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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL E. MOORE, JAMES
RODENBO,

Plaintiffs,

v.

VICTOR WILLIS,

Defendant.

Case No. 14cv1602 BTM(RBB)

**ORDER GRANTING MOTION TO
REMAND**

Judgment Creditor Van Wyck, Inc., has filed a motion to remand this action to state court. For the reasons discussed below, Van Wyck's motion is **GRANTED.**

I. BACKGROUND

In October, 2010, this suit was commenced by Plaintiffs Michael E. Moore and Jason Rodenbo in the Superior Court of California. Plaintiffs sued Defendant Victor Willis for breach of a legal services contract.

On May 23, 2011, default judgment was entered against Willis and in favor of Plaintiffs.

On May 22, 2014, the judgment was assigned to Van Wyck. On June 10, 2014, Van Wyck filed a motion to appoint a receiver to aid in collection of the

1 judgment by taking possession of and conducting a sale of copyright interests
2 claimed by Willis in certain musical compositions. Those copyrights are the
3 subject of a separate action pending before this Court, Scorpio, et al. v. Willis,
4 11cv1557 BTM.

5 On July 3, 2014, Willis removed the action to this Court.

6 On August 8, 2014, Van Wyck filed its motion to remand.

7 On August 22, 2014, Willis filed a motion to consolidate this case with the
8 Scorpio case.

10 II. DISCUSSION

11 Van Wyck moves to remand this action on the ground that the Court has
12 no subject matter jurisdiction. As discussed below, the Court agrees with Van
13 Wyck.

14 The removing defendant always has the burden of establishing that
15 removal is proper, and the court resolves all ambiguity in favor of remand to
16 state court. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). In his
17 Notice of Removal, Willis contends that the Court has original jurisdiction over
18 the matter because Van Wyck's claim "arises under copyright law."

19 Under the "well-pleaded complaint" rule, federal-question jurisdiction
20 extends over "only those cases in which a well-pleaded complaint establishes
21 either that federal law creates the cause of action or that the plaintiff's right to
22 relief necessarily depends on resolution of a substantial question of federal
23 law." Franchise Tax Bd. of California v. Construction Laborers Vacation Trust,
24 463 U.S. 1, 14 (1983). This rule makes a plaintiff the "master of his complaint"
25 and allows him to "avoid federal jurisdiction by relying exclusively on state law."
26 Balcorta v. Twentieth Century-Fox Film Corp., 208 F.3d 1102, 1106 (9th Cir.
27 2000). In determining whether a state claim depends on the resolution of a
28 federal question to such an extent that subject matter jurisdiction is triggered,

1 courts ask whether the federal question is “basic” and “necessary” as opposed
2 to “collateral” and “merely possible,” “pivotal” as opposed to “incidental,” or
3 “direct and essential” as opposed to “attenuated.” Lippitt v. Raymond James
4 Financial Serv., Inc., 340 F.3d 1033, 1045 (9th Cir. 2003).

5 Here, the state claim is for breach of contract. (Amended Complaint
6 attached to Notice of Removal). The complaint does not seek remedies under
7 the Copyright Act or involve copyrights at all. Furthermore, the state claim
8 does not necessarily depend on a resolution of copyright issues. To the extent
9 copyright issues are involved in post-judgment enforcement proceedings, the
10 federal issues are collateral and do not bear upon the merits of Plaintiffs’ claim.
11 See, e.g., Tulsa Industr. Auth. v. Tulsa Airports Improvement Trust, 2013 WL
12 5964012, at *4 (N.D. Okla. Nov. 7, 2013) (holding that state law claim did not
13 necessarily raise a federal issue where the federal law issue would arise only
14 in post-judgment proceedings if plaintiffs established that defendant was liable
15 for breach of contract or breach of representation).

