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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BLUE MOUNTAIN HOMES LLC,

Plaintiff,

No. CIV S-11-2155 KJM DAD PS

vs.

RONNIE D. BELL, et al.,

ORDER AND

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

By Notice of Removal filed August 15, 2011, this unlawful detainer action was removed from Solano County Superior Court by defendant Renee L.H. Bell, who is proceeding pro se.¹ Accordingly, the matter has been referred to the undersigned for all purposes encompassed by Local Rule 302(c)(21).

Defendant Renee L.H. Bell has filed an incomplete motion to proceed in forma pauperis. In the absence of complete information about defendant’s income, defendant has failed to make the showing required by 28 U.S.C. § 1915. The motion will be denied without prejudice on that ground.

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¹ Named defendant Ronnie D. Bell has not joined in the removal.

1 It is well established that the statutes governing removal jurisdiction must be
2 “strictly construed against removal.” Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064
3 (9th Cir. 1979) (citing Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108 (1941)).
4 “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first
5 instance.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). “The burden of establishing
6 federal jurisdiction falls on the party invoking removal.” Harris v. Provident Life & Accident
7 Ins. Co., 26 F.3d 930, 932 (9th Cir. 1994) (quoting Gould v. Mut. Life Ins. Co., 790 F.2d 769,
8 771 (9th Cir.1986)). Moreover, “the existence of federal jurisdiction depends solely on the
9 plaintiff’s claims for relief and not on anticipated defenses to those claims.” ARCO Envtl.
10 Remediation, LLC v. Dep’t of Health & Envtl. Quality, 213 F.3d 1108, 1113 (9th Cir. 2000).
11 Where it appears that the district court lacks subject matter jurisdiction over a removed case, “the
12 case shall be remanded.” 28 U.S.C. § 1447(c).

13 In conclusory fashion, defendant Renee Bell alleges as follows in her notice of
14 removal: plaintiff filed an unlawful detainer action in Solano County Superior Court; defendant
15 Renee Bell filed a demurrer alleging that plaintiff’s notice to vacate premises did not comply
16 with The Protecting Tenants at Foreclosure Act, 12 U.S.C. § 5220; the state court did not sustain
17 defendant Renee Bell’s demurrer. (Notice of Removal (Doc. No. 1) at 1-2.) Defendant argues
18 that “[f]ederal question jurisdiction exists because Defendants’ demurrer, a pleading, depend
19 [sic] on the determination of Defendants’ rights and Plaintiff’s duties under federal law.” (Id. at
20 3.)

21 Defendant’s notice of removal includes a copy of plaintiff’s complaint (Id., Ex.
22 A.) It is evident from plaintiff’s complaint that this action is nothing more than a garden-variety
23 unlawful detainer action filed against the former owner of real property located in California and
24 based wholly on California law. Plaintiff’s complaint does not involve any “claim or right
25 arising under the Constitution, treaties or laws of the United States” that would have permitted
26 plaintiff to file this action originally in federal court. See 28 U.S.C. § 1441(b). Defendant’s own

1 argument demonstrates that if there is any federal claim in this action it arises solely from the
2 affirmative defense alleged by defendant Renee Bell and not from the claims alleged in plaintiff's
3 unlawful detainer complaint.

4 For the reasons set forth above, the court finds that defendant Renee L.H. Bell has
5 failed to meet the burden of establishing a basis for federal jurisdiction.

6 IT IS HEREBY ORDERED that defendant Renee Bell's motion to proceed in
7 forma pauperis (Doc. No. 2) is denied without prejudice; and

8 IT IS RECOMMENDED that this action be summarily remanded to the Superior
9 Court of California, County of Solano and this case be closed.

10 These findings and recommendations will be submitted to the United States
11 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
12 fourteen days after being served with these findings and recommendations, any party may file
13 written objections with the court and serve a copy on all parties. A document presenting
14 objections should be titled "Objections to Magistrate Judge's Findings and Recommendations."
15 Any reply to objections shall be filed and served within seven days after service of the objections.

16 DATED: August 19, 2011.

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19 _____
DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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