United States District Court Southern District of Texas

ENTERED

January 18, 2017 David J. Bradlev, Clerk

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

Clara Smith,	Ş
	§
Plaintiff,	§
	§
<i>.</i>	§
	§
THE BANK OF NEW YORK MELLON FKA	§
THE BANK OF NEW YORK, AS TRUSTEE FOR	§
THE CERTIFICATE HOLDERS OF THE	§
CWABS, INC. ASSET-BACKED CERTIFICATES,	§
Series 2007–4, <i>et al.</i> ,	§
	§

CIVIL ACTION H-16-1669

Defendants.

ORDER

§

Pending before the court is plaintiff Clara Smith's motion to remand a case that was removed to federal court by defendants The Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificate Holders of the CWABS, Inc. Asset-Backed Certificates, Series 2007-4 ("BONY Trustee"), Bank of America, N.A., Specialized Loan Servicing, LLC, and the Bank of New York Mellon, N. A. (collectively, "Defendants"). Dkt. 10. Having considered Defendants' amended notice of removal (Dkt. 13), Defendants' statement concerning removal (Dkt. 14), the amended certificate of interested parties (Dkt. 16), the motion to remand, response, and reply (Dkts. 10, 18, 24), the court finds that this controversy lacks the diversity required for subject matter jurisdiction under 28 U.S.C. §§ 1332 and 1441(b).

As the removing party, Defendants have the burden to "classify the trust, establish its citizenship, and prove complete diversity." *Id.; see Juarez v. DHI Mortg., Ltd.*, No. CV H-15-3534, 2016 WL 3906296, at *2 (S.D. Tex. July 19, 2016). BONY Trustee argues it is a trustee of a traditional trust and claims it possesses "the customary powers to hold, manage, and dispose of assets

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for the benefit of others." Dkt. 18 at 5 (citing *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 464, 100 S. Ct. 1779 (1980)). However, because Defendants merely recited the *Navarro* standard and failed to provide any evidence of such "customary powers," the court finds that Defendants did not meet their burden for removal. Therefore, this case is REMANDED to the 152nd Judicial District Court of Harris County, Texas.

It is so ORDERED.

Signed at Houston, Texas on January 18, 2017.

Gray H. Miller United States District Judge