



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	CV 11-1149 PA (AGRx)	Date	February 9, 2011
Title	Deutsche Bank Nat'l Trust Co. v. Rosario Maria Soto, et al.		

Here, the Complaint contains a single cause of action for unlawful detainer; no federal claim is alleged. Defendant does not allege that the Complaint contains a federal claim in disguise, or that the unlawful detainer claim is preempted by federal law. Instead, Defendant seems to allege that federal question jurisdiction exists because she is bringing cross-claims and counterclaims for violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) and violation of the Securities Exchange Act. However, neither an actual nor an anticipated federal counterclaim can form a basis for removal. Vaden v. Discover Bank, \_\_\_ U.S. \_\_\_, 129 S. Ct. 1262, 1272, 173 L. Ed. 2d 206 (2009). However, because the scope of an unlawful detainer proceeding is limited insofar as it is only a summary proceeding, cross-complaints and counterclaims are not allowed. Knowles v. Robinson, 60 Cal. 2d 620, 626-27, 36 Cal. Rptr. 33, 387 P.2d 833 (1963). Thus, because the Complaint does not assert any federal claims, and Defendant’s cross-claims and counterclaims do not provide a basis for federal question jurisdiction, Defendant has failed to meet her burden of establishing federal question jurisdiction under 28 U.S.C. § 1331.

Defendant has also failed to show that diversity jurisdiction exists over this action. Subject matter jurisdiction based on diversity of citizenship requires all plaintiffs to have different citizenship from all defendants and that the amount in controversy exceed \$75,000. See 28 U.S.C. § 1332; Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373, 98 S. Ct. 2396, 2402, 57 L. Ed. 2d 274 (1978). To establish citizenship for diversity purposes, a natural person must be a citizen of the United States and be domiciled in a particular state. Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1090 (9th Cir. 1983). Persons are domiciled in the places they reside with the intent to remain or to which they intend to return. See Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001). For the purposes of diversity jurisdiction, a corporation is a citizen of any state where it is incorporated and of the state where it has its principal place of business. 28 U.S.C. § 1332(c); see also Indus. Tectonics, Inc. v. Aero Alloy, 912 F.2d 1090, 1092 (9th Cir. 1990).

In the Notice of Removal, Defendant does not properly allege Plaintiff’s citizenship. Although Defendant alleges that Plaintiff is a citizen of New York because its main office is located in New York (Notice of Removal at ¶ 18), the citizenship of a corporation is determined by both the state where it is incorporated and the state where it has its principal place of business. As such, Defendant’s allegations are insufficient insofar as they do not set forth Plaintiff’s place of incorporation. Because Defendant has not properly alleged Plaintiff’s citizenship, the Court cannot determine whether it has diversity jurisdiction.

Moreover, although Defendant alleges that the amount in controversy exceeds \$75,000 because the total amount of the mortgage note is \$1,135,000 (Notice of Removal at ¶ 21), the caption of the Complaint clearly states that the “amount demanded does not exceed \$10,000.” In unlawful detainer actions, the title to the property is not involved -- only the right to possession. Evans v. Superior Court, 67 Cal. App. 3d 162, 170 (1977). As such, the amount in controversy is determined by the amount of damages sought in the Complaint, rather than the value of the subject real property. Id. Here, Plaintiff alleges in the prayer of the Complaint that it is only seeking possession of the premises and costs of suit.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CIVIL MINUTES - GENERAL

Case No.	CV 11-1149 PA (AGR <sub>x</sub> )	Date	February 9, 2011
Title	Deutsche Bank Nat'l Trust Co. v. Rosario Maria Soto, et al.		

Thus, given that the amount of the note is not in controversy, Defendant has failed to show that this action meets the minimum jurisdictional requirement.

For the reasons discussed above, Defendant has not met her burden to establish this Court's jurisdiction. See Harris v. Bankers Life & Cas. Co., 425 F.3d 689, 694 (9th Cir. 2005). Accordingly, this Court remands this action to Ventura County Superior Court, Case No. 56-2010-00374602-CL-UD-SIM, for lack of federal subject matter jurisdiction. See 28 U.S.C. § 1447(c).

IT IS SO ORDERED.