



Unlawful Detainer in Federal Court? It's Not as Far Fetched as You Think.

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In the wake of the Supreme Court of Virginia's decision in *Parrish v. Fed. Nat'l Mortg. Ass'n*, 292 Va. 44, 787 S.E.2d 116 (2016), foreclosure purchasers have faced increasing difficulty evicting borrowers who remain in the house. Post-sale evictions in Virginia are accomplished by a statutory action called unlawful detainer. An unlawful detainer may be filed in a Virginia general district court, which is a court of limited jurisdiction where the eviction process is relatively quick and inexpensive^[1]

In *Parrish*, however, the Supreme Court of Virginia ruled that because a general district court lacks jurisdiction to decide the validity of a foreclosure purchaser's *title* (as opposed to its right of *possession*), that means the court loses jurisdiction over an unlawful detainer when a defendant raises a "bona fide" challenge to the foreclosure purchaser's title. For the *Parrish* majority, this poses no problem because the foreclosure purchaser remains free to "seek appropriate remedies in the circuit court under its original jurisdiction."^[2] The problem, of course, is that prosecuting an unlawful detainer in a Virginia circuit court can easily take more than one year (file to trial), depending on the court. The process also involves more expense given the opportunity for full discovery and motions practice that is afforded in a Virginia circuit court as opposed to a general district court.

For out-of-state foreclosure purchasers confronted with a holdover borrower who has asserted a title defense, one solution may be to file an unlawful detainer in a federal district court under its diversity jurisdiction.^[3] Federal district courts sitting in Virginia, particularly the U.S. District Court for the Eastern District of Virginia, a/k/a the "rocket docket", operate at a quicker pace than Virginia circuit courts. While federal court litigation also entails full discovery and motions practice, pre-trial summary judgment is more readily available. On the right facts, an out-of-state foreclosure purchaser can realistically expect summary judgment within six months of filing its complaint in federal court. Once summary judgment has been granted, the federal court, just like a Virginia circuit court, can order the clerk to issue a writ of possession to be executed by a U.S. Marshal as opposed to a Virginia circuit court sheriff's deputy^[4]

^[1] Va. Code § 16.1-77(3).

^[2] *Parrish*, 292 Va. at 53, 787 S.E.2d at 122.

[3] 28 U.S.C. § 1332(a) (providing for the federal district's original jurisdiction where the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the parties are citizens of different states).

[4] See Fed. R. Civ. P. 64(a) (“throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment”); Fed. R. Civ. P. 70 (“On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance”).

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