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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

EASTSIDE FUNDING LLC,

Plaintiff,

v.

WENDELL EVANS and CHERYL  
DUKE,

Defendants.

CASE NO. C15-5137 RJB

ORDER DENYING IFP AND  
REMANDING CASE

This matter comes before the Court on the Defendants’ Application to Proceed *In Forma Pauperis* (“IFP”) (Dkts. 1 and 2) and on review of the file. The Court has reviewed the relevant documents on the remainder of the file herein.

This case involves an unlawful detainer action that was filed in Pierce County Superior Court by Eastside Funding LLC against Wendell Evans and Cheryl Duke. Dkt. 1-1.

**APPLICATIONS TO PROCEED IFP**

**Standard for Granting Application for IFP.** The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See*

1 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an application to  
2 proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9<sup>th</sup> Cir. 1963), *cert. denied* 375  
3 U.S. 845 (1963).

4 **Defendants’ Application to Proceed IFP.** Defendant Cherly Duke states that she  
5 receives \$1,951 from social security disability. Dkt. 2. She states that she has around \$1,680 in  
6 monthly expenses. Dkt. 2. In his description of “other income” Defendant Wendell Evans states  
7 in his IFP application that he receives “disability (gross) 7.20 in only source income.” Dkt. 1, at  
8 1. He reports \$500.00 in expenses. Dkt. 1, at 2.

9 **Decision on Application to Proceed IFP.** It appears that Defendants have the income to  
10 pay the filing fee in this case. They have made a choice to remove this civil action. While the  
11 costs of this action may place a burden on their resources, Defendants appear to have sufficient  
12 funds to pay the filing fee. Defendants’ Application to Proceed *In Forma Pauperis* (“IFP”)  
13 (Dkts. 1 and 2) should be denied.

14 **IFP on Appeal.** In the event that Defendants appeal this order, and/or appeals dismissal  
15 of this case, IFP status should be denied by this court, without prejudice to Defendants to file  
16 with the Ninth Circuit U.S. Court of Appeals an application to proceed *in forma pauperis*.

#### 17 **REVIEW OF THE FILE**

18 On March 5, 2015, Frank W. Roberson and Effie Roberson removed this case to federal  
19 court from Pierce County Superior Court. Dkt. 1. The Notice of Removal states that jurisdiction  
20 is based upon federal question jurisdiction, pursuant to 28 U.S.C. § 1331. Dkt. 1-1, at 2. The  
21 Notice of Removal states that “Plaintiff has actually filed a Federal Question Action,” and that  
22 “the Complaint in this action was filed . . . as artful pleading” that “intentionally fails to allege  
23 compliance with the Civil Rights Act of 1968.” Dkt. 1-1, at 2. The Notice of Removal states  
24

1 that “[t]he Federal Cause of Action in ejectment/eviction is the basis for this action, irrespective  
2 of artful pleading, such that action could have been brought in Federal District Court.” Dkt. 1-1,  
3 at 3.

4 Pursuant to 28 U.S.C. § 1447(c), “[i]f at any time before final judgment it appears that the  
5 district court lacks subject matter jurisdiction, the case shall be remanded.” Jurisdiction is a  
6 threshold issue that must be raised *sua sponte*. *Steel Co. v. Citizens for a Better Environment*,  
7 523 U.S. 83, 94-95 (1998).

8 A federal court is presumed to lack subject matter jurisdiction until a plaintiff establishes  
9 otherwise. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994); *Stock West*,  
10 *Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9<sup>th</sup> Cir. 1989). Therefore, the plaintiff bears  
11 the burden of proving the existence of subject matter jurisdiction. *Stock West*, 873 F.2d at 1225;  
12 *Thornhill Publishing Co., Inc. v. Gen’l Tel & Elect. Corp.*, 594 F.2d 730, 733 (9<sup>th</sup> Cir. 1979);  
13 *Association of Am. Med. Colls. v. United States*, 217 F.3d 770, 778 (9<sup>th</sup> Cir. 2000). The  
14 documents filed in this matter, including the documents filed along with the Notice of Removal,  
15 show that this is a case involving state law. The court has no jurisdiction over state law claims.  
16 Even if the documents filed could be interpreted as raising a defense under federal law, an  
17 interpretation that is tenuous at best, such a defense would not confer federal jurisdiction. “A  
18 defense that raises a federal question is inadequate to confer federal jurisdiction.” *Merrell Dow*  
19 *Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 808 (1986).

20 A review of the pleadings filed shows that the court does not have subject matter  
21 jurisdiction over this case. The case should be remanded to Pierce County Superior Court,  
22 pursuant to 28 U.S.C. § 1447(c).

1 Accordingly, it is hereby **ORDERED** that:

- 2 • Defendants' Application to Proceed *In Forma Pauperis* (Dkts. 1 and 2) **ARE**  
3 **DENIED**;
- 4 • In the event that Defendants appeal this order, and/or appeals dismissal of this  
5 case, IFP status **IS DENIED** by this court, without prejudice to Defendants to file  
6 with the Ninth Circuit U.S. Court of Appeals an application to proceed *in forma*  
7 *pauperis*; and
- 8 • This case is **REMANDED** to Pierce County Superior Court.

9 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
10 to any party appearing *pro se* at said party's last known address. The Clerk is directed to take the  
11 steps necessary to remand this case to Pierce County Superior Court.

12 Dated this 16<sup>th</sup> day of March, 2015.

13 

14 **ROBERT J. BRYAN**  
15 United States District Judge