No. 08-60887

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NATIONSTAR MORTGAGE, LLC,
Plaintiff-Appellant,
v.

WILLIE E. KNOX and LINDA M. KNOX,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Mississippi

BRIEF FOR APPELLEES
WILLIE E. KNOX and LINDA M. KNOX

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CERTIFICATE OF INTERESTED PARTIES

08-60887, Nationstar Mortgage, LLC v. Willie E. Knox and Linda M. Knox

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Defendants/Appellees Willie E. Knox and Linda M. Knox

Plaintiff/Appellant Nationstar Mortgage, LLC, an affiliate of Fortress Investment Group LLC

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December 22, 2008

STATEMENT REGARDING ORAL ARGUMENT

The Knoxes agree with Nationstar that oral arguments would assist the Court in resolving this appeal. This Court has no precedential decision on the Anti-Injunction Act's effect on lawsuits brought under section 4 of the Federal Arbitration Act, although opinions from other circuits have refused to stay state court proceedings. *See Zurich Am. Ins. Co. v. Superior Court for the State of Cal.*, 326 F.3d 816, 819 (7th Cir. 2003) ("hold[ing] that the preliminary injunction violates the Anti-Injunction Act" in a case in which the federal district court enjoined state court proceedings as part of a section 4 lawsuit); *Transouth Fin. Corp. v. Bell*, 149 F.3d 1292, 1298 (11th Cir. 1998) ("[W]e hold that no exception to the Anti-Injunction Act is applicable to this case and affirm the district court's denial of [plaintiff's] motion for a stay of the parallel state court proceedings in this case."); *Ultracashmere House, Ltd. v. Meyer*, 664 F.2d 1176, 1181 (11th Cir. 1981) ("Neither the policies embodied in the Arbitration Act nor the equitable principles underlying the anti-injunction statute and its exceptions supported issuance of a stay against the state court action in this case."), *overruling on other grounds recognized by Baltin v. Alaron Trading Corp.*, 128 F.3d 1466, 1469 n.8 (11th Cir. 1997). Moreover, oral arguments will permit the parties to assist the Court in its de novo review of subject matter jurisdiction, which is lacking based on this Circuit's case law concerning collateral attacks on remand orders. *See New*

Orleans Pub. Serv., Inc. v. Majoue, 802 F.2d 166, 167-68 (5th Cir. 1986) (per curiam).

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PARTIES i

STATEMENT REGARDING ORAL ARGUMENT ii

TABLE OF CONTENTS..iv

TABLE OF AUTHORITIES vi

STATEMENT OF JURISDICTION...1

STATEMENT OF THE ISSUES..2

STATEMENT OF THE CASE...3

STATEMENT OF THE FACTS 7

SUMMARY OF THE ARGUMENT 8

ARGUMENT 10

STANDARD OF REVIEW 10

I. THE FEDERAL COURTS LACK SUBJECT MATTER JURISDICTION 10

A. Nationstar's Federal Court Lawsuit Is an Impermissible Collateral Attack on a Remand Order...11

B. Nationstar Failed To Establish the Amount in Controversy Exceeds $75,000 16

1. The State Court Complaint Expressly Limited "All Relief" 18

2. Nationstar Provided No Evidence that an Arbitrator Could Award Equitable or Declaratory Relief 19

3. Nationstar Presented Legally Flawed Evidence that the Loan Had a Value of More than $75,000...20

II. THE ANTI-INJUNCTION ACT PROHIBITED THE DISTRICT COURT FROM STAYING THE KNOXES' STATE COURT PROCEEDINGS 22

A. The Anti-Injunction Act Is a Foundational Principle of Federalism that Federal Courts Must Strictly Follow 23

B. The Anti-Injunction Act Prohibits a Federal Court from Enjoining State Court Proceedings in Favor of Arbitration 25

1. Injunctions of State Courts Are Not "Expressly Authorized" by the Federal Arbitration Act 28

2. A Stay of State Court Proceedings Is Not Necessary in Aid of the Federal Courts' Jurisdiction 33

C. The Anti-Injunction Act Prohibits All Relief Sought by Nationstar 38

1. The Anti-Injunction Act Prohibits Nationstar from Obtaining Its Desired Order Requiring the State Court Stay the Lawsuit and Requiring the Knoxes Dismiss the Lawsuit 39

2. The Anti-Injunction Act Prohibits Nationstar from Obtaining Its Desired Order with the Same Effect as an Injunction Staying the State Court Lawsuit 40

3. The Federal Arbitration Act Yields to Limits Placed on the Federal Courts by Other Legal Doctrines 42

CONCLUSION 45

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Cases

Amalgamated Clothing Workers of Am. v. Richmond Bros., 348 U.S. 511 (1955).25

America's Moneyline, Inc. v. Coleman, 360 F.3d 782 (7th Cir. 2004) 19

Am. Heritage Life Ins. Co v. Orr, 294 F.3d 702 (5th Cir. 2002) 29, 30

Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs, 398 U.S. 281 (1970)..35, 42

Bank One, N.A. v. Shumake, 281 F.3d 507 (5th Cir. 2002).........................31, 43, 44

Brown v. Pac. Life Ins. Co., 462 F.3d 384 (5th Cir. 2006).....................................27

Burr & Forman v. Blair, 470 F.3d 1019 (11th Cir. 2006)......................................34

Carney v. Resolution Trust Corp., 19 F.3d 950 (5th Cir. 1994) (per curiam).........41

In re Centex Home Equity Co., No. 04-04-585-CV, 2004 WL 2945702 (Tex. App. Dec. 22, 2004)...20

Chick Kam Choo v. Exxon Corp., 486 U.S. 140 (1988) 22

De Aguilar v. Boeing Co., 47 F.3d 1404 (5th Cir. 1995)...18

Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213 (1985)................................44, 45

Equitable Trust Co. v. Commodity Futures Trading Comm'n, 669 F.2d 269 (5th Cir. 1982) 15

Galey v. World Mktg. Alliance, 510 F.3d 529 (5th Cir. 2007) 12

Grace Brethren Church v. California, 457 U.S. 393 (1982)..................................41

Great Earth Cos. v. Simons, 288 F.3d 878 (6th Cir. 2002) 26

Hartford Ins. Group v. Lou-Con, Inc., 293 F.3d 908 (5th Cir. 2002) (per curiam) 16, 17, 20, 21

J.P. Morgan Chase Bank v. Lott, No. 06-102, 2007 WL 30271 (S.D. Miss. Jan. 3, 2007) 26

Lister v. Comm'rs Court, 566 F.2d 490 (5th Cir. 1978) 17

Mitchum v. Foster, 407 U.S. 225 (1972) 28, 29, 30, 31

Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1 (1983) 10, 25, 31, 34, 44

Munich Am. Reinsurance Co. v. Crawford, 141 F.3d 585 (5th Cir. 1998) 43

New Orleans & Gulf Coast Ry. Co. v. Barrois, 533 F.3d 321 (5th Cir. 2008) 10

New Orleans Pub. Serv., Inc. v. Majoue, 802 F.2d 166 (5th Cir. 1986) (per curiam) .... iii, 13, 14, 15, 16

Newby v. Enron Corp., 338 F.3d 467 (5th Cir. 2003) 30, 34

Nguyen v. Dist. Dir., Bureau of Immigration & Customs Enforcement, 400 F.3d 255 (5th Cir. 2005) (per curiam) 10

Okla. Packing Co. v. Okla. Gas & Elec. Co., 309 U.S. 4 (1940) 39

Parry v. Bache, 125 F.2d 493 (5th Cir. 1942) 12

Phillips v. Chas. Schreiner Bank, 894 F.2d 127 (5th Cir. 1990) 35, 36, 40

Prudential-Bache Sec., Inc. v. Fitch, 966 F.2d 981 (5th Cir. 1992) 10

Roodveldt v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 585 F. Supp. 770 (E.D. Pa. 1984) 27

Royal Ins. Co. of Am. v. Quinn-L Capital Corp., 960 F.2d 1286 (5th Cir. 1992) 34, 35

S.W.S. Erectors, Inc. v. Infax, Inc., 72 F.3d 489 (5th Cir. 1996) 15

Sarnoff v. Am. Home Prods. Corp., 798 F.2d 1075 (7th Cir. 1986) 21

Sphere Drake Ins. PLC v. Marine Towing, Inc., 16 F.3d 666 (5th Cir. 1994)........16

Swofford v. Shearson Lehman/Am. Express, 604 F. Supp. 1128 (E.D. Ark. 1985)........26

Texas v. United States, 837 F.2d 184 (5th Cir. 1988)........33

Tex. Employers Ins. Ass'n v. Jackson, 862 F.2d 491 (5th Cir. 1988) (en banc)........*passim*

Total Plan Servs. v. Tex. Retailers Assoc., 925 F.2d 142 (5th Cir. 1991)........24, 30

