

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE ARLINGTON BANK,

Plai-tiff,

vs.

Civil Actio- 2:10-CV-293
Judge Smith
Magistrate Judge Ki-g

BEE, INC., et al.,

Defe-da-ts.

ORDER

O- April 7, 2010, Mark Berma- filed a motio- for leave to proceed *in forma pauperis*, Doc. No. 1, seeki-g to remove to this Court a civil foreclosure actio- pe-di-g agai-st him a-d a corporate defe-da-t i- the Ohio Court of Appeals for the Te-th District. Doc. No. 1. This matter is -ow before the Court o- plai-tiff's *Motion to Remand*, Doc. No. 4. Because the *Motion to Remand* does -ot co-tai- a- i-sufficie-t defe-se or a-y "redu-da-t, immaterial, imperti-e-t, or sca-dalous matter," see Fed. R. Civ. P. 12(f), Mr. Berma-'s *Motion to Strike the Motion to Remand*, Doc. No. 8, is **DENIED**.

It appears from the docume-ts submitted by Mr. Berma-, Doc. No. 1, *State Court Record*, that a civil actio- allegi-g breach of co-tract a-d seeki-g foreclosure was origi-ally filed agai-st Mr. Berma- a-d Bee, I-c., i- the Fra-kli- Cou-ty Court of Commo- Pleas i- 2009. That court e-tered a default judgme-t a-d decree i- foreclosure, *id.*, at 48 - 52, from which Mr. Berma- filed a -otice of appeal o- Ja-uary 15, 2010. *Id.*, at 61 - 62. Mr. Berma- also filed a- origi-al complai-t for writ of prohibitio- a-d ma-damus i- the state court of appeals. *Id.*, at 98 - 113.

Mr. Berma- co-te-ds that this is a civil actio- properly removed to this Court pursua-t to 28 U.S.C. §1441(b)

i- that it arises u-der federal questio-
jurisdictio-, u-der the Fifth a-d Fourtee-th
Ame-dme-ts of the Co-stitutio-, the right of due
process, right to be heard, ba-k a-d wire fraud,
a-d fair a-d impartial trial of merits.
Furthermore the Plai-tiff is a Federally chartered
ba-k a-d substa-tive violatio-s of Rule u-der TILA
a-d Federal Ba-ki-g Statutes will be i-olved i-
a trial of issues whe- this matter is tried i- a
Federal jurisdictio- court.

Id., *Notice of Removal*, at 2 - 3.

A civil actio- fou-ded o- a claim arisi-g u-der the Co-stitutio-
or laws of the U-ited States may be removed by a defe-da-t. 28 U.S.C.
§1441(b). A case arises u-der federal law, however, o-ly if a federal
questio- appears o- the face of the well-pleaded complai-t. *Caterpillar
Inc. v. Williams*, 482 U.S. 386, 391 - 92 (1987); *Louisville & Nashville
RR Co. v. Mottley*, 211 U.S. 149, 152 (1908). The plai-tiff is the
"master to decide what law [it] will rely upo-." *The Fair v. Kohler Die
& Specialty Co.*, 228 U.S. 22, 25 (1913).

The complai-t origi-ally filed i- the Fra-kli- Cou-ty Court of
Commo- Pleas, fairly read, i-vokes o-ly claims u-der state law. Nowhere
does the complai-t refer to 42 U.S.C. §1983 or to a-y other federal
statute. The fact that a defe-da-t believes that he may have available
to him a defe-se based o- federal law ca--ot form a proper basis for
removal. *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463
U.S. 1, 10 (1983).

Because it appears that the actio- was -ot properly removed to this
Court,¹ the *Motion to Remand*, Doc. No. 4, is **GRANTED**.

This actio- is hereby **ORDERED REMANDED** to the Ohio Court of Appeals
for the Te-th District.

¹It also appears that the *Notice of Removal* was untimely. See 28 U.S.C. § 1446(b).

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT