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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 IDA 1 INC.; KIP DREAM HOMES INC.;
12 ORCHID TERRACE INC.; 1 TO INFINITY
13 LLC, dba 1 TO INFINITY DB PLAN,

14 Plaintiffs,

15 v.

16 JOHN HAN CHIANG CHEN, aka JOHN H.
17 CHEN; YANG HA CHEUNG; and Does 1 to
18 20, inclusive,

19 Defendants.

Case No. C-13-02355-RMW

ORDER REMANDING CASE

[Re: Docket Nos. 3 and 8]

20 On April 3, 2013, plaintiffs IDA 1 Inc., Kip Dream Homes Inc., and Orchid Terrace Inc.
21 filed a complaint in the Superior Court of the State of California, County of Santa Clara, alleging
22 unlawful detainer under California Code of Civil Procedure § 1161a(b)(3). On the day that the
23 eviction trial was scheduled to take place in state court, May 24, 2013, defendants John H. Chen
24 and Yang Ha Cheung removed the case to federal court on the alleged basis of a federal question.
25 Notice of Removal, Dkt. No. 1. On that same day, plaintiffs filed a motion to remand this case
26 back to state court. Motion to Remand, Dkt. No. 3. The issue is whether a federal question is
27 present in the Complaint that gives this court subject matter jurisdiction over plaintiffs' claim.
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1 For the reasons set forth below, the court concludes that it lacks subject matter jurisdiction, and
2 remands.

3 I. BACKGROUND

4 On March 15, 2013, plaintiffs purchased the subject property located in Santa Clara
5 County at a foreclosure sale conducted pursuant to California Civil Code § 2924, and recorded
6 the Trustee's Deed in the Santa Clara County Recorder's Office. Compl. ¶¶ 6, 7, Dkt. No. 1, Ex.
7 A. On March 29, 2013, plaintiffs served a notice to quit on defendants, informing them that the
8 property was sold and requiring them to vacate the property within three days. *Id.* ¶ 8.
9 Defendants failed to vacate, and plaintiff filed an action for unlawful detainer requesting
10 "immediate restitution of possession of the subject property," damages, and costs in state court.
11 *Id.* ¶ 10. On the day of trial, more than thirty days after service of the complaint, defendants
12 removed this action to federal court on the alleged basis of a federal question. On the same day,
13 plaintiffs filed the present motion to remand. Plaintiffs then filed a motion requesting an
14 expedited decision on its motion for remand.

15 II. ANALYSIS

16 Plaintiffs argue that defendants' notice of removal is both untimely and improper on its
17 face. Defendants do not contest the fact that their removal was outside of the statutory thirty day
18 timeframe for removal. Defendants simply argue that they did not intend to waive the right to
19 remove. Defendants contend that plaintiffs' unlawful detainer action arises under the Protecting
20 Tenants at Foreclosure Act of 2009, 12 U.S.C. § 5201 and that a federal question exists "as to
21 whether there were violations of federal RESPA laws by the foreclosing parties." Opp'n 3-4, Dkt.
22 No. 13.

23 The court agrees with plaintiffs that defendants' removal is both untimely and improper on
24 its face, and is a clear attempt to delay the state court unlawful detainer trial. Defendants filed a
25 notice of removal twenty days after the statutory deadline had passed, offering no explanation for
26 the late filing. This alone warrants remand. 28 U.S.C. § 1446(b). Moreover, no federal question
27 exists that gives rise to federal subject matter jurisdiction. Contrary to defendants' unfounded
28 assertions, plaintiffs' unlawful detainer action states a claim only under California Code of Civil

1 Procedure § 1161a(b)(3), which does not raise any embedded federal question. *See Deutsche*
2 *Bank Nat. Trust Co. v. Baltazar*, No. 12-2281 (PJH), 2012 WL 2159414, at *2 (N.D. Cal. June
3 13, 2012); *Wells Fargo Bank v. Kravits*, No. 11-05698 (LB), 2012 WL 216379, at *2 (N.D. Cal.
4 Jan. 24, 2012) ("Plaintiff correctly argues that its complaint asserts only a cause of action for
5 unlawful detainer pursuant [to] . . . section 1161a(b)(3). . . . [I]n these circumstances, the PTFA
6 does not create federal-question jurisdiction.").

7 Remand is proper because there is no federal question at issue in this case and the court
8 lacks subject matter jurisdiction. 28 U.S.C. § 1447(c). Because both parties will benefit from an
9 expedient order on plaintiffs' motion to remand, the court deems this motion proper for a decision
10 without a hearing, *see* Civ. L.R. 7-1(b), and GRANTS plaintiffs' motion to remand on the papers.

11 III. CONCLUSION

12 The court grants plaintiffs' motion to remand and hereby remands the case to the Superior
13 Court of the State of California, County of Santa Clara.

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15 Dated: June 6, 2013

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17 Ronald M. Whyte
18 United States District Court Judge
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