
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 8:16-cv-1992-JLS-KESx

Date: November 14, 2016

Title: David Padua v. Robert Pace, et al.

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

Not Present

Not Present

**PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING PLAINTIFF'S EX
PARTE APPLICATION TO REMAND (Doc. 5)**

Before the Court is an Ex Parte Application to Remand filed by Plaintiff David Padua. (Ex Parte App., Doc. 5.) Defendants Robert Pace and Therese Pace were served the Ex Parte Application and have not filed any Opposition. (Proof of Service, Doc. 5-2.) On September 27, 2016, Plaintiff filed a Complaint in unlawful detainer in Orange County Superior Court against Defendants. (Compl., Doc. 5-2.) On November 2, 2016, Defendants removed the case to this Court alleging federal question jurisdiction. (Notice of Removal, Doc. 1.) Plaintiff argues that no federal question exists and seeks remand. (Ex Parte App.) Because the present action was improperly removed, and because the Court lacks subject matter jurisdiction over it, the Court GRANTS the Ex Parte Application and REMANDS this case to Orange County Superior Court.

Federal courts are courts of limited jurisdiction, having subject-matter jurisdiction only over matters specifically authorized by Congress or the Constitution. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). The Court's subject-matter jurisdiction may be premised on the presence of a federal question, or it may be premised on diversity jurisdiction. 28 U.S.C. §§ 1331–1332. As the proponent of the Court's jurisdiction, a removing defendant bears the burden of establishing it. *Abrego Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 685 (9th Cir. 2006).

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Although the Notice of Removal states that a claim in the present action arises under federal law, a review of the complaint reveals that it is a straightforward unlawful detainer action proceeding under state law, which is believed to be subject to a number of federal defenses. (*See* Notice of Removal ¶ 7 (referring to the “‘Protecting Tenants at Foreclosure Act of 2009,’ 12 U.S.C. § 5201” and articulating that federal law provides for a ninety-day notice period prior to the filing of any state eviction proceeding).) At best, Defendants rely upon a federal defense to a state-law claim. The assertion of a federal defense to a state-law claim does not convert the state-law claim into one “arising under” federal law for purposes of federal-question jurisdiction. *See Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (setting forth the “well-pleaded complaint rule”). Therefore, the Court has no federal question jurisdiction.

Nor does the present action meet the requirements of diversity jurisdiction. The Complaint expressly states that the amount in controversy is “UNDER \$10,000.00.” *See* 28 U.S.C. § 1332(a). Moreover, in the absence of a federal question, where the Court’s jurisdiction is premised on diversity of citizenship, a removing defendant may not be a resident of the forum state. Here, Defendants’ reported address is the property at issue in this action (located in Huntington Beach, California), and they are therefore clearly forum defendants who lack the ability to remove a state-court action. *See* 28 U.S.C. § 1441(b)(2).

For the foregoing reasons, the Ex Parte Application is GRANTED. The Court therefore REMANDS this matter to the Superior Court of California in Orange County (30-2016-00877484-CL-UD-CJC) and closes this case.

Initials of Preparer: tg