

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THE BANK OF NEW YORK MELLON FKA)	Case No.: 12-cv-01163-LHK
THE BANK OF NEW YORK AS TRUSTEE)	
FOR THE CERTIFICATEHOLDERS OF)	
CWALT, INC., ALTERNATIVE LOAN)	ORDER REMANDING CASE
TRUST 2005.51 MORTGAGE PASS-)	
THROUGH CERTIFICATES, SERIES 2005-51,))	
Plaintiffs,)	
v.)	
LEO GERMANELO and DOES I through X,)	
Defendants.)	

On March 8, 2012, Defendant Leo Germanelo (“Defendant”) removed this unlawful detainer action from the Superior Court for the County of Monterey to federal court, asserting federal question jurisdiction. *See* ECF No. 1 (“Notice of Removal”) at 2. The case was reassigned to the undersigned judge on March 14, 2012. ECF No. 6. Before the Court is Plaintiff’s Motion to Remand for lack of jurisdiction, which Defendant has not opposed. *See* ECF Nos. 9 (“Mot.”), 15 (“Reply”). The Court finds the matter appropriate for determination without oral argument and therefore VACATES the hearing set for August 9, 2012. *See* Civil L.R. 7-1(b). Having reviewed Plaintiff’s submissions and the relevant law, the Court concludes that it lacks jurisdiction over this matter, and therefore GRANTS the Motion to Remand.

I. BACKGROUND

1 The instant dispute arises from a non-judicial foreclosure sale of real property located at
2 3229 Susan Avenue, Marina, California 93933 (the “Property”). Notice of Removal, Ex. A
3 (complaint) at 2. In seeking to recover possession of the Property, Plaintiff The Bank of New York
4 Mellon fka The Bank of New York as Trustee for the Certificateholders of Cwalt, Inc., Alternative
5 Loan Trust 2005.51, Mortgage Pass-Through Certificates, Series 2005-51 (“Plaintiff”), filed a
6 complaint in the Superior Court for the County of Monterey alleging a single cause of action,
7 unlawful detainer, pursuant to California Code of Civil Procedure § 1161a. *See* Notice of
8 Removal, Ex. A at 1. Defendant filed a demurrer to the complaint alleging defective notice, which
9 the Superior Court overruled. *See* Removal Notice at 3 & Ex. B (demurrer). Defendant
10 subsequently removed this action to federal court.

11 **II. LEGAL STANDARDS AND DISCUSSION**

12 There are two bases for federal subject matter jurisdiction: (1) federal question jurisdiction
13 under 28 U.S.C. § 1331, and (2) diversity jurisdiction under 28 U.S.C. § 1332. A suit may be
14 removed from state court to federal court only if the federal court would have had subject matter
15 jurisdiction over the case. 28 U.S.C. § 1441(a). If it appears at any time before final judgment that
16 the federal court lacks subject matter jurisdiction, the federal court must remand the action to state
17 court. 28 U.S.C. § 1447(c). The party seeking removal bears the burden of establishing federal
18 jurisdiction. *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir.
19 2009). “The removal statute is strictly construed, and any doubt about the right of removal requires
20 resolution in favor of remand.” *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th
21 Cir. 2009) (citing *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)).

22 **A. Federal Question Jurisdiction**

23 Under 28 U.S.C. § 1331, federal courts have original jurisdiction over civil actions “arising
24 under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Federal
25 jurisdiction “is determined (and must exist) as of the time the complaint is filed and removal is
26 effected.” *Strotek Corp. v. Air Transport Ass’n of Am.*, 300 F.3d 1129, 1133 (9th Cir. 2002).
27 Removal pursuant to § 1331 is governed by the “well-pleaded complaint rule,” which provides that
28

1 federal question jurisdiction exists only when “a federal question is presented on the face of
2 plaintiff’s properly pleaded complaint.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

