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Consumer Finance Practice

January 3, 2018

Ninth Circuit Clarifies Amount in Controversy for Purposes of Subject Matter Jurisdiction in Certain HBOR Cases

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On December 27, 2017, the Ninth Circuit Court of Appeals issued a published decision impacting subject matter jurisdiction when a complaint seeks a stay of foreclosure proceedings pursuant to the California Homeowners' Bill of Rights ("HBOR"). The Ninth Circuit found in *Corral, et al. v. Select Portfolio Servicing, Inc., et al.*, ___ F.3d. ___, 2017 WL 6601872 (9th Cir. 2017) that the value of the property and the amount of the underlying loan do not count toward the amount of controversy where a complaint seeks only a temporary stay of foreclosure. The Court's decision in *Corral* carves out an exception to the wealth of decisions finding the value of the property and/or amount of the loan pertinent in determining the amount in controversy where the complaint seeks to enjoin a foreclosure sale. This decision not only impacts a lender/servicer's ability to remove future cases filed by borrowers in state court, but may also impact cases that were previously filed in or removed to federal court solely based on the value of the property and/or amount of the loan.

In *Corral*, the complaint did not demand a specific amount of damages, but instead sought an order temporarily enjoining a nonjudicial foreclosure sale while the servicer reviewed a loan modification application. In their prayer for relief, the plaintiffs-borrowers requested a temporary stay of foreclosure while their loan modification application was reviewed, as well as compensatory damages and costs, statutory damages under HBOR including the greater of treble damages or $50,000, and attorneys' fees and costs. The servicer/investor defendants removed the case to federal court on the basis of diversity jurisdiction, asserting that there was more than $75,000 in controversy due to the value of the property and amount of indebtedness on the note. The district court denied plaintiffs' motion for remand, finding that the benefit resulting from a stay of foreclosure had a value in excess of $75,000 due to the value of the property and the amount of the loan.

On appeal, the *Corral* court found that the district court improperly relied on cases in which plaintiffs sought a permanent or indefinite injunction in connection with efforts to quiet title or otherwise rescind a loan, in contrast to the complaint in *Corral*, which only sought a temporary stay of foreclosure while the servicer reviewed a loan modification application. The Ninth Circuit found that unlike cases seeking an indefinite or permanent stay of foreclosure, a complaint requesting only a *temporary* stay of foreclosure in order to pursue a loan modification did not put the value of the property and/or amount of the loan at issue because even if the borrowers were to succeed in the lawsuit, they would not be able to keep the property without paying the loan balance.

The Ninth Circuit limited its holding in *Corral* to complaints that do not allege a specific damage amount and only request a temporary stay of foreclosure. And while the Ninth Circuit further specified that its holding in *Corral* was not a "bright line rule" and does not mean that every case seeking a temporary injunction pending review of a loan modification would not satisfy the amount in controversy, the Court suggested that any purported injury to the lender/servicer would be minimal as the servicer could control the length of the review, thereby limiting any potential damages. Likewise, the Ninth Circuit found that the benefit to the borrower in obtaining only a temporary stay of foreclosure is also minimal, as a brief extension of time in the property does not equal the value of the property and/or the total amount of the underlying loan. Of course, in making these findings, the Ninth Circuit ignored the fact that the length of a review is not wholly in control of the servicer, as borrowers are often able to prolong loan modification reviews by purposefully delaying in providing required documents or sending information in piecemeal.

Moving forward, servicers/investors who wish to remove to federal court on diversity grounds will need to be prepared to demonstrate—through admissible evidence if a motion to remand is filed—that more than $75,000 is in controversy and can no longer rely solely on the property or loan value if a complaint only seeks a temporary stay of foreclosure. The Ninth Circuit noted in the *Corral* decision that such evidence may include the transactional costs to the lender of delaying foreclosure or a fair rental value of the property during the pendency of the injunction. Alternatively, if a complaint is not removable on its face, a defendant may be able to subsequently remove the case if it learns of information that would make the case removable, such as information regarding the amount of damages learned through discovery.

Aside from future removals, the *Corral* decision may also impact cases now pending in federal court that were previously filed or removed based on the amount of the loan and/or value of the property. Because subject matter jurisdiction cannot be waived and any action taken by a court without subject matter jurisdiction is void, servicer/investors should consider reviewing any pending cases that were removed to federal court based on diversity jurisdiction to ensure subject matter jurisdiction is met under the *Corral* standard. To the extent a case was removed based on pre-*Corral* principles, the removing party may wish to seek remand on its own in order to avoid litigating a case in a court that lacks jurisdiction.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors.

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