Transouth Fin. Corp. v. Bell, 149 F.3d 1292 (11th Cir. 1998)........ii, 25

Ultracashmere House, Ltd. v. Meyer, 664 F.2d 1176 (11th Cir. 1981)........ii, 25

United Serv. Prot. Corp. v. Lowe, 354 F. Supp. 2d 651 (S.D. W. Va. 2005)........26

United States v. Herrera-Ochoa, 245 F.3d 495 (5th Cir. 2001)........13

Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623 (1977)........33

Vines v. Univ. of La. at Monroe, 398 F.3d 700 (5th Cir. 2005)........10

Webb v. Investacorp, Inc., 89 F.3d 252 (5th Cir. 1996) (per curiam)........17, 19

Wilson v. Huffman (*In re Missionary Baptist Found. of Am., Inc.*), 712 F.2d 206 (5th Cir. 1983)........13

Zurich Am. Ins. Co. v. Superior Court for the State of Cal., 326 F.3d 816 (7th Cir. 2003)........ii, 25, 35, 36, 37

Statues

9 U.S.C. §§ 1-16........8

9 U.S.C. § 3........12, 16

9 U.S.C. § 4........*passim*

15 U.S.C. § 1012(b) 42

28 U.S.C. § 1332 .... *passim*

28 U.S.C. § 1447(d) 14

28 U.S.C. § 1651 30

28 U.S.C. § 2283 .... *passim*

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STATEMENT OF JURISDICTION

As discussed in Section I under the Argument heading, *infra*, both this Court and the district court lack subject matter jurisdiction over this case. Accordingly, this Court should vacate the district court's decision and remand with instructions to dismiss the case for a lack of jurisdiction.

STATEMENT OF THE ISSUES

1) Whether the federal courts lack diversity jurisdiction because a federal district court previously rejected the plaintiff's asserted basis for jurisdiction in a remand decision and because the plaintiff has not proved the amount in controversy exceeds $75,000?

2) Whether a stay of state court proceedings is justified by the "expressly authorized" or "in aid of its jurisdiction" exceptions to the Anti-Injunction Act, 28 U.S.C. § 2283, in a federal court lawsuit brought to compel arbitration?

3) Whether the district court properly dismissed the case to which no Anti-Injunction Act exception applies because all of the plaintiff's requested relief either would expressly stay state court proceedings or would have such an effect?

STATEMENT OF THE CASE

Willie and Linda Knox ("the Knoxes") filed suit against Nationstar Mortgage, LLC ("Nationstar") in the Chancery Court of Grenada County, Mississippi on February 1, 2007. R. 11-23; R.E. 6. That suit ("the state court lawsuit"), filed in response to the pending foreclosure of the Knoxes' house, raised various state statutory and common law claims based on Nationstar's origination and servicing of a loan secured by the Knoxes' house. R. 14-23; R.E. 6. The state court lawsuit specified that "[a]ll relief sought . . . in this complaint are not to exceed $70,000.00" and that the Knoxes would neither amend it to request more nor accept a judgment for a greater amount. R. 23; R.E. 6.

Nationstar removed the state court lawsuit to the United States District Court for the Northern District of Mississippi on March 1, 2007. R. 266; R.E. A. As its grounds for removal, Nationstar asserted that 28 U.S.C. § 1332 provided the district court with diversity jurisdiction. R. 266; R.E. A. The Knoxes moved to remand the state court lawsuit on April 2, 2007 because the amount in controversy was less than $75,000, which deprived the district court of diversity jurisdiction. R. 266; R.E. A. The removed state court lawsuit, Northern District of Mississippi Case Number 07-cv-29, was originally assigned to Judge Mills and was reassigned to Judge Aycock on October 29, 2007.

Meanwhile, on March 7, 2007, Nationstar filed a separate lawsuit against the Knoxes in the United States District Court for the Northern District of Mississippi. This suit ("the federal court lawsuit") sought to compel arbitration pursuant to section 4 of the Federal Arbitration Act, 9 U.S.C. § 4. R. 5-10; R.E. 5. The complaint asserted that 28 U.S.C. § 1332 provided the district court with diversity jurisdiction. R. 5; R.E. 5. On April 13, 2007, the Knoxes moved to consolidate the federal court lawsuit with the removed state court lawsuit and to dismiss the federal court lawsuit. R. 34-38. The Knoxes argued for dismissal because the amount in controversy was less than $75,000, which deprived the district court of diversity jurisdiction, and because of the Anti-Injunction Act. R. 64-74; R.E. 7. Nationstar opposed consolidation. R. 186-188. The federal court lawsuit, Northern District of Mississippi Case Number 07-cv-32, was assigned to Judge Mills and never reassigned.

On June 24, 2008, Judge Aycock granted the Knoxes' motion to remand the state court lawsuit. R. 270; R.E. A. Judge Aycock held that the Knoxes' complaint "on its face, is clear" in seeking less than $75,000 in relief because of its ad damnum clause. R. 268; R.E. A. Judge Aycock also held that the Knoxes were precluded from increasing their demand at a later point. R. 269; R.E. A. Accordingly, Judge Aycock held that the Knoxes "are legally bound to accept less than the federal jurisdictional amount" and that "the actual amount in controversy

does not invoke diversity jurisdiction." R. 269; R.E. A (internal quotation marks omitted). On August 26, 2008, the Knoxes provided Judge Aycock's written opinion to Judge Mills and argued it served as an additional reason to rule against Nationstar in the federal court lawsuit. R. 263-264.

On September 19, 2008, Judge Mills dismissed the federal court lawsuit without prejudice. R. 290; R.E. 2. Judge Mills recognized that Judge Aycock had held diversity jurisdiction was not present over the mortgage dispute between Nationstar and the Knoxes. R. 292; R.E. 3. He nevertheless determined diversity jurisdiction was present for the federal court lawsuit by adding the Knoxes' damage demand in the state court lawsuit and the value of the mortgage itself. R. 292-293; R.E. 3. In so doing, Judge Mills found that the value of the mortgage was at least $5,000, but he did not resolve the dispute between Nationstar's claim that its value exceeded $107,000 and the Knoxes' claim that it was only $44,739.26. R. 293; R.E. 3.

The district court, however, did agree with the Knoxes that "principles of equity, comity and federalism" codified by the Anti-Injunction Act prevented it from staying proceedings in the state court lawsuit. R. 294; R.E. 3. It recognized that Fifth Circuit precedent establishes that the Anti-Injunction Act bars a federal court from ordering relief that "would have the same effect" as a prohibited injunction. R. 293; R.E. 3 (citing *Tex. Employers Ins. Ass'n v. Jackson*, 862 F.2d

491, 494 (5th Cir. 1988) (en banc)). Accordingly, the district court dismissed the federal court lawsuit because "[b]y ruling on Nationstar's motion to compel arbitration, this court would enjoin the state court from proceeding." R. 294; R.E 3.

STATEMENT OF THE FACTS

Nationstar's predecessor in interest, Centex Home Equity Corporation, originated an 11.4% interest rate loan to the Knoxes in September 2000. R. 117-119; R.E. 9. That loan, with an initial outstanding principal of $64,000, was secured by a deed of trust on the Knoxes' home in Grenada, Mississippi. R. 120-126.

The Knoxes kept the loan current through the payment due on May 1, 2005. R. 103; R.E. 8. Based on their payments through that date, the Knoxes reduced the outstanding principal balance to $44,739.26. R. 103; R.E. 8. The loan then went into default. Nationstar, through the substitute trustee for the deed of trust, commenced foreclosure against the Knoxes and set the foreclosure sale for February 6, 2007. R. 130-131. The Knoxes commenced the state court lawsuit on February 1, 2007 to defend against the pending foreclosure.

SUMMARY OF THE ARGUMENT

The district court lacked subject matter jurisdiction over this lawsuit because a federal district court judge had already issued a remand order determining that the amount in controversy between the Knoxes and Nationstar was less than the minimum required for diversity jurisdiction—the only asserted basis of jurisdiction in this case. This Court's precedents dictate that Nationstar's effort to obtain a second ruling on that jurisdictional question was an impermissible collateral attack on the remand order over which the federal courts lack subject matter jurisdiction. Moreover, even absent the prior jurisdictional determination, Nationstar did not meet its burden to demonstrate the case satisfied the amount-in-controversy threshold. Accordingly, this Court should vacate the district court's decision and remand the case to be dismissed for a lack of subject matter jurisdiction.

If diversity jurisdiction does exist, the district court's decision must be affirmed because the Anti-Injunction Act required the suit's dismissal. Contrary to Nationstar's argument, nothing in the Federal Arbitration Act, 9 U.S.C. §§ 1-16, affects the standard application of the Anti-Injunction Act. As a cornerstone of this country's system of judicial federalism, the Anti-Injunction Act prohibits federal courts from staying state court proceedings, with three exceptions that are narrowly interpreted. None of those exceptions apply in this case. First, the Federal Arbitration Act has not "expressly authorized" any injunctions to compel

arbitration—let alone injunctions directed at state courts. Second, a federal court cannot stay state court proceedings "in aid of its jurisdiction" based on an assumption that the state court, which has concurrent jurisdiction to rule on compelling arbitration, will come to a different result than the federal court. Finally, Nationstar correctly concedes the "relitigation" exception does not apply. Because none of the exceptions apply and because Nationstar's federal court lawsuit sought only relief that either expressly stays the Knoxes' state court proceedings or would have that effect, the district court correctly determined the Anti-Injunction Act required it to dismiss the case.

ARGUMENT

STANDARD OF REVIEW

This Court reviews de novo a district court's determination that it had subject matter jurisdiction. *New Orleans & Gulf Coast Ry. Co. v. Barrois*, 533 F.3d 321, 327 (5th Cir. 2008). Arguments disputing the federal courts' subject matter jurisdiction can be raised for the first time on appeal. *Nguyen v. Dist. Dir., Bureau of Immigration & Customs Enforcement*, 400 F.3d 255, 260 (5th Cir. 2005) (per curiam).

A district court's denial of an injunction against state court proceedings is reviewed for an abuse of discretion, although any interpretation of the Anti-Injunction Act made as part of the decision is reviewed de novo. *See Vines v. Univ. of La. at Monroe*, 398 F.3d 700, 704 (5th Cir. 2005).

I. THE FEDERAL COURTS LACK SUBJECT MATTER JURISDICTION.

The Federal Arbitration Act itself does not create federal subject matter jurisdiction. *See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 n.32 (1983) ("The Arbitration Act is something of an anomaly in the field of federal-court jurisdiction. It creates a body of federal substantive law establishing and regulating the duty to honor an agreement to arbitrate, yet it does not create any independent federal-question jurisdiction under 28 U.S.C. § 1331 or otherwise." (citation omitted)); *Prudential-Bache Sec., Inc. v. Fitch*, 966 F.2d 981,

987 (5th Cir. 1992) ("*Moses Cone* establishes definitively that the [Federal Arbitration Act] does not provide an independent basis for federal jurisdiction."). Instead, section 4 of the Federal Arbitration Act, the basis for this lawsuit, provides that the federal courts' jurisdiction to compel arbitration is dependent upon whether they "would have jurisdiction under Title 28, in a civil action . . . of the subject matter of a suit arising out of the controversy between the parties." 9 U.S.C. § 4.

In the case at hand, no such basis of jurisdiction exists. Nationstar claims only diversity jurisdiction under 28 U.S.C. § 1332 covers this case. Appellant's Br. 1. But Nationstar's assertion of diversity jurisdiction constitutes an impermissible collateral attack on a prior determination by a Mississippi federal district court that the parties' dispute does not meet the amount-in-controversy requirement of § 1332. In addition to the prior district court ruling, Nationstar failed to meet its burden to prove that the amount of this controversy exceeds $75,000. Accordingly, neither this Court nor the district court has subject matter jurisdiction over Nationstar's complaint, and this Court must vacate the district court's opinion and remand the case for dismissal.

A. Nationstar's Federal Court Lawsuit Is an Impermissible Collateral Attack on a Remand Order.

The Federal Arbitration Act did not require Nationstar file a separate lawsuit to seek a federal court order compelling arbitration. When Nationstar removed the

Knoxes' state court lawsuit, 9 U.S.C. § 3 allowed it to file a motion to demand arbitration as part of the removed case.[1] Instead, it chose to file the instant, separate, lawsuit to compel arbitration pursuant to 9 U.S.C. § 4. In so choosing, Nationstar subjected itself to the risks of piecemeal litigation, including the possibility that subject matter jurisdiction would be lacking over its separate lawsuit based on this Circuit's case law concerning collateral attacks on remand orders. When Judge Aycock remanded the Knoxes' state court lawsuit, that possibility became a reality.

Nationstar asserted that federal subject matter jurisdiction existed over both lawsuits for precisely the same reason: more than $75,000 was at stake in the dispute concerning the Knoxes' mortgage. *Compare* R.5; R.E. 5, *with* R. 266; R.E. A. Moreover, Nationstar made the same argument in both cases that the ad damnum clause in the Knoxes' state court complaint did not keep the amount in

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[1] *See* 9 U.S.C. § 3 ("[T]he court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement . . . ."); *Parry v. Bache*, 125 F.2d 493, 495 (5th Cir. 1942) (holding 9 U.S.C. § 3 applies to removed actions); *see also Galey v. World Mktg. Alliance*, 510 F.3d 529, 530-31 (5th Cir. 2007) (describing a removed case that followed such procedure).

controversy below $75,000 because of the complaint's reference to other forms of relief including rescission and declaratory relief.[2]

In remanding the state court lawsuit on June 24, 2008, Judge Aycock rejected Nationstar's position and held that the dispute was worth less than $75,000. R. 266-270; R.E. A. At that time, Judge Mills had not yet determined whether he had jurisdiction over this case.

Accordingly, Nationstar's asserted ground for jurisdiction, diversity jurisdiction premised on a mortgage dispute worth more than $75,000, had already been rejected by the remand decision of a Mississippi federal district court when the district court determined on September 19, 2008 that it had jurisdiction over this case. As dictated by this Court's decision in *New Orleans Public Service, Inc. v. Majoue*, 802 F.2d 166 (5th Cir. 1986) (per curiam), Nationstar's continued reliance on the exact same facts and arguments to justify subject matter jurisdiction constitutes an impermissible collateral attack on Judge Aycock's remand order.

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[2] Compare Nationstar's Memorandum in Opposition to Motion to Dismiss and Consolidate in the federal court lawsuit, R. 178-180, with Nationstar's Memorandum in Opposition to Motion to Remand in the removed state court litigation, Northern District of Mississippi Case No. 07-cv-29, Doc. 13, at 6-12. The Knoxes request this Court take judicial notice of Nationstar's filing in the related lawsuit, which is available through PACER. *See Wilson v. Huffman* (*In re Missionary Baptist Found. of Am., Inc.*), 712 F.2d 206, 211 (5th Cir. 1983) ("A court may take judicial notice of the record in prior related proceedings, and draw reasonable inferences therefrom."); *United States v. Herrera-Ochoa*, 245 F.3d 495, 501 (5th Cir. 2001) ("An appellate court may take judicial notice of facts, even if such facts were not noticed by the trial court.").

See 28 U.S.C. § 1447(d) ("An order remanding a case to the State court from which it was removed is not reviewable on appeal *or otherwise* . . . ." (emphasis added)). Indeed, no subject matter jurisdiction exists over this lawsuit because of Judge Aycock's earlier decision.

In *Majoue*, the federal court plaintiff had removed a suit against it from state court, alleging federal question jurisdiction existed over a pension-related dispute. 802 F.2d at 167. The district court disagreed and remanded. *Id.* The plaintiff then advanced the same arguments for federal court jurisdiction in its separate lawsuit seeking declaratory relief concerning the pension dispute and an injunction against the state proceedings. *Id.* The federal district court adjudicated, but rejected, the merits of the plaintiff's jurisdictional argument. *Id.*

This Court, however, vacated the district court's jurisdictional decision and remanded "for an order dismissing the case for want of subject matter jurisdiction." *Id.* The Court held this resolution was necessary, regardless of the merits of the plaintiff's jurisdictional argument, because the continued federal court litigation was "an attempt to seek collateral review of the district court's original order remanding the case to state court." *Id.* But such collateral review is prohibited by "the plain language and meaning of 28 U.S.C. § 1447(d), which provides that a remand order 'is not reviewable on appeal or *otherwise*.'" *Id.* at 168. This provision not only prohibits the Court of Appeals from reviewing remand

decisions, but it also divests the district courts of jurisdiction. *See id*. at 167. The Court concluded that "[a]ny other result would elevate form over substance," which would be impermissible in light of the fact that "[s]ection 1447(d) is not merely a formal rule, but was enacted by Congress to avoid interruption of the litigation of the merits of a removed cause by prolonged litigation of questions of jurisdiction of the district court to which the cause is removed." *Id*. at 168 (internal quotation marks omitted) (quoting *United States v. Rice*, 327 U.S. 742, 751 (1946)); *cf. S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996) (noting that a defendant is prohibited from removing a case multiple times "on the same ground"); *Equitable Trust Co. v. Commodity Futures Trading Comm'n*, 669 F.2d 269, 272 (5th Cir. 1982) ("[A] dismissal for lack of subject-matter jurisdiction, while not binding as to all matters which could have been raised, is, however, conclusive as to matters actually adjudged." (internal quotation marks omitted) (quoting *Acree v. Airline Pilots Assoc.*, 390 F.2d 199, 203 (5th Cir. 1968))).

