

United States District Court

EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

PATRIOT BANK

§

V.

§

CASE NO. 4:11CV626

§

Judge Schneider/Judge Mazzant

§

FELICIA MONROE

§

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On October 12, 2011, the report of the Magistrate Judge was entered containing proposed of fact and recommendations concerning Plaintiff’s Motion to Remand and Request for Expedited Ruling (Dkt. #4), recommending that the motion to remand should be granted.

The Court has made a *de novo* review of the objections raised by Defendant. Defendant’s objections assert a new ground for federal jurisdiction based upon a federal question. First, Defendant did not assert this as a basis for removal. Second, a review of the complaint demonstrates that there is no federal claim asserted. “A case may not be removed to federal court on the basis of a federal defense ... even if the defense is anticipated in the plaintiff’s complaint.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987). As far as the Court can discern from the record, Plaintiff’s claim against Defendant arises under the Texas Property Code concerning a forcible eviction of Defendant from real property. Accordingly, the Court finds that Defendant has not met her burden of establishing that Plaintiff’s complaint presents a federal question pursuant to 28 U.S.C. § 1331. Finally, Defendant asserts that this case can be removed under “Protecting Tenants at Foreclosure Act of 2009.” This citation does not bolster Defendant’s cause because the “Protecting Tenants at

Foreclosure Act of 2009” does not create a private right of action. *See, e.g., Wells Fargo Bank v. Lapeen*, No. 11-01932-LB, 2011 WL 2194117 (N.D. Cal. June 6, 2011). Moreover, even if this is a defense that arises under federal law, it does not appear on the face of Plaintiff’s complaint or otherwise confer federal jurisdiction. *See Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987). Therefore, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections are without merit. The Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this Court.

It is, therefore, **ORDERED** that Plaintiff’s Motion to Remand (Dkt. #4) is **GRANTED** and the case is **REMANDED** to County Court at Law No. 6 for Collin County, Texas.

It is SO ORDERED.

SIGNED this 27th day of October, 2011.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE