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JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE BANK OF NEW YORK
MELLON TRUST COMPANY, NA,

Plaintiff,

v.

MARIA RIVAS, ROBERTO A.
FLORES, aka "Felipe Flores,"
HERIBERTA FLORES, et al.,

Defendants.

Case No. CV 16-08660-MWF (RAOx)

ORDER REMANDING ACTION,
DENYING REQUEST TO PROCEED
IN FORMA PAUPERIS

I.

FACTUAL BACKGROUND

On October 7, 2016, Plaintiff, the Bank of New York Mellon Trust Company, NA, successor to the Bank of New York Trust Company, NA, as trustee for the Chase Mortgage Finance Corporation Multi-Class Mortgage Pass-Through Certificates, Series 2007-S6 ("Plaintiff") filed an unlawful detainer action in Los Angeles County Superior Court against Defendants Maria Rivas, Roberto A. Flores, also known as "Felipe Flores," Heriberta Flores ("Defendant H. Flores") and Does 1-10 (collectively, the "Defendants"). (Notice of Removal ("Removal") & Attached Complaint for Unlawful Detainer ("Compl."), Dkt. No. 1.) Plaintiff alleges that it is the owner of real property located in Sherman Oaks, California

1 (“the Property”), having acquired the Property at a trustee sale. (Compl., ¶¶ 1, 7-8.)
2 Plaintiff further alleges that Defendants are residing at the Property and have been
3 served with a notice to quit and deliver up possession of the Property, but have
4 failed to do so. (*Id.*, ¶¶ 9-11.)

5 On November 21, 2016, Defendant H. Flores filed a Notice of Removal,
6 asserting that this Court has jurisdiction on the basis of federal question and, in
7 support, cites to 28 U.S.C. §§ 1441, 1331. (Removal at ¶ 5.) In addition,
8 Defendant H. Flores filed a request to proceed *in forma pauperis* status. (Dkt. No.
9 3.)

10 II. 11 DISCUSSION

12 Federal courts are courts of limited jurisdiction, having subject matter
13 jurisdiction only over matters authorized by the United States Constitution and
14 federal statutes. *See, e.g., Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377,
15 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994). It is this Court’s duty to always
16 examine its own subject matter jurisdiction, *see Arbaugh v. Y&H Corp.*, 546 U.S.
17 500, 514, 126 S. Ct. 1235, 163 L. Ed. 2d 1097 (2006), and the Court may remand a
18 case summarily if there is an obvious jurisdictional issue, *cf. Scholastic Entm’t, Inc.*
19 *v. Fox Entm’t Grp., Inc.*, 336 F.3d 982, 985 (9th Cir. 2003) (“While a party is
20 entitled to notice and an opportunity to respond when a court contemplates
21 dismissing a claim on the merits, it is not so when the dismissal is for lack of
22 subject matter jurisdiction.” (citations omitted)). A defendant attempting to
23 remove an action from state to federal court bears the burden of proving that
24 jurisdiction exists. *See Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986).
25 Further, there is a “strong presumption” against removal jurisdiction. *See Gaus v.*
26 *Miles, Inc.*, 980 F.2d 564, 567 (9th Cir. 1992).

27 As noted above, Defendant H. Flores asserts that this Court has subject
28 matter jurisdiction due to the existence of a federal question and cites 28 U.S.C.

1 §§ 1331 1441. (Removal at ¶ 5.) Section 1441 provides in relevant part that a
2 defendant may remove to federal court a civil action in state court of which the
3 federal court has original jurisdiction. *See* 28 U.S.C. § 1441(a). Section 1331
4 provides that federal “district courts shall have original jurisdiction of all civil
5 actions arising under the Constitution, laws, or treaties of the United States.” *See*
6 *id.* § 1331.

7 Here, the Court’s review of the Notice of Removal and the attached
8 complaint makes clear that federal question jurisdiction over the instant matter does
9 not exist. Plaintiff could not have brought this action in federal court as Plaintiff
10 does not allege facts supplying federal question jurisdiction, and therefore removal
11 was improper. *See* 28 U.S.C. § 1441(a); *Caterpillar, Inc. v. Williams*, 482 U.S.
12 386, 392, 107 S. Ct. 2425, 96 L. Ed. 2d 318 (1987) (“Only state-court actions that
13 originally could have been filed in federal court may be removed to federal court by
14 the defendant.”).

15 The Court notes that the underlying action is one for unlawful detainer,
16 which arises under and is governed by the laws of the State of California. Thus,
17 there is no federal question apparent on the face of Plaintiff’s Complaint. *See, e.g.,*
18 *Wescom Credit Union v. Dudley*, No. CV 10-8203 GAF (SSx), 2010 WL 4916578,
19 at *2 (C.D. Cal. Nov. 22, 2010) (“An unlawful detainer action does not arise under
20 federal law.”); *IndyMac Fed. Bank, F.S.B. v. Ocampo*, No. EDCV 09-2337 PA
21 (DTBx), 2010 WL 234828, at *2 (C.D. Cal. Jan. 13, 2010) (remanding an action to
22 state court for lack of subject matter jurisdiction where plaintiff’s complaint
23 contained only an unlawful detainer claim).

24 There is no merit to defendant’s contention that federal question jurisdiction
25 exists under the Protecting Tenants at Foreclosure Act of 2009 (“PTFA”). Removal
26 at ¶¶ 2, 5-7, 9-13. The PTFA does not create a private right of action; rather, it
27 provides a defense to state law unlawful detainer actions. *See Logan v. U.S. Bank*
28 *Nat. Ass’n*, 722 F.3d 1163, 1164 (9th Cir. 2013) (affirming dismissal of the

1 complaint because the PTFA “does not create a private right of action allowing
2 [plaintiff] to enforce its requirements”). It is well settled that a “case may not be
3 removed to federal court on the basis of a federal defense . . . even if the defense is
4 anticipated in the plaintiff’s complaint, and even if both parties concede that the
5 federal defense is the only question truly at issue.” *Caterpillar*, 482 U.S. at 393,
6 107 S.Ct. at 2430. Thus, to the extent Defendant H. Flores’s defenses to the
7 unlawful detainer action are based on alleged violations of federal law, those
8 defenses do not provide a basis for federal question jurisdiction. *See id.* Because
9 Plaintiff’s complaint does not present a federal question, either on its face or as
10 artfully pled, the court lacks jurisdiction under 28 U.S.C. § 1331.

11 **III.**

12 **CONCLUSION**

13 Accordingly, IT IS ORDERED that this case is REMANDED to the Superior
14 Court of California, County of Los Angeles forthwith.

15 IT IS FURTHER ORDERED that Defendant H. Flores’s Request to Proceed
16 In Forma Pauperis is DENIED as moot.

17 IT IS SO ORDERED.

18
19 DATED: November 28, 2016



20
21 MICHAEL W. FITZGERALD
UNITED STATES DISTRICT JUDGE

22 Presented by:

23 /s/

24
25 ROZELLA A. OLIVER
UNITED STATES MAGISTRATE JUDGE