

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Omnivest Corp. v. Johnny Acevedo, et al.

Omnivest Corp. · No. 2:25-cv-00995-DAD-SCR · Decided April 4, 2025

OPINION

(PS)(UD)Omnivest Corp v. Harmon

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 OMNIVEST CORP, No. 2:25-cv-00995-DAD-SCR (UD) (PS)

12 Plaintiff,

13 v. ORDER SUA SPONTE REMANDING CASE

TO THE SACRAMENTO COUNTY

14 JOHNNY ACEVEDO, et al., SUPERIOR COURT AND DENYING

MOTION TO PROCEED IN FORMA

15 Defendants. PAUPERIS AS MOOT 16 (Doc. No. 2) 17 18 This is an unlawful detainer action
brought under California state law by plaintiff 19 Omnivest Corp. On April 2, 2025, defendants,
proceeding pro se, removed this case to this 20 federal court from the Sacramento County
Superior Court and defendant Acevedo filed a motion 21 to proceed in forma pauperis.¹ (Doc.
Nos. 1, 2.) 22 A district court has “a duty to establish subject matter jurisdiction over the removed
action 23 sua sponte, whether the parties raised the issue or not.” United Investors Life Ins. Co. v.
Waddell 24 & Reed, Inc., 360 F.3d 960, 967 (9th Cir. 2004). The removal statute, 28 U.S.C. §
1441, is 25 strictly construed against removal jurisdiction. Geographic Expeditions, Inc. v. Estate
of Lhotka, 26 599 F.3d 1102, 1107 (9th Cir. 2010). It is presumed that a case lies outside the
limited 27 1 The case number of this action in the Sacramento County Superior Court is
25UD000996. 28 (Doc. No. 1 at 7.) 1 jurisdiction of the federal courts, and the burden of
establishing the contrary rests upon the party 2 asserting jurisdiction. Geographic Expeditions, 599
F.3d at 1106–07. In addition, “the existence 3 of federal jurisdiction depends solely on the
plaintiff’s claims for relief and not on anticipated 4 defenses to those claims.” ARCO Envtl.
Remediation, LLC v. Dep’t of Health & Envtl. Quality, 5 213 F.3d 1108, 1113 (9th Cir. 2000).
“The strong presumption against removal jurisdiction” 6 means that “the court resolves all
ambiguity in favor of remand to state court.” Hunter v. Philip 7 Morris USA, 582 F.3d 1039, 1042
(9th Cir. 2009). That is, federal jurisdiction over a removed 8 case “must be rejected if there is any

doubt as to the right of removal in the first instance.” 9 *Geographic Expeditions*, 599 F.3d at 1107. “If at any time prior to judgment it appears that the 10 district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c); 11 *Gibson v. Chrysler Corp.*, 261 F.3d 927, 932 (9th Cir. 2001). Remand under 28 U.S.C. § 1447(c) 12 “is mandatory, not discretionary.” *Bruns v. NCUA*, 122 F.3d 1251, 1257 (9th Cir. 1997); see also 13 *California ex. rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004). Where it appears, 14 as it does here, that the district court lacks subject matter jurisdiction over a removed case, “the 15 case shall be remanded.” 28 U.S.C. § 1447(c). 16 “The presence or absence of federal question jurisdiction is governed by the ‘well-pleaded 17 complaint rule,’ which provides that federal jurisdiction exists only when a federal question is 18 presented on the face of the plaintiff’s properly pleaded complaint.” *California v. United States*, 19 215 F.3d 1005, 1014 (9th Cir. 2000); see also *Dynegy*, 375 F.3d at 838. Under the well-pleaded 20 complaint rule, courts look to what “necessarily appears in the plaintiff’s statement of his own 21 claim in the bill or declaration, unaided by anything in anticipation of avoidance of defenses 22 which it is thought the defendant may interpose.” *California*, 215 F.3d at 1014. Accordingly, “a 23 case may not be removed on the basis of a federal defense . . . even if the defense is anticipated in 24 the plaintiff’s complaint and both parties concede that the federal defense is the only question 25 truly at issue.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987); see also *Vaden v. 26 Discover Bank*, 556 U.S. 49, 70 (2009) (“It does not suffice to show that a federal question lurks 27 somewhere inside the parties’ controversy, or that a defense or counterclaim would arise under 28 federal law.”). 1 Here, defendants have not shown that removal of this action to this federal court is 2 | appropriate. Plaintiff’s complaint in this case is a straight-forward unlawful detainer action that is 3 | based entirely on state law. (Doc. No. 1 at 7-9.) There is no federal question present in the 4 | complaint. Ud.) Moreover, even assuming that defendants can assert a federal defense or 5 | counterclaim, they cannot use that as the basis for removal because the defensive invocation of 6 | federal law cannot form the basis of this court’s jurisdiction. See *Vaden*, 556 U.S. at 70; 7 | *Caterpillar*, 482 U.S. at 392; *California*, 215 F.3d at 1014. 8 Because there is no federal question appearing in plaintiff’s complaint in this case, 9 | defendants have failed to properly invoke this court’s jurisdiction. Remand of this case to the 10 | Sacramento County Superior Court is appropriate and mandatory. 28 U.S.C. § 1447(c); 11 | *Geographic Expeditions*, 559 F.3d at 1107; *Bruns*, 122 F.3d at 1257. 12 Accordingly, 13 1. This action is REMANDED forthwith to the Sacramento County Superior Court, 14 pursuant to 28 U.S.C. § 1447(c), for lack of subject matter jurisdiction; 15 2. Defendant Acevedo’s motion to proceed in forma pauperis (Doc. No. 2) is denied 16 as having been rendered moot by this order; and 17 3. The Clerk of the Court is directed to CLOSE this case. 18 IT IS SO ORDERED. | pated: _ April 3, 2025 Da A. 2, gel

20 DALE A. DROZD

UNITED STATES DISTRICT JUDGE

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