

The Hon. Ricardo S. Martinez

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REBECCA ALEXANDER, a single woman,

Plaintiff,

v.

KING COUNTY, WASHINGTON, a county
municipality; STATE OF WASHINGTON, one
of the fifty states of the United States; BANK
OF AMERICA, N.A., a national banking
association; NORTHWEST TRUSTEE
SERVICES, INC., a Washington corporation;
U.S. BANK NATIONAL ASSOCIATION, as
Trustee for Harborview Mortgage Loan Trust
2005-12, Mortgage Loan Pass-through
Certificates, Series 2005-12 Trust;
NATIONSTAR MORTGAGE, LLC, a foreign
entity; JOHN DOE TRUSTEE; JOHN DOE
TRUST; MERS, a foreign corporation,

Defendants.

NO. 2:17-cv-00653-RSM

NATIONSTAR, U.S. BANK, AND
MERS' OPPOSITION TO
PLAINTIFF'S MOTION TO REMAND

NOTE ON MOTION CALENDAR:
JUNE 2, 2017

I. INTRODUCTION

Defendants Nationstar Mortgage LLC ("Nationstar"); U.S. Bank National
Association, as Trustee for Harborview Mortgage Loan Trust 2005-12, Mortgage Loan Pass-

104034/000075/01749942-1
OPPOSITION TO MOTION TO
REMAND- 1
CASE NO. 2:17-cv-00653-RSM

ANGLIN FLEWELLING RASMUSSEN
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1 through Certificates, Series 2005-12 Trust (“U.S. Bank”); and Mortgage Electronic
2 Registration Systems, Inc. (“MERS”) (hereafter collectively “Defendants”) hereby oppose
3 Plaintiff’s Motion for Remand because, as Plaintiff’s filings show, this case necessarily raises
4 issues under the ADA that are actually disputed, substantial, and capable of resolution in
5 federal court without disrupting the federal-state balance approved by Congress.

6 **II. BACKGROUND AND RELEVANT FACTS**

7 On April 13, 2017, Plaintiff filed her Complaint (“Complaint”), and Summons was
8 issued. The case was given Snohomish County Superior Court Cause No. 17-2-03709-31 (the
9 “State Court Action”). See Complaint at Exhibit A to Dkt. No. 1 herein. Plaintiff’s complaint
10 attempts to circumvent federal question jurisdiction by stating that her claims are “not
11 intended to invoke the provisions of the federal ADA, except to the extent such federal law
12 requires Washington State officials, including Washington judges, to accommodate her
13 disabilities for purposes of being treated equally.” Complaint at ¶1.1. Despite this, as part of
14 her outrage claim, Plaintiff alleges that multiple defendants caused her to become
15 permanently disabled by their servicing practices following her separately becoming disabled
16 and thus being an “eggshell” plaintiff. Complaint at ¶¶6.3, 6.5-6.9. Plaintiff’s complaint also
17 cites to a recent Bankruptcy Court decision awarding punitive damages under federal law
18 against Bank of America. *Id.* at ¶6.10.

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20 On April 13, 2017, Plaintiff also filed a Motion for Temporary Restraining Order. *See*
21 Dkt. No. 2-1 at pp. 7-13.

1 On April 24, 2017, Defendants Nationstar, U.S. Bank and MERS filed their
2 Opposition to Plaintiff's Motion for Temporary Restraining Order in the State Court Action.
3 See Dkt. No. 2-1 at pp. 23-32. Plaintiff's reply brief was filed the same day. See Dkt. No. 2-1
4 at pp. 95-99.

5 As is made clear by Plaintiff's Motion for Temporary Restraining order and Reply
6 filed in support thereof, Plaintiff is clearly asking for the application of federal law to support
7 the relief that she is requesting. In her Motion for Temporary Restraining Order, Plaintiff
8 posited the following "issue": "Should this Court order that Alexander be required to pay no
9 bond, or a nominal bond, as an accommodation under the ADA...?" See Dkt. No. 2-1 at p. 8.