This case presents the same attempt as in *Majoue* to use the identical argument already rejected as part of a remand decision as the basis for jurisdiction in a separate federal court lawsuit. No factual developments have affected Judge Aycock's previous determination that jurisdiction did not exist. *See S.W.S. Erectors*, 72 F.3d at 494 (allowing a second removal premised on "newly acquired

facts" from a deposition conducted during the course of the litigation); *Sphere Drake Ins. PLC v. Marine Towing, Inc.*, 16 F.3d 666, 669 (5th Cir. 1994) (distinguishing *Majoue* when the remand order was based on a failure to obtain the consent of codefendants, which did not apply to the separate federal court lawsuit). This case also shares with *Majoue* the possibility that adjudication of the federal court lawsuit will affect proceedings in the state court litigation even after the remanding federal district court held it had no jurisdiction to do so. Accordingly, Nationstar's federal court lawsuit must be "remand[ed] for an order dismissing the case for want of subject matter jurisdiction." *Majoue*, 802 F.2d at 167.[3]

B. Nationstar Failed To Establish the Amount in Controversy Exceeds $75,000.

Nationstar failed to meet its burden to prove the federal courts' subject matter jurisdiction over this lawsuit even absent the earlier remand order holding the controversy between the Knoxes and Nationstar fails to meet the amount-in-controversy threshold. As the party invoking diversity jurisdiction, Nationstar "bears the burden of establishing the amount in controversy by a preponderance of the evidence." *Hartford Ins. Group v. Lou-Con, Inc.*, 293 F.3d 908, 910 (5th Cir.

[3] This outcome matches the result Nationstar would have obtained had it sought to compel arbitration directly as part of the removed state court lawsuit pursuant to 9 U.S.C. § 3. *See supra* pp. 11-12. In that situation, Judge Aycock's jurisdictional ruling would have prevented her from reaching the request to compel arbitration. Creating identical outcomes whether a motion is filed pursuant to 9 U.S.C § 3 or 9 U.S.C. § 4 would lessen the potential for judge shopping or attempts to get two bites at the apple.

2002) (per curiam). Moreover, Nationstar was required to "support the allegation by competent proof" when the Knoxes challenged in the district court Nationstar's assertion that the case satisfied the $75,000 jurisdictional threshold. *Lister v. Comm'rs Court*, 566 F.2d 490, 492 (5th Cir. 1978).

As noted above, diversity jurisdiction is the only asserted ground of subject matter jurisdiction. Accordingly, Nationstar had to prove that "the matter in controversy exceeds the sum or value of $75,000." 28 U.S.C. § 1332(a). The value "must be judged as of the time the complaint is filed." *Hartford Ins.*, 293 F.3d at 910 (quoting *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1252 (5th Cir. 1998)). In a suit to compel arbitration under 9 U.S.C. § 4, the amount in controversy depends on the value of the "potential award in the underlying arbitration proceeding." *Webb v. Investacorp, Inc.*, 89 F.3d 252, 256 (5th Cir. 1996) (per curiam).

Nationstar failed to prove this case satisfies the jurisdictional threshold because: 1) it relied on the demands made in the Knoxes' state court complaint that explicitly limited the value of "all relief" to $70,000; 2) it relied on forms of relief for which it provided no proof that an arbitrator could award; and 3) it relied on legally flawed evidence that the mortgage had a value of more than $75,000. Accordingly, the federal courts lack subject matter jurisdiction.

1. The State Court Complaint Expressly Limited "All Relief."

The Knoxes' state court complaint concerning their home loan explicitly provided that "[a]ll relief sought . . . in this complaint" was limited to $70,000. R. 23; R.E. 6. Moreover, that provision stipulated that the Knoxes would neither accept a judgment for more than $70,000 nor amend the complaint to demand a greater amount. R. 23; R.E. 6.

This Court has held that including a stipulation with a complaint that binds the plaintiff to recovering no more than $75,000 will prevent a finding of diversity jurisdiction. *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1412 (5th Cir. 1995). Such a stipulation creates a "legal certainty" that the value of the controversy raised by the complaint will not exceed the jurisdictional threshold. *Id.* Therefore, as Judge Aycock already held, the Knoxes' state court complaint precludes a finding of diversity jurisdiction according to *De Aguilar*. *See* R. 269; R.E. A ("The Plaintiffs are 'legally bound to accept less' than the federal jurisdictional amount.").

Judge Mills agreed with Judge Aycock that the stipulation in the Knoxes' complaint "precludes an award of more than $70,000." R. 292; R.E. 3. Judge Mills nevertheless held the jurisdictional threshold was satisfied because he read the complaint to leave open the possibility of obtaining both $70,000 in monetary relief and additional non-monetary relief valued at more than $5,000. R. 292; R.E. 3. But the complaint prevents such an interpretation by expressly limiting the

value of "[*a*]*ll* relief" to $70,000. R. 23; R.E. 6 (emphasis added). This language limits the total value of both monetary and non-monetary relief to $70,000. Accordingly, the state court lawsuit did not create a controversy involving more than $75,000.

2. Nationstar Provided No Evidence that an Arbitrator Could Award Equitable or Declaratory Relief.

The district court relied on the possibility of obtaining non-monetary relief worth more than $5,000 to determine diversity jurisdiction exists over this lawsuit. R. 292-293; R.E. 3. But the amount in controversy for a lawsuit seeking to compel arbitration under 9 U.S.C. § 4 is the value of the "potential award in the underlying *arbitration proceeding*." *Webb*, 89 F.3d at 256 (emphasis added); *see also America's Moneyline, Inc. v. Coleman*, 360 F.3d 782, 786-87 (7th Cir. 2004) (stressing that the amount in controversy in a lawsuit seeking to compel arbitration is "the stakes of the arbitration"). Accordingly, only relief requested by the state court complaint that an arbitrator could award is relevant to the jurisdictional determination. Nationstar offered no proof about the relief an arbitrator could award to the Knoxes, and instead it wrongly rests upon the "claims asserted" in the underlying state court lawsuit. Appellant's Br. 1 & n.1.

Not only did Nationstar fail to provide evidence on the relief an arbitrator could award, but the arbitration agreement placed into the record by Nationstar also casts grave doubts on whether the Knoxes could receive non-monetary relief.

"Nothing" in the agreement gives an arbitrator "any authority, power or right to alter, change, amend, modify, add to or subtract from the provisions of the Credit Transaction." R. 129; R.E. 11. Such a restriction appears to eliminate an arbitrator's ability to order rescission of the mortgage, cancel it, or order any other kind of equitable relief affecting its terms. The agreement also expressly excludes from its coverage "any action to effect a foreclosure," seemingly rendering the Knoxes' request for a foreclosure injunction beyond an arbitrator's power. R. 129; R.E. 11; *cf. In re Centex Home Equity Co.*, No. 04-04-585-CV, 2004 WL 2945702, at *4 (Tex. App. Dec. 22, 2004) (finding a homeowner's claims seeking to prevent a foreclosure were outside the scope of the arbitration agreement at issue in this case).

The district court, therefore, could not rely on non-monetary relief as a basis of jurisdiction. *See Hartford Ins.*, 293 F.3d at 910 ("[T]he party invoking federal diversity jurisdiction . . . bears the burden of establishing the amount in controversy by a preponderance of the evidence.").

3. Nationstar Presented Legally Flawed Evidence that the Loan Had a Value of More than $75,000.

Nationstar's claim in the district court that the value of this loan was more than $107,000 is legally flawed, and it cannot support a determination that this case meets the jurisdictional threshold. Nationstar attempted to prove the $107,000 value through the sum of scheduled payments required as of September 20, 2000,

the loan's origination date. R. 127; R.E. 10.[4] But only values "as of the time the complaint is filed" are relevant for jurisdictional determinations. *Hartford Ins.*, 293 F.3d at 910 (quoting *St. Paul Reinsurance*, 134 F.3d at 1252). Nationstar's dated calculation of the Knoxes' payment obligation failed to meet that standard because they had made nearly five years of payments at the time Nationstar filed this lawsuit. *See* R. 103; R.E. 8 (disclosing the mortgage was current through the payment due on May 1, 2005). Indeed, the Knoxes had reduced the principal balance on the original $64,000 loan to less than $45,000. R. 103; R.E. 8. Because Nationstar produced no evidence about the current value of the loan, its value does not support diversity jurisdiction. *See Hartford Ins.*, 293 F.3d at 910 ("[T]he party invoking federal diversity jurisdiction . . . bears the burden of establishing the amount in controversy by a preponderance of the evidence.").[5]

Whether or not this Court determines that the district court lacked jurisdiction over a suit seeking a second opinion on the jurisdiction determinations that Judge Aycock made in remanding the state court lawsuit, Nationstar failed to

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[4] The district court did not endorse Nationstar's claim about the value. R. 293; R.E. 3.

[5] Moreover, any reliance on the loan's future payments would have to depend on their present value rather than their nominal amount. *See Sarnoff v. Am. Home Prods. Corp.*, 798 F.2d 1075, 1078 (7th Cir. 1986) (Posner, J.) ("When what is claimed is a future benefit, the valuation of the claim for purposes of jurisdiction . . . requires discounting the future benefit to its present value."), *superseded on other grounds as recognized in Hart v. Schering-Plough Corp.*, 253 F.3d 272, 274 (7th Cir. 2001).

satisfy its burden to prove the amount in controversy in this lawsuit meets the threshold for diversity jurisdiction. This Court should vacate the district court's decision and remand it to be dismissed for a lack of subject matter jurisdiction.

II. THE ANTI-INJUNCTION ACT PROHIBITED THE DISTRICT COURT FROM STAYING THE KNOXES' STATE COURT PROCEEDINGS.

If this Court determines that the district court had subject matter jurisdiction, it should affirm the district court's dismissal of the case based on the Anti-Injunction Act. Nationstar's contrary arguments wrongly treat the Federal Arbitration Act as trumping the Anti-Injunction Act. Although the Federal Arbitration Act expresses a strong preference for enforcing arbitration, it nevertheless must coexist with the Founders' principles of judicial federalism codified in the Anti-Injunction Act. *See Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988) ("The [Anti-Injunction] Act, which has existed in some form since 1793, is a necessary concomitant of the Framers' decision to authorize, and Congress' decision to implement, a dual system of federal and state courts. It represents Congress' considered judgment as to how to balance the tensions inherent in such a system." (citation omitted)).

The Anti-Injunction Act generally prohibits federal courts from interfering with the operation of state courts. Any federal court intervention in the Knoxes' state court proceedings would not come within the exceptions to the Anti-

Injunction Act, which the federal courts must narrowly interpret in light of the foundational importance of its prohibition. The district court properly dismissed Nationstar's lawsuit to which no exception applies because it requests the federal courts interfere with Mississippi's state courts both through an explicit demand for a stay of the Knoxes' remanded state court lawsuit and through the effect of the other relief it seeks.

A. The Anti-Injunction Act Is a Foundational Principle of Federalism that Federal Courts Must Strictly Follow.

The Anti-Injunction Act mandates that "[a] court of the United States may not grant an injunction to stay proceedings in a State court," unless it meets one of three exceptions. 28 U.S.C. § 2283. This Court, following the lead of the Supreme Court, has clearly explained that the Anti-Injunction Act serves a fundamental role in maintaining judicial federalism. In its most extensive examination of the Anti-Injunction Act, this Court, sitting en banc, stressed the Anti-Injunction Act's importance to the Constitution's structure: "[I]ts prohibitions are due in no small part to the fundamental constitutional independence of the States. . . . [T]he hands-off doctrine expressed in Section 2283 is to be considered in the light of the function of Section 2283 as a pillar of federalism." *Tex. Employers' Ins. Assoc. v. Jackson*, 862 F.2d 491, 497-98 (5th Cir. 1988) (en banc) (internal quotation marks omitted) (quoting *Chick Kam Choo*, 486 U.S. at 146; *T. Smith & Son., Inc. v. Williams*, 275 F.2d 397, 407 (5th Cir. 1960)). The Anti-Injunction Act applies

with its full force in cases involving federally created rights, as it requires federal courts respect state courts by assuming they will adequately protect federal rights. *Id*. at 498.

Accordingly, the Anti-Injunction Act must be interpreted so that "any doubts" about its scope are "resolved in favor of allowing the state court action to proceed. . . . The explicit wording of § 2283 itself implies as much, and the fundamental principle of a dual system of courts leads inevitably to that conclusion." *Id*. at 499 (internal quotation marks omitted) (quoting *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 297 (1970)). The Anti-Injunction Act must be interpreted in favor of allowing the state court action to proceed "even where the state proceedings interfere with a protected federal right . . . even when the interference is unmistakably clear." *Total Plan Servs. v. Tex. Retailers Assoc.*, 925 F.2d 142, 144 (5th Cir. 1991) (internal quotation marks and emphasis omitted) (quoting *Atl. Coast*, 398 U.S. at 294).

The Anti-Injunction Act provides three exceptions in which a federal court can stay state court proceedings: "as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. But these statutory exceptions must be strictly construed: "It is settled that these exceptions are narrow and are not to be enlarged by loose statutory construction." *Jackson*, 862 F.2d at 498 (internal quotation marks and

brackets omitted) (quoting *Chick Kam Choo*, 486 U.S. at 146). Moreover, the three grounds are "the only exceptions" that allow a federal court to stay state court proceedings. *Id.*; *see also Amalgamated Clothing Workers of Am. v. Richmond Bros.*, 348 U.S. 511, 514 (1955) ("[T]he prohibition [of the Anti-Injunction Act] is not to be whittled away by judicial improvisation.").

B. The Anti-Injunction Act Prohibits a Federal Court from Enjoining State Court Proceedings in Favor of Arbitration.

Both the Seventh and Eleventh Circuits have held that the Anti-Injunction Act prohibited courts from staying state court proceedings as part of lawsuits brought under 9 U.S.C. § 4.[6] *See Zurich Am. Ins. Co. v. Superior Court for the State of Cal.*, 326 F.3d 816, 819 (7th Cir. 2003) ("hold[ing] that the preliminary injunction violates the Anti-Injunction Act" in a case in which the federal district court enjoined state court proceedings as part of a § 4 lawsuit); *Transouth Fin. Corp. v. Bell*, 149 F.3d 1292, 1298 (11th Cir. 1998) ("[W]e hold that no exception to the Anti-Injunction Act is applicable to this case and affirm the district court's denial of [plaintiff's] motion for a stay of the parallel state court proceedings in this case."); *Ultracashmere House, Ltd. v. Meyer*, 664 F.2d 1176, 1181 (11th Cir. 1981) ("Neither the policies embodied in the Arbitration Act nor the equitable

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[6] The Supreme Court has declined to decide whether the Anti-Injunction Act allows a federal court to stay state court proceedings as part of a lawsuit brought under 9 U.S.C. § 4. *See Moses Cone*, 460 U.S. at 25 n.32 ("We need not address whether a federal court might stay a state-court suit pending arbitration under 28 U.S.C. § 2283.").

principles underlying the anti-injunction statute and its exceptions supported issuance of a stay against the state court action in this case."), *overruling on other grounds recognized by Baltin v. Alaron Trading Corp.*, 128 F.3d 1466, 1469 n.8 (11th Cir. 1997).[7]

District courts in other circuits, including this circuit, have ruled in a similar manner. *See J.P. Morgan Chase Bank v. Lott*, No. 06-102, 2007 WL 30271, at *5 n.6 (S.D. Miss. Jan. 3, 2007) ("The court finds that none of the three exceptions in the Anti-Injunction Act apply in this case. . . . Accordingly, the court will not issue a stay of the State Court Action pending arbitration."); *United Serv. Prot. Corp. v. Lowe*, 354 F. Supp. 2d 651, 659 (S.D. W. Va. 2005) ("In addition to their motion to compel arbitration, the plaintiffs have asked this court to enjoin the state court proceedings in the underlying dispute. This aspect of the motion raises serious concerns of federalism and comity. . . . In this case, I find that none of the three exceptions to the Anti-Injunction Act apply."); *Swofford v. Shearson Lehman/Am. Express*, 604 F. Supp. 1128, 1129 (E.D. Ark. 1985) ("[Plaintiff] would have this Court stay the state court trial until this Court could rule on his Petition to Compel Arbitration of their dispute. . . . The Court does not believe that any of the

[7] The Sixth Circuit has held that the Anti-Injunction Act's relitigation exception justified a federal district court staying state court proceedings pending arbitration. *See Great Earth Cos. v. Simons*, 288 F.3d 878, 894 (6th Cir. 2002). Nationstar, however, correctly concedes that this Circuit's case law does not permit application of the relitigation exception to this case. Appellant's Br. 15 n.8.

exceptions to the [Anti-Injunction] Act are applicable here."); *Roodveldt v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 585 F. Supp. 770, 784 (E.D. Pa. 1984) ("I have concluded that [plaintiff] is not entitled to an injunction directed against the state court proceedings. . . . [P]rinciples of comity and federalism require that I refrain from interfering in the pending state court case at this time.").[8] And—as Nationstar acknowledges—this Court has no precedential holding addressing federal courts' ability to stay state court proceedings as part of compelling arbitration. *See* Appellant's Br. 19 (acknowledging that only "*dicta* and unpublished decisions" by this Court affirm stays of state court proceedings in cases brought under 9 U.S.C. § 4).[9]

Nationstar tries to justify its disregard for the Anti-Injunction Act's prohibition based on two of the statutory exceptions: for injunctions "expressly authorized by Act of Congress"; and when it is "necessary" for a federal court to

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[8] As Nationstar catalogues, other district courts have determined they can stay state court proceedings as part of compelling arbitration. Appellant's Br. 20-21. One commentator, however, has noted many of the decisions staying state court proceedings provide cursory analysis and reasoning. *See* Jean R. Sternlight, *Forum Shopping for Arbitration Decisions: Federal Courts' Use of Antisuit Injunctions Against State Courts*, 147 U. Pa. L. Rev. 91, 97-98 (1998).

[9] Nevertheless, Nationstar wrongly latches onto this Court's *dicta* in *Brown v. Pacific Life Insurance Co*, 462 F.3d 384 (5th Cir. 2006). Appellant's Br. 19 & n.10. That decision does not help Nationstar because *Brown* justified its suggestion that a federal court compelling arbitration can stay state court proceedings based on the relitigation exception to the Anti-Injunction Act. *See* 462 F.3d at 391 n.3. But Nationstar has correctly conceded that this Circuit's case law does not permit application of the relitigation to this case. Appellant's Br. 15 n.8.

stay state court proceedings "in aid of its jurisdiction." Appellant's Br. 15-18. But neither of these exceptions applies, as anything more than Nationstar's superficial examination reveals. When no exception applies, the federal courts cannot stay state court proceedings. Accordingly, the district court's holding that the Anti-Injunction Act forbids a stay in this case must be affirmed.

1. Injunctions of State Courts Are Not "Expressly Authorized" by the Federal Arbitration Act.

The Anti-Injunction Act's permits federal courts to stay state proceedings "as expressly authorized by Act of Congress." 28 U.S.C. § 2283. This Court has warned against loose constructions of the "expressly authorized" exception that "disregard[] the words 'as expressly' in section 2283." *Jackson*, 862 F.2d at 504.

This exception does not apply to a lawsuit brought under 9 U.S.C. § 4 to compel arbitration. Nationstar is unable to cite a single case holding that the Federal Arbitration Act "expressly authorized" an exception to the Anti-Injunction Act. Moreover, none appears to exist. *See* Sternlight, *supra*, at 157 ("To date, all courts considering the question have held that a federal court is not justified in enjoining a state court action in the arbitration context based on the 'expressly authorized' exception."). This Court also should hold this exception is inapplicable.

As a threshold requirement for the exception to apply, the statute in question must create its own right to injunctive relief. *See Mitchum v. Foster*, 407 U.S. 225,

238 (1972) (requiring that any statute found to expressly authorize an exception to the Anti-Injunction Act "clearly creat[ed] a federal right or remedy *enforceable in a federal court of equity*" (emphasis added)); *Jackson*, 862 F.2d at 504 (rejecting that 33 U.S.C. § 905(a) expressly authorized an exception to the Anti-Injunction Act because "nothing in [it] purports to grant anyone a right or remedy 'enforceable in a federal court of equity'"); *see also Mitchum*, 407 U.S. at 242 (observing, in the course of holding that 42 U.S.C. § 1983 provided express authorization, that "Congress plainly authorized the federal courts to issue injunctions in § 1983 actions, by expressly authorizing a 'suit in equity' as one of the means of redress").

The Federal Arbitration Act does not contain a provision authorizing federal courts to issue injunctions as part of compelling arbitration. *See Am. Heritage Life Ins. Co v. Orr*, 294 F.3d 702, 714 (5th Cir. 2002) (Dennis, J., concurring) ("[T]he [Federal Arbitration Act] does not authorize federal courts to enjoin ongoing state

proceedings.”). This lack of an injunctive remedy, by itself, definitively forecloses Nationstar’s reliance on the “expressly authorized” exception.[10]

Even for statutes that do provide for injunctions, the focus of the injunctive relief provision must closely relate to the activity of state courts in order to “expressly authorize[]” a stay of state court proceedings. *See Mitchum*, 407 U.S. at 240 (holding 42 U.S.C. § 1983 provided express authorization because “the Act was intended to enforce the provision of the Fourteenth Amendment against state action, whether that action be executive, legislative, or *judicial*” (internal quotation marks and ellipsis omitted) (quoting *Ex parte Virginia*, 100 U.S. 339, 346 (1879))); *Total Plan*, 925 F.2d at 145 (holding 29 U.S.C. § 1132(a)(3) did not create an exception to the Anti-Injunction Act because “conspicuously absent from the language of this . . . injunction provision is any suggestion of its use by federal courts against state tribunals” (internal quotation marks and brackets omitted) (quoting *U.S. Steel Corp. Plan for Employee Ins. Benefits v. Musisko*, 885 F.2d 1170, 1177 (3d Cir. 1989))); *Jackson*, 862 F.2d at 503-04 (holding the injunction

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[10] Instead, the All Writs Act, 28 U.S.C. § 1651, provides the only authority for a federal judge to issue an injunction as part of compelling arbitration. *See Am. Heritage*, 294 F.3d at 714 n.3 (Dennis, J., concurring); Appellant’s Br. at 22. That fact further demonstrates why the “expressly authorized” exception does not apply to an injunction issued as part of compelling arbitration because this Court has held that the Anti-Injunction Act *limits* the All Writs Act. *See Newby v. Enron Corp.*, 338 F.3d 467, 473-74 (5th Cir. 2003) (“This broad grant of authority [in the All Writs Act] is then limited by the Anti-Injunction Act . . . .”). Determining that an injunction issued under the All Writs Act is an expressly authorized exception to the Anti-Injunction Act would turn this limit on its head.

authorized by 33 U.S.C. § 921(d) did not create an exception to the Anti-Injunction Act because it focused on the federal court's ability "to enforce against an employer or insurer payment of an award"). Moreover, express authorization will be found only when Congress has created a "*uniquely* federal right or remedy." *Mitchum*, 407 U.S. at 237 (emphasis added).

The Federal Arbitration Act does not contain any provisions directed at restraining state courts. To the contrary, the "anomal[ous]" jurisdictional provision in 9 U.S.C. § 4 means that "enforcement of the Act is left in large part to the state courts."[11] *Moses Cone*, 460 U.S. at 25 n.32; *see also Bank One, N.A. v. Shumake*, 281 F.3d 507, 514 (5th Cir. 2002) ("[The Federal Arbitration Act] does not reflect a congressional intent for federal courts to occupy the entire field of arbitration law.").

Nationstar does not identify any provisions directed at restraining state courts. Instead, it claims that the language in 9 U.S.C. § 4 providing "for an order directing that . . . arbitration proceed" expressly authorizes a state court injunction, *see* Appellant's Br. 17 ("Because district courts are 'expressly authorized' to 'direct' that claims asserted in state court be arbitrated . . . ."). That relief, however, is focused on the parties to the dispute rather than the state courts.

[11] Not only does this "anomal[ous] jurisdictional provision" belie the necessary focus on restraining state courts, it means the Federal Arbitration Act does not create the "*uniquely* federal right or remedy" requisite for an "expressly authorized" exception. *Mitchum*, 407 U.S. at 237 (emphasis added).

Moreover, Nationstar's own reliance on the argument that federal courts are "necessarily empowered" to enjoin state court proceedings rather than having express authority to do so, Appellant's Br. 17, implicitly admits that 9 U.S.C. § 4 does not "expressly authorize[]" federal courts to stay state court proceedings. Accordingly, the Federal Arbitration Act's language falls far short of a relief provision focused on state courts that creates an "expressly authorized" exception to the Anti-Injunction Act.

The legislative history of the Federal Arbitration Act reinforces this conclusion that nothing in it is directed at restraining the state courts:

> Nor does the legislative history or policy underlying the [Federal Arbitration Act] show that Congress believed the statute would be ineffective if the federal courts were not empowered to enjoin state court proceedings. Instead, this history shows that the [Federal Arbitration Act] was passed to supplement, and not supplant, an ongoing effort to modernize state arbitration laws. The federal law was said to be needed because federal courts might well hold that state laws did not apply in federal court. At no point did the drafters indicate that the federal law might be used to countermand actions taken in state court.

Sternlight, *supra*, at 114-15 (footnotes omitted), *cited in Am. Heritage*, 294 F.3d at 714 n.3 (Dennis, J., concurring). This Court has held such legislative history is very instructive in determining that Congress has not "expressly authorized" an exception to the Anti-Injunction Act. *See Jackson*, 862 F.2d at 503 (holding that the Longshore and Harbor Workers' Compensation Act did not expressly authorize an exception because it lacked legislative history demonstrating Congress's intent

to affect state court proceedings); *see also Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 634 (1977) (plurality opinion) (holding that the Clayton Act did not expressly authorize an exception because "[t]he relevant legislative history of [5 U.S.C. § 26] simply suggests that in enacting [it] Congress was interested in extending the right to enjoin antitrust violations to private citizens"). The Federal Arbitration Act's legislative history, therefore, further demonstrates Nationstar's misplaced reliance on the express authorization exception to the Anti-Injunction Act.

