

No. 23-

IN THE
Supreme Court of the United States

GREGORY O. GARMONG,

Petitioner,

v.

MAUPIN, COX & LEGOY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The petitioner brought a breach of contract action in Nevada state court against the law firm which represented him in a bankruptcy filed by his ex-wife. The respondent law firm removed the case to the United States Bankruptcy Court for the District of Nevada. It took the petitioner the succeeding four years through two appeals and \$74,700.00 in attorney's fees to get remanded to state court. Despite finding that there were no statutory grounds for removal in its first opinion, the Ninth Circuit later denied, in a second appeal, remand fees under 28 U.S.C. § 1447(c) because the respondent made a "plausible" jurisdictional argument.

The question for review is whether the Ninth Circuit is employing a new and incorrect standard for remand fees under 28 U.S.C. § 1447(c), which deviates from the standard set by Martin v. Franklin Capital Corp., 546 U.S. 132, 141 (2005) and creates a split among the circuit courts which have considered how to employ that standard.

LIST OF PARTIES IN THE COURT OF APPEALS

The caption of the case contains the names of all the parties.

LIST OF ALL RELATED PROCEEDINGS

1. Second Judicial District Court of the State of Nevada, in and for the County of Washoe; docket no. CV17-02123; Gregory Garmong, plaintiff v. Maupin, Cox & LeGoy, a Nevada professional corporation, defendant; no judgment was entered; the case was removed to the United States Bankruptcy Court for the District of Nevada.

2. United States Bankruptcy Court for the District of Nevada; main docket no. BK-N-10-52588-gwz, adversary docket no. 17-05043-gwz, Linda L. Garmong, debtor, Gregory Garmong, plaintiff v. Maupin, Cox & LeGoy, a Nevada professional corporation, defendant; orders appealed: 1) Order on Motion to Remand, Motion to Abstain and Motion for Attorney's Fees and Costs, entered on February 1, 2019 and 2) Order on Motion to Enforce Order Approving Withdrawal of Counsel and Settlement Terms Placed Upon the Record and Motion for Fees, entered on July 30, 2019.

3. United States District Court for the District of Nevada; docket no. 3:19-cv-00490-RCJ, Gregory Garmong, appellant v. Maupin, Cox & LeGoy, a Nevada professional corporation, respondent; Order affirming the decision of the Bankruptcy Court entered on July 14, 2020 and Order denying reconsideration entered on November 30, 2020.

4. United States Court of Appeals for the Ninth Circuit; docket no. 20-17520; Gregory Garmong, appellant v. Maupin, Cox & LeGoy, a Nevada professional corporation, respondent; Memorandum Decision Reversing and Remanding, entered on December 22, 2021.

5. United States District Court for the District of Nevada; docket no. 3:19-cv-00490-RCJ, Gregory Garmong, plaintiff v. Maupin, Cox & LeGoy, a Nevada professional corporation, defendant; Order denying attorney's fees on remand, entered on May 12, 2022.

6. 4. United States Court of Appeals for the Ninth Circuit; docket no. 22-15885; Gregory Garmong, appellant v. Maupin, Cox & LeGoy, a Nevada professional corporation, respondent; Memorandum Decision affirming order denying attorney's fees on remand, entered on October 11, 2023.

TABLE OF CONTENTS

	<i>Page</i>
QUESTION PRESENTED FOR REVIEW	i
LIST OF PARTIES IN THE COURT OF APPEALS	ii
LIST OF ALL RELATED PROCEEDINGS	iii
TABLE OF CONTENTS.....	v
TABLE OF APPENDICES	vi
TABLE OF CITED AUTHORITIES	vii
CITATIONS OF OPINIONS AND ORDERS	1
STATEMENT OF JURISDICTION	1
STATEMENT OF THE CASE	2
ARGUMENT.....	4
CONCLUSION	7

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A —MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED OCTOBER 11, 2023	1a
APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA, FILED MAY 12, 2022 ...	5a
APPENDIX C — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED DECEMBER 22, 2021	8a
APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED NOVEMBER 22, 2023	11a
APPENDIX E — RELEVANT STATUTORY PROVISION	13a

