

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SAMUEL K. LIPARI,)	
)	
Appellant,)	
)	
v.)	Case No. 08-3984
)	
u.S. BANCORP and U.S. BANK)	
NATIONAL ASSOCIATION,)	
)	
Appellees.)	

APPELLEES' MOTION TO DISMISS
APPELLANT'S "THIRD NOTICE OF APPEAL"

Appellant's "third amended notice of appeal" is equally as meritless as the appeals this Court dismissed on October 9, 2008 and November 11, 2008. As a result, appellees U.S. Bancorp and U.S. Bank National Association, pursuant to Fed. R. App. P. 27 and Eight Circuit Local Rule 47(A), again move to dismiss the appeal. As grounds for this motion, appellees state:

1. On September 5, 2008, appellant filed his first notice of appeal from the Western District of Missouri. Specifically, appellant appealed from the District Court's April 4, 2007 interim order denying appellant's motion for remand and transferring this case to the District of Kansas. This Court dismissed the appeal on October 9, 2008. (Exhibit A.) Appellant filed a second notice of appeal on October 16, 2008 attempting to obtain review of the same interim orders. This Court dismissed the second appeal on November 11, 2008 (Exhibit B). The Court also denied appellant's motion to recall the mandate in Case No. 08-3428 issued upon dismissal of the second appeal. (Exhibit C.)

2. Like the two prior appeals, the "third amended notice of appeal" seeks review of the District Court's "order to transfer the concurrent jurisdiction state claims to the Kansas District Court when the removal from state court was obtained through fraud on [the District]

[C]ourt and federal jurisdiction was exclusively in the US Tenth Circuit Court of Appeals [The appellant] also appeals [the District] [C]ourt's refusal to abstain under the 'first to file' rule." (Third Amended Notice of Appeal at p. 1.)

3. This Court does not have jurisdiction over this appeal. This matter has been pending in the United States District Court for the District of Kansas since its transfer from the Western District of Missouri on April 9, 2007 and receipt in the District of Kansas April 10, 2007. (Exhibit D (Missouri docket sheet) and Exhibit E (partial Kansas docket sheet) hereto reflecting physical transfer of files.) As a result, this case has not been pending within the district courts of the Eighth Circuit for more than twenty (20) months.

4. The District Court for the Western District of Missouri did not certify any order for immediate interlocutory appeal under 28 U.S.c. § 1292(b). Appellant did not file a writ request in this Court asking that the District Court be prohibited from accomplishing the transfer set forth in its April 4, 2007 order. Nor is the order one of the types that is immediately appealable under 28 U.S.C. § 1292(a).

5. Appellant currently has an appeal docketed in the Tenth Circuit Court of Appeals in which he purports to appeal from the rulings of the District Court, Case Nos. 08-3287, 08-3338 and 08-3345. The Tenth Circuit appeals were not dismissed, but rather held in abeyance, pending a final order from the Kansas District Court. Accordingly, the Tenth Circuit has exercised jurisdiction to hear this appeal. (Exhibit F.)

6. Because the Eighth Circuit Court of Appeals lacks jurisdiction to hear this appeal, it should be dismissed.

BACKGROUND

The appellant's litigation with these defendants has consumed over six years and is reflected in several orders and decisions. *See Medical Supply Chain, Inc. v. US Bancorp. et al.*,

2003 WL 21479192 (D. Kan., June 16, 2003), *afJ'd* 112 Fed. Appx. 730 (10th Cir. 2004); *Medical Supply Chain, Inc. v. Novation, et al.*, 419 F. Supp.2d 1316 (D. Kan. 2006), *appeal dismissed* 508 F.3d 572 (10th Cir. 2007); *see also Lipari v. U.S. Bancorp*, 2008 WL 4190784 (D. Kan. Sept. 4, 2008). The suit pertinent to this appeal was filed in 2006, removed to federal court and transferred to the United States District Court for the District of Kansas. (Exhibits D, E); *Lipari v. US Bancorp*, 2008 WL 4190784.

BASIS FOR DISMISSAL

An appeal should be dismissed when this Court lacks jurisdiction to hear it. This matter is a prime example. Mr. Lipari's claims have been pending in the United States District Court for the District of Kansas since April 2007. (Exhibits D, E; *Lipari, supra.*) This third, successive notice of appeal purports once again to challenge interim orders of the United States District Court for the Western District of Missouri, namely its decisions denying remand and ordering transfer. However, there is not an appealable order of the Western District of Missouri from which the appellant may seek this Court's review. *See Midwest Motor Express, Inc. v. Central States Southeast and Southwest Pension Fund*, 70 F.3d 1014, 1016 (8th Cir. 1996)(transfer orders generally not immediately reviewable); *Saab v. Home Depot U.S.A.*, 469 F.3d 758, 759 (8th Cir. 2006)(orders denying remand ordinarily not immediately appealable).¹

Even if appellant could have sought review of the Missouri federal court order denying remand and transferring this matter to the District of Kansas, either by interlocutory appeal or extraordinary writ,² his "third notice of appeal" to this Court now-more than 20 months after the case has been transferred to and litigated to finality in the Kansas federal court-is untimely and

¹ The district court did not certify the order for appeal under 28 U.S.C. § 1292(b) and the order is not otherwise immediately appealable under 28 U.S.C. § 1292(a).

² While these procedures may have been available to Mr. Lipari at the time the case was pending in the Western District of Missouri, *see Koehler v. Green*, 370 F. Supp.2d 904,906 n.1 (E.D. Mo. 2005), he cannot rely upon them now.

without merit. *See Integrated Health Servs. of Cliff Manor, Inc. v. THCI Company, LLC*, 417 F.3d 953, 957 (8th Cir. 2005). Mr. Lipari has filed an appeal to the Tenth Circuit Court of Appeals. There is no absolute right for him to file an appeal in any court of his choosing and at any time he chooses, let alone to seek the piecemeal review of interim district court orders. The "third amended notice of appeal" should be dismissed.'

WHEREFORE, appellees U.S. Bancorp and U.S. Bank National Association request that this Court dismiss appellant's appeal and for such other relief as the Court deems just and proper.

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ATTORNEYS FOR APPELLEES U.S. BANCORP
AND U.S. BANK NATIONAL ASSOCIATION

3 Appellant's filing of multiple frivolous appeal notices is wholly improper, particularly when this Court already has twice dismissed the prior appeals. There is no authority for appellant's third appeal. It is clear that Mr. Lipari cannot seek relief in this Court where the Missouri federal court had lost its jurisdiction more than a year and a half ago. *See Integrated Health Servs. of Cliff Manor, Inc.*, 417 F.3d at 957; *Midwest Motor Express, Inc.*, 70 F.3d at 1016; *In re Nine Mile Ltd.*, 673 F.2d 242, 243 (8th Cir. 1982). Having no legal or factual basis, the appeal is frivolous.

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the above and foregoing was delivered via United States mail, postage prepaid, this 30th day of December, 2008, to:

Mr. Samuel K. Lipari
3520 NE Akin Boulevard
Suite 918
Lee's Summit, MO 64064

Appellant

Isi Mark A. Olthoff
Attorney for Appellees U.S. Bancorp and U.S. Bank
National Association

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 08-3087

Samuel K. Lipari,

Plaintiff - Appellant

v.

US Bancorp, NA; US Bank NA,

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:06-cv-01012-FJG)

JUDGMENT

The motion of appellee for dismissal of this appeal is granted. The appeal is hereby dismissed. See Eighth Circuit Rule 47 A(b).

October 09,2008

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

EXHIBIT ~

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 08-3428

Samuel K. Lipari,

Plaintiff - Appellant

v.

US Bancorp, NA; US Bank NA,

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:06-cv-01012-F JG)

JUDGMENT

The motion of appellee for dismissal of this appeal is granted. The appeal is hereby dismissed. See Eighth Circuit Rule 47 A(b).

November II, 2008

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 08-3428

Samuel K. Lipari,

Appellant

v.

US Bancorp, NA and US Bank NA,

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:06-cv-0 10 12-FJG)

ORDER

The motion to recall the mandate filed by Appellant Lipari has been considered by the court and is denied.

December 09,2008

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

EXHIBIT ~

CLOSED, EAPADMIN

U.S. District Court
United States District Court for the Western District of Missouri (Kansas City)
CIVIL DOCKET FOR CASE #: 4:06-cv-01012-FJG

Lipari v. US Bancorp, NA et al
Assigned to: Chief District Judge Fernando J. Gaitan, Jr
Case in other court: Jackson County Circuit Court,
Missouri, 0616-CV32307
Cause: 28: 1332 Diversity-Other Contract

Date Filed: 12/13/2006
Date Terminated: 04/04/2007
Jury Demand: Both
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

Samuel K. Lipari

represented by Samuel K. Lipari
297 NE Bayview
Lee's Summit, MO 64064
PROSE

V.

Defendant

US Bancorp, NA

represented by Andrew M. DeMarea
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Defendant

US BankNA

represented by Andrew M. DeMarea
(See above for address)
LEAD ATTORNEY

EXHIBIT D

ATTORNEY TO BE NOTICED

Mark A. Olthoff

(See above for address)

