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United States District Court  
For the Northern District of California

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

ONEWEST BANK, FSB,

No. C 10-00936 SI

Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
UNOPPOSED MOTION TO REMAND,  
REMANDING ACTION TO CONTRA  
COSTA COUNTY SUPERIOR COURT,  
AND DENYING PLAINTIFF'S MOTION  
FOR FEES AND COSTS**

v.

BENJAMIN SANCHEZ, et al.,

Defendants.

Plaintiff's unopposed motion to remand is currently set for hearing on August 13, 2010. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument and hereby VACATES the hearing. Having considered plaintiff's papers, the Court GRANTS the motion to remand.

**BACKGROUND**

Plaintiff OneWest Bank, FSB filed this unlawful detainer action in the Contra Costa County Superior Court in November 2009 after purchasing the home of defendants Benjamin and Elvia Sanchez at a non-judicial foreclosure sale in May 2009. Complaint ¶ 5. The summons and complaint were served on defendants on November 21, 2009, and defendants thereafter answered the complaint. See RJN Ex. 2, 3. On March 5, 2010, defendants filed a Notice of Removal in this Court.

Now before the Court is plaintiff's unopposed motion to remand the action back to state court and for an award of attorneys' fees and costs under 28 U.S.C. § 1447(c).

1 **DISCUSSION**

2 **I. Motion to Remand**

3 An action filed in state court may be removed to federal court only if the federal court would  
4 have had original subject matter jurisdiction over the action. 28 U.S.C. § 1441(a). The bases for federal  
5 subject-matter jurisdiction are federal question jurisdiction under 28 U.S.C. § 1331 and diversity of  
6 citizenship jurisdiction under 28 U.S.C. § 1332. The removal statute is strictly construed against  
7 removal jurisdiction, and doubt is resolved in favor of remand. *Libhart v. Santa Monica Dairy Co.*, 592  
8 F.2d 1062, 1064 (9th Cir. 1979). Remand to state court may be ordered either for lack of subject matter  
9 jurisdiction or for any defect in removal procedure. *See* 28 U.S.C. § 1447(c).

10 Removal was clearly improper in this case. First, defendants cite federal question jurisdiction  
11 as the basis for removal. The sole cause of action stated in the complaint, however, is for unlawful  
12 detainer. This is not a federal cause of action. Defendants make passing reference to a number of  
13 federal statutes in their removal notice, including the Fair Debt Collection Practices Act, Real Estate  
14 Settlement Procedures Act, and Truth in Lending Act. These statutes, however, do not form the basis  
15 of plaintiff's complaint, and have no place in determining whether there is Court has jurisdiction over  
16 this matter. *Franchise Tax Bd. of the State of Cal. v. Constr. Lab. Vacation Trust for S. Cal.*, 463 U.S.  
17 1, 10 (1983) (“[A] defendant may not remove a case to federal court unless the *plaintiff's* complaint  
18 establishes that the case ‘arises under’ federal law.”) (original emphasis). Second, although defendants  
19 did not assert diversity jurisdiction as a ground for removal, the Court notes that removal would not be  
20 proper on that basis either, as defendants are citizens of California. 28 U.S.C. § 1441(b) (actions not  
21 arising under federal law are “removable only if none of the . . . defendants is a citizen of the State in  
22 which such action is brought”). Finally, a Notice of Removal must be filed within thirty days of service  
23 of the complaint. *Id.* § 1446(b). Defendants did not file their Notice of Removal until more than three  
24 months after they received service, and have provided no explanation for the untimely removal.

25 Accordingly, the motion to remand is GRANTED.

26  
27 **II. Attorneys' Fees and Costs**

28 Plaintiff also seeks an award of the attorneys' fees and costs incurred in bringing this motion to

1 remand. 28 U.S.C. § 1447(c) permits the Court to order payment of “just costs and any actual expenses,  
2 including attorney fees, incurred as a result of the removal.” In deciding whether to order payment of  
3 costs, the Court must assess whether removal was “wrong as a matter of law.” *Balcorta v. Twentieth*  
4 *Century-Fox Film Corp.*, 208 F.3d 1102, 1106 n.6 (9th Cir. 2000). “[A]bsent unusual circumstances,  
5 [costs] should not be awarded when the removing party has an objectively reasonable basis for  
6 removal.” *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 136 (2005).

7 Here, it is plain that there was no proper basis for removal; this action involves a single state-law  
8 cause of action, and there is no diversity of citizenship. Nonetheless, defendants are proceeding pro se,  
9 and apparently believed that asserting federal statutes in defense of this action presented a basis for  
10 removal. In view of defendants’ pro se status, the Court declines to order an award of the fees and costs  
11 associated with the removal. See *Boutrup v. Washburn*, No. 09-2678, 2009 WL 4573299, at \*2 (E.D.  
12 Cal. Nov. 24, 2009) (“[W]hile having the status of pro se does not set up a dichotomy of rules vis-a-vis  
13 represented litigants, that pro se status warrants some consideration when reviewing a § 1447(c)  
14 request.”); *HSBC Bank USA, N.A. v. Bryant*, No. 09-1659, 2009 WL 3787195, at \*5 (S.D. Cal. Nov. 10,  
15 2009) (a pro se defendant is “entitled to more leeway in his attempt to comply with the removal statute,  
16 as long as it was not objectively unreasonable”).


17 Plaintiffs’ request for attorneys’ fees and costs is therefore DENIED.

18  
19 **CONCLUSION**

20 For the foregoing reasons, and for good cause shown, plaintiff’s motion to remand is  
21 GRANTED. (Docket No. 6). This action is hereby REMANDED to the Contra Costa County Superior  
22 Court.

23  
24 **IT IS SO ORDERED.**

25 Dated: August 5, 2010

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28 SUSAN ILLSTON  
United States District Judge