TABLE OF CITED AUTHORITIES

*Page***CASES:**

<u>Baker Ranches, Inc. v. Haaland,</u> 2023 WL 6784357 (9th Cir. Oct. 13, 2023)	5
<u>Balcorta v. Twentieth Cent.-Fox Film Corp.,</u> 208 F.3d 1102 (9th Cir. 2000)	6
<u>Caterpillar, Inc. v. Williams,</u> 482 U.S. 386, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987)	6
<u>In re Fietz,</u> 52 F. 2d 455 (9th Cir. 1988)	6
<u>In re Garmong,</u> 2023 WL 6620304 (9th Cir. Oct. 11, 2023)	5
<u>In re Wilshire Courtyard,</u> 729 F.3d 1279 (9th Cir. 2013)	6
<u>Kent State U. Bd. of Trustees v.</u> <u>Lexington Ins. Co.,</u> 512 Fed. Appx. 485 (6th Cir. 2013)	5
<u>Kokkonen v. Guardian Life Ins. Co. of Am.,</u> 511 U.S. 375 (1994)	6
<u>Lott v. Pfizer, Inc.,</u> 492 F.3d 789 (7th Cir. 2007)	4, 6

Cited Authorities

	<i>Page</i>
<u>Lussier v. Dollar Tree Stores, Inc.</u> , 518 F.3d 1062 (9th Cir. 2008).....	5
<u>Martin v. Franklin Capital Corp.</u> , 546 U.S. 132 (2005).....	4, 7
<u>Wolf v. Kennelly</u> , 574 F.3d 406 (7th Cir. 2009).....	4
STATUTES AND RULES:	
28 U.S.C. § 158(d)(1)	4
28 U.S.C. § 1254(1).....	1
28 U.S.C. § 1291.....	4
28 U.S.C. § 1447(e).....	3, 4, 5, 7
Sup. Ct. R. 12.5	1
Sup. Ct. R. 29(4)(b)	1
Sup. Ct. R. 29(4)(c).....	1

CITATIONS OF OPINIONS AND ORDERS

The Ninth Circuit's Memorandum decision can be found at 2023 WL 6620304 and Appendix A, 1a-4a. The Order of the United States District Court for the District of Nevada denying fees on remand can be found at 2022 WL 2135643 and Appendix B, 5a-7a. The related Ninth Circuit Memorandum decision remanding the case can be found at 2021 WL 6102184 and Appendix C, 8a-10a.

STATEMENT OF JURISDICTION

The judgment sought to be reviewed was entered by the United States Court of Appeals for the Ninth Circuit on October 11, 2023.

On November 22, 2023 the Ninth Circuit entered its order denying a combined petition for panel rehearing and for rehearing en banc. This Court has not entered any order granting an extension of time to file this petition for writ of certiorari.

The petitioner is not relying on the provisions of Rule 12.5.

This Court has jurisdiction to review on a petition for writ of certiorari the judgment of the Ninth Circuit under the provisions of 28 U.S.C. § 1254(1).

The notifications required by Rule 29(4)(b) and (c) are not applicable to this petition.

STATEMENT OF THE CASE

Petitioner Gregory Garmong (“Garmong”) was a creditor in his ex-wife’s bankruptcy filed in the United States Bankruptcy Court for the District of Nevada. He was represented by respondent Maupin, Cox & LeGoy (“MCL”). That firm had one attorney specializing in bankruptcy law. After Garmong had been charged over \$200,000.00 in fees, that attorney announced he was seeking an appointment as a bankruptcy judge and leaving the firm. MCL offered to assign another, non-bankruptcy attorney to Garmong, but wanted to charge an additional \$20,000.00 to educate that attorney on the file.

Garmong refused the MCL offer. In turn, MCL moved to withdraw as his counsel in the bankruptcy court. The bankruptcy court held a hearing on the motion to withdraw, which evolved into a settlement conference. There was a purported settlement, which the bankruptcy court placed on the record. The adversary proceeding brought by Garmong to deny his ex-wife a discharge was closed.

