

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES – GENERAL

Case No. SACV 14-00910-CJC(JCGx)

Date: July 17, 2014

Title: MIN V. BANK OF AMERICA, N.A., ET AL.

PRESENT:

HONORABLE CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGE

Michelle Urie
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

None Present

None Present

PROCEEDINGS: (IN CHAMBERS) ORDER REMANDING ACTION TO ORANGE COUNTY SUPERIOR COURT AND DENYING AS MOOT PNC BANK'S MOTION TO DISMISS [filed 6/19/14]

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 July 28, 2014 at 1:30 p.m. is hereby vacated and off calendar.

On June 11, 2014, Defendant PNC Bank, N.A. removed to federal court the action originally filed against it and Defendant Bank of America, N.A., among others, by Plaintiff Theresa Choon Min in Orange County Superior Court. (*See* Dkt. No. 1 [“Notice of Removal”].) PNC Bank does not attest, nor provide evidence to suggest, that prior to removal, it sought and obtained the consent of Bank of America to remove the action. (*See generally* Notice of Removal). Indeed, Bank of America instead removed the action itself, thereby creating a separate federal action. (*See Min v. Bank of America*, No. SACV 14-00898-CJC-DFM.)

Under 28 U.S.C § 1446, when a civil action is removed from state court, “all defendants who have been properly joined and served must join in or consent to the removal of the action.” “Where fewer than all the defendants have joined in a removal action, the removing party has the burden under section 1446(a) to explain affirmatively the absence of any co-defendants in the notice for removal.” *Prize Frize Inc. v. Matrix Inc.*, 167 F.3d 1261, 1266 (9th Cir. 1999). Here, Defendant Bank of America has not

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joined in the Notice of Removal, and PNC Bank has failed to explain its absence. Accordingly, the removal notice is facially defective, and there has been no attempt to cure the defect within the 30-day statutory period. Accordingly, the action is **REMANDED** to Orange County Superior Court. PNC Bank's motion to dismiss Plaintiff's Complaint is **DENIED AS MOOT**.

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