

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JASON BORNE

CIVIL ACTION NO.

VERSUS

24-303-JWD-EWD

HOME BANK, N.A., ET AL.

NOTICE

Please take notice that the attached Magistrate Judge's Report has been filed with the Clerk of the U. S. District Court.

In accordance with 28 U.S.C. § 636(b)(1), you have 14 days after being served with the attached report to file written objections to the proposed findings of fact, conclusions of law, and recommendations set forth therein. Failure to file written objections to the proposed findings, conclusions and recommendations within 14 days after being served will bar you, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court.

ABSOLUTELY NO EXTENSION OF TIME SHALL BE GRANTED TO FILE WRITTEN OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT.

Signed in Baton Rouge, Louisiana, on December 27, 2024.


ERIN WILDER-DOOMES
UNITED STATES MAGISTRATE JUDGE

**UNITED STATES DISTRICT COURT
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CIVIL ACTION NO.

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MAGISTRATE JUDGE'S REPORT, RECOMMENDATION, AND ORDER

Before the Court is a Motion to Dismiss for Lack of Jurisdiction Over the Subject Matter,¹ filed by Home Bank, N.A. (“Home Bank”); Stephen Damore; Newman, Mathis, Brady & Spedale, PLC; Clay LeGros; Jeffery Toepfer, and Mayne Maiorana (collectively, “Defendants”). Because Plaintiffs Jason Borne (“Borne”) and Scott Benard (“Bernard”) have not adequately established this Court’s subject matter jurisdiction over the claims in this case, it is recommended that the Motion be granted, and the case dismissed.²

I. BACKGROUND

On or about April 12, 2024, Borne, who is representing himself, filed a form Complaint for a Civil Case against Defendants.³ Borne, who was the only plaintiff initially, says he “enacted a mortgage/promissory note on behalf of Emerald Magnolia Properties, LLC, and signed a personal guarantee” for the funding of a loan by Home Bank.⁴ According to Borne, the loan was never fully funded. Instead, Home Bank terminated his credit line, “thereby creating its default of

¹ R. Doc. 19.

² Earlier in this case, Borne filed an “Objection to the Assignment of Claim to a Magistrate.” R. Doc. 8. The undersigned is a magistrate judge, appointed to that office to perform all duties that are permissible under 28 U.S.C. § 636, *et seq.* This case was referred to the undersigned for disposition. Because a motion to dismiss is excluded from direct ruling by a magistrate judge under 28 U.S.C. § 636(b)(1)(A), the suggested disposition of Defendants’ Motion to Dismiss for Lack of Jurisdiction Over the Subject Matter (R. Doc. 19) is made by Report and Recommendation. To the extent any party disagrees with any finding or recommendation within this Report relating to disposition of the Motion to Dismiss, that party may file objections within fourteen (14) days of being served with the Report. The assigned district judge will then make a *de novo* determination (anew and without deference) as to any finding or recommendation to which objection is made. 28 U.S.C. § 636(b)(1)(C).

³ R. Doc. 1.

⁴ R. Doc. 1, p. 9.

the alleged mortgage and establishing its fraud upon the public record wherein it stated the loan was fully-funded.”⁵ Borne says his property was then seized and sold at a sheriff’s sale based on an executory process started by Home Bank in Louisiana state court.⁶ Borne alleges this case involves “Defendant’s [sic] collective commission of fraud, misrepresentation, deceptive practice, conspiracy, and mail fraud through the wrongful enforcement of a mortgage debt.”⁷ He originally asserted that this Court has federal question jurisdiction under 18 U.S.C. §§ 1001, 1341, and 1343.⁸

Because Borne failed to adequately establish subject matter jurisdiction, on June 21, 2024, this Court issued an Order (the “June 21 Order”) explaining the deficiencies and instructing Borne to file a comprehensive amended complaint.⁹ Borne’s “Notice of Amendment to Claim for Damages,” seeking to add Scott Bernard (“Bernard”) as an additional plaintiff and increasing the demand for monetary damages from \$4,000,000 to \$6,000,000,¹⁰ was also stricken from the record because, and as Borne was told, as a non-lawyer he cannot represent Bernard.¹¹

Borne and Bernard (collectively “Plaintiffs”) timely filed an “Amendment to Establish Our Claim for Damages is Proper Within this Common-Law Venue and Demand for Trial Date.”¹² While not entirely clear, it seems that the thrust of Plaintiffs’ argument is that the claims in this case are “not proceeding under ‘federal jurisdiction’ … nor will it be guided by ‘civil procedure’ nor constrained by citizenship requirements.”¹³ In other words, it seems that Plaintiffs believe because they have asserted claims under the U.S. Constitution they do not have to establish subject

⁵ *Id.*

⁶ R. Doc. 1, pp. 10-11.

⁷ R. Doc. 1, p. 9.

⁸ R. Doc. 1, p. 3, ¶ II(A).

⁹ Defendants’ original Motion to Dismiss for Lack of Jurisdiction Over the Subject Matter was also terminated without prejudice.

¹⁰ R. Doc. 6, p. 1. The Notice of Amendment to Claim for Damages was filed on June 14, 2024.

¹¹ R. Doc. 16, pp. 4-5.

¹² R. Doc. 18. The Amendment is signed by Bernard. R. Doc. 18, p. 12.

¹³ R. Doc. 18, p. 5.

matter jurisdiction.¹⁴ As Plaintiffs are incorrect in this belief, and (apparently) do not intend to make any effort to meet their burden to establish subject matter jurisdiction in this case, Defendants' Motion should be granted, and the case dismissed without prejudice.

II. LAW AND ANALYSIS

A. Plaintiffs Have Not Established Subject Matter Jurisdiction

As explained in the June 21 Order, unlike state district courts, which are courts of general jurisdiction that can hear all types of claims, federal courts may only entertain those cases over which there is federal subject matter jurisdiction. There are two primary ways to establish federal subject matter jurisdiction. First, this Court has subject matter jurisdiction over “civil actions arising under the Constitution, laws, or treatises of the United States.”¹⁵ This Court also has subject matter jurisdiction over civil cases where the amount in controversy is more than \$75,000.00, exclusive of interest and costs, and the parties are of completely diverse citizenship (*i.e.*, all plaintiffs are citizens of a different state than all defendants).¹⁶ A federal court is to presume that a case lies outside its subject matter jurisdiction, and the burden to establish federal subject matter jurisdiction is on the party asserting it (here, Plaintiffs).¹⁷ When a court does not have subject matter jurisdiction over a case, it must be dismissed.¹⁸

Borne alleged in the original Complaint that this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331,¹⁹ citing three federal criminal statutes, specifically 18 U.S.C. §§

¹⁴ To the extent Borne disagreed with the June 21 Order, he had the ability to appeal it to the assigned district judge within fourteen (14) days but did not do so. 28 U.S.C. § 636(b)(1)(A) (“A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge’s order is clearly erroneous or contrary to law.”).

¹⁵ 28 U.S.C. § 1331.

¹⁶ 28 U.S.C. § 1332.

¹⁷ *Mourning v. U.S. Dept. of State-Visa Office*, 32 Fed.Appx. 130, at *1 (5th Cir. 2002), citing *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir.), cert. denied, 534 U.S. 993 (2001).

¹⁸ *Goodrich v. United States*, 3 F.4th 776, 779 (5th Cir. 2021), citing *Nat'l Football League Players Ass'n v. Nat'l Football League*, 874 F.3d 222, 225 (5th Cir. 2017).

¹⁹ R. Doc. 1, p. 3, ¶ II.

1001, 1341, and 1343.²⁰ As those statutes do not provide a private right of action,²¹ they cannot form the basis for federal question jurisdiction. Nor is an allegation of constitutional violations alone sufficient to establish federal question jurisdiction. Although Plaintiffs do not specifically reference 42 U.S.C. § 1983, which would be a basis for federal question jurisdiction, they are alleging violations of their constitutional rights.²² That is insufficient for jurisdiction, however, because any § 1983 claim against a private actor is completely without merit.²³ “A plaintiff asserting a claim under 42 U.S.C. § 1983 must demonstrate that a defendant (1) deprived him of

²⁰ R. Doc. 1, p. 3.

²¹ See, e.g., *Thomas v. Abebe*, 833 Fed.Appx. 551, 555 (5th Cir. 2020) (affirming the district court’s determination that the plaintiff lacked a private cause of action under 18 U.S.C. § 1001). The Fifth Circuit has also expressly held that there is no private right of action under 18 U.S.C. §§ 3141 or 3143. *See Rhodes v. McCall-N Ltd.*, No. 21-4221, 2022 WL 3349229, at *4 (S.D. Tex. July 27, 2022), citing *Napper v. Anderson, Henley, Shields, Bradford & Pritchard*, 500 F.2d 634, 636 (5th Cir. 1974) (holding that 18 U.S.C. § 1343 does not provide a private right of action for civil litigants); *Bell v. Health-Mor, Inc.*, 549 F.2d 342, 346 (5th Cir. 1977) (holding the same for § 1341).

²² See R. Doc. 1, p. 10 (“[T]he 19th JDC allowed HOME BANK to seize and sell Plaintiff’s property at a sheriff’s sale, thereby, violating Plaintiff’s Due Process of Law and abridging his inherent rights.”); and see R. Doc. 20, p. 1 (“Our case unambiguously involves the deprivation of private rights and property, thus falling within the purview of an Article III court and mandating judgment by a common-law jury as enumerated in the Bill of Rights.”). Plaintiffs do not name any judge or employee of the 19th JDC, which is a Louisiana state court, as a defendant in this case, nor would such claims likely be viable. Any claim against Judge William Jorden, who presided over the Louisiana state court proceedings, would be barred by absolute immunity, and the 19th JDC is not a “person” capable of being sued for constitutional violations under § 1983. *See Stump v. Sparkman*, 435 U.S. 349, 359 (1978) (“A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors.”); *Wilkerson v. 17th Judicial Dist. Court, Parish of LaFourche*, No. 08-1196, 2009 WL 249737, at **3-4 (E.D. La. Jan. 30, 2009) (state court is not a “person” subject to suit under § 1983).

²³ See *Williamson as Next Friend of J.S.W. v. Presbyterian Christian School Inc.*, No. 18-15, 2018 WL 10419234, at *3 (S.D. Miss. Oct. 2, 2018), citing *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89 (1998); *Lavergne v. Sanford*, 570 Fed.Appx. 385, 386 (5th Cir. 2014) (finding no federal jurisdiction under § 1983 for claims against non-state actors for constitutional violations); *Drake v. St. Paul Travelers Ins. Co.*, 353 Fed.Appx. 901, 905 (5th Cir. 2009) (determining § 1983 was inapplicable to defendant who was not a state actor, such that the court lacked subject-matter jurisdiction over the claim against him); *Mitchell v. Clinkscales*, 253 Fed.Appx. 339, 340 (5th Cir. 2007) (holding that a plaintiff’s claim under 42 U.S.C. § 1983 was insufficient to establish subject-matter jurisdiction based on the existence of a federal question when the plaintiff did not allege facts demonstrating that the defendant acted under color of state law, such that dismissal under Rule 12(h)(3) was required).

his constitutional rights and (2) acted under color of state law.²⁴ No defendant in this case is alleged to be a state actor.²⁵

As to diversity jurisdiction under 28 U.S.C. § 1332, which requires a claim between parties of diverse citizenship that exceeds the required jurisdictional amount of \$75,000, exclusive of interest and costs,²⁶ the June 21 Order told Borne that he had not adequately alleged the citizenship of any party, which is required to proceed with subject matter jurisdiction under that provision. Plaintiffs have not cured that failure.

