UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CAPITAL ONE BANK (USA), N.A.,

      Plaintiff,

vs.

ROBERT F. PONTE, et al.,

      Defendants.

_____/

Civil Action No.
11-CV-11072

HON. MARK A. GOLDSMITH

ORDER ACCEPTING AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION AND REMANDING THE CASE TO STATE COURT

This matter is presently before the Court on the Report of Recommendation ("R&R") of Magistrate Judge Laurie J. Michelson, entered on May 26, 2011. Magistrate Judge Michelson recommends that the Court either sua sponte remand this matter to state court or issue an order requiring Defendants to show cause why the matter should not be remanded to state court. The parties have not filed objections to the R&R, and the time to do so has expired.

The Court agrees with the Magistrate Judge that subject matter jurisdiction is lacking because Defendants improperly rely on the claims raised in their counterclaim as the basis for federal question jurisdiction. As the Magistrate Judge correctly notes, federal question jurisdiction cannot be predicated on a defendant's counterclaim. R&R at 5. See also Chase Manhattan Mortg. Corp. v. Smith, 507 F.3d 910, 914-915 (6th Cir. 2007) (federal question jurisdiction proper only when a federal question is presented on the face of the plaintiff's properly pleaded complaint; federal counterclaims inadequate to confer federal jurisdiction). The Court accepts and adopts the Magistrate Judge's thorough and well-reasoned R&R, and remands the case

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to 14A-3 Judicial District Court for the State of Michigan.

        SO ORDERED.

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s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

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Dated: June 13, 2011