3 The state court complaint attached to the Notice of Removal discloses no federal statutory
4 or constitutional question. Plaintiff asserts only a single cause of action for unlawful detainer
5 pursuant to California Code of Civil Procedure § 1161(a)(b)(3). ECF No. 1, Ex. A. An unlawful
6 detainer action does not arise under federal law but rather is purely a creature of California law.
7 *See Fed. Home Loan Mortg. Corp. v. Viray*, 2012 WL 1231838, at *1 (N.D. Cal. Apr. 12, 2012);
8 *Wells Fargo Bank v. Lapeen*, 2011 WL 2194117, at *3 (N.D. Cal. June 6, 2011); *Litton Loan*
9 *Servicing, L.P. v. Villegas*, 2011 WL 204322, at *2 (N.D. Cal. Jan. 21, 2011).

10 Defendant’s Notice of Removal asserts that federal question jurisdiction exists because
11 Defendant filed a demurrer in state court based on Plaintiff’s alleged noncompliance with the
12 notice requirements of the Protecting Tenants at Foreclosure Act, 12 U.S.C. § 5220, and therefore
13 resolution of the case “depend[s] on the determination of Defendants’ rights and Plaintiff’s duties
14 under federal law.” ECF No. 1 at 3; *see* ECF No. 1, Ex. B (demurrer). However, it is well-settled
15 that “a case may *not* be removed to federal court on the basis of a federal defense . . . even if the
16 defense is anticipated in the plaintiff’s complaint, and even if both parties concede that the federal
17 defense is the only question truly at issue.” *Caterpillar*, 482 U.S. at 393. Nor can a counterclaim
18 “serve as the basis for [§ 1331] ‘arising under’ jurisdiction.” *Holmes Grp., Inc. v. Vornado Air*
19 *Circulation Sys., Inc.*, 535 U.S. 826, 830-32 (2002). Thus, to the extent Defendant’s defenses or
20 counterclaims to the unlawful detainer action are based on alleged violations of federal law, those
21 allegations do not provide a basis for federal jurisdiction.¹ Because no federal question is
22 presented on the face of Plaintiff’s properly pleaded complaint, this Court lacks federal question
23 jurisdiction. *See Caterpillar*, 482 U.S. at 392.

24 B. Diversity Jurisdiction

25
26 ¹ Although irrelevant to the Court’s jurisdictional analysis, the Court further notes that even if a
27 defense or counterclaim could give rise to federal question – which it cannot – the PTFA does not
28 create a private right of action or an independent basis for federal subject matter jurisdiction. *See*
Aurora Loan Servs. LLC v. Torres, No. 11-cv-30611, 2011 WL 4551458, at *1 (N.D. Cal. Sept. 30,
2011); *Nativi v. Deutsch Bank Nat’l Trust Co.*, No. 09-06096 PVT, 2010 WL 2179885, at *2-4
(N.D. Cal. May 26, 2010).

1 Even though Defendants' Notice of Removal is based solely on an assertion of federal
2 question jurisdiction, the Court briefly notes that diversity jurisdiction over this action is also
3 lacking. Diversity jurisdiction exists only in suits between citizens of different states and "where
4 the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs." 28
5 U.S.C. § 1332(a). Here, Plaintiff's Complaint seeks damages in an amount less than \$10,000.
6 Notice of Removal, Ex. A. Thus, because the amount in controversy is less than \$75,000, diversity
7 jurisdiction is also lacking. *See* 28 U.S.C. § 1332(a); *St. Paul Mercury Indem. Co. v. Red Cab Co.*,
8 303 U.S. 283, 291 (1938) (the status of the case as disclosed by the plaintiff's complaint is
9 controlling for purposes of removal).

10 **III. CONCLUSION**

11 Defendant has not carried its burden of establishing federal jurisdiction. Accordingly,
12 Plaintiff's Motion to Remand this matter to the Superior Court for the County of Monterey is
13 GRANTED. The Clerk shall close the file.

14 **IT IS SO ORDERED.**

15
16 Dated: April 30, 2012

17 
18 LUCY H. KOH
19 United States District Judge