On November 13, 2017 Garmong filed a complaint against MCL in Nevada state court alleging breach of contract and breach of fiduciary duty, among other claims for relief. There was nothing in the complaint stating or implicating a federal question. On December 6, 2017 MCL removed the case to the United States Bankruptcy Court for the District of Nevada.

Garmong moved to remand the case to Nevada state court on the basis that there was no removal jurisdiction. MCL argued that the bankruptcy court had ancillary jurisdiction to enforce its own order approving the

settlement placed on the record. On February 1, 2019 the court denied the motion to remand.

MCL sought to enforce the terms of the attempted settlement agreement. Garmong argued that there was no settlement agreement because it had never been reduced to a writing signed by all of the parties. On July 30, 2019 the bankruptcy court entered its order granting an MCL “Motion to Enforce Order Approving Withdrawal of Counsel and Settlement Terms Placed Upon the Record and Motion for Fees.”

Garmong appealed the orders of the bankruptcy court to the United States District Court for the District of Nevada on August 13, 2019. That court affirmed in an order entered on July 14, 2020.

Garmong appealed again to the United States Court of Appeals for the Ninth Circuit, on December 27, 2020. The basis for the appeal was the same position he had argued since removal—that there was no statutory removal jurisdiction. The Ninth Circuit agreed and reversed and remanded in a Memorandum entered on December 22, 2021. Appendix C.

As a result of the remand to Nevada state court, Garmong sought attorney’s fees under 28 U.S.C. § 1447(c) for being forced to wander in the wilderness for over four years without ever addressing the merits of his state court complaint. He filed his motion for \$74,700.00 in attorney’s fees on January 27, 2022. On May 12, 2022 the District Court entered its order denying any fees, finding that the issues in the removal were “novel and complex.” Order, at Appendix B.

On June 9, 2022 Garmong appealed the denial of any remand fees to the Ninth Circuit. That court affirmed the District Court in a Memorandum entered on October 11, 2023. Garmong filed a combined petition for rehearing and en banc rehearing. The petition was denied on November 22, 2023. Appendix D.

This petition seeks review of a judgment from the United States Court of Appeals for the Ninth Circuit. That court had jurisdiction under 28 U.S.C. § 158(d)(1) and 28 U.S.C. § 1291.

ARGUMENT

The District Court and the Ninth Circuit committed legal error in denying remand fees to the petitioner under 28 U.S.C. §1447(c). The standard for granting fees was set by this Court in Martin v. Franklin Capital Corp., 546 U.S. 132, 141 (2005): “Absent unusual circumstances, courts may award attorney’s fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal.” Circuit courts have applied the following “general rule”:

‘[I]f, at the time the defendant filed his notice in federal court, clearly established law demonstrated that he had no basis for removal, then a district court should award a plaintiff his attorneys’ fee. By contrast, if clearly established law did not foreclose a defendant’s basis for removal, then a district court should not award attorneys’ fees.’

Wolf v. Kennelly, 574 F.3d 406, 411–12 (7th Cir. 2009) (quoting from Lott v. Pfizer, Inc., 492 F.3d 789, 793 (7th

Cir. 2007)) (emphasis added). *Accord*, Kent State U. Bd. of Trustees v. Lexington Ins. Co., 512 Fed. Appx. 485, 489 (6th Cir. 2013) (unpublished); Lussier v. Dollar Tree Stores, Inc., 518 F.3d 1062, 1066 (9th Cir. 2008).

Recently, however, the Ninth Circuit has subtly digressed from the objective standard into shades of subjectivity. For example, “Due to the plausible jurisdictional challenges raised by the government, the district court did not abuse its discretion in denying Baker Ranches’ request for attorney’s fees and costs under 28 U.S.C. § 1447(c) because the government did not ‘lack an objectively reasonable basis for seeking removal.’” Baker Ranches, Inc. v. Haaland, 2023 WL 6784357, at *2 (9th Cir. Oct. 13, 2023) (unpublished) (emphasis added). In the present case, the Ninth Circuit applied the same “plausible reasonableness” standard: “Based on the plausible jurisdictional considerations raised in this case, we are unable to conclude that Maupin ‘lacked an objectively reasonable basis for seeking removal.’” In re Garmong, 2023 WL 6620304, at *1 (9th Cir. Oct. 11, 2023) (emphasis added); Appendix A.

