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

STRATEGIC PARTNERS, LP,

Plaintiff,

No. 2:12-cv-02803 LKK KJN PS

vs.

ROBERT IJAMS et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

On November 15, 2012, defendants Robert Ijams and Marilyn Ijams filed a notice of removal in this court to effectuate the removal of a state court action pending in Placer County Superior Court. (Dkt. No. 1.)¹ Having reviewed the notice of removal and accompanying documentation, the undersigned concludes that this court lacks subject matter jurisdiction over the action and recommends that this case be summarily remanded to the Placer County Superior Court.

A federal court has an independent duty to assess whether federal subject matter jurisdiction exists, whether or not the parties raise the issue. See United Investors Life Ins. Co.

¹ This matter proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004) (stating that “the district court had a
2 duty to establish subject matter jurisdiction over the removed action *sua sponte*, whether the
3 parties raised the issue or not”); accord Rains v. Criterion Sys., Inc., 80 F.3d 339, 342 (9th Cir.
4 1996). Because subject matter jurisdiction may not be waived by the parties, a district court
5 must remand a case if it lacks jurisdiction over the matter. Kelton Arms Condominium Owners
6 Ass’n, Inc. v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003) (citing Sparta Surgical
7 Corp. v. Nat’l Ass’n of Sec. Dealers, Inc., 159 F.3d 1209, 1211 (9th Cir. 1998)); see also 28
8 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district court lacks
9 subject matter jurisdiction, the case shall be remanded”).

10 In relevant part, the federal removal statute provides:

11 (a) Except as otherwise expressly provided by Act of Congress,
12 any civil action brought in a State court of which the district courts
13 of the United States have original jurisdiction, may be removed by
14 the defendant or the defendants, to the district court of the United
15 States for the district and division embracing the place where such
16 action is pending.

15 28 U.S.C. § 1441(a). “The defendant bears the burden of establishing that removal is proper.”
16 Provincial Gov’t of Marinduque v. Placer Dome, Inc., 582 F.3d 1083, 1087 (9th Cir. 2009).
17 “The removal statute is strictly construed against removal jurisdiction,” id., and removal
18 jurisdiction “must be rejected if there is any doubt as to the right of removal in the first instance”
19 Geographic Expeditions, Inc. v. Estate of Lhotka, 599 F.3d 1102, 1107 (9th Cir. 2010) (citation
20 and quotation marks omitted).

21 A federal district court generally has original jurisdiction over a civil action
22 when: (1) a federal question is presented in an action “arising under the Constitution, laws, or
23 treaties of the United States” or (2) there is complete diversity of citizenship and the amount in
24 controversy exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332(a).

25 In regards to federal question jurisdiction, federal courts have “jurisdiction to
26 hear, originally or by removal from a state court, only those cases in which a well-pleaded

1 complaint establishes either that federal law creates the cause of action, or that the plaintiff's
2 right to relief necessarily depends on resolution of a substantial question of federal law."
3 Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 27-28 (1983); see also
4 Republican Party of Guam v. Gutierrez, 277 F.3d 1086, 1088-89 (9th Cir. 2002). "[T]he
5 presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint
6 rule,' which provides that federal jurisdiction exists only when a federal question is presented on
7 the face of the plaintiff's properly pleaded complaint." Placer Dome, Inc., 582 F.3d at 1091
8 (citation and quotation marks omitted). "In determining the existence of removal jurisdiction,
9 based upon a federal question, the court must look to the complaint *as of the time the removal*
10 *petition was filed.*" Abada v. Charles Schwab & Co., 300 F.3d 1112, 1117 (9th Cir. 2002)
11 (citation and quotation marks omitted). Mere reference to federal law is insufficient to permit
12 removal. See Smith v. Indus. Valley Title Ins. Co., 957 F.2d 90, 93 (3d Cir. 1992) ("[T]he mere
13 presence of a federal issue in a state cause of action does not automatically confer federal
14 question jurisdiction"). Also, defenses and counterclaims cannot provide a sufficient basis to
15 remove an action to federal court. See Vaden v. Discover Bank, 556 U.S. 49, 60 (2009); Berg v.
16 Leason, 32 F.3d 422, 426 (9th Cir. 1994); Takeda v. Northwestern Nat'l Life Ins. Co., 765 F.2d
17 815, 821-22 (9th Cir. 1985).

18 Here, removal cannot be based on federal question jurisdiction. The state court
19 pleadings and papers attached to the removal notice establish that the state court action is
20 nothing more than a simple unlawful detainer action and is titled as such. (See Dkt. No. 1 at 5-
21 10.) According to the state court complaint, plaintiff acquired the subject real property in
22 Rocklin, California, after a foreclosure sale and is seeking to evict defendants from the property.
23 (Dkt. No. 1 at 8-9.) This court has no jurisdiction over unlawful detainer actions, which are
24 brought pursuant to state law and fall strictly within the province of the state court.

