IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TIMOTHY J. PAGLIARA, Plaintiff, v. FEDERAL NATIONAL MORTGAGE ASSOCIATION, Defendant.	)	Civil Action No. 16-193-GMS

ORDER

WHEREAS Plaintiff filed a civil action in the Chancery Court of the State of Delaware on March 14, 2016;

WHEREAS Defendants removed that case from the Delaware Chancery Court to this court on March 25, 2016 (D.I. 1.);

WHEREAS presently before the court is Plaintiff's Motion to Remand (D.I. 10); and

WHEREAS the court has considered the parties' submissions as well as the applicable law;

IT IS HEREBY ORDERED THAT:

1. Plaintiff's Motion to Remand (D.I. 10) is GRANTED.[1]

[1]The underlying Delaware Court of Chancery action was brought by Plaintiff under Del. Code Ann. tit. 8, § 220. (D.I. 1, Ex. A-1 ¶¶ 207–212). Plaintiff sought an order from the Chancery Court permitting him to inspect and copy certain books and records of Fannie Mae. *Id.* ¶ 212. Because the case was brought under Delaware state corporate law, Plaintiff argues, removal to federal district court was improper. (D.I. 11 at 2). For the reasons that follow, the court finds Plaintiff's argument persuasive, and, accordingly, grants Plaintiff's Motion to Remand the case to the Delaware Court of Chancery.

Before turning to the issue of federal question jurisdiction, the court wishes to discuss Plaintiff's standing to bring this case. Defendant's contend that Plaintiff lacks standing to pursue this suit because 12 U.S.C. § 4617(b)(2)(A) ("the Succession of Rights provision") transferred all of Plaintiff's rights as a shareholder of Fannie Mae to the Conservator, FHFA. (D.I. 17 at 13). Accordingly, Defendant's argue, Plaintiff is attempting to assert rights of a third party, FHFA, in this suit. *Id.* at 14. The Succession of Rights provision of the Housing and Economic Recovery Act of 2008 provides,

> [t]he Agency, as conservator or receiver, and by operation of law, immediately succeed to—(i) all rights, titles, powers, and privileges of the regulated entity, and of any stockholder, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity; and (ii) title to the books, records, and assets of any other legal custodian of such regulated entity.

12 U.S.C § 4617(b)(2)(A)(i), (ii) (2012). When reviewing a facial challenge to subject matter jurisdiction, the court accepts all of the factual allegations in the Complaint as true. *Mortensen v. First Fed. Sav. & Loan Ass'n,* 549 F.2d 884, 891 (3d Cir. 1977).

Defendants improperly conflate Plaintiff's standing with Plaintiff's likelihood of succeeding on the merits of his claim. Subject matter jurisdiction does not depend on the validity of a party's cause of action. *See Bell v. Hood,* 327 U.S. 678, 682 (1946). Instead, a district court has standing when "the right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if they are given another." *Id.* at 685.

Here, just as was the case in the Eastern District of Virginia, "[i]f Pagliara's interpretation of HERA is correct, he unquestionably seeks to assert his own right as a stockholder to inspect Freddie Mac's corporate records." *Pagliara v. Fed. Home Loan Mortg. Corp.*, No. 116CV337JCCJFA, 2016 WL 4441978; at *4 (E.D. Va. Aug. 23, 2016). Accordingly, Fannie Mae's denial of Pagliara's inspection demand would constitute a cognizable injury that this court is capable of remedying. *See Lujan v. Defs.of Wildlife,* 504 U.S. 555, 560 (1992) (explaining that Article III standing has three elements: (1) "injury in fact"; (2) "a causal connection between the injury and the conduct complained of"; and (3) likelihood that the injury is redressable by the court). Pagliara therefore has standing to pursue this suit. The court now must decide whether federal question jurisdiction exists or whether it must remand the case to the Delaware Court of Chancery.