10 Thereafter, Plaintiff's Reply focuses almost entirely on the application of federal law,
11 arguing: "Defendants do not respond to the federal law arguments based on the American's
12 With Disabilities Act. By doing so they ignore Article 6 of the United States
13 Constitution...Defendants are well aware that their trustee refused to provide its disability
14 policies to Ms. Alexander (*sic*) ADA advocates. ... [D]efendants had a responsibility to insure
15 the Trustee complies with disability laws." See Dkt. No. 2-1 at p. 96. Plaintiff's reply goes
16 on to quote allegedly pertinent portions of the "Findings and Purposes of the ADA." *Id.* at pp.
17 96-97. Plaintiff also argued that the defendants "do not have immunity to violate the ADA."
18 *Id.* at p. 3.

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20 Upon receiving this reply clearly implicating a disputed issue of federal law
21 underpinning Plaintiff's claims and the relief she has requested, Defendants filed the notice of
22 removal. See Dkt. No. 1 herein.

V. AUTHORITY

A. *Standard for Federal Question Jurisdiction.*

“28 U.S.C. §1331 provides federal jurisdiction of all civil actions ‘arising under’ federal law.” *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Manning*, 136 S. Ct. 1562, 1569, 194 L. Ed. 2d 671 (2016). The term “arising under” is satisfied in either of two circumstances: “Most directly, and most often, federal jurisdiction attaches when federal law creates the cause of action asserted. ... But even when ‘a claim finds its origins’ in state law, there is ‘a special and small category of cases in which arising under jurisdiction still lies.’” *Id.* at 1569-70, citing *Gunn v. Minton*, 568 U. S. ___, ___, 133 S. Ct. 1059, 185 L. Ed. 2d 72, 79 (2013). As the Supreme Court has explained, a federal court has jurisdiction of a state-law claim if it “necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance” of federal and state power. *Manning*, 136 S. Ct. at 1570, quoting *Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 125 S. Ct. 2363, 162 L. Ed. 2d 257 (2005); see also *Gunn*, 133 S. Ct. at 1065 (framing the same standard as a four-part test). “That description typically fits cases ... in which a state-law cause of action is ‘brought to enforce’ a duty created by [a federal statute] because the claim’s very success depends on giving effect to a federal requirement.” *Manning*, 136 S. Ct. at 1570 (U.S. May 16, 2016)

In order to determine whether a case falls into this “special and small category,” the Court must consider whether the “federal issue is: (1) necessarily raised, (2) actually

1 disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting
2 the federal-state balance approved by Congress.” *Gunn*, 133 S.Ct. at 1065. If all four of
3 these requirements are met, then this Court has jurisdiction because “there is a serious
4 federal interest in claiming the advantages thought to be inherent in a federal forum, which
5 can be vindicated without disrupting Congress's intended division of labor between state
6 and federal courts.” *Id.* (internal quotation marks and citation omitted).

7 A corollary to this analysis is the “artful pleading” doctrine, which provides that a
8 plaintiff “may not avoid federal jurisdiction by omitting from the complaint allegations of
9 federal law that are essential to the establishment of the claim.” *Lippitt v. Raymond James*
10 *Fin. Servs.*, 340 F.3d 1033, 1041 (9th Cir. 2003) (internal quotation marks omitted). The
11 artful pleading doctrine allows courts to “delve beyond the face of the state court complaint
12 and find federal question jurisdiction by recharacterizing a plaintiff's state law claim as a
13 federal claim.” *Id.* (internal quotation marks and alterations omitted).

14
15 ***B. Plaintiff's Complaint alleges Federal law violations.***

16 Plaintiffs’ Motion for Remand should be denied because Plaintiff’s complaint
17 (currently deficiently pleaded as admitted by Plaintiff’s counsel) has been shown though
18 Plaintiff’s subsequent filings to necessarily raise issues under the ADA that are actually
19 disputed, substantial, and capable of resolution in federal court without disrupting the
20 federal-state balance approved by Congress.

21 Specifically, in her Motion for Temporary Restraining Order, Plaintiff posited the
22 following “issue”: “Should this Court order that Alexander be required to pay no bond, or a
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1 nominal bond, as an accommodation under the ADA...?” *See* Dkt. No. 2-1 at p. 8.

