

United States District Court

For the Northern District of California

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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAFEDERAL NATIONAL MORTGAGE No. C-11-05790 DMR
ASSOCIATION,

Plaintiff,

**ORDER REMANDING CASE TO
SUPERIOR COURT OF CALIFORNIA**

v.

ANDRE D. IRBY, et al.,

Defendants.

/

Defendants Andre D. Irby and Kathy Martinez (“Defendants”) removed this case pursuant to 28 U.S.C. § 1441 from Alameda County Superior Court, where it was pending as a complaint for unlawful detainer against Defendant. The Notice of Removal states one ground for removal: that the Complaint presents a federal question such that the case could have originally been filed in this court. (Notice of Removal ¶¶ 6, 10.) When a notice of removal is filed, the court must examine it “promptly,” and, “[i]f it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.” 28 U.S.C. § 1446(c)(4). Plaintiff Federal National Mortgage Association and Defendants have both consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c).

I. Federal Question Jurisdiction

1 Federal courts are courts of limited jurisdiction, and a “federal court is presumed to lack
2 jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock W., Inc. v.*
3 *Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citations omitted). “[T]he presence or
4 absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which
5 provides that federal jurisdiction exists only when a federal question is presented on the face of the
6 plaintiff’s properly pleaded complaint.” *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998)
7 (quoting *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987)). That rule applies equally to
8 evaluating the existence of federal questions in cases brought initially in federal court and in
9 removed cases. *See Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 830 n.2
10 (2002). Relevant for purposes here, a federal question exists only when it is presented by what is or
11 should have been alleged in the complaint. *Id.* at 830. The implication of a federal question through
12 issues raised by an answer or counterclaim does not suffice to establish federal question jurisdiction.
13 *Id.* at 831.

14 According to Defendants' Notice of Removal, a federal question arises because Defendants'
15 answer "depend[s] on the determination of Defendants' rights and Plaintiff's duties under federal
16 law." (Notice of Removal ¶ 10.) The complaint that Plaintiff filed in Alameda County Superior
17 Court, however, simply alleges a state cause of action under unlawful detainer. (Compl.) Whatever
18 Defendants intend to argue in response to this allegation does not give rise to removal jurisdiction.

II. Conclusion

20 For the reasons above, the court REMANDS this action to the Alameda County Superior
21 Court.

23 || IT IS SO ORDERED.

25 | Dated: January 10, 2012

