

1 **WO**

2

3

4

5

6

**IN THE UNITED STATES DISTRICT COURT**

7

**FOR THE DISTRICT OF ARIZONA**

8

9	First Horizon Home Loan, a Division of )	No. CV09-2186 PHX-DGC
	First Tennessee Bank National )	
10	Association, its successors and/or )	<b>ORDER</b>
	assigns, )	
11	)	
	Plaintiff, )	
12	)	
	vs. )	
13	)	
	Adeyemi Kayode, et al., )	
14	)	
	Defendants. )	
15	)	

16 Defendant Ron E. Medley has removed the present case to this Court from state court.  
17 Dkt. #1. The Court finds that it does not have jurisdiction over the case and will remand it  
18 to state court for further proceedings.<sup>1</sup>

19 **I. Background.**

20 On September 5, 2008, First Horizon Home Loan filed a forcible detainer action  
21 against Adeyemi and Kerry Ann Kayode and Does I-X. Dkt. #1-1 at 1-3.<sup>2</sup> On September  
22

23 <sup>1</sup> Currently, there are 11 motions pending in this case, including a motion to dismiss  
24 and remand by First Horizon Home Loan and a corresponding motion by Medley to strike  
25 that motion. Dkt. ## 27, 30. Although the Court has read the pending motions, responses,  
26 and replies, the Court will remand this case sua sponte on the grounds that it lacks  
27 jurisdiction. See *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990) (“The federal  
28 courts are under an independent obligation to examine their own jurisdiction . . . .”)

<sup>2</sup> Citations to pages in the parties’ filings will be to the page numbers applied by the  
Court’s electronic docket at the top of each page.

1 16, 2008, “RON E. MEDLEY, d/b/a CONSUMER FORECLOSURE SERVICES” – the  
2 occupant of the premises at issue in the forcible detainer action – filed an answer to First  
3 Horizon’s action and also filed counterclaims against First Horizon. *Id.* at 11-15  
4 (capitalization in original); *see id.* at 122. On September 23, 2008, the state court ordered  
5 Medley to submit proof of his interest in the real property at issue and also struck Medley’s  
6 counterclaims. *Id.* at 23-24.

7 Trial in the forcible detainer case was set for November 25, 2008. *Id.* at 114. Four  
8 days before trial, Medley filed a notice of removal to the United States District Court,  
9 claiming that the District Court had jurisdiction under 28 U.S.C. 1332(a) and (c)(1). *Id.* at  
10 116-121. The District Court remanded the action to state court, finding that there was no  
11 basis for federal jurisdiction. *First Horizon Home Loan v. Medley*, No. Civ 08-2158-PHX-  
12 DKD, Dkt. #19 (September 9, 2009). The state court then set trial for October 19, 2009.  
13 Dkt. #1-1 at 128. On the morning of trial, Medley filed another notice of removal to the  
14 District Court, which the state court denied. *See* CV 2008-021450, Minute Entry of  
15 October 19, 2009. Medley did not appear for trial, and the state court found him and the  
16 Kayodes guilty of forcible detainer and granted judgment in favor of First Horizon. Dkt. #27  
17 at 7-9. On November 2, 2009, the Kayodes filed a notice of entry of an automatic stay,  
18 which was the result of a bankruptcy filing by the Kayodes in January of 2009. Dkt. #27 at  
19 3; Dkt. #23 at 11.

20 **II. Analysis.**

21 In his notice of removal of October 19, 2009, Medley asserts that this Court has  
22 jurisdiction under 28 U.S.C. § 1334(b) and 28 U.S.C. § 1331. The Court disagrees that it has  
23 jurisdiction under either statute and will remand the case to state court.

24 **A. 28 U.S.C. § 1334(b).**

25 Medley asserts that this Court has jurisdiction over the case under 28 U.S.C.  
26 § 1334(b), and removed the case to this Court using 28 U.S.C. § 1452. Under 28 U.S.C.  
27 § 1452 and § 1334(b), a party may remove any state action that is under Title 11, or that is  
28 “related to” or “arising in” a case under Title 11. *See* 28 U.S.C. §§ 1452, 1334(b). This

1 removal statute is to be strictly construed, and any doubts regarding removal must be  
2 resolved in favor of remand to state court. *See Luevano v. Dow Corning Corp.*, 183 B.R. 751  
3 (W.D. Tex. 1995) (citing *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100 (1941)).

4 Medley asserts that this Court has jurisdiction over the case because it is under,  
5 “arising in,” or “related to” a case under Title 11 – the petition for bankruptcy filed by the  
6 Kayodes on January 12, 2009. Dkt. #1 at 2. The Court disagrees. First, the action in this  
7 case is not brought under Title 11; it is a forcible detainer action brought under Arizona law.  
8 Dkt. #1-1 at 1-3. Second, this action is not “arising in” a case under Title 11 because “arising  
9 in” proceedings have no existence outside bankruptcy – and the forcible detainer action  
10 clearly would exist regardless of the bankruptcy. *See Wood v. Wood*, 825 F.2d 90, 97 (5th  
11 Cir. 1987). Third, this action is not “related to” a case under Title 11 because the outcome  
12 of the proceeding could not conceivably have any effect on the estate of the Kayodes. The  
13 state court already ruled on the forcible detainer case against the Kayodes. Dkt. #27 at 7-9;  
14 *see Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (“The usual articulation of the  
15 test for determining whether a civil proceeding is related to bankruptcy is whether the  
16 outcome of that proceeding could conceivably have any effect on the estate being  
17 administered in bankruptcy.”).