2 Thereafter, Plaintiff’s Reply focused almost entirely on the application of federal
3 law, arguing: “Defendants do not respond to the federal law arguments based on the
4 American’s With Disabilities Act. By doing so they ignore Article 6 of the United States
5 Constitution...Defendants are well aware that their trustee refused to provide its disability
6 policies to Ms. Alexander (*sic*) ADA advocates. ... [D]efendants had a responsibility to
7 insure the Trustee complies with disability laws.” *See* Dkt. No. 2-1 at p. 96. Plaintiff’s
8 reply goes on to quote allegedly pertinent portions of the “Findings and Purposes of the
9 ADA.” *Id.* at pp. 96-97. Plaintiff also argued that the defendants “do not have immunity
10 to violate the ADA.” *Id.* at p. 3.

11 Defendants dispute having violated the ADA, and Plaintiff’s own arguments
12 illustrate that she herself characterizes the ADA issues as substantial in this case. As such,
13 at least a portion of Plaintiff’s complaint arises under federal law under the test set forth in
14 *Gunn supra*, and thus this Court has jurisdiction under 28 USC §1331. This Court also has
15 supplemental jurisdiction over related claims within this action under 28 U.S.C. § 1367(a),
16 which provides in pertinent part that “in any civil action of which the district courts have
17 original jurisdiction, the district courts shall have supplemental jurisdiction over all other
18 claims that are so related to claims in the action within such original jurisdiction that they
19 form part of the same case or controversy under Article III of the United States
20 Constitution.”

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22 Plaintiff’s attempt to argue that her case cannot be heard in federal court because
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1 this Court will not accommodate her disability is nothing more than a desperate attempt to
2 support an argument that this case is somehow not capable of resolution in federal court
3 without disrupting the federal-state balance approved by Congress. The Court should not
4 bite unless it agrees that U.S. District Courts do not and will not comply with the access
5 requirements of the ADA. Defendants do not believe this to be the case.

6 Plaintiffs' Motion for Remand should be denied because this case necessarily
7 raises issues under the ADA that are actually disputed, substantial, and capable of
8 resolution in federal court without disrupting the federal-state balance approved by
9 Congress. 28 U.S.C. §1331; *Gunn*, 133 S.Ct. at 1065.

10 **III. CONCLUSION**

11 For the reasons set forth above, Defendants Nationstar, MERS, and U.S. Bank,
12 respectfully request that Plaintiff's Motion for Remand be denied.

13 A proposed order is provided herewith for the Court's convenience.

14 DATED this 30th day of May, 2017.

15 */s Adam G. Hughes*

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23 *Attorneys for Defendants Nationstar Mortgage LLC;
24 U.S. Bank National Association, as Trustee for
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Loan Pass-through Certificates, Series 2005-12 Trust;
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of May, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Western District of Washington using the CM/ECF system, which will send notification of such filing to the following:

<p>7 8 9</p> <p>Scott E. Stafne STAFNE LAW FIRM 239 Olympic Avenue Arlington, WA 98223 <i>Attorneys for Plaintiff</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Email <input checked="" type="checkbox"/> By CM/ECF System</p>
<p>10 11 12 13</p> <p>Joshua Schaer RCO LEGAL, P.S. 13555 SE 36th Street, Suite 300 Bellevue, WA 98006 <i>Attorneys for Defendant Northwest Trustee Services, Inc.</i></p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Email <input checked="" type="checkbox"/> By CM/ECF System</p>
<p>14 15 16 17 18 19</p> <p>John Briggs MacKenzie Brown KING COUNTY PROSECUTING ATTORNEY'S OFFICE Civil Division E554 King County Courthouse 516 Third Avenue Seattle, WA 98104 Attorneys for Defendant King County</p>	<p><input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Email <input checked="" type="checkbox"/> By CM/ECF System</p>

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8 Signed this 30th day of May, 2017 at Seattle, Washington.

9 /s/ Kay Spading
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