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
12/13/2006	1	NOTICE OF REMOVAL by US Bancorp, NA, US Bank NA, US Bancorp, NA, US Bank NA from Circuit Court of Jackson County, Missouri, case number 0616-CV32307. (Filing fee \$ 350 receipt number 1408283) filed by Mark A. Olthoff on behalf of US Bancorp, NA, US Bank NA, US Bancorp, NA, US Bank NA. (Attachments: # 1 State Court Petition# 2 Civil Cover Sheet)(Olthoff, Mark) (Entered: 12/13/2006)
12/13/2006	2	NOTICE of filing by US Bancorp, NA, US Bank NA re 1 Notice of Removal, to Plaintiff(Olthoff, Mark) (Entered: 12/13/2006)
12/13/2006	3	DISCLOSURE OF CORPORATE INTERESTS filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA.(Olthoff, Mark) (Entered: 12/13/2006)
12/14/2006	4	NOTICE of filing by US Bancorp, NA, US Bank NA of Certificate of Filing of Notice of Removal in State Court and Proof of Service (Olthoff, Mark) (Entered: 12/14/2006)
12/14/2006	5	Notice of EAP Administrative (Attachments: # I EAP General Order) (Baldwin, Joella) (Entered: 12/14/2006)
12/18/2006	6	MOTION to remand and rely to Notice of Removal filed by Samuel K. Lipari. Suggestions in opposition/response due by 1/2/2007 unless otherwise directed by the court. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4# 5 Exhibit 5)(Jones, Robin) Modified on 12/19/2006 to attach Letter to Clerk (Jones, Robin). (Entered: 12/18/2006)
12/21/2006	7	ANSWER to Complaint filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA.(Olthoff, Mark) (Entered: 12/21/2006)
12/29/2006	8	SUGGESTIONS in opposition re ()MOTION to remand filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA. Reply suggestions due by 1/16/2007 unless otherwise directed by the court (Related document(s)6) (Olthoff, Mark) (Entered: 12/29/2006)
01/03/2007	9	ORDER -joint proposed discovery plan and scheduling order due by 2/19/2007. Counsel for defendants, after consultation with plaintiff, shall take the lead in preparing a proposed scheduling order for execution and filing with the court. Signed by Judge Fernando I. Gaitan Jr. on 1/13/07. (Enss, Rhonda) (Entered: 01/03/2007)

01/04/2007	10	MOTION for more definite statement filed by Samuel K. Lipari.Suggestions in opposition/response due by 1119/2007 unless otherwise directed by the court. (Jones, Robin) (Entered: 0110512007)
01104/2007	11	MOTION to vacate Case Management Order, Document 9, filed by Samuel K. Lipari.Suggestions in opposition/response due by 111912007 unless otherwise directed by the court. (Related document(s) 9) (Jones, Robin) (Entered: 01105/2007)
0110412007	12	REPLY to answer on behalf of Plaintiff Samuel K. Lipari. (Attachments: # 1 Exhibit 1)(Related document(s)7) (Jones, Robin) (Entered: 01105/2007)
01118/2007	13	SUGGESTIONS in opposition re 10 MOTION for more definite statement filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA. Reply suggestions due by 2/5/2007 unless otherwise directed by the court (Related document(s)I 0) (Olthoff, Mark) (Entered: 01118/2007)
01118/2007	14	SUGGESTIONS in opposition re 11 MOTION to vacate 9 Order, filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA. Reply suggestions due by 2/5/2007 unless otherwise directed by the court (Related document(s)JJ) (Olthoff, Mark) (Entered: 0111812007)
01119/2007	15	MOTION for leave to file excess pages filed by Mark A. Olthoff on behalf of all defendantsSuggestions in opposition/response due by 2/8/2007 unless otherwise directed by the court. (Olthoff, Mark) (Entered: 01119/2007)
01119/2007	16	MOTION to dismiss case <i>Or, In the Alternative, Motion to Transfer</i> filed by Mark A. Olthoff on behalf of all defendants Suggestions in opposition/response due by 2/812007 unless otherwise directed by the court. (Olthoff, Mark) (Entered: 01119/2007)
01119/2007	17	SUGGESTIONS in support re 16 MOTION to dismiss case <i>Or, In the Alternative, Motion to Transfer</i> filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA. (Attachments: # J Exhibit A# 2 Exhibit B# J Exhibit C# 4 Exhibit D# 5 Exhibit E)(Related document(s)lf» (Olthoff, Mark) (Entered: 01119/2007)
01/3112007	18	MOTION to stay further proceedings pending appeal filed by Samuel K. Lipari. Suggestions in opposition/response due by 212012007 unless otherwise directed by the court. (Attachments: # 1 Notice of Exhibit Attachment)(Carr, Lori) (Entered: 02/0112007)
02/0812007	19	SUGGESTIONS in opposition re 18 MOTION to stay <i>Defendants' Suggestions in Opposition to Plaintiff's Motion to Stay</i> filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA. Reply suggestions due by 2126/2007 unless otherwise directed by the court (Related document(s)18) (Olthoff, Mark) (Entered: 02/08/2007)
02/09/2007	20	REPORT of Rule 26(t) planning meeting. (Olthoff, Mark) (Entered: 02/09/2007)

04/04/2007	21	ORDER denying 6 plaintiffs motion to remand; denying 10 plaintiffs motion for more definite statement; denying as moot 11 plaintiffs motion to reconsider Court's case management order; granting 15 defendants' motion for leave to file excess pages; granting 16 defendant's motion to transfer case to District Court of KS; and denying as moot 18 plaintiffs motion to stay. Signed by Judge Fernando L. Gaitan Jr. on 4/4/07. (Enss, Rhonda) (Entered: 04/04/2007)
04/09/2007		TRANSFER documents mailed to USDC - District of Kansas. This is a text entry only - no document is attached. (Jones, Robin) (Entered: 04/09/2007)

