

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**SAVANNAH MIDTOWN LLC d/b/a
SAVANNAH MIDTOWN,**

Plaintiff,

v.

1:13-cv-3530-WSD

RODNEY McDONALD,

Defendant.

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Justin S. Anand’s Final Report and Recommendation [3] (“R&R”), which recommends remanding this dispossessory action to the Magistrate Court of Fulton County, Georgia.

I. BACKGROUND

On June 15, 2012, Plaintiff Savannah Midtown LLC (“Plaintiff”) initiated a dispossessory proceeding against its tenant Defendant Rodney McDonald (“Defendant”) in the Magistrate Court of Fulton County, Georgia. The Complaint seeks possession of premises currently occupied by Defendant, plus past due rent, late fees, and costs.

On October 25, 2013, Defendant, proceeding *pro se*, removed the case to this Court by filing his Notice of Removal and an application to proceed *in forma pauperis* (“IFP”) [1]. Defendant appears to assert that there is federal subject-matter jurisdiction based on the existence of a question of federal law. He claims in his Notice of Removal that this action violates “15 USCA 1692.”

On October 29, 2013, Magistrate Judge Anand granted Defendant’s application to proceed IFP. Judge Anand also considered *sua sponte* the question of federal jurisdiction and recommends that the Court remand this case to the state court.

Judge Anand found that Plaintiff’s underlying pleading shows that this action is a dispossessory proceeding that does not invoke a federal question. Noting that a federal law defense or counterclaim alone is not sufficient to confer federal jurisdiction, Judge Anand concluded that the Court does not have federal question jurisdiction over this matter. Judge Anand further found that Plaintiff is not a “U.S. Government Entity,” as indicated on Defendant’s Civil Cover Sheet. For these reasons, Judge Anand concludes that this case is required to be remanded to the state court.

There are no objections to the R&R.

II. DISCUSSION

A. Legal Standard

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982) (per curiam). A district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). With respect to those findings and recommendations to which a party has not asserted objections, the Court must conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983) (per curiam).

B. Analysis

Defendant does not object to the R&R's conclusion that Plaintiff's Complaint does not present a federal question. The Court does not find any error in this conclusion. It is well-settled that federal-question jurisdiction exists only when a federal question is presented on the face of a plaintiff's well-pleaded complaint and that the assertions of defenses or counterclaims based on federal law cannot confer federal question jurisdiction over a cause of action. See Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 6 (2003); Holmes Group, Inc. v. Vornado Air


Circulation Systems, Inc., 535 U.S. 826, 830-32 (2002). The Court further agrees with the R&R's finding that Plaintiff, a private business, is not a "U.S. Government Entity." This action is thus required to be remanded to the state court. See 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.").

III. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that Magistrate Judge Justin S. Anand's Final Report and Recommendation [3] is **ADOPTED**. This action is **REMANDED** to the Magistrate Court of Fulton County, Georgia.

SO ORDERED this 27th day of November, 2013.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE