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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THE BANK OF NEW YORK MELLON,
Plaintiff,
v.
ANDY BILOTTI,
Defendant.

No. 2:15-cv-0854 MCE DAD PS

FINDINGS AND RECOMMENDATIONS

By Notice of Removal filed April 21, 2015, this unlawful detainer action was removed from the Sacramento County Superior Court by defendant Andy Bilotti, who is proceeding pro se. Accordingly, the matter has been referred to the undersigned for all purposes encompassed by Local Rule 302(c)(21).

It is well established that the statutes governing removal jurisdiction must be “strictly construed against removal.” Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 1979) (citing Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108 (1941)). See also Syngenta Crop Prot., Inc. v. Henson, 537 U.S. 28, 32 (2002); Provincial Gov’t of Martinique v. Placer Dome, Inc., 582 F.3d 1083, 1087 (9th Cir. 2009). “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). “The burden of establishing federal jurisdiction falls on the party invoking removal.” Harris v. Provident Life & Accident Ins. Co., 26 F.3d 930, 932 (9th Cir. 1994)

1 (quoting Gould v. Mut. Life Ins. Co., 790 F.2d 769, 771 (9th Cir.1986)). See also Provincial
2 Gov't of Martinduque, 582 F.3d at 1087. In addition, “the existence of federal jurisdiction
3 depends solely on the plaintiff’s claims for relief and not on anticipated defenses to those claims.”
4 ARCO Envtl. Remediation, LLC v. Dep’t of Health & Envtl. Quality, 213 F.3d 1108, 1113 (9th
5 Cir. 2000). Where it appears, as it does here, that the district court lacks subject matter
6 jurisdiction over a removed case, “the case shall be remanded.” 28 U.S.C. § 1447(c).

7 In removing this action, defendant asserts that this court has original jurisdiction over the
8 action because “[p]laintiff’s claim is based upon a notice which expressly references and
9 incorporates the ‘Protecting Tenants at Foreclosure Act of 2009,’ 12 U.S.C. § 5201.” (Notice of
10 Removal (Dkt. No. 1) at 3.) However, it is evident from a reading of plaintiff’s complaint filed in
11 the Sacramento County Superior Court that this is nothing more than a garden-variety unlawful
12 detainer action filed against the former owner of real property located in California and that it is
13 based wholly on California law without reference to any claim under federal law. (Id. at 13.)

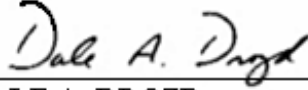
14 As such, the complaint does not involve any “claim or right arising under the Constitution,
15 treaties or laws of the United States” that would have permitted plaintiff to file this action
16 originally in federal court. See 28 U.S.C. § 1441(b). It is also evident from defendant’s Notice of
17 Removal that any federal claims that could conceivably be presented in this action arise solely
18 from defendant’s own affirmative defenses and not from the plaintiff’s unlawful detainer
19 complaint. See ARCO Envtl. Remediation, LLC, 213 F.3d at 1113. Thus, the defendant has
20 failed to meet his burden of establishing a basis for federal jurisdiction over this action.

21 Accordingly, IT IS RECOMMENDED that this action be summarily remanded to the
22 Sacramento County Superior Court and that this case be closed.

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

1 parties are advised that failure to file objections within the specified time may waive the right to
2 appeal the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: April 28, 2015

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6 DALE A. DROZD
7 UNITED STATES MAGISTRATE JUDGE

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