25 Defendants contend that federal question jurisdiction exists because defendants'
26 state court demurrer, which was apparently not sustained, depended on the determination of

1 defendants' rights and plaintiff's duties under federal law, in particular the Protecting Tenants at
2 Foreclosure Act ("PTFA"). See Pub. L. No. 111-22, § 702, 123 Stat. 1632 (2009). (Dkt. No. 1
3 at 2-3.) The PTFA "provides certain protections to tenants who reside in properties subject to
4 foreclosure," including the requirement that a 90-day notice to vacate be given to bona fide
5 tenants. SD Coastline LP v. Buck, 2010 WL 4809661, at **1-2 (S.D. Cal. Nov. 19, 2010)
6 (unpublished). A state court demurrer is essentially the equivalent of a motion to dismiss in
7 federal court. However, plaintiff's complaint itself is strictly an action based on the California
8 unlawful detainer statutes. Thus, defendants' reference to the PTFA is best characterized as a
9 potential defense or counterclaim, neither of which is considered in evaluating whether a federal
10 question appears on the face of a plaintiff's complaint.

11 Any defenses based on federal law must generally be raised in the state court
12 action and do not provide a basis for removal. "A case may not be removed to federal court on
13 the basis of a federal defense,...even if the defense is anticipated in the plaintiff's complaint, and
14 even if both parties admit that the defense is the only question truly at issue in the case." ARCO
15 Envtl. Remediation, LLC v. Dep't. of Health & Envtl. Quality of the State of Montana, 213 F.3d
16 1108, 1113 (9th Cir. 2000) (citation and quotation marks omitted); see also Valles v. Ivy Hill
17 Corp., 410 F.3d 1071, 1075 (9th Cir. 2005) ("A federal law defense to a state-law claim does not
18 confer jurisdiction on a federal court, even if the defense is that of federal preemption and is
19 anticipated in the plaintiff's complaint.")

20 Indeed, federal courts have consistently rejected attempts to premise federal
21 subject matter jurisdiction on the 90-day notice provision of the PTFA. See, e.g., Parkland Sec.,
22 Inc. v. Carey, 2012 WL 159621, at *2 (E.D. Cal. Jan. 18, 2012) (unpublished), adopted by 2012
23 WL 458433 (E.D. Cal. Feb. 10, 2012) (unpublished); Wescom Credit Union v. Dudley, 2010
24 WL 4916578, at **2-3 (C.D. Cal. Nov. 22, 2010) (unpublished); SD Coastline LP, 2010 WL
25 4809661, at **2-3; Aurora Loan Servs, LLC v. Martinez, 2010 WL 1266887, at *1 (N.D. Cal.
26 Mar. 29, 2010) (unpublished). Such rejection is based on the fact that an argument relying on

1 the PTFA's notice provision is an attempt to premise the court's subject matter jurisdiction on a
2 defense or counterclaim.²

3 Furthermore, this action cannot be removed on grounds of diversity jurisdiction.
4 First, the amount in controversy does not exceed \$75,000, because plaintiff's complaint
5 specifically seeks \$25,000 or less. (Dkt. No. 1 at 7.) Second, defendants are citizens of
6 California, and therefore cannot remove the action from a California state court on the basis of
7 diversity jurisdiction. See 28 U.S.C. § 1441(b) ("Any civil action of which the district courts
8 have original jurisdiction founded on a claim or right arising under the Constitution, treaties or
9 laws of the United States shall be removable without regard to the citizenship or residence of the
10 parties. *Any other such action shall be removable only if none of the parties in interest properly*
11 *joined and served as defendants is a citizen of the State in which such action is brought*")
12 (emphasis added).

13 Based on the aforementioned analysis, the court finds that remand is appropriate,
14 because the court lacks subject matter jurisdiction over plaintiff's unlawful detainer action
15 brought pursuant to California law.

16 CONCLUSION

17 For the foregoing reasons, IT IS HEREBY RECOMMENDED that:

- 18 1. The action be summarily remanded to the Placer County Superior Court;
- 19 2. The Clerk be directed to serve a certified copy of this order on the Clerk of the
20 Placer County Superior Court, and reference the state case number (MCV0056000) in the proof
21 of service; and
- 22 3. The Clerk be directed to close this case.

24 ² Additionally, federal district courts have concluded that the PTFA does not create a
25 federal private right of action, but provides directives to state courts. See, e.g., Deutsche Bank
26 Nat'l Trust Co. v. Jora, 2010 WL 3943584, at *1 n.3 (E.D. Cal. Oct. 1, 2010) (unpublished);
Zalemba v. HSBC Bank, USA, Nat'l Ass'n, 2010 WL 3894577, at **2-4 (S.D. Cal. Oct. 1, 2010)
(unpublished).