B. Further Leave to Amend Is Not Warranted

“[D]istrict courts often afford plaintiffs at least one opportunity to cure pleading deficiencies before dismissing a case, unless it is clear that the defects are incurable or the plaintiffs advise the court that they are unwilling or unable to amend in a manner that will avoid dismissal.”²⁷

The June 21 Order provided specific details as to why what Borne originally alleged was

²⁴ *Williamson as Next Friend of J.S.W.*, 2018 WL 10419234, at *3 (remanding a case removed on the basis of § 1983 for lack of jurisdiction because, while the plaintiff asserted a violation of due process rights pursuant to the Fourteenth Amendment to the United States Constitution, the plaintiff’s pleadings did not contain an allegation that [the defendant] was a state actor).

²⁵ Although Plaintiffs claim this Court is denying their constitutional right to a jury trial under the Seventh Amendment, that would not be a basis for subject matter jurisdiction in this case, which must exist when the suit is filed. *Hensgens v. Deere & Co.*, 833 F.2d 1179, 1180 (5th Cir. 1987) (citation omitted). Additionally, this Court has not only the authority, but the obligation, to ensure a basis for the exercise of subject matter jurisdiction before ever reaching the issue of whether the claims must be tried by a jury. *See Rosemount Sand & Gravel Co. v. Lambert Sand & Gravel Co.*, 469 F.2d 416, 418 (5th Cir. 1972) (finding no denial of the plaintiff’s Seventh Amendment right to a jury trial in the trial court’s decision that it lacked subject matter jurisdiction over the case as “questions of jurisdiction are properly within the ambit of the court’s authority”) (citations omitted).

²⁶ In addition to Home Bank, Defendant Newman, Mathis, Brady & Spedale, LLC, a law firm, is alleged to have represented Home Bank in Louisiana state court proceedings, and all the individual defendants are affiliated with Home Bank, either as a corporate officer or as counsel. *See* R. Doc. 1, p. 9. Plaintiffs’ claims really seem to arise out of complaints about the handling of a foreclosure proceeding in Louisiana state court. R. Doc. 1-1, pp. 5-20. In seeking return of property that was seized and sold at sheriff’s sale, Plaintiffs also seek to collaterally attack a state court judgment, which is impermissible in this Court under the *Rooker/Feldman* doctrine. *See United States v. Shepherd*, 23 F.3d 923, 924-25 (5th Cir. 1994) (finding that “if a district court is confronted with issues that are ‘inextricably intertwined’ with a state judgment, the court is ‘in essence being called upon to review the state-court decision’” which is not permitted). Plaintiffs have recourse to challenge state court judgments within the state court system.

²⁷ *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 513 (2006).

²⁷ *See Eason v. Thaler*, 14 F.3d 8 (5th Cir. 1994). *See also, e.g., In re Am. Airlines, Inc., Privacy Litig.*, 370 F. Supp. 2d 552, 567-68 (N.D. Tex. 2005).

insufficient (and what needed to be alleged) to establish subject matter jurisdiction. Rather than comply with that Order, Plaintiffs elected to, instead, argue that compliance was not necessary. Under these circumstances, further leave to amend is not warranted.

Accordingly,

IT IS RECOMMENDED that the Motion to Dismiss for Lack of Jurisdiction over the Subject Matter,²⁸ filed by Home Bank, N.A.; Stephen Damore; Newman, Mathis, Brady & Spedale, PLC; Clay LeGros; Jeffery Toepfer, and Mayne Maiorana, be **GRANTED** and this case be **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

Because of the recommendation of dismissal of the case and because the relief sought is premature, **IT IS ORDERED** that the “Second Demand to Set Trial Date with Attached Order” and the “Demand for Judgment at Common-Law,” filed by Plaintiffs Jason Borne and Scott Bernard, are **DENIED** without prejudice to reurging if the recommendation for dismissal of the case is rejected.

IT IS FURTHER ORDERED that the Clerk of Court shall provide this Magistrate Judge’s Report, Recommendation, and Order to Plaintiffs Jason Borne (13576 Lakeway Drive, Prairieville, LA 70769) and Scott Bernard (1113 Range Ave., #110-109, Denham Springs, LA 70726) by regular and certified mail, return receipt requested.

Signed in Baton Rouge, Louisiana, on December 27, 2024.


ERIN WILDER-DOOMES
UNITED STATES MAGISTRATE JUDGE

²⁸ R. Doc. 19.