PACER Service Center			
Transaction Receipt			
1	0411 112007 09:48:01		
IPACER Login: Ius3686	IICent Code: 1		
IDescription: IIOcket Report IISearch Criteria: 114:06-cv-0 10 12-F 10	1		
IBillable Pages: 112	IICost: 110.16	1	

SA

U.S. District Court
District of Kansas (Kansas City)
CIVIL DOCKET FOR CASE #: 2:07-cv-02146-CM-DJW

Lipari v. US Bancorp N A et al
Assigned to: District Judge Carlos Murguia
Referred to: Magistrate Judge David J. Waxse
Case in other court: USDC Western District of Missouri,
06-01012
Cause: 28: 1332 Diversity-Other Contract

Date Filed: 0411012007
Jury Demand: Both
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

Samuel K. Lipari

represented by Samuel K. Lipari
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Lee's Summit, MO 64064
PROSE

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Law Office of Dennis Hawver
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Email: hawverlaw@embarqmail.com
TERMINATED: 0110212008

V.

Defendant

US Bancorp N A

represented by Andrew M. DeMarea
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EXHIBIT C

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 816-421-3355
 Fax: 816-374-0509
 Email: molthoff@stklaw.com
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pefendant

US BankNA

represented by Andrew M. DeMarea
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jay E. Heidrick
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mark A. Olthoff
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/10/2007		Case transferred in from Western District of Missouri. Case Number 06-1012. Case is an electronic transfer.(mm) (Entered: 0411112007)
04/10/2007	1	NOTICE OF REMOVAL from Western District of Missouri, case number 06-1012, filed by Samuel K. Lipari. (Attachments: (1) Exhibit A)(Originally filed in WD/MO on 12/13/06)(mm) (Entered: 0411112007)
04/10/2007	7	ANSWER to Complaint 1 by US Bancorp N A, US Bank NA. (Originally filed in WD/MO on 12/21/06)(mm) (Entered: 0411112007)

United States Court of Appeals
Tenth Circuit

December 19, 2008

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
lisabeth A. Shumaker
Clerk of Court

SAMUEL K. LIPARI,

Plaintiff - Appellant,

v.

Case Nos. 08-3287,
08-3338, and 08-3345

US BANCORP NA; US BANK NA,

(D. Kans. No 2:07-CV -02146-CM-DJW)

Defendants - Appellees.

ORDER

All three of the above-referenced appellate cases, 08-3287, 08-3338, and 08-3345, arise out of the same proceeding before the U.S. District Court for the District of Kansas, Lipari v. US Bancorp NA, No. 2:07-CV -02146-CM-DJW.

Case No. 08-3287 is an appeal by the plaintiff prior to the entry of final judgment of various orders. That case was being held in abeyance pending the entry of a final judgment order.

Case No. 08-3338 is another appeal by the plaintiff initiated prior to the entry of judgment. That case is currently pending responses following the entry of a jurisdictional show cause order.

However, the district court on December 12, 2008 entered a final judgment as to

EXHIBIT t

all claims of the plaintiff. dismissed the case and in the same order, affirmed the magistrate judge's order relating to \$700.00 in defendants' attorneys fees that the plaintiff has been ordered to pay. On December 17, 2008, the plaintiff filed a third notice of appeal referencing this final judgment.

Once a final judgment is entered, a prematurely filed notice of appeal ripens. Fed. R. App. P. 4(a)(2); Dodd Ins. Services, Inc. v. Royal Ins. Co., 935 F.2d 1152, 1154 n.1 (10th Cir. /991). And, as previously noted, the plaintiff has filed another notice of appeal following the entry of final judgment.

The court directs as follows. Case Nos. 08-3287, 08-3338, and 08-3345 are consolidated for purposes of record preparation, briefing, and court consideration. Although other orders issued in these now consolidated appeals remain in effect, the parties are excused from filing any additional responses to jurisdictional show cause orders. Any previously ordered abatements are now lifted.

Because the plaintiff-appellant is proceeding without counsel, the district court shall transmit to this court a single record on appeal for all three appeals pursuant to Tenth Cir. R. 11.2. The record on appeal shall be transmitted on or before January 26, 2009.

All motions and briefs filed in these consolidated appeals will include all three case numbers on the cover in the case caption.

The consolidated opening brief of the plaintiff-appellant addressing all claims of error properly before the court in the three consolidated appeals will be due within 40

days after the record on appeal is filed. Fed. R. App. P. 31(a)(I). The consolidated response brief of the defendants-appellees and any consolidated reply brief of the plaintiff-appellant will then be due as provided in the applicable rules.

Entered for the Court
ELISABETH A. SHUMAKER
Clerk of Court,

A handwritten signature in black ink, appearing to read "Douglas E. Cressler", written over a horizontal line.

by:
Douglas E. Cressler
Chief Deputy Clerk

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

SAMUEL K. LIPARI,)	
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Appellant,)	
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v.)	Case No. 08-3984
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U.S. BANCORP and U.S. BANK)	
NATIONAL ASSOCIATION,)	
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Appellees.)	

