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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

U.S. BANK NATIONAL
ASSOCIATION, as Trustee,

Plaintiff,

v.

BEATRIZ GONZALES; and DOES 1
through 100, inclusive,

Defendants.

1:11-cv-00060 OWW JLT

ORDER GRANTING MOTION TO
REMAND; GRANTING IN PART
REQUEST FOR ATTORNEYS'
FEES AND COSTS; AND
DENYING REQUEST TO BAR
FUTURE REMOVALS (DOC. 3)

This action concerns real property located at 1200 Dorian Drive, Bakersfield, California 93304 ("Subject Property"). Plaintiff, U.S. Bank National Association, purchased the property pursuant to a Trustee's Deed Upon sale, recorded on or about November 1, 2010 in the Official Records of Kern County. See Doc. 1, Ex. 1, Complaint, at ¶ 4. On November 17, 2010, Plaintiff filed an Unlawful Detainer action regarding the Subject Property against Defendant Beatriz Gonzales in Kern County Superior Court - Metropolitan Judicial District. See Complaint. After being served with the Complaint on December 5, 2010, Doc. 3-2, Ex. 2 (proof of personal service upon Beatriz Gonzales), Defendant failed to answer and default judgment was entered on January 4, 2011.

1 On January 12, 2011, Defendant, who proceeds *pro se*,
2 removed this action to federal court. Plaintiff timely
3 filed its motion to remand on February 10, 2011 pursuant
4 to Title 28 U.S.C. § 1447(c) (motion to remand on the
5 basis of any defect other than lack of subject matter
6 jurisdiction must be made within 30 days of filing of
7 notice of removal). Defendant did not file an
8 opposition.
9

10 Remand is required here because removal was untimely.
11 Notice of removal of a civil action must be filed "within
12 thirty days after the receipt by the defendant, through
13 service or otherwise, of a copy of the initial pleading
14 setting forth the claim or relief upon which such action
15 or proceeding is based...." 28 U.S.C. § 1446(b). Here,
16 Defendant was personally served on December 5, 2010. The
17 notice of removal, filed more than thirty days later on
18 January 12, 2011, was therefore untimely.
19

20 Even if the notice of removal had been timely, the
21 case does not satisfy the requirements of the removal
22 statute, 28 U.S.C. § 1441, which provides that a
23 defendant may remove to federal court any action over
24 which the federal court would have original jurisdiction:
25

26 Except as otherwise expressly provided by Act of
27 Congress, any civil action brought in a State
28 court of which the district courts of the United
 States have original jurisdiction, may be

1 removed by the defendant or the defendants, to
2 the district court of the United States for the
3 district and division embracing the place where
4 such action is pending. For purposes of removal
5 under this chapter, the citizenship of
6 defendants sued under fictitious names shall be
7 disregarded.

8 28 U.S.C. § 1441(a).

9 Federal courts have original jurisdiction over civil
10 actions arising under the U.S. Constitution, federal
11 laws, or treaties of the United States -- so called
12 "federal questions." 28 U.S.C. § 1331. Federal Question
13 jurisdiction is governed by the "well-pleaded complaint
14 rule," which provides that the federal question must be
15 presented on the face of the plaintiff's properly pleaded
16 complaint. *Wayne v. DHL Worldwide Express*, 294 F.3d
17 1179, 1183 (9th Cir. 2002). The existence of a defense
18 based on federal law is insufficient. *Id.* Here, there
19 is no federal question jurisdiction because the face of
20 the complaint reveals only one claim: a state law cause
21 of action for Unlawful Detainer arising under California
22 Code of Civil Procedure §1161(a), a local action
23 involving the law of real property and contract.

24 Alternatively, a Federal Court may assert original
25 jurisdiction over civil actions where the matter in
26 controversy exceeds \$75,000 in value, exclusive of
27 interest and costs, and is between citizens of different
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1 States, pursuant to the "diversity" statute, 28 U.S.C. §
2 1331. Even assuming the truth of the allegation in the
3 complaint that the amount in controversy is \$95,000,
4 removal of diversity cases is limited to situations where
5 "none of the parties in interest properly joined and
6 served as defendants is a citizen of the State in which
7 such action is brought." 28 U.S.C. 1441(b). Here, based
8 on Beatriz Gonzales' admitted residence in California,
9 Doc. 1 at 2, and the absence of any other allegation
10 suggesting her citizenship is elsewhere, it appears that
11 Defendant is a citizen of the state in which this action
12 is brought and therefore is barred from removing this
13 case to federal court.
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15
16 Plaintiff also requests that it be allowed to recover
17 its reasonable fees and costs incurred in filing this
18 motion for remand, in the amount of \$2,100.00. 28 U.S.C.
19 § 1447 provides that "[a]n order remanding the case may
20 require payment of just costs and any actual expenses,
21 including attorney fees, incurred as a result of the
22 removal." "Absent unusual circumstances, courts may
23 award attorney's fees under § 1447(c), only where the
24 removing party lacked an objectively reasonable basis for
25 seeking removal." *Martin v. Franklin Capital Corp.*, 546
26 U.S. 132, 141 (2005). A *pro se* defendant is "entitled
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1 to more leeway in his attempt to comply with the removal
2 statute, as long as it was not objectively unreasonable."
3 *HSBC Bank USA, N.A. v. Bryant*, 2009 WL 3787195 (S.D. Cal.
4 Nov. 10, 2009). Nevertheless, pro se litigants "must
5 follow the same rules of procedure that govern other
6 litigants." *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir.
7 1987). Defendant has failed to offer any explanation for
8 her removal, which fails to comply with the facial
9 requirements of the removal statute.

11 Plaintiff's request for \$2,100.00 in fees included
12 4.0 billable hours (at \$175.00/hour) for a total of
13 \$700.00 to prepare the motion. The request also
14 anticipated eight hours of billable time to prepare a
15 reply and attend the hearing, an additional \$1,400.00.
16 In light of Defendant's non-opposition and Plaintiff's
17 failure to file a reply, this eight-hour allocation is
18 excessive. Defendant's total recovery shall be limited
19 to \$1,500.00, which reflects time spent preparing the
20 motion and a reasonable fee for defense counsel's
21 personal attendance at the hearing.

24 Finally, Plaintiff requests a court order barring
25 future removals in this action. Courts have ruled that
26 when parties file multiple frivolous removals, the Court
27 may bar any future removals of that state action. *U.S.*

1 Bank Nat'l Ass'n v. Garcia, 2010 WL 3505093 (Sept. 3,
2 2010). Plaintiff has not presented evidence of previous
3 frivolous removals warranting an injunction against
4 future removal activity. One incident does not a pattern
5 make.

6
7 CONCLUSION

8 For the reasons set forth above:

9 (1) This action is REMANDED to Kern County Superior
10 Court;

11 (2) Plaintiff's request for \$2,100.00 in attorney's
12 fees and costs associated with this remand motion is
13 GRANTED IN PART; Plaintiff shall recover only \$1,500.00
14 in attorney's fees;

15 (3) Plaintiff's request for an injunction against
16 future removals of this action is DENIED;

17 (4) Plaintiff's proposed order, Doc. 6, filed March
18 15, 2011, SHALL BE DISREGARDED; and

19 (5) Plaintiff shall re-submit a proposed order
20 consistent with this memorandum decision within five (5)
21 days of electronic service.
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25 IT IS SO ORDERED

26 Dated: March 16, 2011

27 /s/ Oliver W. Wanger
28 United States District Judge