

FILED

2013 APR 16 AM 10:16

CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_ *[Signature]*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DAISON LLC,	)	CASE NO. CV 13-2248 UA (DUTYx)
	)	
Plaintiff,	)	ORDER SUMMARILY REMANDING
v.	)	IMPROPERLY REMOVED ACTION
	)	
SOLEDAD AVILA, et al.,	)	
	)	
Defendants.	)	
_____	)	

The Court remands this unlawful detainer action to state court summarily because it was improperly removed and this Court lacks subject matter jurisdiction.

On March 28, 2013, Defendant Soledad Avila lodged a Notice of Removal ("Notice"), seeking to remove to this Court what appears to be a routine California state court unlawful detainer action. [See Attachment to Notice.] Together with the removal notice, Defendant presented an application to proceed without prepayment of the filing fee. The Court has denied the latter application in a separate order because the action was not properly removed. To prevent the action from

1 remaining in jurisdictional limbo, the Court now issues this order to  
2 remand the action to state court on the following grounds.<sup>1</sup>

3 Plaintiff Daison LLC could not have brought this action in federal  
4 court in the first instance, in that no basis for original federal  
5 jurisdiction appears from the complaint, and the Notice of Removal does  
6 not competently allege facts supporting either diversity or federal-  
7 question jurisdiction. Removal, therefore, is improper. See 28 U.S.C.  
8 § 1441(a); Exxon Mobil Corp. v. Allapattah Svcs., Inc., 545 U.S. 546,  
9 563, 125 S. Ct. 2611, 162 L. Ed. 2d 502 (2005). Specifically,  
10 citizenship of the parties is unclear from the pleadings, and even if  
11 complete diversity of citizenship exists, the amount in controversy does  
12 not exceed the jurisdictional threshold of \$75,000. [See Attachment to  
13 Notice at 5 (Complaint for Unlawful Detainer, alleging that amount  
14 demanded does not exceed \$10,000).] Additionally, Defendant could not  
15 properly remove the action on the basis of diversity jurisdiction in any  
16 event, because he resides in California, the forum state. See 28 U.S.C.  
17 § 1441(b).

18 Nor does Plaintiff's unlawful detainer action raise any federal  
19 legal question. See 28 U.S.C. §§ 1331, 1441(b). In his removal notice,  
20 Defendant fails to assert any violation of federal law.<sup>2</sup> But it would  
21

---

22 <sup>1</sup> In addition to the defects discussed below, the Court notes  
23 that Plaintiff filed his Notice of Removal in the incorrect district.  
24 The unlawful detainer action was filed in San Diego superior court.  
25 [See Attachment to Notice.] San Diego County is part of the Southern  
26 District of California, not the Central District. See 28 U.S.C. §  
84(c), (d). As such, the Notice should not have been filed in this  
Court, but rather in the Southern District. See 28 U.S.C. § 1441(a).  
In light of the absence of federal jurisdiction in any event, transfer  
of the action to the Southern District would be futile.

27 <sup>2</sup> In the Notice, Plaintiff appears to be arguing that removal is  
28 proper for the following reasons: 1) he was not given proper notice  
before his property was sold; 2) the state unlawful detainer action

1 be immaterial even if Defendant were raising a federal defense or  
2 counterclaim. "For better or for worse . . . a defendant may not remove  
3 a case to federal court" on the basis of federal-question jurisdiction  
4 "unless the plaintiff's complaint establishes that the case 'arises  
5 under' federal law." Franchise Tax Bd. v. Const. Laborers Vacation  
6 Trust, 463 U.S. 1, 10, 103 S. Ct. 2841, 77 L. Ed. 2d 420 (1983).

7 Accordingly, this matter is **remanded** to the Superior Court of  
8 California for the County of San Diego, for lack of subject matter  
9 jurisdiction pursuant to 28 U.S.C. § 1447(c). The Clerk is directed to  
10 send a certified copy of this order to the state court and to serve  
11 copies of this order on the parties.

12  
13 **IT IS SO ORDERED.**

14  
15 DATED: 4/10, 2013

16  
17  
18   
19 \_\_\_\_\_  
20 GEORGE H. KING  
21 CHIEF UNITED STATES DISTRICT JUDGE  
22  
23  
24  
25  
26

27 \_\_\_\_\_  
28 should be stayed pending a class action lawsuit in Washington D.C.;  
and 3) a separate federal lawsuit has been filed based on the same  
facts of the state unlawful detainer action. Plaintiff, however,  
fails to raise any federal legal question.