**APPELLEES' MOTION TO DISMISS
APPELLANT'S "THIRD NOTICE OF APPEAL"**

Appellant's "third amended notice of appeal" is equally as meritless as the appeals this Court dismissed on October 9, 2008 and November 11, 2008. As a result, appellees U.S. Bancorp and U.S. Bank National Association, pursuant to Fed. R. App. P. 27 and Eight Circuit Local Rule 47(A), again move to dismiss the appeal. As grounds for this motion, appellees state:

1. On September 5, 2008, appellant filed his first notice of appeal from the Western District of Missouri. Specifically, appellant appealed from the District Court's April 4, 2007 interim order denying appellant's motion for remand and transferring this case to the District of Kansas. This Court dismissed the appeal on October 9, 2008. (Exhibit A.) Appellant filed a second notice of appeal on October 16, 2008 attempting to obtain review of the same interim orders. This Court dismissed the second appeal on November 11, 2008 (Exhibit B). The Court also denied appellant's motion to recall the mandate in Case No. 08-3428 issued upon dismissal of the second appeal. (Exhibit C.)

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[C]ourt and federal jurisdiction was exclusively in the US Tenth Circuit Court of Appeals. . . . [The appellant] also appeals [the District] [C]ourt's refusal to abstain under the 'first to file' rule." (Third Amended Notice of Appeal at p. 1.)

3. This Court does not have jurisdiction over this appeal. This matter has been pending in the United States District Court for the District of Kansas since its transfer from the Western District of Missouri on April 9, 2007 and receipt in the District of Kansas April 10, 2007. (Exhibit D (Missouri docket sheet) and Exhibit E (partial Kansas docket sheet) hereto reflecting physical transfer of files.) As a result, this case has not been pending within the district courts of the Eighth Circuit for more than twenty (20) months.

4. The District Court for the Western District of Missouri did not certify any order for immediate interlocutory appeal under 28 U.S.C. § 1292(b). Appellant did not file a writ request in this Court asking that the District Court be prohibited from accomplishing the transfer set forth in its April 4, 2007 order. Nor is the order one of the types that is immediately appealable under 28 U.S.C. § 1292(a).

5. Appellant currently has an appeal docketed in the Tenth Circuit Court of Appeals in which he purports to appeal from the rulings of the District Court, Case Nos. 08-3287, 08-3338 and 08-3345. The Tenth Circuit appeals were not dismissed, but rather held in abeyance, pending a final order from the Kansas District Court. Accordingly, the Tenth Circuit has exercised jurisdiction to hear this appeal. (Exhibit F.)

6. Because the Eighth Circuit Court of Appeals lacks jurisdiction to hear this appeal, it should be dismissed.

BACKGROUND

The appellant's litigation with these defendants has consumed over six years and is reflected in several orders and decisions. *See Medical Supply Chain, Inc. v. US Bancorp. et al.*,

2003 WL 21479192 (D. Kan., June 16, 2003), *aff'd* 112 Fed. Appx. 730 (10th Cir. 2004); *Medical Supply Chain, Inc. v. Novation, et al.*, 419 F. Supp.2d 1316 (D. Kan. 2006), *appeal dismissed* 508 F.3d 572 (10th Cir. 2007); *see also Lipari v. U.S. Bancorp*, 2008 WL 4190784 (D. Kan. Sept. 4, 2008). The suit pertinent to this appeal was filed in 2006, removed to federal court and transferred to the United States District Court for the District of Kansas. (Exhibits D, E); *Lipari v. US Bancorp*, 2008 WL 4190784.

BASIS FOR DISMISSAL

An appeal should be dismissed when this Court lacks jurisdiction to hear it. This matter is a prime example. Mr. Lipari's claims have been pending in the United States District Court for the District of Kansas since April 2007. (Exhibits D, E; *Lipari, supra.*) This third, successive notice of appeal purports once again to challenge interim orders of the United States District Court for the Western District of Missouri, namely its decisions denying remand and ordering transfer. However, there is not an appealable order of the Western District of Missouri from which the appellant may seek this Court's review. *See Midwest Motor Express, Inc. v. Central States Southeast and Southwest Pension Fund*, 70 F.3d 1014, 1016 (8th Cir. 1996)(transfer orders generally not immediately reviewable); *Saab v. Home Depot U.S.A.*, 469 F.3d 758, 759 (8th Cir. 2006)(orders denying remand ordinarily not immediately appealable).¹

Even if appellant could have sought review of the Missouri federal court order denying remand and transferring this matter to the District of Kansas, either by interlocutory appeal or extraordinary writ,² his "third notice of appeal" to this Court now—more than 20 months after the case has been transferred to and litigated to finality in the Kansas federal court—is untimely and

¹ The district court did not certify the order for appeal under 28 U.S.C. § 1292(b) and the order is not otherwise immediately appealable under 28 U.S.C. § 1292(a).

