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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

J P MORGAN CHASE BANK N.A.

CIVIL NO.: 10-1461

VERSUS

HONORABLE RICHARD HAIK

ALFRED MCZEAL, SR.

MAGISTRATE MICHAEL HILL

REASONS FOR JUDGMENT

Before the Court is plaintiff's Motion to Remand (Doc. 7). Upon thorough review of the record and being fully advised of the premises, the Court rules as follows:

BACKGROUND

Plaintiff filed its Petition for Executory Process in the 15th Judicial District Court of Louisiana. The defendant, Mr. McZeal, has since removed the suit to this court alleging diversity of citizenship and federal question jurisdiction.

LAW AND ANALYSIS

The defendant is a Louisiana domiciliary and plaintiff filed its petition in Louisiana State Court. The "forum defendant" doctrine precludes a defendant who is a citizen of the forum state from removing the case based on diversity. 28 U.S.C § 1441(b) (2010). Therefore, the defendant cannot rely on diversity jurisdiction to remove this action to Federal Court. Additionally, the defendant has failed to demonstrate that it is more likely than not that the amount in controversy requirement of 28 U.S.C. § 1332 was met. *See, e.g., Asociacion Nacional de Pescadores a Pequena Escala O Artesenales de Colombia, S.A. v. Dow Quimica de Colombia*, 988 F.2d 559, 565-66 (5th Cir. 1993).

With respect to federal question jurisdiction, the defendant must rely upon the plaintiff's "well pleaded complaint" and cannot rely upon a federal claim asserted as a defense; nor can the defendant rely on a federal claim asserted as a counter-claim in attempting to establish federal question jurisdiction. *McAteer v. Silverleaf Resorts, Inc.*, 514 F.3d 411, 416 (5th Cir. 2008), citing *PCI Transp., Inc. v. Fort Worth & W. R.R.Co.*, 418 F.3d 535, 543 (5th Cir. 2005). If, on its face, the plaintiff's complaint raises no issue of federal law, federal question jurisdiction is lacking. *Hart v. Bayer Corp.*, 199 F.3d 239, 244 (5th Cir. 2000), citing *Franchise Tax Bd. v. Laborers Vacation Trust*, 463 U.S. 1, 10, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983). Plaintiff's petition does not include any federal claims; further, the defendant cannot assert federal question jurisdiction based upon the federal claims asserted in his counter-claim. Therefore, federal question jurisdiction is lacking.

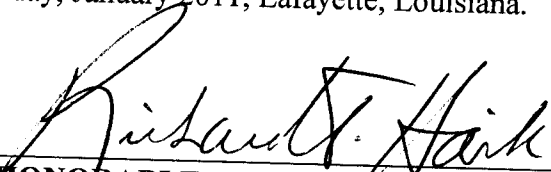
Furthermore, the defendant's removal was untimely. The defendant was served on January 26, 2010 and the notice of removal was not filed until September 21, 2010, well beyond the thirty (30) day period for removal. 28 U.S.C. § 1446(b) (2010).

Although this Court ultimately finds the defendant's bases for removal are insufficient, it does not find that the defendant lacked an objectively reasonable basis for removing the present action.

CONCLUSION

Based upon the foregoing, the Court hereby GRANTS plaintiff's Motion to Remand and DENIES its Motion for Costs and Fees.

THUS DONE AND SIGNED this 6th day, January 2011, Lafayette, Louisiana.



HONORABLE RICHARD HAIK
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA



United States District Court
OFFICE OF THE CLERK
Western District of Louisiana

January 7, 2011

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16th Judicial District Court
Lafayette Parish Courthouse
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In re: Civil Action No. 10-1461
Your Case No. 09-077773-F
J P Morgan Chase N A vs. Alfred McZeal, Sr.

Dear Sir :

Please be advised that the above captioned matter has been remanded to your Court. We enclose herewith certified copies of our docket entries and the Judgment or Order to Remand.

The official court record for the Western District of Louisiana is the electronic case filing system, CM/ECF. Our website is <https://ecf.lawd.uscourts.gov>; counsel may access this database to obtain any pleadings you require.

Please acknowledge receipt on the enclosed copy of this letter.

For questions regarding this document or transmission, please call our CM/ECF help desk at 1-866-323-1101.

THUS DONE January 7, 2011.

TONY R. MOORE
CLERK OF COURT

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