

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FANNIE MAE ("FEDERAL NATIONAL MORTGAGE ASSOCIATION")

1:11-cv-00973 OWW SMS

ORDER GRANTING UNOPPOSED  
MOTION TO REMAND (DOC. 6)

Plaintiff,

v.

VANCE EZELL, REBECCA EZELL,

## Defendants.

This action concerns real property located at 4132 West Paul Avenue, Fresno, California 93722 ("Subject Property").

Plaintiff, Federal National Mortgage Association ("Fannie Mae"), purchased the Subject Property at a trustee's sale on November 5,

2010. Doc. 1, Complaint, at ¶ 4. Defendants Vance and Rebecca Ezell were served with a written 3-Day Notice to Vacate on

January 7, 2011 *Id.* Exs. B, f, G. Defendants failed to comply.

with the Notice to Vacate, *id.* at ¶ 9, and Fannie Mae filed an action for unlawful detainer in Eugene County Superior Court on

January 20, 2011, see generally, Doc. 1 at p. 10 of 26. On June

1 basis of federal question jurisdiction. See Doc. 1, Notice of  
2 Removal, at 2-3.

3 The procedure for removal is set forth in 28 U.S.C. § 1446,  
4 which provides, in pertinent part:

5 The notice of removal of a civil action or proceeding  
6 shall be filed within thirty days after the receipt by  
the defendant, through service or otherwise, of a copy  
of the initial pleading setting forth the claim for  
relief upon which such action or proceeding is based,  
7 or within thirty days after the service of summons upon  
8 the defendant if such initial pleading has then been  
9 filed in court and is not required to be served on the  
10 defendant, whichever period is shorter.

11 28 U.S.C. § 1446(b). Defendants' own Demurrer admits Defendants  
12 were served with the complaint for unlawful detainer on January  
13 21, 2011. Doc. 1, Ex. B, p. 22 of 26. Removal on June 13, 2011  
14 was untimely.

15 Even if, *arguendo*, removal was timely, there is no basis for  
16 subject matter jurisdiction over this case. The standard for  
17 removal is set forth in 28 U.S.C. § 1441, which provides that a  
18 defendant may remove to federal court any action over which the  
19 federal court would have original jurisdiction:

21 Except as otherwise expressly provided by Act of  
22 Congress, any civil action brought in a State court of  
23 which the district courts of the United States have  
24 original jurisdiction, may be removed by the defendant  
25 or the defendants, to the district court of the United  
26 States for the district and division embracing the  
place where such action is pending. For purposes of  
removal under this chapter, the citizenship of  
defendants sued under fictitious names shall be  
disregarded.

28 U.S.C. § 1441(a).

1           Federal courts have original jurisdiction over civil actions  
2 arising under the U.S. Constitution, federal laws, or treaties of  
3 the United States -- so called "federal questions." 28 U.S.C. §  
4 1331. Federal question jurisdiction is governed by the "well-  
5 pleaded complaint rule," which provides that the federal question  
6 must be presented on the face of the plaintiff's properly pleaded  
7 complaint. *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183  
8 (9th Cir. 2002). The existence of a defense based on federal law  
9 is insufficient. *Id.* Here, there is no federal question  
10 jurisdiction because the face of the complaint reveals only one  
11 claim: a state law cause of action for unlawful detainer, to  
12 recover possession of real property, an inherently local action,  
13 involving the law of real property and contract. That Defendants  
14 claim that the Notice to Quit failed to comply with the  
15 Protecting Tenants in Foreclosure Act, 12 U.S.C. § 5220 is  
16 irrelevant under the well-pleaded complaint rule.

19           Alternatively, a Federal court may assert original  
20 jurisdiction over civil actions where the matter in controversy  
21 exceeds \$75,000 in value, exclusive of interest and costs, and is  
22 between citizens of different States, pursuant to the "diversity"  
23 statute, 28 U.S.C. § 1331. Here, based on Defendants' own  
24 admission in their removal papers, they reside at the Subject  
25 Property, which is located in California. Doc. 1, Demurrer, p.  
26 22 of 26. Defendants are citizens of the state in which this  
27

1 action is brought and therefore are barred from removing this  
2 case to federal court.

3 Plaintiff also requests that it be allowed to recover its  
4 reasonable fees and costs incurred in filing this motion for  
5 remand, in the amount of \$875 plus costs. Doc. 6 at 3; Doc. 6,  
6 Declaration of Glenn H. Wechsler, at ¶ 4. 28 U.S.C. § 1447  
7 provides that "[a]n order remanding the case may require payment  
8 of just costs and any actual expenses, including attorney fees,  
9 incurred as a result of the removal." "Absent unusual  
10 circumstances, courts may award attorney's fees under § 1447(c),  
11 only where the removing party lacked an objectively reasonable  
12 basis for seeking removal." *Martin v. Franklin Capital Corp.*,  
13 546 U.S. 132, 141 (2005). A *pro se* defendant is "entitled to  
14 more leeway in his attempt to comply with the removal statute, as  
15 long as it was not objectively unreasonable." *HSBC Bank USA,  
16 N.A. v. Bryant*, 2009 WL 3787195 (S.D. Cal. Nov. 10, 2009).  
17 Nevertheless, *pro se* litigants "must follow the same rules of  
18 procedure that govern other litigants." *King v. Atiyeh*, 814 F.2d  
19 565, 567 (9th Cir. 1987). Defendants have failed to offer any  
20 explanation for this removal, which fails to comply with the  
21 facial requirements of the removal statute, and have filed no  
22 opposition.

23 Plaintiff's fee request includes 6.0 billable hours to  
24 review the notice of removal, prepare a motion to remand,  
25

1 memorandum of points and authorities, and a declaration. Billing  
2 rates for Fannie Mae are \$175/hour, for a total of \$875. This  
3 motion did not require 6.0 hours of billable time. This is a  
4 straightforward motion to remand that should have been prepared  
5 largely from experience. The motion did not even raise the most  
6 obvious defect in the removal, timeliness. For overbilling and  
7 shoddy work, Plaintiff's motion for attorney's fees is DENIED.  
8

9 CONCLUSION

10 For the reasons set forth above:

11 (1) This action is REMANDED to Fresno County Superior Court;  
12 and

13 (2) Plaintiff's request for attorney's fees is DENIED.

14 Plaintiff shall submit a proposed order consistent with this  
15 memorandum decision within five (5) days following electronic  
16 service.

17  
18 SO ORDERED  
19 Dated: July 26, 2011

20 /s/ Oliver W. Wanger  
21 Oliver W. Wanger  
22 United States District Judge  
23  
24  
25  
26  
27  
28