² While these procedures may have been available to Mr. Lipari at the time the case was pending in the Western District of Missouri, *see Koehler v. Green*, 370 F. Supp.2d 904, 906 n.1 (E.D. Mo. 2005), he cannot rely upon them now.

without merit. *See Integrated Health Servs. of Cliff Manor, Inc. v. THCI Company, LLC*, 417 F.3d 953, 957 (8th Cir. 2005). Mr. Lipari has filed an appeal to the Tenth Circuit Court of Appeals. There is no absolute right for him to file an appeal in any court of his choosing and at any time he chooses, let alone to seek the piecemeal review of interim district court orders. The “third amended notice of appeal” should be dismissed.³

WHEREFORE, appellees U.S. Bancorp and U.S. Bank National Association request that this Court dismiss appellant’s appeal and for such other relief as the Court deems just and proper.

/s/ Mark A. Olthoff

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ATTORNEYS FOR APPELLEES U.S. BANCORP
AND U.S. BANK NATIONAL ASSOCIATION

³ Appellant’s filing of multiple frivolous appeal notices is wholly improper, particularly when this Court already has twice dismissed the prior appeals. There is no authority for appellant’s third appeal. It is clear that Mr. Lipari cannot seek relief in this Court where the Missouri federal court had lost its jurisdiction more than a year and a half ago. *See Integrated Health Servs. of Cliff Manor, Inc.*, 417 F.3d at 957; *Midwest Motor Express, Inc.*, 70 F.3d at 1016; *In re Nine Mile Ltd.*, 673 F.2d 242, 243 (8th Cir. 1982). Having no legal or factual basis, the appeal is frivolous.

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the above and foregoing was delivered via United States mail, postage prepaid, this 30th day of December, 2008, to:

Mr. Samuel K. Lipari
3520 NE Akin Boulevard
Suite 918
Lee's Summit, MO 64064

Appellant

/s/ Mark A. Olthoff

Attorney for Appellees U.S. Bancorp and U.S. Bank
National Association

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 08-3087

Samuel K. Lipari,

Plaintiff - Appellant

v.

US Bancorp, NA; US Bank NA,

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:06-cv-01012-FJG)

JUDGMENT

The motion of appellee for dismissal of this appeal is granted. The appeal is hereby dismissed. See Eighth Circuit Rule 47A(b).

October 09, 2008

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

EXHIBIT 

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 08-3428

Samuel K. Lipari,

Plaintiff - Appellant

v.

US Bancorp, NA; US Bank NA,

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:06-cv-01012-FJG)

JUDGMENT

The motion of appellee for dismissal of this appeal is granted. The appeal is hereby dismissed. See Eighth Circuit Rule 47A(b).

November 11, 2008

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

EXHIBIT B

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 08-3428

Samuel K. Lipari,

Appellant

v.

US Bancorp, NA and US Bank NA,

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:06-cv-01012-FJG)

ORDER

The motion to recall the mandate filed by Appellant Lipari has been considered by the court and is denied.

December 09, 2008

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

EXHIBIT C

CLOSED, EAPADMIN

**U.S. District Court
United States District Court for the Western District of Missouri (Kansas City)
CIVIL DOCKET FOR CASE #: 4:06-cv-01012-FJG**

Lipari v. US Bancorp, NA et al
Assigned to: Chief District Judge Fernando J. Gaitan, Jr
Case in other court: Jackson County Circuit Court,
Missouri, 0616-CV32307
Cause: 28:1332 Diversity-Other Contract

Date Filed: 12/13/2006
Date Terminated: 04/04/2007
Jury Demand: Both
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

Samuel K. Lipari

represented by **Samuel K. Lipari**
297 NE Bayview
Lee's Summit, MO 64064
PRO SE

V.

Defendant

US Bancorp, NA

represented by **Andrew M. DeMarea**
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Defendant

US Bank NA

represented by **Andrew M. DeMarea**
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LEAD ATTORNEY

