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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 THE BANK OF NEW YORK, AS
10 SUCCESSOR INDENTURE TRUSTEE UNDER
11 NOVASTAR MORTGAGE FUNDING TRUST
12 SERIES 2006-1,

13 Plaintiff,

14 v.

15 LUIS GUEVARA-MARTINEZ,

16 Defendant.
17

No. C 11-5474 CW

ORDER GRANTING
PLAINTIFF'S MOTION
TO REMAND AND
GRANTING
DEFENDANT'S
APPLICATION TO
PROCEED IN FORMA
PAUPERIS

18 On November 10, 2011, Defendant Luis Guevara-Martinez removed
19 this case from the Alameda County Superior Court and moved for
20 leave to proceed in forma pauperis (IFP). From the face of the
21 application it appears that Defendant meets the financial
22 requirements to proceed IFP and the application to proceed IFP is
23 granted.

24 On December 8, 2011, Defendant Bank of New York moved for
25 remand. Opposition to the motion to remand was due on December
26 22, 2011, but has not been filed. The Court has reviewed the
27 removed complaint and concludes that it must be remanded.
28

1 A defendant may remove a civil action filed in state court to
2 federal district court so long as the district court could have
3 exercised original jurisdiction over the matter. 28 U.S.C.
4 § 1441(a). For removal to be proper, there must be federal
5 question jurisdiction or diversity jurisdiction. Franchise Tax
6 Bd. of State of California v. Construction Laborers Vacation Trust
7 for Southern California, 463 U.S. 1, 10 (1983). District courts
8 have federal question jurisdiction over civil actions arising
9 under the United States Constitution, laws or treaties of the
10 United States. 28 U.S.C. § 1331. District courts have diversity
11 jurisdiction over civil actions when they are between citizens of
12 different states and the amount in controversy exceeds \$75,000.
13 28 U.S.C. § 1332(a).

14 Title 28 U.S.C. § 1447(c) provides that if, at any time
15 before judgment, it appears that the district court lacks subject
16 matter jurisdiction over a case previously removed from state
17 court, the case must be remanded. On a motion to remand, the
18 scope of the removal statute must be strictly construed. Gaus v.
19 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). "The 'strong
20 presumption' against removal jurisdiction means that the defendant
21 always has the burden of establishing that removal is proper."
22 Id. Courts should resolve doubts as to removability in favor of
23 remanding the case to state court. Id.

24 This removed case is a residential unlawful detainer action
25 following a judicial foreclosure. It contains one cause of action
26 for unlawful detainer, which arises exclusively under state law.
27 In his notice of removal, Defendant argues that federal question
28 jurisdiction exists because Plaintiff has violated the federal

1 Protecting Tenants at Foreclosure Act of 2009 which "raises
2 questions as to what rights tenants have because of the effect of
3 foreclosure." However, "[t]he presence or absence of federal-
4 question jurisdiction is governed by the well-pleaded complaint
5 rule, which provides that federal jurisdiction exists only when a
6 federal question is presented on the face of the plaintiff's
7 properly pleaded complaint.'" Rivet v. Regions Bank of La., 522
8 U.S. 470, 475 (1998) (quoting Caterpillar Inc. v. Williams, 482
9 U.S. 386 (1987)). A federal defense is not part of a plaintiff's
10 properly pleaded statement of his or her claim. Id. (citing
11 Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987)). A
12 case, therefore, may not be removed to the federal court based on
13 a federal defense "even if the defense is anticipated in the
14 plaintiff's complaint, and even if both parties admit that the
15 defense is the only question truly at issue in the case."
16 Franchise Tax Bd., 463 U.S. at 14; see Rivet, 522 U.S. at 475.
17 Because the only possible federal issue in this case involves a
18 defense, federal question jurisdiction is lacking.

19 The complaint alleges that Plaintiff seeks damages in an
20 amount not to exceed \$10,000. Because the amount in controversy
21 is less than \$75,000, diversity jurisdiction is lacking. See St.
22 Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 291 (1938)
23 (the status of the case as disclosed by the plaintiff's complaint
24 is controlling for purposes of removal).

25 Because there is no federal question or diversity
26 jurisdiction, this Court lacks subject matter jurisdiction over
27 this case and it must be remanded.
28

CONCLUSION

For the foregoing reasons, the Court grants Defendant's motion to remand this case to the Alameda County Superior Court and grants Plaintiff's application to proceed IFP.

IT IS SO ORDERED.

Dated: 1/9/2012


CLAUDIA WILKEN
United States District Judge