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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PNC BANK NATIONAL ASSOCIATION,

Plaintiff,

No. C 10-5069 PJH

v.

ORDER REMANDING CASE

ALBERT MEDINA, et al.,

Defendants.

Defendants Albert Medina and Virginia Medina removed this action from the Superior Court of San Joaquin County on November 9, 2010, alleging diversity jurisdiction. Because the court finds that it lacks subject matter jurisdiction, the case is hereby REMANDED.

Federal courts can adjudicate only those cases which the Constitution and Congress authorize them to adjudicate – those involving diversity of citizenship or a federal question, or those to which the United States is a party. See Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994). The burden of establishing federal jurisdiction for purposes of removal is on the party seeking removal. Valdez v. Allstate Ins. Co., 372 F.3d 1115, 1117 (9th Cir. 2004).

The removal statutes are construed restrictively, so as to limit removal jurisdiction. Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108-09 (1941); see also Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir. 2003) (doubts as to removability are resolved in favor of remanding case to state court). A defendant has a

1 particularly heavy burden where the state court complaint specifically indicates that it seeks
2 damages of less than \$75,000. The district court must remand the case if it appears before
3 final judgment that the court lacks subject matter jurisdiction. 28 U.S.C. § 1447(c).

4 The complaint at issue, which was filed in the Superior Court of San Joaquin County
5 on August 27, 2010, alleges a single cause of action under state law, for unlawful detainer
6 following a non-judicial foreclosure sale in April 2010. The complaint further alleges that on
7 May 21, 2010. defendants were served with a 90-day notice to vacate vacate the premises.
8 The caption of the complaint states “Amount Demanded Does not Exceed \$10,000.” In the
9 prayer for relief, plaintiff seeks “restitution and possession of the property” and the sum of
10 \$31.67 per day, which represents “the unpaid fair market value” for use and occupancy of
11 the property and premises from August 20, 2010 until rendition of Judgment herein,” and
12 “such other and further relief as the Court may deem just and proper.”

13 In the notice of removal, defendants assert diversity jurisdiction under 28 U.S.C.
14 § 1332, alleging only that parties are citizens of different states. However, there are two
15 requirements for establishing diversity jurisdiction – the parties on each side must be
16 diverse, and the amount in controversy must exceed \$75,000. 28 U.S.C. § 1332(a).

17 Under 28 U.S.C. § 1447(c), the district court is required to remand state law claims
18 where the court lacks removal jurisdiction – that is, where there is no federal question or
19 diversity jurisdiction. Albingia Versicherungs A.G. v. Schenker Int’l, Inc., 344 F.3d 931,
20 936, amended, 350 F.3d 916 (9th Cir. 2003). Subject matter jurisdiction is fundamental
21 and cannot be waived. Billingsly v. C.I.R., 868 F.2d 1081, 1085 (9th Cir. 1989). Federal
22 courts have no power to consider claims for which they lack subject-matter jurisdiction.
23 See Chen-Cheng Wang ex rel. United States v. FMC Corp., 975 F.2d 1412, 1415 (9th Cir.
24 1992). Thus, in the present case, the court must consider whether it has subject matter
25 jurisdiction over the removed unlawful detainer action before it can consider whether the
26 unlawful detainer action should be consolidated with the related wrongful foreclosure
27 action.

28 Here, defendants have not met their burden of establishing that the amount in

1 controversy exceeds \$75,000. When a state court complaint affirmatively alleges that the
2 amount in controversy is less than the jurisdictional threshold, the party seeking removal
3 must prove with “legal certainty” that the jurisdictional amount is met. See Lowdermilk v.
4 U.S. Bank Nat'l Ass'n, 479 F.3d 994, 998-1000 (9th Cir. 2007). Here, the face of the
5 complaint makes clear that plaintiff is seeking an amount less than \$10,000, and as of the
6 time of removal, the amount claimed (\$31.67 per day, from August 20, 2010 to November
7 9, 2010) was well under that amount. Moreover, plaintiff filed this unlawful detainer action
8 as a “limited civil case,” which necessarily means that the “whole amount of damages
9 claimed is twenty-five thousand dollars (\$25,000) or less.” Cal. Civ. Proc. Code § 86(a)(4).

10 In accordance with the foregoing, this case is hereby REMANDED to the San
11 Joaquin Superior Court pursuant to 28 U.S.C. § 1447(c) for lack of subject matter
12 jurisdiction. See Singer v. State Farm Mut. Auto. Ins. Co., 116 F.3d 373, 376-77 (9th Cir.
13 1997) (where plaintiff does not claim damages in excess of \$75,000 and defendant offers
14 no facts whatsoever to show that the amount in controversy exceeds \$75,000, then
15 defendant has not borne the burden on removal of proving that the amount in controversy
16 requirement is satisfied).

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IT IS SO ORDERED.

Dated: November 23, 2010



PHYLLIS J. HAMILTON
United States District Judge