“Plausible” is not the same as “objective.” The Martin “objectively reasonable” standard should not include style points for creative arguments. If the legal precedent at the time clearly foreclosed removal, then it was objectively unreasonable to remove.

There was nothing in the petitioner’s state court complaint triggering federal jurisdiction. As the Ninth Circuit stated:

[T]he validity of the district court’s award of attorney’s fees to Balcorta turns on whether

it correctly concluded that no federal question jurisdiction existed. The presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint. See *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987). This rule makes a plaintiff the master of his complaint: it allows him to avoid federal jurisdiction by relying exclusively on state law.

Balcorta v. Twentieth Cent.-Fox Film Corp., 208 F.3d 1102, 1106 (9th Cir. 2000) (affirming an award of attorney’s fees under 28 U.S.C. § 1447(c)). The contrived attempts at federal jurisdiction by the respondents were decisively rebuffed by the Ninth Circuit in its Memorandum decision reversing and remanding to the state court. Appendix A. The cases which the court cited in the Memorandum rejecting any form of bankruptcy removal jurisdiction, In re Fietz, 52 F. 2d 455, 457 (9th Cir. 1988), In re Wilshire Courtyard, 729 F.3d 1279, 1289 (9th Cir. 2013) and Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 376-77 (1994), all predated removal of the petitioner’s action by a good margin. In other words, “relevant case law clearly foreclosed the defendants’ basis of removal.” Lott v. Pfizer, Inc., 492 F.3d 789, 794 (7th Cir. 2007).

Now, in denying remand fees to the petitioner, the Ninth Circuit has retreated from an “objectively reasonable” standard into a murky “plausible” standard, which affords too much opportunity to apply subjective considerations.

CONCLUSION

There is a developing split between the circuit courts of appeal over how to apply the Martin “objectively reasonable” standard for granting fees under 28 U.S.C. § 1447(c). The Ninth Circuit has deviated from Martin by positing a new “plausible” standard. The petitioner respectfully requests that this Court grant his petition, vacate the judgment of the Ninth Circuit, remand the case to the District Court and instruct that court to grant the fees he incurred in the protracted struggle to return to state court.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A —MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED OCTOBER 11, 2023	1a
APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA, FILED MAY 12, 2022 . . .	5a
APPENDIX C — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED DECEMBER 22, 2021	8a
APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED NOVEMBER 22, 2023	11a
APPENDIX E — RELEVANT STATUTORY PROVISION	13a

1a

**APPENDIX A —MEMORANDUM OF THE
UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT, FILED OCTOBER 11, 2023**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-15885

D.C. No. 3:19-cv-00490-RCJ

IN RE: LINDA L. GARMONG,

Debtor,

GREGORY O. GARMONG,

Appellant,

v.

MAUPIN, COX & LEGOY,

Appellee.

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Appendix A

MEMORANDUM*

Submitted October 6, 2023**
Las Vegas, Nevada

Before: RAWLINSON and OWENS, Circuit Judges,
and PREGERSON***, District Judge.

Gregory Garmong (Garmong) appeals the district court's order denying his motion for attorney's fees under 28 U.S.C. § 1447.

We have jurisdiction under 28 U.S.C. § 1291 to review the district court's order concerning attorney's fees. *See Chan Healthcare Grp., PS v. Liberty Mut. Fire Ins. Co.*, 844 F.3d 1133, 1141 (9th Cir. 2017). We review the district court's denial of attorney's fees for an abuse of discretion. *See Grancare, LLC v. Thrower by and through Mills*, 889 F.3d 543, 547 (9th Cir. 2018). "We will reverse a district court decision only if it is premised on clearly erroneous findings of fact or erroneous determinations of law." *Id.* at 547-48 (citation and internal quotation marks omitted).

Under 28 U.S.C. § 1447(c), "[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

***The Honorable Dean D. Pregerson, United States District Judge for the Central District of California, sitting by designation.

Appendix A

the removal.” “[A]bsent unusual circumstances, courts may award attorney’s fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal. . . .” *Chan Healthcare Grp.*, 844 F.3d at 1141 (citation omitted).

