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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. SACV 17-01589 JVS (KESx) Date September 20, 2017

Title The Bank of New York Melon v. James Kim

Present: The Honorable James V. Selna

Karla J. Tunis

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings: (IN CHAMBERS) Order Remanding Action**

On September 13, 2017, James Kim (“Kim”) removed this case from the Superior Court of the State of California for the County of Orange. (Docket No. 1.) He removed on the basis of federal question jurisdiction, 28 U.S.C. § 1331. (Notice of Removal, ¶ 7.)

The Court has reviewed the jurisdictional allegations and has considered other possible bases for jurisdiction in light of the facts pled in the Complaint and the Notice of Removal. The Court finds no basis for jurisdiction, and now remands the case.

The Court must determine jurisdiction on the basis of the case removed. The underlying action is an unlawful detainer action. No federal claims are asserted (28 U.S.C. § 1331). Federal defenses or federal counterclaims provide no basis to remove an action which does not otherwise establish federal jurisdiction. See Franchise Tax Board of State of Cal. v. Construction Laborers Vacation Trust, 643 U.S. 1, 10 (1983); Metro Ford Truck Sales, Inc. v. Ford Motor Co., 145 F.3d 320, 326-27 (5th Cir. 1998). Thus, Kim’s assertion of the Protecting Tenants at Foreclosure Act of 2009, 12 U.S.C. § 5201, as a defense does not create jurisdiction. There is no basis for federal question jurisdiction.

Neither the Notice of Removal nor the underlying complaint establishes that the parties are diverse, as required by 28 U.S.C. § 1332(a)(1). In any event, it is apparent that the amount of relief sought is less than the jurisdictional minimum of \$75,000. The

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face of the Complaint states that the amount of claimed damages is less than \$10,000. Moreover, as a California resident Kim cannot remove on the basis of diversity. 28 U.S.C. § 1441(b)(2). There is no basis for diversity jurisdiction.

The case is remanded to the Superior Court of the State of California for the County of Orange for lack of jurisdiction.

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