

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FEB 27 2009

Civil Action No. '09 - CV - 00422 BnB GREGORY C. LANGHAM
CLERK

(The above civil action number must appear on all future papers sent to the Court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

(Removal from First Judicial District, County of Santa Fe, State of New Mexico, Edmund L. Smith & Judith B. Smith v. First Judicial District Court, Case No. D101CV2008-02027)

EDMUND L. SMITH, and
JUDITH B. SMITH,

Plaintiffs,

v.

FIRST JUDICIAL DISTRICT COURT,
NEW MEXICO GOVERNMENT,
EMC MORTGAGE CORPORATION,
JAMES A. HALL,
DANIEL A SANCHEZ,
F. M. MOWRER,
BYRON J. HESS, in their individual private capacity,
SANCHEZ MOWRER & DESIDERIO, P.C.,
SEIBEL,
PARNALL & HESS, LLP, in their commercial capacity,
OFFICE OF THE SANTA FE COUNTY CLERK, and
5 JOHN AND JANE DOES,

Defendants.

ORDER FOR SUMMARY REMAND

Plaintiffs, Edmund L. Smith and Judith B. Smith, have submitted to this Court *pro se* two documents with different captions, one titled "Forfeiture of Proceedings for Lack of Jurisdiction and Venue" and the other titled "Complaint for Negligence." The clerk of the Court will be directed to commence a civil action.

The Court must construe the documents liberally because Plaintiffs are representing themselves. **See Haines v. Kerner**, 404 U.S. 519, 520-21 (1972); **Hall v. Bellmon**, 935 F.2d 1106, 1110 (10th Cir. 1991). Therefore, the document titled “Forfeiture of Proceedings for Lack of Jurisdiction and Venue” will be treated as a notice of removal. The document titled “Complaint for Negligence” will be treated as the action Plaintiffs seek to remove to this Court and, for that reason, the Court has used the caption to the “Complaint for Negligence” as the caption for this order and for this action. Although neither Edmund L. Smith nor Judith B. Smith has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915, the Court will not require the Smiths to cure this deficiency, and instead will remand the action summarily to the First Judicial District Court.

Plaintiffs apparently seek the removal to this Court of Case No. D101CV2008-02027, a civil case filed in the First Judicial District in the County of Santa Fe, New Mexico. The Court has reviewed the liberally construed notice of removal and finds that it is deficient for several reasons. Only defendants may remove an action from state court. **See** 28 U.S.C. § 1446(a). Plaintiffs fail to set forth “a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.” *Id.* Lastly, Plaintiffs do not demonstrate that the New Mexico court action properly may be removed to this Court. Therefore, this action will be summarily remanded to the First Judicial District Court. Accordingly, it is

ORDERED that the clerk of the Court commence a civil action in this matter. It is


FURTHER ORDERED that the document titled "Forfeiture of Proceedings for Lack of Jurisdiction and Venue" is construed liberally as a notice of removal. It is

FURTHER ORDERED that this action is remanded summarily to the First Judicial District Court in the County of Santa Fe, New Mexico. It is

FURTHER ORDERED that the clerk of this Court shall mail a certified copy of this order to the clerk of the First Judicial District Court at the address stamped on the front of the document titled "Forfeiture of Proceedings for Lack of Jurisdiction and Venue," i.e., First Judicial District Court; Santa Fe, Rio Arriba & Los Alamos Counties; P.O. Box 2268; Santa Fe, NM 87504-2268.

DATED at Denver, Colorado, this 27 day of Feb., 2009.

BY THE COURT:


ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. '09 - CV - 00422

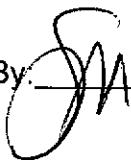
Edmund L. Smith
102 CR A1
Sapello, NM 87745

Judith B. Smith
102 CR A1
Sapello, NM 87745

First Judicial District Court - **CERTIFIED**
Santa Fe, Rio Arriba & Los Alamos Counties
P.O. Box 2268
Santa Fe, NM 87504-2268

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 2/27/09

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk