

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**CEDARS OF CHALET, and  
HAMMOND RESIDENTIAL,**

**Plaintiffs,**

**v.**

**1:15-cv-4214-WSD**

**DANIELLE DOZIER, and All  
Others,**

**Defendant.**

**OPINION AND ORDER**

This matter is before the Court on Magistrate Judge Gerrilyn G. Brill’s Final Report and Recommendation (“R&R”) [3], which recommends remanding this dispossessory action to the Magistrate Court of DeKalb County, Georgia.

**I. BACKGROUND**

On November 16, 2015, Plaintiff “Cedars of Chalet Hammond Residential”<sup>1</sup> (“Plaintiff”) initiated a dispossessory proceeding against its tenant, Defendant Danielle Dozier (“Defendant”) in the Magistrate Court of DeKalb County, Georgia. The Complaint seeks possession of premises currently occupied by Defendant and seeks past due rent, fees and costs. (See Compl. [1.1 at 4]).

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<sup>1</sup> It appears that Cedars of Chalet is the property management company, which brought suit on behalf of Hammond Residential.

On December 3, 2015, Defendant, proceeding pro se, removed the DeKalb County action to this Court by filing her Petition for Removal and an application to proceed in forma pauperis (“IFP”) [1].<sup>2</sup> Defendant appears to assert that there is federal subject matter jurisdiction because there is a question of federal law in this action. In her Petition for Removal, Defendant claims that Plaintiff violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (“FDCPA”), Rule 60 of the Federal Rules of Civil Procedure, and “having a legal duty to abort eviction pursuant to O.C.G.A. [§] 51-1-6.” (Pet. for Removal at 1).

On December 9, 2015, Magistrate Judge Brill granted Defendant’s application to proceed IFP. The Magistrate Judge then considered, sua sponte, whether there is federal subject matter jurisdiction. The Court found that federal subject matter jurisdiction was not present and recommended that the Court remand the case to the Magistrate Court of DeKalb County. The Magistrate Judge found that the Complaint filed in Magistrate Court asserts a state court dispossessory action and does not allege federal law claims. Because a federal law defense or counterclaim does not confer federal jurisdiction, the Magistrate Judge concluded that the Court does not have federal question jurisdiction over this matter.

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<sup>2</sup> The Court notes that Defendant’s Petition for Removal is not signed.

Although not alleged in her Petition for Removal, the Magistrate Judge also considered whether the Court has subject-matter jurisdiction based on diversity of citizenship. The Magistrate Judge found that Defendant failed to allege any facts to show that the parties' citizenship is completely diverse, or that the amount in controversy exceeds \$75,000. The Magistrate Judge concluded that the Court does not have diversity jurisdiction over this matter and that this case is required to be remanded to the state court.

There are no objections to the R&R.

## **II. DISCUSSION**

### **A. Legal Standard**

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). A district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). With respect to those findings and recommendations to which objections have not been asserted, the Court must

conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984).

B. Analysis

Defendant does not object to the R&R's finding that Plaintiff's Complaint does not present a federal question and that the parties are not diverse. The Court does not find any plain error in these conclusions. It is well-settled that federal-question jurisdiction exists only when a federal question is presented on the face of a plaintiff's well-pleaded complaint and that the assertions of defenses or counterclaims based on federal law cannot confer federal question jurisdiction over a cause of action. See Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 6 (2003); Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 830-32 (2002). The record also does not show that Plaintiff and Defendant are citizens of different states, or that the amount in controversy exceeds the statutory threshold of \$75,000. See 28 U.S.C. § 1332(a); Fed. Home Loan Mortg. Corp. v. Williams, Nos. 1:07-cv-2864-RWS, 1:07-cv-2865-RWS, 2008 WL 115096, at \*2 (N.D. Ga. Jan. 29, 2008) (“[A] dispossessory proceeding under Georgia law is not an ownership dispute, but rather only a dispute over the limited right to possession, title to property is not at issue and, accordingly, the removing Defendant may not

rely on the value of the property as a whole to satisfy the amount in controversy requirement.”).

Because the Court lacks both federal question and diversity jurisdiction, the Magistrate Judge recommended that this action be remanded to the state court. See 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”).

Defendant did not object to this recommendation and the Court finds no plain error in it.<sup>3</sup>

### III. CONCLUSION

For the foregoing reasons,

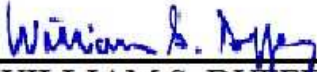
**IT IS HEREBY ORDERED** that Magistrate Judge Gerrilyn G. Brill’s Final Report and Recommendation [3] is **ADOPTED**.

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<sup>3</sup> Even if subject matter jurisdiction existed, the Court cannot provide Defendant the relief she seeks—a stay of state court eviction proceedings—because a federal court is prohibited under the Anti-Injunction Act, 28 U.S.C. § 2283, from enjoining a state court eviction proceeding. To the extent Defendant seeks to have the Court find that a completed dispossessory proceeding was wrongful and overturn a writ of possession issued by a state court, the Court lacks jurisdiction under the Rooker-Feldman doctrine to do so. Doe v. Fla. Bar, 630 F.3d 1336, 1341 (11th Cir. 2011) (Federal district courts “generally lack jurisdiction to review a final state court decision.”) (citing D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983) & Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923)).

**IT IS FURTHER ORDERED** that this action be **REMANDED** to the Magistrate Court of DeKalb County, Georgia.

**SO ORDERED** this 29th day of March, 2016.

  
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WILLIAM S. DUFFEY, JR.  
UNITED STATES DISTRICT JUDGE