EXHIBIT D

ATTORNEY TO BE NOTICED

Mark A. Olthoff

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/13/2006	<u>1</u>	NOTICE OF REMOVAL by US Bancorp, NA, US Bank NA, US Bancorp, NA, US Bank NA from Circuit Court of Jackson County, Missouri, case number 0616-CV32307. (Filing fee \$ 350 receipt number 1408283) filed by Mark A. Olthoff on behalf of US Bancorp, NA, US Bank NA, US Bancorp, NA, US Bank NA. (Attachments: # <u>1</u> State Court Petition# <u>2</u> Civil Cover Sheet)(Olthoff, Mark) (Entered: 12/13/2006)
12/13/2006	<u>2</u>	NOTICE of filing by US Bancorp, NA, US Bank NA re <u>1</u> Notice of Removal, to Plaintiff (Olthoff, Mark) (Entered: 12/13/2006)
12/13/2006	<u>3</u>	DISCLOSURE OF CORPORATE INTERESTS filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA.(Olthoff, Mark) (Entered: 12/13/2006)
12/14/2006	<u>4</u>	NOTICE of filing by US Bancorp, NA, US Bank NA of Certificate of Filing of Notice of Removal in State Court and Proof of Service (Olthoff, Mark) (Entered: 12/14/2006)
12/14/2006	<u>5</u>	Notice of EAP Administrative (Attachments: # <u>1</u> EAP General Order) (Baldwin, Joella) (Entered: 12/14/2006)
12/18/2006	<u>6</u>	MOTION to remand and rely to Notice of Removal filed by Samuel K. Lipari. Suggestions in opposition/response due by 1/2/2007 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit 1# <u>2</u> Exhibit 2# <u>3</u> Exhibit 3# <u>4</u> Exhibit 4# <u>5</u> Exhibit 5)(Jones, Robin) Modified on 12/19/2006 to attach Letter to Clerk (Jones, Robin). (Entered: 12/18/2006)
12/21/2006	<u>7</u>	ANSWER to Complaint filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA.(Olthoff, Mark) (Entered: 12/21/2006)
12/29/2006	<u>8</u>	SUGGESTIONS in opposition re <u>6</u> MOTION to remand filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA. Reply suggestions due by 1/16/2007 unless otherwise directed by the court (Related document(s) <u>6</u>) (Olthoff, Mark) (Entered: 12/29/2006)
01/03/2007	<u>9</u>	ORDER - joint proposed discovery plan and scheduling order due by 2/9/2007. Counsel for defendants, after consultation with plaintiff, shall take the lead in preparing a proposed scheduling order for execution and filing with the court. Signed by Judge Fernando J. Gaitan Jr. on 1/3/07. (Enss, Rhonda) (Entered: 01/03/2007)

01/04/2007	10	MOTION for more definite statement filed by Samuel K. Lipari. Suggestions in opposition/response due by 1/19/2007 unless otherwise directed by the court. (Jones, Robin) (Entered: 01/05/2007)
01/04/2007	11	MOTION to vacate Case Management Order, Document 9, filed by Samuel K. Lipari. Suggestions in opposition/response due by 1/19/2007 unless otherwise directed by the court. (Related document(s) 9) (Jones, Robin) (Entered: 01/05/2007)
01/04/2007	12	REPLY to answer on behalf of Plaintiff Samuel K. Lipari. (Attachments: # 1 Exhibit 1)(Related document(s) 7) (Jones, Robin) (Entered: 01/05/2007)
01/18/2007	13	SUGGESTIONS in opposition re 10 MOTION for more definite statement filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA. Reply suggestions due by 2/5/2007 unless otherwise directed by the court (Related document(s) 10) (Olthoff, Mark) (Entered: 01/18/2007)
01/18/2007	14	SUGGESTIONS in opposition re 11 MOTION to vacate 9 Order, filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA. Reply suggestions due by 2/5/2007 unless otherwise directed by the court (Related document(s) 11) (Olthoff, Mark) (Entered: 01/18/2007)
01/19/2007	15	MOTION for leave to file excess pages filed by Mark A. Olthoff on behalf of all defendants Suggestions in opposition/response due by 2/8/2007 unless otherwise directed by the court. (Olthoff, Mark) (Entered: 01/19/2007)
01/19/2007	16	MOTION to dismiss case <i>Or, In the Alternative, Motion to Transfer</i> filed by Mark A. Olthoff on behalf of all defendants Suggestions in opposition/response due by 2/8/2007 unless otherwise directed by the court. (Olthoff, Mark) (Entered: 01/19/2007)
01/19/2007	17	SUGGESTIONS in support re 16 MOTION to dismiss case <i>Or, In the Alternative, Motion to Transfer</i> filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D# 5 Exhibit E)(Related document(s) 16) (Olthoff, Mark) (Entered: 01/19/2007)
01/31/2007	18	MOTION to stay further proceedings pending appeal filed by Samuel K. Lipari. Suggestions in opposition/response due by 2/20/2007 unless otherwise directed by the court. (Attachments: # 1 Notice of Exhibit Attachment)(Carr, Lori) (Entered: 02/01/2007)
02/08/2007	19	SUGGESTIONS in opposition re 18 MOTION to stay <i>Defendants' Suggestions in Opposition to Plaintiff's Motion to Stay</i> filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA. Reply suggestions due by 2/26/2007 unless otherwise directed by the court (Related document(s) 18) (Olthoff, Mark) (Entered: 02/08/2007)
02/09/2007	20	REPORT of Rule 26(f) planning meeting. (Olthoff, Mark) (Entered: 02/09/2007)

04/04/2007	21	ORDER denying 6 plaintiff's motion to remand; denying 10 plaintiff's motion for more definite statement; denying as moot 11 plaintiff's motion to reconsider Court's case management order; granting 15 defendants' motion for leave to file excess pages; granting 16 defendant's motion to transfer case to District Court of KS; and denying as moot 18 plaintiff's motion to stay. Signed by Judge Fernando J. Gaitan Jr. on 4/4/07. (Enss, Rhonda) (Entered: 04/04/2007)
04/09/2007		TRANSFER documents mailed to USDC - District of Kansas. This is a text entry only - no document is attached. (Jones, Robin) (Entered: 04/09/2007)

