

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-02234-WYD-CBS (Removed from County Court, Jefferson
County, Colorado, Case No. 06C19389)

TCF NATIONAL BANK,

Plaintiff,

v.

MARK G. DALY,

Defendant.

ORDER REMANDING CASE TO STATE COURT

THIS MATTER is before the Court on the Notice of Petition and Verified Petition for Warrant of Removal and Preliminary Injunction, filed November 7, 2006 ("Notice of Removal") by Mark G. Daly, and the Motion for Remand to State Court, filed November 14, 2006 (docket #3) by TCF National Bank. Upon consideration of the Notice of Removal and Motion for Remand, I find that the Motion for Remand should be **GRANTED.**

There is a presumption against removal jurisdiction, *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995), and statutes conferring jurisdiction upon the federal courts, particularly removal statutes, are to be narrowly construed." *Pritchett v. Office Depot, Inc.*, 420 F.3d 1090, 1094-95 (10th Cir. 2005). If there is any ambiguity as to whether removal is appropriate, I must adopt a reasonable, narrow construction of the applicable removal statute. *Pritchett*, 420 F.3d at 1095.

Here, there are several defects with the Notice of Removal that require

immediate remand. First, I note that Mr. Daly, the party seeking removal, has failed to comply with D.C.COLO.LR 81.2, which requires that “[t]he removing party shall promptly file with this court copies of all state court pleadings, motions and other papers.” To date, none of the state court pleadings, motions or other papers have been filed in this case. Defendants failure to comply with this rule is “a fatal defect and requires remand.” *Careertrack Seminars, Inc. v. Lomasney*, 150 B.R. 257, 258 (D.Colo. 1992).

In addition, the Civil Cover Sheet and Supplemental Civil Cover Sheet indicate that Mr. Daly, a Defendant in the state court case, seeks removal based on diversity jurisdiction. For a federal court to have original jurisdiction in a diversity case, the amount in controversy must exceed \$75,000 and the matter must be between citizens of different states. 28 U.S.C. § 1332(a). However 28 U.S.C. § 1441(b) provides that “any other such action [of which the district courts have original jurisdiction] shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” On the Civil Cover Sheet and in the Notice of Removal Mr. Daly states that he is a citizen of the State of Colorado. As a citizen of the State of Colorado, Mr. Daly cannot remove this case based on diversity jurisdiction. See 14B Charles Alan Wright, et al., *Federal Practice and Procedure*, § 3723, pg. 568 (1998).

TCF National Bank has requested that I award them the costs and attorney fees incurred in connection with the removal, and assert that the Notice of Removal was clearly improper and filed solely for the purpose of delay. In the Tenth Circuit, a

decision whether to award attorney fees and costs under § 1447(c) when a case is remanded to state court is within the sound discretion of the district court. *Wallic v. Owens-Corning Fiberglass Corp.*, 40 F. Supp.2d 1185, 1189 (D. Colo. 1999) (citing *Suder v. Blue Circle, Inc.*, 116 F.3d 1351, 1353 (10th Cir.1997)). On the record before me, I cannot say that the Notice of Removal was so unreasonable and vexatious as to justify the imposition of attorneys fees and costs in this case.

Therefore, in consideration of the foregoing, it is hereby

ORDERED that the Motion for Remand to State Court, filed November 14, 2006 (docket #3) is **GRANTED IN PART** as set forth herein. It is

FURTHER ORDERED that this matter shall be **REMANDED** to County Court for the County of Jefferson, State of Colorado.

Dated: November 21, 2006

BY THE COURT:

s/ Wiley Y. Daniel _____
Wiley Y. Daniel
U. S. District Judge