16 Even if it were proper to base subject matter jurisdiction on issues raised
17 in post-judgment motions, as opposed to the complaint, the Court would not
18 find that federal question jurisdiction exists in this case. The Ninth Circuit
19 explains that “it is well established that just because a case involves a copyright
20 does not mean that federal subject matter jurisdiction exists.” Scholastic Entm’t
21 Inc. v. Fox Entm’t Group, Inc., 336 F.3d 982, 985 (9th Cir. 2003). The test is
22 “whether (1) the complaint asks for a remedy expressly granted by the
23 Copyright Act; (2) the complaint requires an interpretation of the Copyright Act;
24 or (3) federal principles should control the claims.” Id. at 986.

25 Van Wyck’s motion to appoint a receiver arises from state law governing
26 enforcement of judgments. State law, not federal statutory law, governs
27 whether copyrights are subject to execution to satisfy a judgment. Hendricks
28 & Lewis PLLC, ___ F.3d ___, 2014 WL 4197388, at *4 (9th Cir. 2014). For this

1 reason, federal question jurisdiction is not created when a plaintiff seeks to
2 enforce a state court judgment by invoking state law procedures to gain control
3 over the defendant's copyrights and other assets. Thus, in Cardwell v. Orsa
4 Institute, LLC, 2012 WL 3235758 (W.D. Tex. Aug. 6, 2012), the court held that
5 the plaintiff's petition for a turnover order and to void an alleged fraudulent
6 transfer of copyrighted works was based upon Texas law and did not support
7 federal question jurisdiction. See also Republic Pictures Corp v. Security-First
8 Nat. Bank of Los Angeles, 197 F.2d 767 (9th Cir. 1952) (holding that federal
9 jurisdiction does not exist in a case to foreclose a mortgage on a copyright).

10 Willis argues that Van Wyck seeks relief that violates the involuntary
11 transfer provision of the Copyright Act. That provision provides:

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13 When an individual author's ownership of a copyright, or of any of
14 the exclusive rights under a copyright, has not previously been
15 transferred voluntarily by that individual author, no action by any
16 governmental body or other official or organization purporting to
seize, expropriate, transfer, or exercise rights of ownership with
respect to the copyright, or any of the exclusive rights under a
copyright, shall be given effect under this title, except as provided
under title 11.

17 17 U.S.C. § 201(e). But Willis's reliance on this provision is a *defense*, and it
18 is well-established that a case may not be removed on the basis of a federal
19 defense. See Caterpillar Inc. v. Williams, 482 U.S. 386, 397 (1987); see also
20 Segundo Suenos, LLC v. Jones, 494 Fed. Appx. 732, 735, 2012 WL 3682912
21 (9th Cir. Aug. 28, 2012) ("The absence of federal question jurisdiction is not
22 cured by a defense arising from copyright law.").¹

23 Willis has not established that the Court has subject matter jurisdiction
24 over this action. Therefore, the Court finds that removal was improper and

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26 ¹ It also appears that § 201(e) does not provide any protection to Willis because it
27 only applies when an individual author's ownership of a copyright "has not previously been
28 transferred voluntarily by that individual author." See Hendricks, 2014 WL 4197388, at *6
(holding that § 201(e) did not protect current owner of copyright because he had previously
transferred his copyright interest to Warner Bros. as part of a settlement before Warner
Bros. agreed to transfer ownership back). The copyrights at issue here were previously
transferred to Can't Stop Productions, Inc., by way of Adaptation Agreements.

1 remands the case to state court.

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III. CONCLUSION

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For the reasons discussed above, the Court **GRANTS** Van Wyck's motion to remand. The Court **REMANDS** this case to the Superior Court of California, County of San Diego.

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The Court **DENIES AS MOOT** Willis's Motion to Consolidate Cases and ex parte motion to continue the hearing on the Motion to Remand so that it can be heard at the same time as the Motion to Consolidate.

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IT IS SO ORDERED.

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DATED: September 8, 2014

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BARRY TED MOSKOWITZ, Chief Judge
United States District Court

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