

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 13-cv-0230-WJM-BNB

SOVEREIGN BANK,

Plaintiff,

v.

PHILLIP A. WOLF,

Defendant.

ORDER DENYING MOTION FOR RECONSIDERATION AND REMANDING CASE

On February 19, 2013, United States District Judge R. Brooke Jackson *sua sponte* remanded this action based on improper removal. (ECF No. 6.) Specifically, Judge Jackson found that Defendant filed his Notice of Removal well in excess of the thirty days permitted by 28 U.S.C. § 1446(b)(1). (*Id.* at 3.) Judge Jackson also noted that a Defendant who is a citizen of the state in which the action is brought may not remove the case on diversity of citizenship grounds. (*Id.* (citing 28 U.S.C. § 1441(b).))

Before the Court is Defendant's "Motion for Reconsideration by the Chief Judge of the United States District Court". (ECF No. 9.) "Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice." *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). "Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party's position, or the controlling law. It is not appropriate to revisit issues

already addressed or advance arguments that could have been raised in prior briefing.”
Id. (citation omitted).

First, Defendant requests reassignment of his case to the Chief Judge due to Defendant’s allegation that Judge Jackson is biased against *pro se* parties. (*Id.* at 7-9.) Based on this allegation, Judge Jackson recused himself and the case was randomly reassigned to the Undersigned. (ECF Nos. 10 & 11.) While the Undersigned is not the Chief Judge, Defendant has cited no authority entitling him to consideration of his case by the Chief Judge. Because Judge Jackson has recused himself and the has been reassigned to the Undersigned, the Court finds that Defendant has been afforded the relief he sought in this aspect of his Motion.

With respect to this Court’s jurisdiction, Defendant contends that there is federal question jurisdiction because the Fair Debt Collection Practices Act (“FDCPA”) is at issue in this case. (ECF No. 9 at 2-3.) However, the Court has reviewed the Plaintiff’s Complaint and there is no mention of the FDCPA. (ECF No. 4-2.) To the extent the FDCPA may be relevant to a defense which Defendant wishes to pursue, the presence of a federal defense does not confer jurisdiction on this Court when the Complaint brings only state law claims. *See Chandler v. O’Bryan*, 445 F.2d 1045, 1055 (10th Cir. 1971) (“It is an established principle that federal jurisdiction based on a federal question must appear from a plaintiff’s ‘well-pleaded complaint’ and that anticipation in the complaint of a federal defense, where the plaintiff’s basic cause of action is grounded only on state law, will not suffice to establish original federal jurisdiction.”)


Defendant also appears to argue that, because the contract at issue in this case included a forum selection clause which stated that any action should be brought in the

State or Federal courts in Massachusetts, the Colorado state courts have no jurisdiction. (ECF No. 9 at 2-3.) However, Defendant's belief that the Colorado state courts do not have jurisdiction over this case does not entitle him to remove the case this Federal Court. The remedy for any error with respect to the forum of this case is to file a motion to dismiss or to change venue with the Colorado state court in which the action was originally brought.

In the instant Motion, Defendant alleges no facts and makes no argument which call into question Judge Jackson's conclusion that Defendant's removal of this action was untimely. Accordingly, Defendant's Motion for Reconsideration (ECF No. 9) is DENIED and this case is REMANDED to the District Court for Jefferson County, Colorado.

Dated this 8th day of March, 2013.

BY THE COURT:



William J. Martinez
United States District Judge