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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Terry Tapp; Ben Koerner; Realty Executives, Inc.,
Plaintiffs,
vs.
Adebisi Alli,
Defendant,

No. CV-11-2069-PHX-GMS

ORDER

Defendant Adebisi Alli has filed a Notice of Removal, seeking to remove Moon Valley Justice Court Case No. CC2011144405 to the Federal District Court of Arizona. (Doc. 1). Since removal is improper because the federal court lacks subject-matter jurisdiction over the case, the Court remands this action.

BACKGROUND

On July 21, 2011, Plaintiffs Terry Tapp, Ben Koerner, and Realty Executives, Inc. filed a complaint in the Moon Valley Justice Court against Defendant, seeking \$3,454 for fraud and harassment. (Doc. 1, Ex. 1(B)). Defendant filed a Motion to Dismiss, which was denied on October 6, 2011. (Doc. 1, Exs. 1, 9). Defendant then filed a Notice of Removal pursuant to 28 U.S.C. § 1441 (2006), stating that she is a citizen of the state of Michigan and that the amount in controversy exceeds \$75,000. (Doc. 1 ¶¶ 7, 11).

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2 **DISCUSSION**

3 **1. Legal Standard**

4 Any time that the Court determines, on motion or on its own, that it lacks subject-
5 matter jurisdiction to hear a case, it must dismiss the action. FED. R. CIV. P. 12(h)(3). “The
6 party asserting jurisdiction has the burden of proving all jurisdictional facts.” *Indus.*
7 *Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990) (citing *McNutt v. Gen.*
8 *Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)). A civil action may only be removed
9 to federal court if federal jurisdiction would have been proper had the complaint originally
10 been filed there. 28 U.S.C. § 1441.

11 Federal jurisdiction is proper in all cases that present a federal question on the face
12 of the complaint. 28 U.S.C. § 1331 (2006). In addition, the Court has subject-matter
13 jurisdiction to rule on cases in which defendants and plaintiffs are citizens of different states
14 and the amount in controversy is greater than \$75,000. 28 U.S.C. § 1332 (2006). If the claim
15 on the face of the complaint is for greater than \$75,000, the amount in controversy
16 requirement is met if the claim is made in good faith. If, however, “from the face of the
17 pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover” an amount
18 adequate to satisfy the amount in controversy requirement, dismissal is proper. *St. Paul*
Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289 (1938).

19 **2. Analysis**

20 As the party asserting federal jurisdiction, Defendant has the burden of proving all
21 jurisdictional facts. *Indus. Tectonics*, 912 F.2d at 1092. Defendant provides a copy of her
22 Michigan Driver’s license, along with a 28-page complaint she filed against Plaintiffs in
23 Wayne County, Michigan on August 9, 2011 in which she states that she is a citizen of
24 Michigan. (Doc. 1, Exs. 5(B), 3). In that suit, Defendant states that while living in Michigan,
25 she paid a deposit on a rental apartment in Phoenix of \$2,215. She claims that the apartment
26 was uninhabitable because of mold and other issues, and that Plaintiffs failed to return her
27 deposit upon demand. She seeks \$450,000 on each of five counts, including Breach of
28 Contract, Tortious Interference with Advantageous Expectancy, Fraud and Fraudulent

1 DATED this 17th day of November, 2011.

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3 *A. Murray Snow*
4 _____
5 G. Murray Snow
6 United States District Judge
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