

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

CORY T. EASTWOOD,
Plaintiffs,

v.

LEHMAN BROTHERS BANK, FSB; et al.,
Defendants.

3:09-cv-00656-LRH-VPC

ORDER

Before the court is plaintiff Cory T. Eastwood’s (“Eastwood”) motion to remand filed on November 8, 2009. Doc. #4¹. Defendants filed an opposition on November 16, 2009. Doc. #11. Thereafter, Eastwood filed a reply on November 29, 2009. Doc. #17.

Also before the court is Eastwood’s motion to stay filed on October 13, 2009. Doc. #5.

I. Facts and Procedural History

On April 13, 2007, Eastwood purchased real property through a mortgage and note executed by defendants. He eventually defaulted on his mortgage and defendants initiated foreclosure proceedings.

Subsequently, on October 15, 2009, Eastwood filed a complaint in state court alleging fourteen separate causes of action against defendants. Doc. #1, Exhibit 2. Defendants removed the matter to federal court on federal question grounds. Doc. #1. Thereafter, Eastwood filed the present

¹ Refers to the court’s docket entry number.

1 motion to remand. Doc. #4.

2 **II. Legal Standard**

3 Under 28 U.S.C. § 1441, “any civil action brought in a State court of which the district
4 courts of the United States have original jurisdiction, may be removed by the defendant or the
5 defendants, to the district court of the United States for the district and division embracing the
6 place where such action is pending.” 28 U.S.C. § 1441(a).

7 Removal of a case to a United States district court may be challenged by motion. 28 U.S.C.
8 § 1441(c). A federal court must remand a matter if there is a lack of jurisdiction. *Id.* Removal
9 statutes are construed restrictively and in favor of remanding a case to state court. *See Shamrock*
10 *Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
11 (9th Cir. 1992). On a motion to remand, the removing defendant faces a strong presumption against
12 removal, and bears the burden of establishing that removal is proper. *Gaus*, 980 F.2d at 566-67;
13 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

14 **III. Discussion**

15 A case may be removed to federal court if the action arises under federal law. *See* 28 U.S.C.
16 § 1331; 28 U.S.C. § 1441. A case arises under federal law if the complaint establishes either that
17 federal law created the cause of action, or that the plaintiff’s right to relief “requires resolution of a
18 substantial question of federal law.” *Franchise Tax Bd. of Cal v. Constr. Laborers Vacation Trust*
19 *for S. Cal.*, 463 U.S. 1, 13 (1983); *see also, Caterpillar Inc. v. Williams*, 482 U.S. 386, 382 (1987).

20 Here, Eastwood argues that there is no federal question because all of his claims are rooted
21 in either state law or common law. Thus, according to Eastwood, there are no federal causes of
22 action supporting removal.

23 However, federal question jurisdiction will lie over state law claims that implicate
24 significant federal issues. *Grable & Sons Metal Prod. v. Darue Engineering & MFG.*, 545 U.S. 308,
25 312 (2005). In his complaint, Eastwood repeatedly reference defendants’ violations of federal laws
26

1 including defendants' concealment of information in violation of federal securities and banking
2 laws. Further, his thirteenth cause of action for conspiracy directly references the Truth in Lending
3 Act, the Real Estate Settlement Procedures Act, and the Home Ownership Protection Act. *See* Doc.
4 #1, Exhibit 1.

5 Eastwood argues that these are "incidental" references to federal laws referred to only as a
6 compilation to the state violations. *See* Doc. #17. However, the court finds that his references are
7 not incidental; they are part of the requisite framework for his claims. Eastwood's conspiracy claim
8 necessarily depends on the resolution of federal law because in order to have conspired to violate
9 plaintiffs' rights defendants must have first violated the federal statutes at issue. Thus, on the face
10 of the complaint, there are questions of federal law establishing federal question jurisdiction. *See*
11 *e.g., California ex. Rel Lockyer v. Dynergy, Inc.*, 375 F.3d 831, 841 (9th Cir. 2004) (finding that
12 removal was proper because the state causes of action turned on the defendant's compliance with
13 federal regulations).

14 IT IS THEREFORE ORDERED that plaintiff's motion to remand (Doc. #4) is DENIED.

15 IT IS FURTHER ORDERED that plaintiff's motion to stay pending the motion to remand
16 (Doc. #5) is DENIED as moot.

17 IT IS SO ORDERED.

18 DATED this 14th day of January, 2010.



19
20
21

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
22
23
24
25
26