

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

| | | | |
|-----------------|--|-------------|--------------|
| Case No. | ED CV 12-0656 PA (MRWx) | Date | May 10, 2012 |
| Title | U.S. Bank National Association v. Nehad Ayyoub, et al. | | |

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

| | | |
|--------------|----------------|----------|
| Paul Songco | Not Reported | N/A |
| Deputy Clerk | Court Reporter | Tape No. |

Attorneys Present for Plaintiff: Attorneys Present for Defendants:
None None

Proceedings: IN CHAMBERS - COURT ORDER

The Court is in receipt of a Notice of Removal filed by Nehad Ayyoub (“Defendant”). Plaintiff U.S. Bank National Association (“Plaintiff”) filed its Complaint in the San Bernardino County Superior Court asserting a single cause of action for unlawful detainer. Defendant, who is appearing pro se, asserts that this Court has subject matter jurisdiction on the basis of 28 U.S.C. § 1443, which provides that district courts shall have original jurisdiction of any civil action authorized by law to redress civil rights violations. Defendant also invokes the Court’s diversity jurisdiction under 28 U.S.C. § 1332.

Federal courts are of limited jurisdiction, having subject matter jurisdiction only over matters authorized by the Constitution and Congress. See, e.g., *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 1675, 128 L. Ed. 2d 391 (1994). A “strong presumption” against removal jurisdiction exists. *Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th Cir. 1992). In seeking removal, the defendant bears the burden of proving that jurisdiction exists. *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986).

I. Civil Rights Jurisdiction

A defendant “who is denied or cannot enforce” his or her civil rights in state court may remove a civil action or criminal prosecution to federal court. 28 U.S.C. § 1443. Section 1443(1) was enacted “to remove from state courts groundless charges not supported by sufficient evidence when these charges are based on race and deny one his federally protected equal rights as guaranteed by Title II of the 1964 Civil Rights Act.” *Walker v. Georgia*, 417 F.2d 5, 9 (5th Cir. 1969). Section 1443 provides, in pertinent part, “Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending: (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof” 28 U.S.C. § 1443(1).

A petition for removal under § 1443(1) must satisfy the two-part test articulated by the Supreme Court in *Georgia v. Rachel*, 384 U.S. 780,

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

| | | | |
|----------|--|------|--------------|
| Case No. | ED CV 12-0656 PA (MRWx) | Date | May 10, 2012 |
| Title | U.S. Bank National Association v. Nehad Ayyoub, et al. | | |

788–92, 794–804, 86 S. Ct. 1783, 16 L. Ed. 2d 925 (1966) and City of Greenwood, Miss. v. Peacock, 384 U.S. 808, 824–28, 86 S. Ct. 1800, 16 L. Ed. 2d 944 (1966). “First, the petitioners must assert, as a defense to the prosecution, rights that are given to them by explicit statutory enactment protecting equal racial civil rights.” California v. Sandoval, 434 F.2d 635, 636 (9th Cir. 1970). “Second, petitioners must assert that the state courts will not enforce that right, and that allegation must be supported by reference to a state statute or a constitutional provision that purports to command the state courts to ignore the federal rights.” Id.

Patel v. Del Taco, Inc., 446 F.3d 996, 998–99 (9th Cir. 2006). Defendant does not allege any facts that would support removal under § 1443 and therefore Defendant meets neither part of the Supreme Court’s test in Georgia v. Rachel. There are no allegations or any other indication that Defendant has properly sought to invoke a law that provides “for the equal civil rights of citizens of the United States,” or that he is unable to pursue such a claim or that the state court is unable or unwilling to enforce such a claim. Nothing in Defendant’s allegations concerning the asserted deficiencies in California’s unlawful detainer procedures “command[s] the state courts to ignore” Defendant’s federal rights. See Patel, 446 F.3d at 998–99; see, also, US Bank, N.A., v. Medina, 2012 U.S. Dist. LEXIS 43054, at *5 (C.D. Cal. March 27, 2012) (denying removal under section 1443 of unlawful detainer action where defendant asserted that “California Civil Code procedures authorizing non-judicial foreclosures and judicial evictions violate [federal rights]”). Therefore, the Notice of Removal’s allegations are insufficient to establish the Court’s jurisdiction under § 1443.

II. Diversity Jurisdiction

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).

Although Defendant alleges that the amount in controversy exceeds \$75,000, 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, costs of suit, and \$50 per day from the expiration of the Notice to Quit until it obtains a judgment. 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.

Conclusion

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

| | | | |
|----------|--|------|--------------|
| Case No. | ED CV 12-0656 PA (MRWx) | Date | May 10, 2012 |
| Title | U.S. Bank National Association v. Nehad Ayyoub, et al. | | |

For the foregoing reasons, Defendant has failed to meet his burden of showing that federal subject matter jurisdiction exists over this action. Accordingly, because the Court lacks subject matter jurisdiction, this action is hereby remanded to the San Bernardino Superior Court, Case No. UDRS1103036. See 28 U.S.C. § 1447(c).

IT IS SO ORDERED.