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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CHERLY CANNON, an individual,
TYLER CANNON, an individual,
and SPROUTS CAFÉ, INC., a
California corporation,

Plaintiffs,

v.

ANNETTE PIERCE, an individual,
and DOES 1-10,

Defendants.

NO. CIV. S-10-574 FCD/DAD

MEMORANDUM AND ORDER

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This matter is before the court on (1) plaintiffs'¹ motion to remand this action to the El Dorado Superior Court on the ground this court lacks subject matter over plaintiffs' complaint which alleges only state law causes of action and (2) defendant Annette Pierce's ("defendant") motion to strike certain allegations of plaintiffs' complaint. Because the court grants plaintiffs' motion to remand, defendant's motion to strike is

¹ Plaintiffs are Cheryl Cannon, Tyler Cannon and Sprouts Café, Inc.

1 denied as moot.²

2 On March 11, 2010, defendant removed this case to this court
3 under 28 U.S.C. § 1441 based on federal question jurisdiction,
4 asserting plaintiffs' complaint raised claims under Title III of
5 the Americans with Disabilities Act of 1990 ("ADA"). Plaintiffs'
6 complaint only expressly alleges causes of action for intentional
7 infliction of emotional distress, negligent infliction of
8 emotional distress, fraud and negligent misrepresentation.
9 (Docket #1.) However, plaintiffs describe in their complaint
10 that defendant previously filed an ADA complaint against
11 plaintiffs in federal court.³ That action is pending before the
12 undersigned. (Annette Pierce v. Sprouts Café Inc., Civ. No. S-
13 09-3002 FCD/DAD, filed Oct. 27, 2009.) Therein, Pierce alleges
14 ADA, and corollary state law, violations against Sprouts Café
15 Inc. based on alleged architectural barriers she confronted at
16 the café. Sprouts Café Inc. answered Pierce's complaint and did
17 not file a counterclaim. (Id. at Docket #7.) Plaintiffs in the
18 instant action allege that in her ADA complaint, plaintiff makes
19 certain false claims against them, and thus, at times, they
20 reference the ADA in their complaint. But, those periodic
21 references do not create a federal question sufficient to confer
22 jurisdiction in this case.

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25 ² Because the court finds that oral argument will not be
26 of material assistance, it orders these matters submitted on the
27 briefs. E.D. Cal. L.R. 230(g).

28 ³ Plaintiffs do not describe this action in detail in
their complaint; instead, they make only a few general references
to an "ADA complaint" filed in "Federal Court" in the "Eastern
District of California." (Id.)

1 "The presence or absence of federal question jurisdiction is
2 governed by the 'well-pleaded complaint rule,' which provides
3 that federal jurisdiction exists only when a federal question is
4 presented on the face of the plaintiff's properly pleaded
5 complaint." Sacramento Metropolitan Air Quality Management Dist.
6 v. United States, 215 F.3d 1005, 1014 (9th Cir. 2000). Such is
7 clearly not the case here, as facially, plaintiffs' complaint
8 pleads only state law causes of action.

9 However, federal question jurisdiction may also lie if "it
10 appears that some substantial disputed question of federal law is
11 a necessary element of one of the well-pleaded state claims."
12 Rains v. Criterion Sys., Inc., 80 F.3d 339, 345 (9th Cir. 1996)
13 (quoting Franchise Tax Bd. of California v. Construction Laborers
14 Vacation Trust for Southern California, 463 U.S. 1, 13 (1983)).
15 Here, plaintiffs' claims are based on the following essential
16 allegations: (1) defendant concealed her identity in
17 communications with plaintiffs which charged accessibility
18 barriers at the restaurant (defendant formerly worked for
19 plaintiffs but did not disclose this fact in her letters);
20 (2) defendant misrepresented that she patronized the restaurant;
21 (3) defendant misrepresented that she uses a wheelchair and/or
22 walker; and (4) defendant misrepresented that the restaurant had
23 barriers that prevented her from using the facility. To
24 determine whether these acts constituted fraud or negligent
25 misrepresentation or whether they caused plaintiffs emotional
26 distress, the court need not determine whether the ADA was
27 violated or whether defendant has a cognizable ADA claim against
28 plaintiffs. Plaintiffs charge defendant with fraud, which they

1 assert was so extreme that it gives rise to a cause of action for
2 intentional or negligent infliction of emotional distress. That
3 determination can be made without consideration of the specific
4 merits of a federal ADA claim.

5 As such, because resolution of a federal issue is not
6 essential to the complaint, the court must grant plaintiffs'
7 motion to remand. Determination of federal law is not a
8 necessary element of one of plaintiffs' well-pleaded state
9 claims, and thus, this court is without jurisdiction over
10 plaintiffs' complaint. See Christianson v. Colt Industries
11 Operating Corp., 486 U.S. 800, 810 (1988).

12 While the court cannot retain jurisdiction over this case,
13 it notes that plaintiffs' complaint could have, and possibly
14 should have been, plead as a counterclaim to Pierce's complaint.
15 However, plaintiffs chose to file a separate action in state
16 court, and as is their right as the masters of their own
17 complaint, they carefully plead only state law causes of action,
18 thus precluding jurisdiction in this court. See Harper v. San
19 Diego Transit Corp., 764 F.2d 663, 667 (9th Cir. 1985)

20 (recognizing "plaintiff is generally free to be the master of his
21 own complaint"). Nevertheless, their complaint is closely
22 related to issues presented in Pierce's federal action. As such,
23 the court suggests that the parties consider moving for a stay,
24 in state court, of plaintiffs' action pending this court's
25 resolution of Pierce's ADA complaint. A stay of that action
26 would be in the interest of judicial economy and would promote
27 the consistent resolution of related actions.

1 Finally, while plaintiffs prevail on the instant motion, the
2 court does not find grounds to award them attorneys' fees. In
3 deciding whether an award of fees is just under 28 U.S.C.
4 § 1447(c),⁴ the test is whether the removing party had an
5 "objectively reasonable basis for removal." Martin v. Franklin
6 Capital Corp., 546 U.S. 132, 136 (2005). "Absent unusual
7 circumstances, fees should not be awarded when the removing party
8 has [such a] basis for removal." Gardner v. UICI, 508 F.3d 559,
9 561 (9th Cir. 2007). Here, defendant's removal meets this
10 standard. The gravamen of plaintiffs' complaint is the
11 allegation that defendant filed a false ADA complaint against
12 them, and their complaint in this action contains multiple
13 references to the ADA. As such, the court cannot find that
14 defendant acted unreasonably in removing the action based on a
15 purported federal question under the ADA. Therefore, the court
16 denies plaintiffs' request for an award of attorneys' fees.

17 Because the court does not have federal question
18 jurisdiction over plaintiffs' complaint, the court REMANDS this
19 action to the Superior Court of California, County of El Dorado.
20 Defendant's motion to strike is DENIED as MOOT.

21 IT IS SO ORDERED.

22 DATED: May 26, 2010



FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE

26 _____
27 ⁴ Said section provides that on granting a motion for
28 remand, the court may order the defendant to pay the plaintiff
"its just costs and any actual expenses, including attorneys'
fees, incurred as a result of the removal."