved by reference to the third subsection of section 1452(f) which provides that Freddie Mac may remove a case "by following any procedure for removal of causes in effect at the time of such removal." Huntingdon contends that, by this language, 12 U.S.C. § 1452(f) requires Freddie Mac to adhere to the general removal procedures as set forth in 28 U.S.C. § 1446. The Third Circuit has interpreted § 1446 to require that, when there is more than one defendant, all defendants must join in the removal petition. See, e.g., Lewis v. Rego Co., 757 F.2d 66, 68 (3d Cir. 1985).

The Court agrees with Freddie Mac that the first subsection of section 1452 governs in this situation because a specific removal provision will control over a general one. See,

e.g., Hellon & Assocs., Inc. v. Phoenix Resort Corp., 958 F.2d 295, 298 (9th Cir. 1992). Because Freddie Mac is deemed an agency of the United States and such agencies can remove without the consent of the other defendants, Freddie Mac may remove a case to federal court unilaterally. This conclusion also makes sense when one considers the important governmental objective that Congress had in mind when it created Freddie Mac.

Congress chartered Freddie Mac during the economic downturn of the 1970s to broaden the availability of residential mortgage loans, and thereby encourage home ownership in the United States. S. Rep. No. 91-761 (1970), reprinted in 1970 U.S.C.C.A.N. 3488. To ensure a steady stream of revenue for home mortgage loans, Congress provided Freddie Mac with certain benefits, including exemption from SEC regulation and state and local income taxes, as well as the ability to borrow funds from the U.S. Treasury at favorable rates. Congress subsequently amended Freddie Mac's charter as part of the Housing and Community Development Act of 1992 in an attempt to improve housing opportunities in under-served communities. H.R. Rep. No. 102-760 (1992), reprinted in 1992 U.S.C.C.A.N. 3281.

The Court must give some meaning to the language that Freddie Mac "shall be deemed to be an agency" under the federal officer removal provision in 28 U.S.C. § 1442. The Court finds that by including this specific reference to the federal officer

removal statute, Congress evidenced a judgment that suits involving Freddie Mac implicate a federal interest. Congress's intent to treat Freddie Mac as a federal agency for purposes of removal would be frustrated if Freddie Mac was required to obtain the consent of co-defendants before it could remove a case to federal court.

The Court might reach the same conclusion without the specific language including Freddie Mac within 28 U.S.C. § 1442. As a threshold matter, § 1452(f)(3) allows Freddie Mac to remove any civil action at any time before trial, without posting a bond or security, "by following any procedure for removal of causes in effect at the time of such removal." By this language, Congress appears to be referring to the most routine aspects of filing a notice of removal. For example, 28 U.S.C. § 1446 requires defendants removing a case to file "a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal." It also requires a removing party to give notice to all adverse parties and to file a copy of the notice with the clerk of the State court. For the Court to interpret what appears to be almost permissive language about following routine procedures as requiring Freddie Mac to obtain the consent of co-defendants to effect removal seems to run counter to the whole thrust of § 1452(f).

Nor do the cases cited by the plaintiff require a different result. For example, Huntingdon relies on two Eleventh Circuit decisions that discuss the interplay between the general removal procedures in 28 U.S.C. § 1446 and the FDIC's grant of special removal powers under 12 U.S.C. § 1819. First, in Lazuka v. Federal Deposit Insurance Corp., 931 F.2d 1530 (11th Cir. 1991), the Eleventh Circuit held that the FDIC was subject to the general removal statute except as specifically provided by § 1819. Id. at 1536. The issue before the court in that case was whether the FDIC must remove the case to federal court within the 30-day limitations period as required by the general removal statute.³ Id. The court did not discuss the FDIC's power to remove a case when there are multiple defendants.

Second, Huntingdon cites the Eleventh Circuit's decision in Federal Deposit Insurance Corp. v. S & I 85-1, Ltd., 22 F.3d 1070 (11th Cir. 1994). The Court finds Huntingdon's reliance on this case misplaced. In S & I 85-1, Ltd., the Eleventh Circuit distinguished between removal procedure and removal rights and stated that Lazuka should not be understood to mean that the general removal statute defines the scope of the FDIC's removal rights. Id. at 1072-73. The court held that, although the general removal statute limits the power of removal

³ The FDIC removal statute was subsequently amended to expressly provide for a 90-day removal period.

to defendants, the FDIC could remove a case under § 1819 "irrespective of its alignment as plaintiff or defendant." Id. at 1073. This result is consistent with earlier decisions by the Second and Fifth Circuits. Beighley v. Fed. Deposit Ins. Corp., 868 F.2d 776, 779 n. 6 (5th Cir. 1989) (rev'd on other grounds); Franklin Nat'l Bank v. Anderson, 532 F.2d 842, 843 (2d Cir. 1976).

In Franklin National Bank, after reasoning that, based on the language of the statute, the FDIC may remove a case as either the plaintiff or the defendant, the Second Circuit further concluded that the FDIC may remove a case to federal court without the consent of co-defendants. 532 F.2d at 846. In reaching this conclusion, the court compared the FDIC statute that permits removal of any suit "to which the [FDIC] shall be a party" with the language in 12 U.S.C. § 632 that permits the Federal Reserve Bank to remove any case where it is a "defendant." Id. at 845. The court decided that if Congress had intended to limit the FDIC's removal power, it knew how to do so. Id. The court then analogized the FDIC's right to remove a case under its special removal statute with the ability of federal officers to remove without the consent of co-defendants under 28 U.S.C. § 1442. Id. at 846.

