

United States District Court
For the Northern District of California

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E-FILED 02-08-2011

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IRMA CARRANZA; ROSENDO CARRANZA, No. C10-04356 HRL

Plaintiffs,

v.

**ORDER TO SHOW CAUSE RE
SUBJECT MATTER JURISDICTION**

AMERICAN PREMIER FUNDING, INC.;
EWV ENTERPRISES, INC.; BANKUNITED,
AS ALLEGED SUCCESSOR IN INTEREST
TO BANKUNITED FSB; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC.; ROBERT E. WEISS INCORPORATED;
DOES 1-30,

Defendants.

Defendants BankUnited and Mortgage Electronic Registration Systems, Inc. removed this matter from Santa Clara County Superior Court, asserting two bases for federal jurisdiction.

Defendants contend that plaintiffs have asserted claims under the Truth in Lending Act (TILA), 15 U.S.C. § 1601, *et seq.* and the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2601, *et seq.* “As a general rule, the presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Arco Environmental Remediation, LLC v. Dep’t of Health & Environmental Quality of the State of Montana*, 213 F.3d 1108, 1113 (9th Cir. 2000) (internal

1 quotations omitted). Here, plaintiffs' complaint, on its face, does not state a claim that arises
2 under federal law. Rather, all asserted claims for relief are based on state law. The complaint
3 does mention TILA and does say that defendants violated RESPA. But those references to
4 TILA and RESPA do not mean that federal law creates the claims under which plaintiffs sue.
5 *Id.* Plaintiffs may not defeat removal by omitting to plead necessary federal questions in a
6 complaint. *Id.* at 1114. Nevertheless, it appears to this court that plaintiffs have simply chosen
7 to challenge defendants' alleged conduct under California law, notwithstanding that the alleged
8 misdeeds might also violate federal laws.

9 As an alternate basis for federal jurisdiction, defendants assert that federal question
10 jurisdiction exists because "the claims alleged by Plaintiffs against BANKUNITED implicate
11 the Financial Institutions Reform, Recovery and Enforcement Act ('FIRREA') in that Plaintiffs
12 seek by their complaint to recover from Defendant BANKUNITED, as a successor to
13 'BankUnited FSB,' a federally chartered savings bank placed in receivership with FDIC by the
14 Office of Thrift Supervision on May 21, 2009, which claims are governed by 12 U.S.C. §
15 1821(d)." (Docket No. 1, Notice of Removal at 2). FIRREA section 1821(d), as this court
16 understands it, essentially sets out various rights and powers of the FDIC in its capacity as
17 conservator or receiver, including the FDIC's ability to remove a case to federal court.
18 12 U.S.C. § 1821(d)(13)(B); *Bullion Services, Inc. v. Valley State Bank*, 50 F.3d 705, 709 (9th
19 Cir. 1995). In general, a case to which the FDIC "is a party shall be deemed to arise under the
20 laws of the United States." 12 U.S.C. § 1819(2)(A). There is nothing in the record before the
21 court, however, indicating that the FDIC ever was a party to this action. How do plaintiffs'
22 claims, which reportedly "implicate" FIRREA, confer federal subject matter
23 jurisdiction—particularly when the FDIC has never been a party to this action and defendants
24 apparently intended to move to dismiss plaintiffs' claims for *lack* of subject matter jurisdiction?
25 (*See* Docket No. 18, Ex. 1).

26 Moreover, the record presented suggests that the FDIC has divested its interest in the
27 subject property (i.e., by liquidating the assets of the failed bank and selling them to defendant
28 BankUnited). (*See* Docket No. 18, Ex. 1 at 9). Do defendants contend that the FDIC's former

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presence is a basis for subject matter jurisdiction? If so, what authority is there for that proposition?

Defendants shall file a letter brief in response to this order to show cause, with citations to cogent authority, clarifying (1) the basis for this court’s jurisdiction over this matter and (2) the propriety of the removal of this action here. Defendants’ response shall not exceed five pages. Per defense counsel’s request, defendants shall have until February 28, 2011 to file their show cause response.

Defendants’ fees motion and plaintiffs’ motion re costs will be taken under submission pending resolution of these jurisdictional issues.

SO ORDERED.

Dated: February 8, 2011



HOWARD B. LLOYD
UNITED STATES MAGISTRATE JUDGE

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