An action commenced in state court may be removed to federal court only when the latter has original jurisdiction over the matter. 28 U.S.C. § 1441(a). Federal courts have original jurisdiction over cases "arising under the Constitution, laws, or treaties of the United States." *Id.* at § 1331. Suits arise under the Constitution, laws, or treaties of the United States when one of those sources creates the cause of action alleged in the plaintiff's complaint. *See Taylor v. Anderson,* 234 U.S. 74, 75–76 (1914). The mention by the plaintiff in his Complaint of a possible federal defense to the plaintiff's state-law claims does not give rise to original jurisdiction. *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Trust for* S. *California,* 463 U.S. 1, 10 (1983).

Defendants allege that, because all of Fannies Mae's obligations under Delaware corporate law arise from 12 C.F.R. § 1239(b), the court has federal question jurisdiction. (D.1. 17 at 3); see *United Jersey Banks v. Parell,* 783 F.2d 360, 366 (3d Cir. 1986) (explaining that federal question jurisdiction can be proper even though the plaintiff brings solely state-law claims when: (1) a substantial issue of federal law is a necessary element of the plaintiff's state-law claim; or (2) when it appears that plaintiff's state-law claim is actually a federal claim). Alternatively, Defendants assert that 12 U.S.C. § 4617(b)(2)(A) preempted any rights that Fannie Mae shareholders have to inspect the books and records of the entity. (D.1. 17 at 3); *see Goepel v. Nat'l Postal Mail Handlers Union, a Div. of LIUNA,* 36 F.3d 306, 311 (3d Cir. 1994) (noting that federal question jurisdiction exists over state-law claims that fall into an area completely preempted by federal law). The court finds Defendant's arguments unavailing.

Federal question jurisdiction does not exist here solely by virtue of Fannie Mae's status as a federally-chartered corporation. The Supreme Court recently addressed the question of whether Fannie Mae's sue-and-be-sued clause, 12 U.S.C. § 1723a(a), vests federal courts with exclusive jurisdiction over all cases involving Fannie Mae. *Lightfoot v. Cendant Mortg. Corp.,* 137 S. Ct. 553, 559 (2017). The Court found that § 1723a(a) did not vest federal courts with exclusive jurisdiction even though Freddie Mac is subject to such jurisdiction. *Id.* at 564. Instead, Fannie Mae can sue and be sued in federal courts that have either diversity or federal-question jurisdiction over the case. *Id.* The court must therefore determine whether it has federal question jurisdiction.

Plaintiff s claim for relief is quiet narrow. Plaintiff simply requests an order permitting him to inspect all of the documents demanded in the demand letter he submitted to the Fannie Mae board in compliance with Del. Code Ann. tit. 8, § 220. (D.I. 1, Ex. A-1 ¶¶ 207–212). Under that section, if a corporation refuses to permit an inspection of the records or does not reply to the stockholder, "the stockholder may apply to the Court of Chancery for an order to compel such inspection." Del. Code Ann. tit. 8, § 220(c). The Court of Chancery is vested with exclusive

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jurisdiction over such actions. *Id.* The normal procedure for enforcing a shareholder's right to inspect the books and records is not altered or preempted by § 4617(b)(2)(A).

The court is persuaded by the recent District of Columbia decision on § 4617(b)(2)(A). *Perry Capital LLC v. Mnuchin,* No. 14–5243, 2017 WL 677589, at *24 (D.C. Cir. Feb. 21, 2017). That court found that § 4617(b)(2)(A) did not bar "direct claims against and rights in the [c]ompanies . . . during conservatorship." *Id.* at *23. The court does not find that all shareholder rights are categorically preempted by § 4617(b)(2)(A). The court also does not find that Plaintiff's cause of action is really one of federal law, or that Plaintiff's cause of action implicates a substantial federal issue that is an essential element of the state-law claim. Thus, Plaintiff's Motion to Remand this case back to the Chancery Court is granted.

At most, Defendants raise a defense under federal law. As mentioned previously, a federal defense to a state-law cause of action is not enough to establish federal question jurisdiction, and it would be improper to deprive the Chancery Court—a court very capable of interpreting federal law—of its exclusive jurisdiction over § 220 actions.