UNITED STATES DISTRICT COURT **EASTERN DISTRICT OF TEXAS**

TODD D. BRYSON,	§	
	§	
Plaintiff,	§	
	§	
versus	§	CIVIL ACTION NO. 1:16-CV-28
	§	
WELLS FARGO BANK, N.A.,	§	
	§	
Defendant.	§	

MEMORANDUM AND ORDER

Pending before the court is Plaintiff Todd D. Bryson's ("Bryson") Motion to Remand (#5), in which Bryson seeks remand to state court of his action against Wells Fargo Bank, N.A. ("Wells Fargo"). After considering the motion, the response, the reply, the pleadings, and the applicable law, the court is of the opinion that Bryson's motion should be granted.

I. Background

Bryson, a Texas resident, filed this case in the 60th Judicial District Court of Jefferson County, Texas, against Wells Fargo and Action Restoration, Inc. ("Action"), a corporation with its principal place of business in Texas, on November 6, 2014. In 2008, Bryson secured a loan from Wachovia Bank, which was subsequently acquired by Wells Fargo, for approximately $700,000.00 on an eleven-acre tract of land that included a residence (the "property"). At the time, Bryson was the Chief Executive Officer of Action, and Action agreed, by contract, that it would be responsible for making Bryson's loan payments. Subsequently, Bryson and Action parted ways, and Action, without notifying Bryson, ceased making loan payments to Wells Fargo. Consequently, Wells Fargo began foreclosure proceedings against the property. Action attempted

to stop the foreclosure proceeding but was unsuccessful, and the property was sold at a foreclosure sale to Wells Fargo on April 1, 2014.

In his petition, Bryson asserted claims of wrongful foreclosure against Wells Fargo and breach of contract against Action. Bryson also sought declaratory relief against both Wells Fargo and Action as well as temporary and permanent injunctive relief against Wells Fargo. Action subsequently filed for Chapter 11 bankruptcy protection on December 11, 2014, in the United States Bankruptcy Court for the Eastern District of Texas (the "Bankruptcy Court"). *In re Action Restoration, Inc.*, No. 14-10620 (Bankr. E.D. Tex. Dec. 16, 2015).[1]

On July 23, 2015, the Bankruptcy Court approved a Compromise and Settlement Agreement (the "settlement agreement") between Action and Bryson, which disposed of all claims between them. After the Bankruptcy Court's approval of the settlement, the 58th Judicial District Court of Jefferson County, Texas, became the proper forum for the distribution of the settlement funds. *Bryson v. BRRW Farm & Ranch, Inc.*, No. A-196,616 (58th Dist. Ct. Jefferson County, Tex.).[2] On July 27, 2015, Wells Fargo filed a Plea in Intervention in the 58th District Court to

[1] Following Action's filing of bankruptcy, Wells Fargo attempted to remove the case to federal court on March 11, 2015, based on 28 U.S.C. § 1334, which grants district courts jurisdiction over cases "related to" bankruptcy proceedings. On June 3, 2015, the court remanded the case back to state court. The court found that although the district court had jurisdiction pursuant to 28 U.S.C. § 1334, Wells Fargo's removal was untimely and, in any event, remand was proper based upon the theories of equitable remand and permissive abstention. *See Bryson v. Wells Fargo Bank, N.A.*, No. 1:15-cv-105 (E.D. Tex. June 3, 2015).

[2] Bryson brought suit against Action and BRRW Farm and Ranch concerning a related matter, which is still pending.

recover monies due to Bryson as a result of the settlement, and, on August 3, 2015, Wells Fargo filed an objection to the payment of Bryson's contingent attorney's fees.[3]

On December 29, 2015, Action's lawyers filed a Notice of Nonsuit against Action in the underlying case, which was approved by Bryson's counsel.[4] The state court judge entered an Order of Nonsuit the following day. Wells Fargo filed its notice of removal of the case to this court on January 28, 2016, asserting that removal is proper based on diversity jurisdiction.

On February 29, 2016, Bryson filed the instant motion to remand, in which he contends that the case became removable on July 23, 2016, when the Bankruptcy Court approved the settlement agreement and that Wells Fargo was aware of the settlement, yet failed to seek removal within 30 days. Bryson also argues that Wells Fargo's removal is untimely because it was filed more than one year after the suit was initially filed and that he did not act in bad faith in nonsuiting Action in December 2015. In response, Wells Fargo argues that the Bankruptcy Court's order approving the settlement agreement did not trigger the 30-day removal clock and that the one-year bar to removal of diversity actions does not apply because Bryson acted in bad faith by delaying in filing its nonsuit of Action.[5]

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[3] Wells Fargo claims it had no knowledge of the settlement agreement, but it appears that counsel for Wells Fargo—although not the same lawyers appearing in this case for Wells Fargo—was present at the hearing on August 4, 2015, where the settlement agreement between Bryson and Action was discussed on the record.