18 Moreover, even if this Court had jurisdiction over this case under 28 U.S.C.  
19 § 1334(b), it would remand this action to state court on equitable grounds. Under 28 U.S.C.  
20 § 1452(b), the district court may remand a claim related to a bankruptcy case “on any  
21 equitable ground.” *See, e.g., Transamerica Fin. Life Ins. Co. v. Merrill Lynch & Co.*, 302  
22 B.R. 620, 628-69 (Bankr. N.D. Iowa 2003); *River Cement Co. v. Bangert Bros. Const. Co.*,  
23 852 F. Supp. 25, 27 (D. Colo. 1994); *In re Riverside Nursing Home*, 144 B.R. 951, 957  
24 (S.D.N.Y. 1992). Medley removed this case in a clear attempt to block the state court trial.  
25 Dkt. #27 at 7-9. This fact alone is a sufficient equitable ground for this Court to remand.

26 **B. 28 U.S.C. § 1331.**

27 This Court has subject matter jurisdiction over cases involving “federal questions”  
28 pursuant to 28 U.S.C. § 1331, which provides: “The district courts shall have original

1 jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United  
2 States.” In this case, the Court disagrees that it has jurisdiction under 28 U.S.C. § 1331.

3 In order to have jurisdiction under 28 U.S.C. § 1331, the federal issue presented in the  
4 case “must be ‘a substantial one, indicating a serious federal interest in claiming the  
5 advantages thought to be inherent in a federal forum.’” *Provincial Gov’t of Marinduque v.*  
6 *Placer Dome, Inc.*, 582 F.3d 1083, 1086-87 (9th Cir. 2009) (quoting *Grable & Sons Metal*  
7 *Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314 (2005)). Moreover, the federal right  
8 claimed “must be an element, and an essential one, of the plaintiff’s cause of action.” *Gully*  
9 *v. First Nat’l Bank*, 299 U.S. 109, 112 (1936) (citations omitted). Here, First Horizon’s only  
10 cause of action is for unlawful detainer under Arizona law, which has no federal element to  
11 it. Dkt. #1-1 at 1-3. As a result, there is no federal question jurisdiction under 28 U.S.C.  
12 § 1331. This is the same conclusion reached in Medley’s previous removal to this Court.  
13 See *First Horizon Home Loan v. Medley*, No. Civ 08-2158-PHX-DKD, Dkt. #19 (September  
14 9, 2009).

15 **III. Conclusion.**

16 Because the Court will remand the action to state court, the Court will deny all  
17 pending motions (Dkt. ##11, 24, 26, 27, 30, 31, 40, 45) without prejudice. First Horizon has  
18 not yet requested attorneys’ fees in conjunction with this removal, but the Court notes that  
19 “[a]n order remanding [a] case may require payment of just costs and any actual expenses,  
20 including attorney’s fees, incurred as a result of the removal.” 28 U.S.C. § 1447(c). This  
21 Court will retain jurisdiction following remand to resolve any motion by First Horizon for  
22 attorneys’ fees and costs, if First Horizon should choose to file one. See *Bryant v. Britt*, 420  
23 F.3d 161 (2d Cir. 2005). Other than First Horizon’s motion for attorneys’ fees, neither party  
24 shall file any motions in this matter without leave of court.

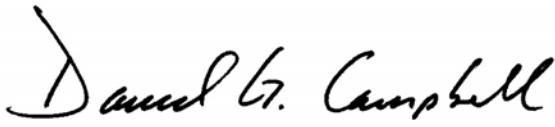
25 **IT IS ORDERED:**

- 26 1. The Clerk shall remand this action to Maricopa County Superior Court.
- 27 2. First Horizon’s motion to dismiss for lack of jurisdiction (Dkt. #27) is **denied**  
28 as moot.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. Medley's ex parte motion (Dkt. #11), motion to dismiss (Dkt. #24), motion to strike (Dkt. #26), motion to strike and for sanctions against Plaintiff (Dkt. #30), motion to strike and for sanctions against Plaintiff (Dkt. #31), motion for hearing on motion for expedited ruling (Dkt. #40), and motion for temporary restraining order or preliminary injunction (Dkt. #40) are **denied** without prejudice.
4. First Horizon may file a motion for attorneys' fees and costs by January 15, 2010. If First Horizon has not filed a motion for attorneys' fees and costs by **January 15, 2010**, the Clerk is directed to terminate this action.
5. Neither party may file any other motions in this action without leave of court.

DATED this 9<sup>th</sup> day of December, 2009.

  
\_\_\_\_\_  
David G. Campbell  
United States District Judge