

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 * * *

4 JOHN W. MANN,

5 Plaintiffs,

6 v.

7 BANK OF NEW YORK MELLON,

8 Defendant.

Case No. 2:17-cv-01262-APG-NJK

**ORDER REMANDING CASE TO
STATE COURT**

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10 Defendant John W. Mann removed this action from Nevada state court. ECF No. 1.
11 However, because it did not appear that this court has subject matter jurisdiction under either
12 diversity or federal question jurisdiction, I ordered Mann to show cause why the case should not
13 be remanded to state court.

14 A defendant may remove a state court case under 28 U.S.C. § 1441(a) only when “the
15 district courts of the United States have original jurisdiction.” If removal is sought based on
16 diversity of citizenship, the suit must be between citizens of different states and the amount in
17 controversy must exceed \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a).
18 Additionally, federal district courts have original jurisdiction over “all civil actions arising under
19 the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. The presence or
20 absence of a federal question is determined by the well-pleaded complaint rule. *Caterpillar Inc. v.*
21 *Williams*, 482 U.S. 386, 392 (1987). Under that rule, federal question jurisdiction exists “only
22 when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Id.*

23 Federal courts are courts of limited jurisdiction and are “presumed to lack jurisdiction in a
24 particular case unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes*
25 *of the Colville Res.*, 873 F.2d 1221, 1225 (9th Cir. 1989). The “‘strong presumption’ against
26 removal jurisdiction means that the defendant always has the burden of establishing that removal
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1 is proper.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Remand is required if the court
2 lacks subject matter jurisdiction. 28 U.S.C. §1447(c).

3 Mann has not shown either diversity or federal question jurisdiction. In his response to
4 my Order to Show Cause, Mann argues that this court has jurisdiction under Article VI of the
5 U.S. Constitution and that district courts have appellate jurisdiction over cases arising out of
6 justice court. He also argues he cannot get a fair trial in state court.

7 Article VI of the U.S. Constitution provides, among other things, that the U.S.
8 Constitution and federal law are the “supreme Law of the Land.” However, the fact that federal
9 law is the supreme law of the land does not transmute plaintiff Bank of New York Mellon’s state
10 law unlawful detainer claim into a federal one. To the extent Mann is referring to Article VI,
11 section 6 of the Nevada Constitution, that provision provides that district courts have appellate
12 jurisdiction from the justice courts. However, the district courts to which that provision refers are
13 the district courts of the State of Nevada, not federal district courts. Finally, Mann has not
14 presented any basis to conclude he will be denied due process in the Nevada state court system.

15 IT IS THEREFORE ORDERED that the case is remanded to the state court from which it
16 was removed for all further proceedings. The clerk of the court is instructed to close this case.

17 DATED this 1st day of June, 2017.

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21 ANDREW P. GORDON
22 UNITED STATES DISTRICT JUDGE
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