

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES – GENERAL

Case No. SACV 08-01219 CJC (JTLx)

Date: January 7, 2009

Title: DAVID J. PASTERNAK v. JOHN RAMIREZ, WAT KHMER VIPASSANARAM;
CHURCH OF THE REVELATION and DOES 1 through 25

PRESENT:

HONORABLE CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGE

Michele Urie
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

None Present

None Present

**PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING PLAINTIFF'S
MOTION FOR REMAND AND DENYING PLAINTIFF'S MOTION FOR
SANCTIONS**[filed 12/17/08]

Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* FED. R. CIV. P. 78; LOCAL RULE 7-15. Accordingly, the hearing set for January 12, 2009 at 1:30 p.m. is hereby vacated and off calendar.

Plaintiff David J. Pasternak, is a receiver appointed by the Superior Court of Los Angeles in the case Khmer Buddhist Association (“KBA”) v. Sar. Mr. Pasternak brought this related case against John Ramirez, Wat Khmer Vipassanaram, and the Church of the Revelation (collectively “Defendants”) in Los Angeles Superior Court for an accounting, conversion, and money had and received. (Notice of Removal, Ex. A, State Court Compl. (“Compl.”) ¶¶ 17, 19, 21-23.) All parties in the case are alleged to be citizens of California, in the counties of Los Angeles and Orange. (Compl. ¶¶ 2-4.) Mr. Pasternak alleges that Defendants received the KBA’s total assets—approximately \$450,000 in cash and six real properties—shortly before the state court appointed Mr. Pasternak as the KBA receiver. (Compl. ¶ 8.) Defendants removed the case to this Court, pursuant to 28 U.S.C. §§ 1441(b)-(c), arguing that the case gives rise to federal questions because their defenses to the state court actions involve interpretations of the First Amendment of the United States Constitution and the United States Tax Code. Mr. Pasternak now moves

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the Court to remand this case to the Superior Court of Los Angeles. For the reasons stated below, Plaintiff's motion for remand is GRANTED.

ANALYSIS

Under 28 U.S.C. § 1447(c), the Court must remand a case “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction . . .” The burden of establishing subject matter jurisdiction falls on Defendants, as the party seeking removal. *Salveson v. W. States Bankcard Ass’n*, 731 F.2d 1423, 1426 (9th Cir. 1984). Moreover, the removal statute is “strictly construed against removal jurisdiction.” *Id.* A cause of action arises under federal law only when a plaintiff's well-pleaded complaint raises issues of federal law. *Emard v. Hughes Aircraft Co.*, 153 F.3d 949, 953 (9th Cir. 1998). A plaintiff will not defeat removal by simply “masking or ‘artfully pleading’ a federal claim as a state claim.” *Sullivan v. First Affiliated Sec., Inc.*, 484 U.S. 850 (1987). A federal court can assert subject matter jurisdiction where a case either: (1) raises a question under federal law; or (2) is between diverse parties and involves an amount in controversy of over \$75,000. 28 U.S.C. § 1331; 28 U.S.C. § 1332.

Defendants have not made any argument for diversity jurisdiction. The parties are also not diverse, judging from the face of the complaint, as they are all citizens of California.

The well-pleaded complaint rule states that courts may not consider the defendant's defenses, answers, or counterclaims when analyzing whether a case may be removed from state court. *Holmes Group Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826 (2002) (holding that a patent counterclaim was insufficient to provide removal jurisdiction). A court may only consider the claims made in the complaint, which, in this case, are simply state-law claims for an accounting, conversion, and money had and received. This case presents similar issues to those resolved in a related case, *KBA v. Sar*, SA08CV05265 (C.D. Cal. 2008.) In that case, Judge David Carter remanded to state court because federal question jurisdiction “does not exist where a suit in State Court merely raises interesting questions of Federal or Constitutional Law in the abstract.” (*KBA*, Order of Sept. 8, 2008, remanding to state court.)

Although Defendants allege that this case presents questions of interpretation of the United States Constitution and federal statutes, they do not present a case for removal

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jurisdiction based upon the face of the complaint. Mr. Pasternak's complaint is a straightforward action alleging claims under state common law. Regardless of whether this case involves interpretation of federal laws or the presentation of Constitutional defenses, the Court cannot exercise removal jurisdiction. For the foregoing reasons, Mr. Pasternak's motion to remand is GRANTED.¹

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¹ Plaintiff's motion for sanctions under Rule 11 is DENIED. Mr. Pasternak argues that the notice of removal filed in this case is frivolous in light of Judge Carter's ruling in *KBA v. Sar*. Federal Rule of Civil Procedure 11 states that the court "may impose appropriate sanction" where it sees fit to do so. Thus, sanction is discretionary, not mandatory. Sanctions are appropriate in the "rare and exceptional case where the action is *clearly* frivolous, legally unreasonable, or without legal foundation, or brought for an improper purpose." *Operating Engineers Pension Trust v. A-C Co.*, 859 F.2d 32, 34 (9th Cir. 1988.) There are some differences between the present case and *KBA* which could have led Defendants to believe that there would be different outcome in this removal. The primary reason that Judge Carter gave for remanding *KBA* was that the individuals who removed that case to federal court were not defendants in the case. The lack of jurisdiction was a secondary reason for Judge Carter's decision. Given that Judge Carter's decision is somewhat distinguishable from this case, and given the expansive protections afforded to religion under the Free Exercise Clause of the First Amendment, it is plausible that the removal filed by defendants was merely creative lawyering, and not a malicious attempt to delay action in the state court. Therefore, the Court declines to exercise its discretion to issue sanctions.