[4] Under Texas law, a nonsuit operates as a voluntary dismissal, without prejudice, of a party's claims. *See* TEX. R. CIV. P. 162; *Rexrode v. Bazar*, 937 S.W.2d 614, 619 (Tex. App.—Amarillo 1997, no writ).

[5] On March 24, 2016, the court ordered Brsyon to file a reply to Wells Fargo's response specifically addressing why he waited to nonsuit Action until December 2015. *See* Docket No. 13. Bryson filed his reply on March 24, 2016.

II. Analysis

A. Removal Jurisdiction

"Federal courts are courts of limited jurisdiction." *Gunn v. Minton*, ___ U.S. ___, 133 S. Ct. 1059, 1064 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)); *accord Hotze v. Burwell*, 784 F.3d 984, 999 (5th Cir. 2015); *Scarlott v. Nissan N. Am., Inc.*, 771 F.3d 883, 887 (5th Cir. 2014); *Halmekangas v. State Farm Fire & Cas. Co.*, 603 F.3d 290, 292 (5th Cir. 2010). "They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen*, 511 U.S. at 377 (citations omitted). The court "must presume that a suit lies outside this limited jurisdiction, and the burden of establishing federal jurisdiction rests on the party seeking the federal forum." *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir.), *cert. denied*, 534 U.S. 993 (2001) (citing *Kokkonen*, 511 U.S. at 377); *accord Hertz Corp. v. Friend*, 559 U.S. 77, 96 (2010); *Clayton v. Conoco Phillips Co.*, 722 F.3d 279, 290 (5th Cir. 2013). In an action that has been removed to federal court, a district court is required to remand the case to state court if, at any time before final judgment, it determines that it lacks subject matter jurisdiction. *See* 28 U.S.C. § 1447(c); *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 638 (2009); *Grupo Dataflux v. Atlas Global Grp., L.P.*, 541 U.S. 567, 571 (2004); *Spear Mktg., Inc. v. BancorpSouth Bank*, 791 F.3d 586, 592 (5th Cir. 2015); *African Methodist Episcopal Church v. Lucien*, 756 F.3d 788, 793 (5th Cir. 2014).

When considering a motion to remand, "[t]he removing party bears the burden of showing that federal jurisdiction exists and that removal was proper." *Barker v. Hercules Offshore Inc.*, 713 F.3d 208, 212 (5th Cir. 2013) (quoting *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002)); *accord African Methodist Episcopal Church*, 756 F.3d at 793;

Mumfrey v. CVS Pharmacy, Inc., 719 F.3d 392, 397 (5th Cir. 2013); *see* 13E CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3602.1 (3d ed. 2013). "This extends not only to demonstrating a jurisdictional basis for removal, but also necessary compliance with the requirements of the removal statute." *Roth v. Kiewit Offshore Servs., Ltd.*, 625 F. Supp. 2d 376, 382 (S.D. Tex. 2008) (quoting *Albonetti v. GAF Corp. Chem. Grp.*, 520 F. Supp. 825, 827 (S.D. Tex. 1981)); *accord Fort Worth & W. R.R. Co. v. Stevenson*, No. 3:15-CV-0906-B, 2015 WL 38679706, at *1 (N.D. Tex. June 22, 2015); *Crossroads of Tex., L.L.C. v. Great-West Life & Annuity Ins. Co.*, 467 F. Supp. 2d 705, 708 (S.D. Tex. 2006). Non-jurisdictional defects in the removal procedure, such as removal by an in-state defendant, however, are waived unless raised in a motion to remand within thirty days after removal. 28 U.S.C. § 1447(c); *Schexnayder v. Entergy La., Inc.*, 394 F.3d 280, 284 (5th Cir. 2004); *Denman by Denman v. Snapper Div.*, 131 F.3d 546, 548 (5th Cir. 1998) (citing *In re Shell Oil Co.*, 932 F.2d 1518, 1523 (5th Cir. 1991)). "Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (citing 28 U.S.C. § 1441(a)); *see Mumfrey*, 719 F.3d at 397.

"The removal statute ties the propriety of removal to the original jurisdiction of the federal district courts." *Frank v. Bear Stearns & Co.*, 128 F.3d 919, 922 (5th Cir. 1997); *see* 28 U.S.C. § 1441(a); *Camsoft Data Sys., Inc. v. S. Elec. Supply, Inc.*, 756 F.3d 327, 333 (5th Cir. 2014); *Barker*, 713 F.3d at 228. Because removal raises significant federalism concerns, the removal statutes are strictly and narrowly construed, with any doubt resolved against removal and in favor of remand. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *African Methodist Episcopal Church*, 756 F.3d at 793; *Barker*, 713 F.3d at 212.

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