

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MISSION PROPERTY MANAGEMENT
CO., INC.,

Plaintiff,

v.

CINDY FRIED, et al.,

Defendants.

Case No. [4:17-cv-02785-KAW](#)

**ORDER REASSIGNING CASE TO A
DISTRICT JUDGE; REPORT AND
RECOMMENDATION TO REMAND
TO STATE COURT; ORDER
GRANTING IN FORMA PAUPERIS
APPLICATION**

Re: Dkt. Nos. 1, 2

On May 15, 2017, Defendant Cindy Fried removed this unlawful detainer action from Alameda County Superior Court, and applied to proceed *in forma pauperis*. (Not. of Removal, Dkt. No. 1; IFP Appl., Dkt. No. 2.)

As removal is clearly improper, and the parties have not consented to the undersigned, for the reasons set forth below, the Court reassigns this case to a district judge and recommends that the case be remanded to state court. Additionally, the Court grants Defendant’s application to proceed *in forma pauperis*.

I. BACKGROUND

Plaintiff Mission Property Management Co. commenced this unlawful detainer action against Defendants Cindy Fried and Maurice Fried in Alameda County Superior Court on or around March 3, 2017. (Not. of Removal at 11.) The complaint contains a single cause of action for unlawful detainer. *Id.* The case is a “limited civil case,” in which Plaintiff seeks immediate possession of a certain property located in Newark, California, which Defendants occupy. *Id.* at ¶ 3.

Plaintiff alleges that Defendants signed a fixed term lease on or about March 5, 2016, and are now demanding possession of the property due to the expiration of the lease. (Compl., Dkt

1 No. 1 at 11-13 ¶¶ 6, 9.)

2 On May 15, 2017, Defendant Cindy Fried removed the action to federal court on the
3 grounds that it presents a federal question. (Not. of Removal at 2.)¹

4 **II. LEGAL STANDARD**

5 Federal courts exercise limited jurisdiction. A “federal court is presumed to lack
6 jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock W., Inc. v.*
7 *Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citation omitted). A defendant may
8 remove a civil action from state court to federal court if original jurisdiction would have existed at
9 the time the complaint was filed. *See* 28 U.S.C. § 1441(a). “[R]emoval statutes are strictly
10 construed against removal.” *Luther v. Countrywide Homes Loans Servicing, LP*, 533 F.3d 1031,
11 1034 (9th Cir. 2008). “Federal jurisdiction must be rejected if there is any doubt as to the right of
12 removal in the first instance,” such that courts must resolve all doubts as to removability in favor
13 of remand. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The burden of establishing that
14 federal jurisdiction exists is on the party seeking removal. *See id.* at 566-67.

15 Federal district courts have original jurisdiction over actions that present a federal question
16 or those based on diversity jurisdiction. *See Wayne v. DHL Worldwide Express*, 294 F.3d 1179,
17 1183 & n.2 (9th Cir. 2002). Federal district courts have federal question jurisdiction over “all civil
18 actions arising under the Constitution, laws or treaties of the United States.” 28 U.S.C. § 1331.
19 Federal question jurisdiction is governed by the well-pleaded complaint rule, which provides that
20 the basis for federal jurisdiction must appear on the face of the properly pleaded complaint, either
21 because the complaint directly raises an issue of federal law or because the plaintiff’s “right to
22 relief under state law requires resolution of a substantial question of federal law in dispute
23 between the parties.” *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*,
24 463 U.S. 1, 13 (1983). “[A] case may not be removed to federal court on the basis of a federal
25 defense . . . , even if the defense is anticipated in the plaintiff’s complaint” *Caterpillar Inc. v.*
26 *Williams*, 482 U.S. 386, 393 (1987) (citation omitted).

27 _____
28 ¹ Co-plaintiff Maurice Fried did not explicitly join in the removal, but, for the purposes of this
report and recommendation, the Court will assume that he consents to the removal.

1 **III. DISCUSSION**

2 Defendant removed this unlawful detainer action from state court on the grounds that the
3 district court has jurisdiction because the case presents a federal question.

4 **A. Federal Question Jurisdiction**

5 Defendant claims that a federal question exists because Defendants are bona fide tenants
6 pursuant to the Protecting Tenants at Foreclosure Act (“PTFA”), and Plaintiff failed to allege
7 compliance with PTFA, serving only a three day notice to quit. (Not. of Removal ¶¶ 3, 7.)
8 Defendants’ rights in an unlawful detainer action, however, depend on the interpretation of state
9 law. Further, Defendant has not shown why the resolution of Plaintiff’s unlawful detainer claim
10 will turn on a substantial question of federal law. The complaint, therefore, fails to present a
11 federal question or a substantial question of federal law.

12 Moreover, the well-pleaded complaint rule prevents the Court from considering any
13 additional claims, such that a defendant cannot create federal question jurisdiction by adding
14 claims or defenses to a notice of removal. *See Provincial Gov’t of Marinduque v. Placer Dome,*
15 *Inc.*, 582 F.3d 1083, 1086 (9th Cir. 2009); *see also McAtee v. Capital One, F.S.B.*, 479 F.3d 1143,
16 1145 (9th Cir. 2007) (even previously asserted counterclaims raising federal issue will not permit
17 removal). Accordingly, Defendant’s claim that there was a violation of the PTFA does not
18 establish federal question jurisdiction in this matter. Thus, Defendant’s contention that there are
19 federal questions at issue in this litigation is misplaced.

20 Lastly, the limited scope of unlawful detainer proceedings precludes cross-complaints or
21 counterclaims. *See Knowles v. Robinson*, 60 Cal. 2d 620, 626-27 (1963). Thus, to the extent that
22 Defendants’ assertions could be contained in any such filing, they would, nonetheless, fail to
23 introduce a basis for federal question jurisdiction.

24 **B. Diversity Jurisdiction**

25 District courts also have original jurisdiction over all civil actions “where the matter in
26 controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between .
27 . . . citizens of different States.” 28 U.S.C. § 1332(a). When federal subject-matter jurisdiction is
28 predicated on diversity of citizenship, complete diversity must exist between the opposing parties.

1 *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373-74 (1978). Under the forum defendant
2 rule, “a civil action otherwise removable solely on the basis of [diversity jurisdiction] may not be
3 removed if any of the parties in interest properly joined and served as defendants is a citizen of the
4 State in which such action is brought.” 28 U.S.C. § 1441(b). Here, Plaintiff’s citizenship is
5 unknown, and Defendants are citizens of California. Thus, the forum defendant rule applies, and
6 the action is not removable on the basis of diversity jurisdiction. *See* 28 U.S.C. § 1441(b).

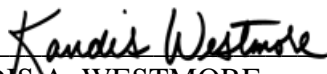
7 **IV. CONCLUSION**

8 For the reasons set forth above, the Court REASSIGNS this action to a district judge with
9 the recommendation that the action be REMANDED to state court for further proceedings. The
10 Court GRANTS Defendant’s request to proceed *in forma pauperis*.

11 Any party may file objections to this report and recommendation with the district judge
12 within 14 days of being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); N.D.
13 Civil L.R. 72-3. The parties are advised that failure to file objections within the specified time
14 may waive the right to appeal the district court’s order. *IBEW Local 595 Trust Funds v. ACS*
15 *Controls Corp.*, No. C-10-5568, 2011 WL 1496056, at *3 (N.D. Cal. Apr. 20, 2011).

16 IT IS SO RECOMMENDED.

17 Dated: June 6, 2017

18 
KANDIS A. WESTMORE
United States Magistrate Judge