2. A Stay of State Court Proceedings Is Not Necessary in Aid of the Federal Courts' Jurisdiction.

The Anti-Injunction Act also authorizes a federal court to stay state court proceedings "where necessary in aid of its jurisdiction." 28 U.S.C. § 2283. This Court has stressed the limited nature of the "in aid of its jurisdiction" exception and described only two circumstances when it applies:

> In cases decided under this exception, courts have interpreted the language narrowly, finding a threat to the court's jurisdiction only where a state proceeding threatens to dispose of property that forms the basis for federal in rem jurisdiction, or where the state proceedings threatens the continuing superintendence by a federal court, such as in a school desegregation case.

Texas v. United States, 837 F.2d 184, 186 n.4 (5th Cir. 1988) (citations omitted);[12] *see also Burr & Forman v. Blair*, 470 F.3d 1019, 1028-29 (11th Cir. 2006) (describing the same two categories and observing they "represent the outermost limits of the exception").

As the Seventh Circuit has held, Nationstar's action to compel arbitration under 9 U.S.C. § 4 is not the narrow type of litigation in which it was necessary to stay state court proceedings in order to protect the federal district court's jurisdiction. The federal courts logically cannot need to protect their jurisdiction in the context of the Federal Arbitration Act's "anomal[ous]" jurisdictional provision that dictates "enforcement of the Act is left in large part to the state courts." *Moses Cone*, 460 U.S. at 25 n.32. As the Supreme Court has held, the "in aid of its jurisdiction" exception could not be invoked when "the state and federal courts had concurrent jurisdiction" because "neither court was free to prevent either party

[12] This Court subsequently suggested that "lengthy, complicated litigation" could serve as the "equivalent of a res" for purposes of the "in aid of its jurisdiction" exception. *Royal Ins. Co. of Am. v. Quinn-L Capital Corp.*, 960 F.2d 1286, 1299 (5th Cir. 1992); *see also Newby*, 338 F.3d at 474-76 (finding an injunction of certain state court proceedings aided the jurisdiction of a federal district court in a "multi-district case centraliz[ing] in one district court fifty-four Enron-related federal civil cases"). But this case, an individual dispute between a married couple and their mortgage lender, certainly does not fall within that category. In suggesting the "equivalent of a res" exception, this Court reiterated the approach that in rem and "superintendence" cases are the exclusive instances in which the exception applies. *See Royal*, 960 F.2d at 1299 (denying application of the "in aid of its jurisdiction" exception because the "claim at issue in this case do not fit in either category described in *Texas v. United States*").

from simultaneously pursuing claims in both courts." *Atl. Coast*, 398 U.S. at 295; *see Zurich*, 326 F.3d at 826 (holding that application of the "in aid of its jurisdiction" exception to a lawsuit seeking to compel arbitration was "undermined by the structure of the [Federal Arbitration Act], which provides concurrent jurisdiction to states to enforce arbitration agreements"). In this particular case, it would be even more illogical to find a federal district court's jurisdiction needed protection from the Knoxes' state court lawsuit because a federal district court's remand order is responsible for the state court now having jurisdiction.

Additionally, a federal court cannot invoke the "in aid of its jurisdiction" exception based on the concern that a state court may render an opinion inconsistent with the federal court's view. *See Royal*, 960 F.2d at 1299 ("[A] possibility that [a state court] could reach judgment first . . . is not sufficient to invoke the 'in aid of jurisdiction' exception."); *Phillips v. Chas. Schreiner Bank*, 894 F.2d 127, 132 (5th Cir. 1990) ("The law is well settled . . . that in no event may the 'aid of jurisdiction' exception be invoked merely because of the prospect that a concurrent state proceeding might result in a judgment inconsistent with the judgment of the district court." (internal quotation marks omitted) (quoting *Texas*, 837 F.2d at 186-87 n.4)).

Nationstar's own explanation for why an injunction is necessary to aid the federal court's jurisdiction relies on just such an impermissible justification.

Nationstar argues that because "[d]istrict courts are clearly permitted to enter orders compelling arbitration under § 4," "allow[ing] state court litigation to continue where the claims are arbitrable would seriously frustrate the court's authority to decide such cases." Appellant's Br. 18 (internal quotation marks and brackets omitted). But state court proceedings would frustrate the federal court's ability to compel arbitration only if the state court does not compel arbitration when the federal court would do so. *See Zurich*, 326 F.3d at 826 (noting the argument that the "in aid of its jurisdiction" exception applied to a proceeding brought under 9 U.S.C. § 4 was "based on an assumption that the state court cannot competently protect the parties' federal rights").

Nationstar's presumption that the state court will not compel arbitration when the federal court would do so represents reality in only two situations: 1) when the state court determines the arbitration agreement is invalid although the federal court would find it valid; or 2) when the state court ignores the Federal Arbitration Act's requirement to enforce valid arbitration agreements. This Court's case law is clear that use of the "in aid of its jurisdiction" exception cannot depend on either assumption. A disagreement between a federal court's and a state court's interpretation of the law is an accepted part of our federal system, which must be corrected by the Supreme Court, rather than grounds for invoking the "in aid of its jurisdiction" exception. *See Phillips*, 894 F.2d at 132. The Anti-

Injunction Act also prevents federal courts from presuming that state courts are unwilling to follow federal law.[13] *See Jackson*, 862 F.2d at 498.

Accordingly, the Seventh Circuit has thoroughly reviewed and squarely rejected Nationstar's exact argument that the "in aid of its jurisdiction" exception applies to an action to compel arbitration. In *Zurich American Insurance Co. v. Superior Court for the State of California*, the federal court plaintiff sought to compel arbitration and obtained an order from the federal district court staying California court proceedings. 326 F.3d at 820. The plaintiff responded to the Anti-Injunction Act's prohibition by arguing the "in aid of its jurisdiction" exception applied. *Id*. at 825. The Seventh Circuit, noting this argument would "extend the exception" beyond anything previously recognized by a federal circuit court, held it did not apply and reversed the district court's order. *Id*. at 826. The plaintiff argued for extending the exception based on the "important federal interest favoring arbitration represented in the Federal Arbitration Act." *Id*. The court, however, held that argument failed because it "strikes at the heart of the Anti-Injunction Act, which evidences confidence in state court" and because it is "undermined by the structure of the [Federal Arbitration Act]." *Id*. (internal

[13] Judge Mills, whose service on both the federal bench and the Mississippi Supreme Court provides a unique perspective on judicial federalism, noted that the Mississippi state courts will compel arbitration when required by the Federal Arbitration Act. R. 294; R.E. 3 (citing *Miss. Care Ctr. of Greenville, LLC v. Hinyub*, 975 So. 2d 211 (Miss. 2008)).

quotation marks omitted) (quoting *Commonwealth Edison Co. v. Gulf Oil Corp.*, 541 F.2d 1263, 1274 (7th Cir. 1976)). This Court should follow the Seventh Circuit's persuasive reasoning and reject Nationstar's attempt to invoke the "in aid of its jurisdiction" exception.

The federal courts cannot stay the Knoxes' state court proceedings because neither of the Anti-Injunction Act exceptions that Nationstar relies upon applies. Accordingly, the district court correctly determined that the Anti-Injunction Act prohibited it from staying state court proceedings.

C. The Anti-Injunction Act Prohibits All Relief Sought by Nationstar.

Nationstar's clear goal in filing this lawsuit against the Knoxes was to prevent them from proceeding with the state court lawsuit. Most obviously, Nationstar explicitly asked the district court to provide such relief. Moreover, the effect of the order compelling arbitration would be to force a stay in the state court litigation. The district court recognized that an order compelling arbitration would have just such an effect: "By ruling on Nationstar's motion to compel arbitration, this court would enjoin the state court from proceeding with [the remanded] action." R. 294; R.E. 3. In light of this Court's precedents, the district court's reasoning fully supports dismissing the lawsuit. This Court should affirm.

1. The Anti-Injunction Act Prohibits Nationstar from Obtaining Its Desired Order Requiring the State Court Stay the Lawsuit and Requiring the Knoxes Dismiss the Lawsuit.

The Anti-Injunction Act applies equally to injunctions directed at a state court and to injunctions directed at the parties to the state court litigation. *See Jackson*, 862 F.2d at 499 n.10 ("It is, of course, also settled that the prohibition of § 2283 cannot be evaded by addressing the order to the parties . . . ." (internal quotation marks omitted) (quoting *Atl. Coast*, 398 U.S. at 287)); *see also Okla. Packing Co. v. Okla. Gas & Elec. Co.*, 309 U.S. 4, 9 (1940) ("That the injunction was a restraint of the parties and was not formally directed against the state court itself is immaterial."). In other words, the federal courts cannot enjoin a party from proceeding in state court if it could not directly order a state court to stay its proceedings.

Nationstar specifically requested the district court directly stay the state court proceedings, which obviously comes within the scope of the Anti-Injunction Act. R. 9; R.E. 5. Moreover, it demanded that the district court order the Knoxes to dismiss the state court lawsuit. R. 9; R.E. 5; R. 209; R.E. 12. These requests seek to obtain an order preventing a party from proceeding with state court litigation. This is the exact kind of injunction that the Anti-Injunction Act prohibits. The district court therefore could not order any of those forms of relief.

