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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. SACV 17-01680 JVS (JCGx) Date October 11, 2017

Title JP Morgan Chase Bank, N.A. v. Botas

Present: The Honorable James V. Selna

Dwayne Roberts

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 27, 2017, Roxana Botas *et al.* (“Botas”) removed this case from the Superior Court of the State of California for the County of Orange. (Docket No. 1.) She removed this action on the basis of federal question jurisdiction, 28 U.S.C. § 1331, diversity jurisdiction, 28 U.S.C. § 1332(a)(1), the civil rights statute, 29 U.S.C. 1443(1). (Notice of Removal, pp. 1-2.)

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). There is no basis for federal question jurisdiction.

It is unclear whether the parties are of diverse citizenship, as required by 28 U.S.C. § 1332(a)(1), because the record does not indicate the citizenship of JP Morgan Chase Bank, N.A. In any event, it is apparent that the amount of relief sought is less than the jurisdictional minimum of \$75,000. The face of the Complaint states that the amount

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of claimed damages is less than \$10,000. There is no basis for diversity jurisdiction. Moreover, as a California resident (Complaint, ¶ 2), Botas may not remove as cases solely on the basis of diversity jurisdiction. 28 U.S.C. § 1441(b)(2).

There is no basis for jurisdiction under 28 U.S.C. § 1443. Section 1443(1) permits a defendant in state cases to remove the proceedings to the federal district courts when a defendant is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens in the United States. In order to successfully remove, the defendant must satisfy a two-prong test: 1) the rights allegedly denied must arise under a federal law providing for specific civil rights stated in terms of racial equality; and 2) the defendant must be denied or unable to enforce the rights in state courts. Johnson v. Mississippi, 421 U.S. 213, 219 (1975); City of Greenwood, Miss. v. Peacock, 384 U.S. 808, 827-28 (1966); Georgia v. Rachel, 384 U.S. 780, 792 (1966).

Under the first prong, constitutional or statutory provisions of general applicability or under statutes not protecting against racial discrimination will not suffice. Johnson, 421 U.S. at 219. Under the second prong, defendant's federal rights are left to the state courts except in rare situations where it can be clearly predicted that those rights will inevitably be denied by the very act of bringing the defendant to trial in state court. Peacock, 384 U.S. at 828.

The present record satisfies neither prong of the statute. Moreover, there is no basis to believe that Botas will not be able to enforce any federal rights she may have in Superior Court.

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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