The Second Circuit reached this result even though the version of the FDIC removal statute in effect provided that the

FDIC may remove a case "by following any procedure for removal now or hereafter in effect." The court stated that this language applied only to the "mechanical" aspects of petitioning for appeal, but the question of "who" can remove should be answered by reference to the language of § 1819 itself. Id.

The Court finds that the Second Circuit's reasoning in Franklin National Bank applies with additional force where, as here, Freddie Mac is expressly deemed an agency of the United States under § 1442. As Freddie Mac is expressly deemed an agency of the United States under § 1442, and this Court has decided that a federal agency can remove a case to federal court without the consent of co-defendants, Freddie Mac's removal in this case was not procedurally defective.

Huntingdon argues, in the alternative, that the Court should either remand the entire case or remand the claims against all defendants except Freddie Mac because the federal question claims are "separate and independent" from the state law claims with which they are joined. Huntingdon relies on the Court's authority to remand a case under 28 U.S.C. § 1441(c), which provides:

Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

In response, Freddie Mac makes three independent arguments: (1) under its special removal statute, 12 U.S.C. § 1452(f), the entire case is deemed to arise under the laws of the United States so that there is no discretionary remand authority under 28 U.S.C. § 1441(c); (2) § 1441 only applies to "actions removable generally" and not to actions removed pursuant to a special removal provision; and (3) the federal question claims are not separate and independent from any non-removable claims.

Because I decide that by including Freddie Mac as a party to this action the entire case is deemed to arise under federal law, I do not decide the separate and independent issue.

In Spring Garden Associates v. Resolution Trust Corp., the Third Circuit addressed this issue with respect to the Resolution Trust Corporation's ("RTC") special removal provision. 26 F.3d 412 (3d Cir. 1994). The RTC provision, 12 U.S.C. § 1441a(1)(1), confers federal jurisdiction over "any action, suit or proceeding to which the [RTC] is a party." The Third Circuit decided that, by this language, Congress intended to confer federal jurisdiction over an entire case to which the RTC is a party. Id. at 417.

The language in Freddie Mac's removal provision differs from the language that the Court of Appeals discussed in Spring Garden, but the difference is not significant for purposes of

this analysis. Freddie Mac's removal provision confers federal jurisdiction over "all civil actions to which [Freddie Mac] is a party."

In Spring Garden, the Court of Appeals reached the conclusion that § 1441a(1)(1) confers federal jurisdiction over an entire suit to which RTC is a party after pursuing three lines of reasoning. The court (1) examined the commonly understood meaning of the words in the provision; (2) examined opinions by other Circuits that interpreted the RTC provision and similar language in other provisions; and (3) compared this language to the Supreme Court's interpretation of the jurisdiction provision in the Federal Tort Claims Act ("FTCA").

First, the Third Circuit stated that the commonly understood meaning of the wording "any action, suit or proceeding to which the [RTC] is a party" encompasses the entire case and not just those claims brought by or against the RTC. Id. at 415-16 (internal quotations omitted).

Second, the Third Circuit found that its interpretation of § 1441a(1)(1) was in agreement with decisions by other Circuits that found that the RTC and the FDIC's respective removal statutes created federal jurisdiction over an entire action. Id. (citing California v. Keating, 986 F.2d 346 (9th Cir. 1993); Kansas Pub. Employees Retirement Sys. v. Reimer & Koger Assocs., Inc., 4 F.3d 614 (8th Cir. 1993); Nat'l Union Fire

Ins. Co. v. Baker & McKenzie, 997 F.2d 305 (7th Cir. 1993);
Walker v. FDIC, 970 F.2d 114 (5th Cir. 1992)).

Third, the Court of Appeals compared the language in § 1441a(1)(1) to the Supreme Court's interpretation of the jurisdiction provision in the Federal Tort Claims Act ("FTCA"). Id. at 417 (citing Finley v. United States, 490 U.S. 545 (1989)). The Third Circuit noted that the relevant language in § 1441a(1)(1) is similar to the hypothetical statutory language that the Supreme Court suggested would be sufficient to create jurisdiction over an entire cause of action. Id. (finding the statutory language at issue analogous to the hypothetical language "civil actions in which there is a claim against the United States").

These three lines of inquiry also support the conclusion that the statutory language in § 1452(f) confers federal jurisdiction over an entire action to which Freddie Mac is a party. A common reading of the language "all civil actions to which [Freddie Mac] is a party" suggests that jurisdiction extends to the entire suit. This language is also similar to the Supreme Court's hypothetical language - "civil actions in which there is a claim against the United States." Just as the Courts of Appeals have decided that the presence of the RTC or the FDIC confers federal jurisdiction over an entire suit, there is no apparent reason to reach a different conclusion with respect to

Freddie Mac.

An appropriate Order follows.

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ORDER

AND NOW, this 10th day of January, 2005, upon consideration of plaintiff Huntingdon Valley Club Condominium Association's motion to remand (Docket No. 14), defendant Federal Home Loan Mortgage Corporation's response thereto, defendant Wells Fargo Home Mortgage's response thereto, and plaintiff's replies in further support of its motion, IT IS HEREBY ORDERED that said motion is DENIED for the reasons stated in the memorandum of today's date.

BY THE COURT:

/s/ Mary A. McLaughlin

MARY A. McLAUGHLIN, J.