2. The Anti-Injunction Act Prohibits Nationstar from Obtaining Its Desired Order with the Same Effect as an Injunction Staying the State Court Lawsuit.

The Anti-Injunction Act "has been interpreted consistently as an absolute bar to *any* federal court action that has the *effect* of staying a pending state court proceeding unless that action falls within one of the Act's three specifically designated exceptions." *Phillips*, 894 F.2d at 131-32 (footnotes omitted) (emphases added). This absolute bar prevented the district court from granting the other relief that Nationstar sought.

The Anti-Injunction Act's prohibition on granting Nationstar's request is dictated by this Court's en banc decision in *Texas Employers' Insurance Ass'n v. Jackson*. In that case, a state court defendant filed a lawsuit in federal court seeking injunctive and declaratory relief against the state court plaintiffs. 862 F.2d at 493. After determining that the Anti-Injunction Act prohibited the requested injunctive relief, the Court turned its attention to the alternate request. *Id*. at 504. It noted the purpose of seeking declaratory relief in the federal court litigation was to stop proceedings in the state court:

> There was no dispute between [the parties] other than [the] state suit. [The] federal action was not to resolve a controversy that existed independently of [the] state suit; nor was it to decide some other controversy, with merely incidental effect on the state suit. It is plain that the *only* purpose and effect of [the] federal suit was to defeat [the] state suit . . . .

Id. at 505. Accordingly, this Court held that "if an injunction would be barred by § 2283, this should also bar the issuance of a declaratory judgment that would have the same effect as an injunction." *Id*. at 506 (internal quotation marks and brackets omitted) (quoting Wright, *Federal Courts* § 47, at 285 (4th ed. 1983)). This result was necessary so as not "to transform section 2283 from a pillar of federalism reflecting the fundamental constitutional independence of the states and their courts, to an anachronistic, minor technicality, easily avoided by mere nomenclature or procedural slight of hand." *Id*. at 505; *see also Grace Brethren Church v. California*, 457 U.S. 393, 408 (1982) (holding the Tax Injunction Act, 28 U.S.C. § 1341, prohibits declaratory relief in instances in which its injunction restriction applies); *Carney v. Resolution Trust Corp.*, 19 F.3d 950, 957-58 (5th Cir. 1994) (per curiam) (holding that the anti-injunction provision of 12 U.S.C. § 1821(j), which restricts federal courts from enjoining a bank receiver, prevents federal courts from granting alternate forms of relief such as declarations or rescission).

Similarly, this lawsuit has a singular focus on the Knoxes' state court lawsuit and a desired effect of preventing proceedings in the state court. As the complaint recites, "[*t*]*he filing of the* [Knoxes' state court] *Lawsuit* is a violation of the Arbitration Agreement. Nationstar hereby seeks to enforce the terms of the Arbitration Agreement and requests an order compelling arbitration and staying the

Lawsuit." R. 7; R.E. 5 (emphasis added). Similarly, Nationstar admits in its brief that its federal court lawsuit "was based upon certain claims filed by the Defendants against it in the Chancery Court of Grenada County, Mississippi," Appellant's Br. 4, and that its lawsuit was brought "[i]n response to the Defendants' claims" raised by filing the state court lawsuit, Appellant's Br. 9. Moreover, Nationstar admits its requested order compelling arbitration would prohibit the Knoxes from continuing with their state court litigation. Although Nationstar attempts to distinguish an order compelling arbitration from an injunction, it then notes that the order would subject the Knoxes to contempt "even in the absence of an injunction" if they continue their state court proceedings. Appellant's Br. 22.

3. The Federal Arbitration Act Yields to Limits Placed on the Federal Courts by Other Legal Doctrines.

Nationstar seeks to avoid the restrictions of the Anti-Injunction Act by constantly trying to redirect the Court's focus onto the policy behind the Federal Arbitration Act. That policy, however, cannot overcome the codified prohibition of the Anti-Injunction Act. *See Atl. Coast*, 398 U.S. at 287 ("[A]ny injunction against state court proceedings . . . must be based on one of the specific statutory exceptions to § 2283 if it is to be upheld.").

This Court on several occasions has held that the power federal courts have under the Federal Arbitration Act to compel arbitration must yield to restraints on

the federal courts imposed by other legal principles. For instance, this Court has held that the "reverse preemption" provision of the McCarran-Ferguson Act, 15 U.S.C. § 1012(b), "le[ft] the [federal] district court without the power to compel arbitration" under 9 U.S.C. § 4. *Munich Am. Reinsurance Co. v. Crawford*, 141 F.3d 585, 596 (5th Cir. 1998). This Court has also held that the tribal exhaustion doctrine limits a federal court's ability to compel arbitration. *See Bank One*, 281 F.3d at 513-14.

In so holding, the Court acknowledged that the Federal Arbitration Act "does reflect policy strongly favoring the enforcement of arbitration clauses," but stressed that "Congress has not expressed an intent to provide a federal forum for *all* suits to compel arbitration."[14] *Id*. at 514. Accordingly, invocation of the Federal Arbitration Act was "not a sufficient basis to override the federal policy of deference to tribal courts." *Id*. Likewise, the Federal Arbitration Act is not a sufficient basis to override the federal policy prohibiting stays of state court proceedings, particularly when that federal policy is statutorily mandated by the Anti-Injunction Act rather than a judicial creation like tribal court deference. *See*

[14] Tribal exhaustion is not required in cases in which there is "an express indication of Congressional intent" for federal courts to proceed. *Bank One*, 281 F.3d at 511. The failure to find such "express indication" in *Bank One* reinforces the conclusion that the Federal Arbitration Act does not "expressly authorize" interference with state court proceedings as required by the first exception to the Anti-Injunction Act. *See supra* pp. 28-33.

id. at 510-11 (explaining that the tribal exhaustion doctrine exists notwithstanding that 28 U.S.C. §§ 1331, 1332 provide federal court jurisdiction).

Nationstar is equally wrong to assert that the Supreme Court's Federal Arbitration Act jurisprudence dictates that the Anti-Injunction Act cannot affect suits to compel arbitration. The Supreme Court has never questioned whether legal doctrines independent of the Federal Arbitration Act limit the federal courts' ability to compel arbitration. To the contrary, the Court has held that the *Colorado River* doctrine, which counsels federal courts to abstain from hearing certain cases, applies to suits under 9 U.S.C. § 4. *See Moses Cone*, 460 U.S. at 19-27 (applying the *Colorado River* factors to a § 4 lawsuit and determining that abstention was not appropriate based on applying the factors to the case's facts).

Nothing in *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213 (1985), is to the contrary, and Nationstar's litany of citations to it does not change that fact. In *Byrd*, the Supreme Court reviewed denials of arbitration pursuant to the "doctrine of intertwining" that some lower courts had created in cases brought under 9 U.S.C. § 4 involving both arbitrable and nonarbitrable claims. *Id*. at 216. The Court held that nothing in the terms or legislative history of the Federal Arbitration Act *itself* provided for such discretion to deny arbitration. *See id*. at 218-21 ("By *its* terms, *the Act* leaves no place for the exercise of discretion by a district court. . . . Thus, insofar as the language *of the Act* guides our disposition of this

case, we would conclude that agreements to arbitrate must be enforced. . . . We turn, then, to consider whether the legislative history *of the Act* provides guidance on this issue." (emphases added)). *Byrd* did not consider whether some limit on federal court power external to the Federal Arbitration Act would affect the ability to compel arbitration.

The Anti-Injunction Act's restriction on federal courts staying state court proceedings is a cornerstone of American judicial federalism that must be followed unless one of its narrow exceptions applies. Neither of the exceptions that Nationstar relies upon allows the federal courts to stay proceedings in the Knoxes' state court lawsuit. The district court could not grant Nationstar's requests for relief that would expressly or effectively stay the proceedings when no exception applies because the Federal Arbitration Act's policy goals do not overcome the Anti-Injunction Act's explicit prohibition. It therefore properly dismissed the lawsuit.

CONCLUSION

This Court should vacate the district court's decision and remand the case to be dismissed for a lack of subject matter jurisdiction. If this Court determines that it has subject matter jurisdiction, it should affirm the district court's decision because no exception to the Anti-Injunction Act applies and all the relief sought by Nationstar would explicitly or in effect stay the state court proceedings.

Respectfully submitted,

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CERIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 10,462 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirement of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaces typeface using Microsoft Office Word 2003 in 14-point Times New Roman.

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December 2008, I served two copies of the foregoing Brief for Appellees Willie E. Knox and Linda M. Knox via UPS next day delivery, postage prepaid, on Plaintiff-Appellant Nationstar Mortgage, LLC through its counsel at the following address:

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