

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

CLEARFIELD CITY, a Utah Municipal
corp.,

Plaintiff,

vs.

LYNN A. JENKINS,

Defendant.

MEMORANDUM DECISION AND
ORDER GRANTING PLAINTIFF'S
MOTION TO REMAND AND
REMANDING CASE

Case No. 1:09-CV-184 TS

Plaintiff moves to remand this case on two grounds. One, that the Notice of Removal and the papers filed therewith do not show any basis for federal jurisdiction. Two, that the removal is untimely.

Defendant responds with the assertion that he is entitled to remove the case pursuant to a Mandate issued by the Tenth Circuit Court of Appeals.

The Court has reviewed the copy of the Mandate Plaintiff attached to his Notice of Removal. It was issued on February 9, 2007, in the case *Jenkins v. MTGLQ Investors*, Case No. 1:97-CV-95 DK (D. Utah). That Mandate provides no authority for the removal of this case.

The Court finds Plaintiff's second ground, timeliness, to be dispositive. Plaintiff's Ex. G to his Notice of Removal is a copy of the docket sheet in this case from the Second Judicial District, State of Utah. It shows that the complaint was filed on October 27, 2006, and that Defendant began filing papers as early as November 20, 2006. Sometime in 2008, the case was consolidated with another case and the consolidated case proceeded to a bench trial in August 2009.


The federal removal statutes provide that a notice of removal in a civil action must be filed "within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action . . . is based."¹

It is clear that the December 30, 2009 Notice of Removal is untimely because Defendant has been participating in this case for several years. It is therefore

ORDERED that Plaintiff Clearfield City's Motion to Remand (Docket No. 3) is GRANTED. This case shall be remanded to the Second District Court, Davis County, State of Utah and this case termed.

DATED January 12, 2010.

BY THE COURT:



TED STEWART
United States District Judge

¹28 U.S.C. § 1446 (b).