

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

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| NATIONAL HOME INVESTORS, LLC, | : | |
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| Plaintiff, | : | |
| | : | |
| v. | : | CASE NO.: 5:16-CV-00155 (LJA) |
| | : | |
| LOUISE WILLIAMS-BURNS, and | : | |
| SHARON WILLIAMS, | : | |
| | : | |
| Defendants. | : | |
| | : | |

ORDER

Before the Court is the Motion to Remand filed by Plaintiff National Home Investors, LLC (“Plaintiff”). (Doc. 4). For reasons that follow, Plaintiffs’ Motion, (Doc. 4), is **GRANTED**.

BACKGROUND

On April 4, 2016, Plaintiff filed a Dispossessory Warrant in the Magistrate Court of Hancock County, Georgia. (Doc. 4-1). Thereby, Plaintiff sought to evict Defendants from a property previously sold to Plaintiff in a foreclosure sale. (*See* Doc. 4 at 2). On April 25, 2016, Defendants filed a Notice of Removal. (Docs. 1, 1-1). In their Notice of Removal, Defendants contend, “[c]ertain issues within [the] state proceeding give[] independent rise to federal subject-matter jurisdiction.” (Doc. 1-1). Defendants also assert, “[t]here have been and continue[] to be, violations against the civil and constitutional rights of the undersigned Defendant[s] which have not been duly protected” in the state court proceeding. (*Id.*) On April 26, 2016, citing the Notice of Removal, the Magistrate Court of Hancock County dismissed the state court action with prejudice. (*See* Doc. 4-3).

DISCUSSION

I. Legal Standard

Generally, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant” by filing a notice of removal in the federal district court. 28 U.S.C. § 1441(a); *see also* 28 U.S.C. § 1446(a). A federal court is vested with subject matter jurisdiction over an action removed from a state court where federal question jurisdiction or diversity jurisdiction exists. 28 U.S.C. §§ 1331, 1332. However, “[f]ederal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). If at any time during the pendency of an action a federal court determines that it lacks jurisdiction, the case must be remanded to the state court in which the case originated. 28 U.S.C. § 1447(c). In reviewing notices of removal, removal statutes are strictly construed “[b]ecause removal jurisdiction raises significant federalism concerns.” *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 411 (11th Cir. 1999) (citing *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-109 (1941)). “While a defendant does have a right, given by statute, to remove in certain situations, plaintiff is still the master of [her] own claim.” *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095 (11th Cir. 1994). A “[d]efendant’s right to remove and [a] plaintiff’s right to choose [her] forum are not on equal footing; . . .” *Id.* at 1095. Though “[r]emoval is a means of allowing out of state defendants to avoid being prejudiced by litigating in the plaintiff’s forum[,] [i]t is not a tactical weapon by which counsel may avoid an inconvenient trial setting or otherwise gain some advantage from delay.” *Weaver v. Miller Elec. Mfg. Co., Inc.*, 616 F. Supp. 683, 687 (S.D. Ala. 1985). Further, “[i]n evaluating a motion to remand [under 28 U.S.C. § 1447], the removing party bears the burden of demonstrating federal jurisdiction.” *Triggs v. John Crump Toyota, Inc.*, 154 F.3d 1284, 1287 n. 4 (11th Cir. 1998) (internal citation omitted); *see also Best Buy Co.*, 269 F.3d at 1319.

II. Federal Question Jurisdiction

Defendants appear to allege that the Court has federal question jurisdiction. “The presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Plaintiff, as “the master of the claim[,] . . . may avoid federal jurisdiction by exclusive reliance on state law. *Id.* “In determining the presence of a federal question, the Court looks to the substance, not the labels, of the plaintiff’s claims as contained in the factual allegations in the complaint.” *Citimortgage, Inc. v. Dhinoja*, No. 1:10-CV-816-TCB, 2010 WL 1485674, at *2 (N.D. Ga. Apr. 13, 2010) (citation omitted).

Plaintiff initiated a dispossessory action in state court pursuant to O.C.G.A. 44-7-50. (*See* Docs. 4, 4-1). No federal law or authority is invoked on the face of the warrant. (*See* Doc. 4-1). In removing this action, Plaintiff has not demonstrated that any issue in the “state proceeding gives independent rise to federal subject-matter jurisdiction.” (Doc. 1-1). Rather, “the dispossessory claim that forms the basis of this action is exclusively a matter of state law.” *Dhinoja*, 2010 WL 1485674, at *2. Further, while Defendants suggest that their civil and constitutional rights have been violated, “[t]here can be no federal question or removal based on an argument raised by the defense, whether that argument is a defense or a counterclaim.” *Bank of New York v. Angley*. *See also* *Ervast v. Flexible Prods. Co.*, 346 F.3d 1007, 1012 (11th Cir. 2003) (noting that a defense that raises a federal question is not sufficient to confer federal jurisdiction); *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002) (finding that a counterclaim that raises a federal question is not sufficient to confer federal jurisdiction). Accordingly, Defendants have failed to carry their burden of demonstrating federal question jurisdiction.

III. Diversity Jurisdiction

In their Notice of Removal, Defendants do not indicate that removal was based on diversity jurisdiction. (*See* Doc. 1). In order to establish diversity jurisdiction, the moving party must demonstrate that the amount in controversy exceeds \$75,000 and that the citizenship of all plaintiffs are diverse the citizenship of all defendants. 28 U.S.C. § 1332; *Williams v. Best Buy Co.*, 269 F.3d 1316, 1319 (11th Cir. 2001). Defendants’ civil cover sheet, however, indicates that the Parties are all citizens of Georgia. (*See* Doc. 1-2). Accordingly, Defendants have failed to demonstrate that the Parties are fully diverse, as required by 28 U.S.C. § 1332.

CONCLUSION

Based on the foregoing, Plaintiff National Home Investors, LLC’s Motion to Remand, (Doc. 4), is **GRANTED**. Furthermore, the **CLERK** is **DIRECTED** to close this case.

SO ORDERED, this 31st day of August, 2016.

/s/ Leslie J. Abrams
LESLIE J. ABRAMS, JUDGE
UNITED STATES DISTRICT COURT