The district court did not abuse its discretion in denying Garmong’s motion for attorney’s fees because Maupin, Cox & Legoy (Maupin) did not “lack[] an objectively reasonable basis for seeking removal.” *Id.* (citation omitted). The bankruptcy court held that it had ancillary jurisdiction over Garmong’s action based on “its inherent power to interpret and enforce the settlement agreement incorporated into the Settlement Order over which it specifically retained jurisdiction.” The bankruptcy court concluded that the settlement agreement was “directly at issue” in Garmong’s action. The district court agreed, holding that Garmong’s “argument that the bankruptcy court lacked jurisdiction [was] without merit because an exercise of jurisdiction by a bankruptcy court to enforce its own orders arises in or is related to the bankruptcy case and is thus within” the bankruptcy court’s “statutory jurisdiction.”

Although in a prior appeal we ultimately disagreed with the jurisdictional analyses conducted by the bankruptcy court and district court, we did not hold that Maupin’s removal of Garmong’s state court action was foreclosed by our precedent. *See Garmong v. Maupin, Cox & Legoy (In re Garmong)*, No. 20-17520, 2021 U.S. App. LEXIS 37925, 2021 WL 6102184, at *1 (9th Cir. Dec. 22, 2021) (unpublished). Notably, we additionally held that, “[e]ven

Appendix A

assuming the bankruptcy court retained jurisdiction over a settlement agreement between Garmong and [Maupin], such retention [did] not confer removal jurisdiction under 28 U.S.C. § 1452, and the parties fail[ed] to identify any other statutory basis for removal.” *Id.* (citation omitted). Based on the plausible jurisdictional considerations raised in this case, we are unable to conclude that Maupin “lacked an objectively reasonable basis for seeking removal.” *Chan Healthcare Grp.*, 844 F.3d at 1141 (citation omitted); *see also Grancare, LLC*, 889 F.3d at 552 (explaining that “[r]emoval is not objectively unreasonable solely because the removing party’s arguments lack merit, or else attorney’s fees would always be awarded whenever remand is granted”) (citation and internal quotation marks omitted).

AFFIRMED.

**APPENDIX B — OPINION OF THE UNITED
STATES DISTRICT COURT FOR THE DISTRICT
OF NEVADA, FILED MAY 12, 2022**

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

May 12, 2022, Decided;
May 12, 2022, Filed

Case No. 3:19-CV-00490-RCJ

BK-10-52588-GWZ CHAPTER 7.

ADVERSARY NO: 17-05043-GWZ

IN RE: LINDA L. GARMONG,

Debtor,

GREGORY O. GARMONG,

Appellant,

v.

MAUPIN, COX & LEGOY, A NEVADA
PROFESSIONAL CORPORATION,

Respondent.

ORDER

After the Bankruptcy Court and this Court held
Respondent's removal of Appellant's state law action to be

Appendix B

proper, Appellant successfully challenged this conclusion to the Ninth Circuit. Consistent with the Ninth Circuit's decision, this Court has therefore remanded Appellant's case to state court. Presently, Appellant moves for attorney fees for the errant removal. This Court retains jurisdiction to consider such a motion and denies it because Appellant has failed to show that Respondent's removal lacked an objectively reasonable basis.

LEGAL STANDARD

Upon remand, a district court "may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447. "Absent unusual circumstances, courts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal. Conversely, when an objectively reasonable basis exists, fees should be denied." *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 141, 126 S. Ct. 704, 163 L. Ed. 2d 547 (2005). "[R]emoval is not objectively unreasonable solely because the removing party's arguments lack merit" *Lussier v. Dollar Tree Stores, Inc.*, 518 F.3d 1062, 1065 (9th Cir. 2008).

ANALYSIS

To succeed in his motion, Appellant needs to demonstrate that Respondent's removal was objectively unreasonable. The issues presented in the removal were novel and complex. Both the Bankruptcy Court as well as this Court held that the removal was proper. In its order

Appendix B

affirming the Bankruptcy Court, this Court explained the issue and how this Court was following the lead of other courts. (ECF No. 25 at 5.) While the Ninth Circuit ultimately held that the removal was improper, it still had an objectively reasonable basis. The Court thus denies Appellant's motion for attorney fees.

CONCLUSION

IT IS HEREBY ORDERED that Motion for Attorney Fees (ECF No. 39) is DENIED.

IT IS SO ORDERED.

Dated May 12, 2022.

/s/ Robert C. Jones
ROBERT C. JONES
United States District Judge

**APPENDIX C — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT, FILED DECEMBER 22, 2021**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 20-17520

D.C. No. 3:19-cv-00490-RCJ

In re: LINDA L. GARMONG,

Debtor,

GREGORY O. GARMONG,

Appellant,

v.

MAUPIN, COX & LEGOY,

Appellee.

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding.

Argued and Submitted December 10, 2021,
San Francisco, California

Before: MURGUIA, Chief Judge, and IKUTA and
VANDYKE, Circuit Judges. Concurrence by Judge
VANDYKE.

*Appendix C***MEMORANDUM***

Gregory Garmong appeals the district court's order affirming the bankruptcy court's order denying Garmong's motion to remand his state court action, and dismissing that action with prejudice. We have jurisdiction to determine our own jurisdiction. *In re Gugliuzza*, 852 F.3d 884, 889 (9th Cir. 2017).

Garmong's state court action is not a civil proceeding arising under, arising in, or related to a case under title 11, because his complaint alleges only state law claims against Maupin, Cox & Legoy (MCL), and the parties do not allege that the outcome of the action would have any effect on Linda Garmong's estate or require any interpretation of the Linda Garmong bankruptcy plan. *See* 28 U.S.C. § 1334(b); *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988); *In re Wilshire Courtyard*, 729 F.3d 1279, 1289 (9th Cir. 2013). Therefore, the bankruptcy court lacked jurisdiction under 28 U.S.C. § 1334(b) over Garmong's state action. Because a party may remove a claim from state court under 28 U.S.C. § 1452 only if the district court "has jurisdiction of such claim or cause of action under section 1334," the district court here lacked removal jurisdiction over Garmong's state court action. Even assuming the bankruptcy court retained jurisdiction over a settlement agreement between Garmong and MCL, *cf. Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 376-77, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994), such retention does

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Appendix C

not confer removal jurisdiction under 28 U.S.C § 1452, and the parties fail to identify any other statutory basis for removal, *see Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, 107 S. Ct. 2425, 96 L. Ed. 2d 318 (1987) (holding that under the well-pleaded complaint rule, the plaintiff is the “master of the claim” and can generally avoid federal jurisdiction if a federal question does not appear on the face of the complaint).

We therefore reverse and remand with instructions that the district court grant Garmong’s motion to remand the case to state court.

REVERSED AND REMANDED.

In re: Linda Garmong, et al v. Maupin, Cox & Legoy,
No. 20-17520

VANDYKE, Circuit Judge, concurring in the judgment.

I concur in the result only.

11a

**APPENDIX D — ORDER OF THE UNITED
STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT, FILED NOVEMBER 22, 2023**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-15885

D.C. No. 3:19-cv-00490-RCJ
District of Nevada,
Reno

In re: LINDA L. GARMONG,

Debtor,

GREGORY O. GARMONG,

Appellant,

v.

MAUPIN, COX & LEGOY,

Appellee.

November 22, 2023, Filed

Before: RAWLINSON and OWENS, Circuit Judges, and
PREGERSON,* District Judge.

* The Honorable Dean D. Pregerson, United States District
Judge for the Central District of California, sitting by designation.

Appendix D

ORDER

The panel unanimously voted to deny the Petition for Rehearing.

Judges Rawlinson and Owens voted to deny, and Judge Pregerson recommended denying, the Petition for Rehearing En Banc.

The full court has been advised of the Petition for Rehearing En Banc, and no judge of the court has requested a vote.

The Petition for Panel Rehearing; Petition for Rehearing En Banc, filed October 25, 2023, is DENIED. No further petitions for rehearing will be accepted in this appeal.

**APPENDIX E — RELEVANT
STATUTORY PROVISION**

28 U.S.C.A. § 1447

§ 1447. Procedure after removal generally

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a) [28 USC § 1446(a)]. If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.