

APPENDIX

A

FILED

JAN 31 2019

*Clerk, U.S. Courts
District Of Montana
Missoula Division*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

LSF8 MASTER PARTICIPATION
TRUST,

CV 19-11-M-DWM

Plaintiff/Counter-
Defendant,

ORDER

vs.

JOHN P. STOKES, PAMELA
STOKES, and ANY PERSON IN
POSSESSION,

Defendants/
Counter-Claimants.

On January 14, 2019, Defendants John P. Stokes and Pamela Stokes (collectively “the Stokes”) improvidently removed this action from Lake County District Court, invoking this Court’s federal question jurisdiction. (Doc. 1.) For the reasons discussed below, this matter is remanded back to the state court for lack of subject matter jurisdiction. *See* 28 U.S.C. §§ 1441, 1447.

Since federal courts are courts of limited jurisdiction, the basis for subject matter jurisdiction must be affirmatively established by the party asserting jurisdiction. *Cal. ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004). Courts strictly construe 28 U.S.C. § 1441 against removal and resolve any doubts about the propriety of removal in favor of remanding the case to state court. *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006). A court must remand “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction[.]” 28 U.S.C. § 1447(c); *Smith v. Mylan Inc.*, 761 F.3d 1042, 1044 (9th Cir. 2014) (explaining a court can remand for lack of subject jurisdiction *sua sponte*).

Here, the Stokes assert federal question jurisdiction exists on the grounds that this action arises under:

18 U.S.C. § 1964 Civil Rico
18 U.S.C. 152(4)

Fraudulent Mortgage Assignment and Fraud Upon the Court

Violation of 18 USC 362 (a) Violation of Automatic Stay

11 USC 362 (h) (k) Removing Assets from the estate without leave of the Bankruptcy Court

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Bankruptcy Fraud

Felony Perjury in Federal Court Proceedings

Wrongful and Fraudulent Foreclosure

Attorney Deceit Upon the Court

(Doc. 1 at 2–3.) The Notice of Removal further states that the “Cross Defendants” (third parties not included in original complaint) “are residents of Texas, North

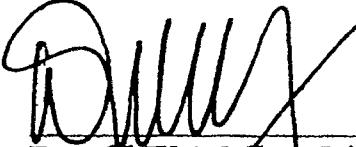
Dakota, and Ireland" and the amount in controversy is in excess of \$14,964,000.00.

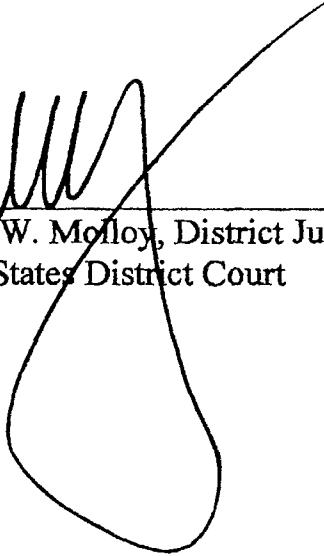
(*Id.* at 3.)

The State Court Complaint, however, is based on the Small Tract Financing Act under Title 71 of the Montana Code Annotated. (See Doc. 3.) The federal issues identified in the Notice of Removal arise only out of the Stokes' counter-claims, defenses, and claims against third-party defendants. Removability cannot be created by [a] defendant pleading a counter-claim presenting a federal question." *Takeda v. Nw. Nat'l Life Ins. Co.*, 765 F.2d 815, 822 (9th Cir. 1985) (collecting cases). Nor is a defense based on federal law sufficient to give rise to subject matter jurisdiction. *Cal. ex rel. Lockyer*, 375 F.3d at 838. A case "arises under" federal law only if the federal question appears on the face of the plaintiff's well-pleaded complaint. *Vaden v. Discover Bank*, 556 U.S. 49, 61–62 (2009); *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 9–12 (1983). Plaintiff LSF8 Master Participation Trust does not allege a federal question on the face of its complaint. As a result, removal on the basis of federal question jurisdiction was improper. Because diversity jurisdiction was alleged only in relation to the third parties listed in the Stokes' answer, it does not provide an alternative basis for removal here. There is no indication Plaintiff LSF8 Master Participation Trust and the Stokes are diverse or the amount in controversy meets the jurisdictional threshold based on the face of the complaint.

Accordingly, IT IS ORDERED that this action is REMANDED back to the Montana Twentieth Judicial District Court, Lake County. The Clerk is directed to transfer the file to the state court and close the case.

DATED this 31st day of January, 2019.


Donald W. Molloy, District Judge
United States District Court



APPENDIX

B

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

FEB 25 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LSF 8 MASTER PARTICIPATION
TRUST,

Plaintiff-counter-
defendant-Appellee,

v.
JOHN PATRICK STOKES; PAMELA J.
STOKES,

Defendants-counter-
claimants-Appellants,

v.
MACKOFF KELLOGG LAW FIRM; et al.,

Counter-defendants-
Appellees.

No. 19-35087

D.C. No. 9:19-cv-00011-DWM

District of Montana,
Missoula

ORDER

Before: CANBY, GRABER, and McKEOWN, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not reviewable. *See* 28 U.S.C. § 1447(d); *Kunzi v. Pan Am. World Airways, Inc.*, 833 F.2d 1291, 1293 (9th Cir. 1987) (order remanding a removed action to state court for lack of subject

matter jurisdiction is not reviewable). Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.

DA/Pro Se

APPENDIX

C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 29 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LSF 8 MASTER PARTICIPATION
TRUST,

Plaintiff-counter-
defendant-Appellee,

v.

JOHN PATRICK STOKES; PAMELA J.
STOKES,

Defendants-counter-
claimants-Appellants,

v.

MACKOFF KELLOGG LAW FIRM; et al.,

Counter-defendants-
Appellees.

No. 19-35087

D.C. No. 9:19-cv-00011-DWM
District of Montana,
Missoula

ORDER

Before: CANBY, GRABER, and McKEOWN, Circuit Judges.

The amended motion for reconsideration en banc (Docket Entry Nos. 5, 6) is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.