

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GROSS MORTGAGE CORPORATION,  
  
Plaintiff,  
  
v.  
  
SABIR AL-MANSUR an individual also  
known as Ronald M. Poole,  
  
Defendant.

No. C-13-0398 EMC

**ORDER RE DEFENDANT’S  
OPPOSITION TO PLAINTIFF’S  
MOTION TO REMAND**  
  
**(Docket Nos. 12-13)**

Previously, the Court issued an order granting Plaintiff Gross Mortgage Corporation’s motion to remand. *See* Docket No. 11 (order). In that order, the Court noted that Defendant Sabir Al-Mansur had failed to file a timely opposition. As it turns out, Mr. Al-Mansur did in fact timely file an opposition but, because of a clerk error, that opposition was not provided to the Court until after the order granting the remand had already issued.

Because there was no fault on the part of Mr. Al-Mansur, the Court shall consider the motion to remand anew -- taking into account the arguments made by Mr. Al-Mansur in his opposition.<sup>1</sup> Unfortunately for Mr. Al-Mansur, none of his arguments have any merit. For example, his contention that GMC does not have valid title to the real property at issue is a defense, which has no

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<sup>1</sup> The Court acknowledges that Mr. Al-Mansur filed a notice of appeal on March 12, 2013. A remand order, however, is not appealable where it is based on lack of subject matter jurisdiction. *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 711-12 (1996) (stating that a remand based on lack of subject matter jurisdiction is not appealable under 28 U.S.C. § 144(d)); *Harmston v. City & County of San Francisco*, 627 F.3d 1273, 1277 (9th Cir. 2010) (noting that, “if a district court remands a case to state court for *any reason* other than lack of subject matter jurisdiction, its remand order is appealable”) (emphasis in original).

1 bearing on whether there is subject matter jurisdiction based on GMC’s complaint. Similarly, his  
2 claim that his constitutional rights have been violated by GMC is a defense or counterclaim, which  
3 cannot be the basis for a removal.<sup>2</sup> See *Holmes Group, Inc. v. Vornado Air Circulation Systems,*  
4 *Inc.*, 535 U.S. 826 (2002); *ARCO Env’tl. Remediation, L.L.C. v. Department of Health & Env’tl.*  
5 *Quality of St. of Mont.*, 213 F.3d 14 1108, 1113 (9th Cir. 2000).

6 Diversity jurisdiction is also lacking for the reason previously identified by the Court -- *i.e.*,  
7 “the matter in controversy exceed[] the sum or value of \$ 75,000,” 28 U.S.C. § 1332(a), and Mr.  
8 Al-Mansur has not made any showing that any damages sought by GMC would exceed that amount.  
9 Indeed, the caption of the complaint (under the jurisdiction section) expressly states that GMC seeks  
10 damages not to exceed \$10,000.

11 Finally, jurisdiction does not obtain under 28 U.S.C. § 1443. As the Court previously noted,  
12 under Supreme Court precedent, under § 1443,

13 “the vindication of the defendant’s federal rights is left to the state  
14 courts except in the rare situations where it can be *clearly predicted* by  
15 reason of the operation of a pervasive and explicit state or federal law  
16 that those rights will inevitably be denied by the very act of bringing  
17 the defendant to trial in the state court.”

18 *Johnson v. Mississippi*, 421 U.S. 213, 220 (1975) (emphasis added). Mr. Al-Mansur has not met  
19 that high standard. To the extent Mr. Al-Mansur asks for an evidentiary hearing to make out a case  
20 under § 1443, that request for relief is denied. Mr. Al-Mansur has not made any offer of proof to  
21 establish that this case might plausibly fall under the auspices of § 1443.

22 Finally, to the extent Mr. Al-Mansur asks for a preliminary injunction or sanctions pursuant  
23 to Federal Rule of Civil Procedure 11, those requests for relief are **DENIED**. The Court is without

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24 <sup>2</sup> The Court notes that Mr. Al-Mansur has now filed a cross-complaint in this proceeding.  
25 That pleading too has no effect on whether there is subject matter jurisdiction over this case, as  
26 subject matter jurisdiction is predicated on GMC’s complaint which initiated the lawsuit. See  
27 *Nationstar, LLC v. Graves*, No. 1:12-cv-02018-AWI-SKO, 2012 U.S. Dist. LEXIS 181914, at \*6  
28 (E.D. Cal. Dec. 26, 2012) (stating that “[r]emoval . . . cannot be based on a defense, counterclaim,  
cross-claim, or third-party claim raising a federal question, whether filed in state or federal court”);  
*Urbino v. Orkin Servs. of Cal.*, 882 F. Supp. 2d 1152, --- n.12 (C.D. Cal. 2011) (noting that a “cross-  
complaint is not relevant to the issue of federal question jurisdiction because jurisdiction must be  
analyzed on the basis of the *plaintiff’s* well-pleaded complaint at the time of removal, not [a  
defendant’s] cross-complaint”) (emphasis in original).

1 jurisdiction to award any injunctive relief; furthermore, Mr. Al-Mansur has not made an adequate  
2 showing that GMC engaged in any conduct before this Court that implicates Rule 11.

3         Accordingly, for the reasons stated both in this order and its order of March 11, 2013, this  
4 case shall be remanded.


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6             IT IS SO ORDERED.

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8 Dated: March 14, 2013

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EDWARD M. CHEN  
United States District Judge

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