PACER Service Center			
Transaction Receipt			
04/11/2007 09:48:01			
PACER Login:	us3686	Client Code:	
Description:	Docket Report	Search Criteria:	4:06-cv-01012-FJG
Billable Pages:	2	Cost:	0.16

SA

**U.S. District Court
District of Kansas (Kansas City)
CIVIL DOCKET FOR CASE #: 2:07-cv-02146-CM-DJW**

Lipari v. US Bancorp N A et al
Assigned to: District Judge Carlos Murguia
Referred to: Magistrate Judge David J. Waxse
Case in other court: USDC Western District of Missouri,
06-01012
Cause: 28:1332 Diversity-Other Contract

Date Filed: 04/10/2007
Jury Demand: Both
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff**Samuel K. Lipari**

represented by **Samuel K. Lipari**
297 NE Bayview
Lee's Summit, MO 64064
PRO SE

Ira Dennis Hawver
Law Office of Dennis Hawver
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Ozawkie , KS 66070
785-876-2233
Fax: 785-876-3038
Email: hawverlaw@embarqmail.com
TERMINATED: 01/02/2008

V.

Defendant**US Bancorp N A**

represented by **Andrew M. DeMarea**
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EXHIBIT E

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Defendant**US Bank NA**

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Jay E. Heidrick
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Mark A. Olthoff
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/10/2007		Case transferred in from Western District of Missouri. Case Number 06-1012. Case is an electronic transfer.(mm) (Entered: 04/11/2007)
04/10/2007	1	NOTICE OF REMOVAL from Western District of Missouri, case number 06-1012, filed by Samuel K. Lipari. (Attachments: (1) Exhibit A)(Originally filed in WD/MO on 12/13/06)(mm) (Entered: 04/11/2007)
04/10/2007	7	ANSWER to Complaint 1 by US Bancorp N A, US Bank NA. (Originally filed in WD/MO on 12/21/06)(mm) (Entered: 04/11/2007)

December 19, 2008

UNITED STATES COURT OF APPEALS Elisabeth A. Shumaker
FOR THE TENTH CIRCUIT Clerk of Court

SAMUEL K. LIPARI,

Plaintiff - Appellant,

v.

US BANCORP NA; US BANK NA,

Defendants - Appellees.

Case Nos. 08-3287,
08-3338, and 08-3345
(D. Kans. No 2:07-CV-02146-CM-DJW)

ORDER

All three of the above-referenced appellate cases, 08-3287, 08-3338, and 08-3345, arise out of the same proceeding before the U.S. District Court for the District of Kansas, Lipari v. US Bancorp NA, No. 2:07-CV-02146-CM-DJW.

Case No. 08-3287 is an appeal by the plaintiff prior to the entry of final judgment of various orders. That case was being held in abeyance pending the entry of a final judgment order.

Case No. 08-3338 is another appeal by the plaintiff initiated prior to the entry of judgment. That case is currently pending responses following the entry of a jurisdictional show cause order.

However, the district court on December 12, 2008 entered a final judgment as to

EXHIBIT F

all claims of the plaintiff, dismissed the case and in the same order, affirmed the magistrate judge's order relating to \$700.00 in defendants' attorneys fees that the plaintiff has been ordered to pay. On December 17, 2008, the plaintiff filed a third notice of appeal referencing this final judgment.

Once a final judgment is entered, a prematurely filed notice of appeal ripens. Fed. R. App. P. 4(a)(2); Dodd Ins. Services, Inc. v. Royal Ins. Co., 935 F.2d 1152, 1154 n.1 (10th Cir. 1991). And, as previously noted, the plaintiff has filed another notice of appeal following the entry of final judgment.

The court directs as follows. Case Nos. 08-3287, 08-3338, and 08-3345 are consolidated for purposes of record preparation, briefing, and court consideration. Although other orders issued in these now consolidated appeals remain in effect, the parties are excused from filing any additional responses to jurisdictional show cause orders. Any previously ordered abatements are now lifted.

Because the plaintiff-appellant is proceeding without counsel, the district court shall transmit to this court a single record on appeal for all three appeals pursuant to Tenth Cir. R. 11.2. The record on appeal shall be transmitted on or before January 26, 2009.

All motions and briefs filed in these consolidated appeals will include all three case numbers on the cover in the case caption.

The consolidated opening brief of the plaintiff-appellant addressing all claims of error properly before the court in the three consolidated appeals will be due within 40

days after the record on appeal is filed. Fed. R. App. P. 31(a)(1). The consolidated response brief of the defendants-appellees and any consolidated reply brief of the plaintiff-appellant will then be due as provided in the applicable rules.

Entered for the Court
ELISABETH A. SHUMAKER
Clerk of Court,

A handwritten signature in black ink, appearing to read "Douglas E. Cressler", written over a horizontal line.

by:
Douglas E. Cressler
Chief Deputy Clerk