

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

United States Courts
Southern District of Texas
FILED

FEB 08 2005

Michael N. Milby, Clerk of Court

JESUS S. GUZMAN and
JOANN B. GUZMAN

V.

OCWEN FEDERAL BANK, FSB,
LASALLE NATIONAL BANK,
AS TRUSTEE, ITS SUCCESSORS
AND ASSIGNS, SALOMON
BROTHERS REALTY,

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CIVIL ACTION NO. 05-61

(JURY DEMANDED BEFORE
REMOVAL)

**PLAINTIFFS' OPPOSED EMERGENCY MOTION TO REMAND
AND REQUEST FOR SANCTIONS**

TO HONORABLE JUDGE OF SAID COURT:

Comes now, Plaintiffs, Jesus and JoAnn Guzman, hereinafter referred to as Plaintiffs, and file this their emergency motion to remand and in support thereof would show the Court as follows:

I.

NATURE OF EMERGENCY CONSIDERATION

Trial by Jury was underway when Defendants wrongfully removed the case. The Jury in this matter was selected, sworn and had taken their place in the jury box. Opening statements were concluded and the Jury was recessed at the end of the day. After the Jury was recessed, Defendants wrongfully removed this case. The Honorable Lisa Gonzales, County Court at Law No. 2, has continued the recess of the Jury until February 16, 2005.

Defendants take the position that Plaintiffs' opening statement somehow acts as an

amendment to their last filed petition and Plaintiffs are now asserting a cause of action under Sarbanes-Oxley. Defendants falsely state: "This notice of remand is filed within 30 days after receipt of the information provided by Plaintiffs regarding their intent to pursue causes of action alleging violation of the Sarbanes-Oxley Act..."

This has always been a State Court proceeding. It was removed during jury trial by Defendants on February 8, 2005, immediately before the first witness was to testify in this matter. This case was filed on June 6, 2003. Plaintiffs' last amended their petition on December 20, 2004. Plaintiffs' petition asserts only State Court causes of action. Nothing in the pleadings requests any relief under the Sarbanes-Oxley Act. The proposed jury charge submitted to Judge Gonzales and provided to Defendants prior to trial pursuant to the State Court's docket control order, contains only jury questions based on state causes of action and drawn from the Texas Pattern Jury Charge or established by Texas case law. By separate brief, Plaintiffs provide these documents to the Court for review. Plaintiffs do not intend to pursue any federal causes of action. The mere mention of a federal statute does not give this Court federal question jurisdiction.

II.

NO TRANSCRIPT REVIEW OR HEARING IS NECESSARY

Based on Defendants Ocwen's recitation of the facts relied upon for removal, this Honorable Court does not even need to review the transcript of the opening statement. Defendants' removal is in bad faith and meant to delay the trial of this matter. See *Masters v. Swiftships Freeport, Inc.*, 867 F.Supp 555, 558-59 (S.D. Tex. 1994). Plaintiffs request the Court grant this motion without the necessity of a hearing, or that a hearing be set on

an emergency basis so that Plaintiffs can present this motion and request the Court to review same as the State trial court has recessed the jury until February 16, 2005, pending ruling by this Court. Hopefully, it would be possible to proceed with trial as early as tomorrow with the same jury and avoid prejudicial delay caused by Defendants.

III.

REMOVAL IS MERITLESS AND WARRANTS SANCTIONS

Plaintiffs assert that Defendants have filed this removal in bad faith. Plaintiffs have two witnesses from out of state scheduled and available to testify today. Those witnesses took off work to travel to Corpus Christi, and will now have to return home until another day. Costs for new plane tickets, hotel rooms, meals and incidental expenses will be incurred as a result of the wrongful removal. Moreover, thousands of dollars in attorneys fees have been incurred as a result of Defendants' actions. Defendants should be sanctioned for their conduct. Plaintiffs seek just costs and actual expenses, including attorneys fees, incurred as a result of the removal pursuant to 28 U.S.C. § 1447 (c). Plaintiffs do not seek further relief but believe the Court may wish to consider sua sponte whether Defendants' counsel should even be allowed to continue to practice in the Southern District of Texas.

IV.

CERTIFICATE OF CONFERENCE

Plaintiffs' counsel has spoken with Defendants' Counsel and have been advised Defendants are opposed to this Motion.

Wherefore, Premises Considered, Plaintiffs pray that the Court grant this motion to remand on an emergency basis, impose sanctions against Defendants, and grant Plaintiffs such other and further relief to which they may be justly entitled.

Respectfully submitted,



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**ATTORNEYS FOR PLAINTIFFS,
JESUS S. GUZMAN AND
JOANN B. GUZMAN**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded to all counsel of record via facsimile on this the 8th day of February, 2005.



ROBERT C. HILLIARD