

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

PROF-2013-S3 LEGAL TITLE TRUST,
BY U.S. BANK NATIONAL
ASSOCIATION, AS LEGAL TITLE
TRUSTEE,

Plaintiff,

v.

VERN A. BRISCOE; SANDRA M.
BRISCOE ET. AL.,

Defendants.

Case No. 4:17-cv-00336-DCN

**MEMORANDUM DECISION AND
ORDER**

On August 11, 2017, Defendant Vern Briscoe filed a Notice of Removal with the Court (Dkt. 1) and an Application for Leave to Proceed in forma pauperis (Dkt. 2). On September 8, 2017, Plaintiff U.S. Bank National Association filed a Motion to Remand to State Court (Dkt. 5), and a Motion to Take Judicial Notice (Dkt. 7).

On October 4, 2017, this case was reassigned to the undersigned District Judge based upon the Order (Dkt. 10) issued by Magistrate Judge Candy W. Dale, recommending the review and consideration of the various Motions. The Ninth Circuit has determined that a motion to remand is dispositive and when the parties in a case fail to consent to have a case assigned to a United States Magistrate Judge, a United States District Judge must enter a final order under 28 U.S.C. § 636.

The Court has reviewed the record in this matter and finds the Order (Dkt. 10) and the recommendations contained therein to be well-founded in the law based on the facts of this case. Judge Dale took judicial notice of the underlying state court proceedings in this matter and correctly ruled that not only was the notice of removal in this matter untimely under 28 U.S.C. § 1446(b), but there is no basis for federal jurisdiction under 28 U.S.C. § 1331. Removal in this instance appears to be an attempt by Briscoe to avoid the pending summary judgment motion in state court. This action, therefore, must be remanded to the appropriate venue—Idaho State Court, Bannock County.

ORDER

IT IS ORDERED:

1. Judge Dale's Order (Dkt. 10) is **INCORPORATED** by reference and **ADOPTED** in its entirety.
2. Plaintiff's Motion to Take Judicial Notice (Dkt. 7) is **GRANTED**.
3. Plaintiff's Motion to Remand to State Court (Dkt. 5) is **GRANTED**.
4. Plaintiff's Application to Proceed in Forma Pauperis (Dkt. 2) is **MOOT** and is therefore **DENIED**.



DATED: October 17, 2017

A handwritten signature in black ink, appearing to read "David C. Nye", written over a horizontal line.

David C. Nye
U.S. District Court Judge