

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TOWNLIN ASSOCIATES	:	CIVIL ACTION
	:	
v.	:	
	:	
SCOTT TURNER and	:	NO. 98-3270
ROSALIND KEEYS	:	

**ORDER**

AND NOW, this \_\_\_\_ day of October, 1998, upon consideration of plaintiff's motion to remand this case to the Montgomery County Court of Common Pleas, defendants' reply, and the response thereto,<sup>1</sup> IT IS HEREBY ORDERED that the motion is GRANTED,<sup>2</sup> and the case is

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<sup>1</sup> On May 27, 1998, Townline Associates ("Townline") filed a landlord-tenant complaint against Scott Turner and Rosalind Keeys, seeking possession of their apartment, past due rent, and attorney's fees and costs. Townline claimed that Turner and Keeys were required to vacate the apartment because their lease had been validly terminated on its expiration date of November 30, 1997. Turner and Keeys filed an answer with a counterclaim alleging racial discrimination on June 24, 1998, and then removed the case to this court on June 25, 1998. The defendants' counterclaims allege that Townline failed to renew their lease because they are black, and assert that Townline has violated their rights under the Fair Housing Act, 42 U.S.C. § 3604 (a) (1994 & Supp. 1998) (preventing housing discrimination "because of race"), and the Civil Rights Act, 42 U.S.C. § 1982 (1994 & Supp. 1998) (providing all citizens with the same right to lease or purchase property "as is enjoyed by white citizens").

<sup>2</sup> A defendant may remove a case from state court to federal court if the federal court would have had original jurisdiction over the case. See 28 U.S.C. § 1441 (a) (1994). As there is no diversity of citizenship between the parties, the defendants may only remove if this court has federal question jurisdiction over the action. See Wright v. London Grove Township, 567 F. Supp. 768, 770 (E.D. Pa. 1983), aff'd, 729 F.2d 1450 (3d Cir.), cert. denied, 469 U.S. 842 (1984). Usually, the federal question serving as the basis for jurisdiction must appear on the face of the complaint. See Oklahoma Tax Comm'n v. Graham, 489 U.S. 838, 840 (1989) (referring to this standard as the "well-pleaded complaint" rule). Thus, defenses or counterclaims based on federal statutory or constitutional law may not normally serve as the jurisdictional basis for removal. See; id. at 842 (defense implicating federal law is insufficient); Ivy Club v. Edwards, 943 F.3d 270, 279 (3d Cir. 1991), cert. denied, 503 U.S. 914 (1992) (same); Takeda v. Northwestern National Life Ins. Co., 765 F.2d 815, 822 (9th Cir. 1985) (counterclaim raising federal question is insufficient). As the complaint here raises only state law claims, and

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questions of federal law appear only in the defendants' counterclaims, removal is improper under the well-pleaded complaint rule.

Defendants contend that they are entitled to remove this action based on a statutory exception to the well-pleaded complaint rule which permits the removal of actions "[a]gainst any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States." 28 U.S.C. § 1443 (1) (1994). Defendants are entitled to remove cases under this section only if they comply with the two-part test adopted by the Supreme Court in Georgia v. Rachel, 384 U.S. 780, 788 (1966), which requires the defendants to demonstrate "both that the right upon which they rely is a 'right under any law providing for . . . equal civil rights,' and that they are 'denied or cannot enforce' that right in the [state] courts." See also Davis v. Glanton, 107 F.3d 1044, 1047 (3d Cir.), cert. denied, 118 S. Ct. 159 (1997) (applying Georgia test).

Because of § 1443 (1)'s historical pedigree, the Supreme Court concluded that it only provided a basis for removing claims under "any law providing for specific civil rights in terms of racial equality." Georgia, 384 U.S. at 792. The Fair Housing Act, because it specifically prevents discrimination in housing "on the basis of race," is an "equal civil rights" statute and thus satisfies the first prong of the Georgia test. See Sofarelli v. Pinellas County, 931 F.2d 718, 724-25 (11th Cir. 1991) (counterclaims under Fair Housing Act were properly removed); Water's Edge Habitat, Inc. v. Pulipati, 837 F. Supp. 501, 504-05 (E.D.N.Y. 1993) (though Fair Housing Act guarantees "equal civil rights" as required by § 1443 (1), FHA claim alleging discrimination on basis of familial status does not support removal under that section). Similarly, § 1982 is an "equal civil rights" statute within the meaning of § 1443 (1) because it mandates that all citizens be afforded the same housing rights that white citizens enjoy.

Though Turner and Keeys can meet the first prong of the Georgia test, they cannot show that they are "denied or cannot enforce" their right to be free from racially-motivated housing discrimination in state court. Defendants contend that they cannot obtain relief in state court because "practically speaking, there is no defense to eviction actions," and "Pennsylvania law does not allow any defense to termination of lease terms." Defendants' Memorandum of Law, at 3. Defendants have failed to provide authority to support their assertion that the state court will refuse to consider their counterclaims alleging discrimination, nor can this court find support for that assertion. To the contrary, this court has identified several instances where Pennsylvania courts have addressed tenants' counterclaims in eviction proceedings. See Mid-Island Properties, Inc. v. Manis, 570 A.2d 1070, 1072 (Pa. Super. Ct. 1990) (considering tenant's retaliatory eviction counterclaims in eviction action); Friedman v. Alleghany Cty. Health Dep't, 293 A.2d 635, 638 (Pa. Commw. Ct. 1972) (dismissing tenant's claim for injunctive relief because his defenses concerning the protection of the Rent Withholding Act "can be raised in any lawsuit brought to evict him"); Hopkinson Associates v. Greenburg, No. 76-11-2603585, 1978 Phila. Cty. Rptr. LEXIS 45, at \*8-9 (Pa. Ct. C.P. May 8, 1978) (entertaining civil rights claims under § 1983 in eviction proceeding and noting that tenant's counterclaims "speak[] in language which is unmistakably that of federal jurisdiction under 28 U.S.C. § 1343 (3)"). Townline also admits that the state court may entertain the defendants' counterclaims upon remand. See Plaintiff's Reply Memorandum, at 2. Moreover, because securing racial equality in the provision of housing is a protected public policy of Pennsylvania, there is no reason to assume that state judges will disregard its importance. See 43 Pa. Cons. Stat. Ann. § 952 (b) (West 1991 & Rev.

REMANDED to the Montgomery County Court of Common Pleas.

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William H. Yohn, Jr., J.

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Supp. 1998) (“[i]t is hereby declared to be the public policy of this Commonwealth . . .to secure housing accommodation and commercial property regardless of race . . .”).

Turner and Keeys are also unable to demonstrate that “the mere pendency of the state court [] action violates their federal civil rights.” Davis, 107 F.3d at 1050. As tenants, they have no absolute right to remain in their apartment if their lease has been validly terminated, and thus, they are not immune to an eviction action brought in state court. See Rodgers v. Rucker, 835 F. Supp. 1410, 1412 (N.D. Ga. 1993) (remanding eviction action to state court because tenant raising Fair Housing Act and § 1982 counterclaims could not meet the second prong of Georgia). In Sofarelli, on which the defendants rely heavily, the court found that the parties did not dispute that the counterclaims in the state court suit, if proved, established that the state court suit itself was the action violating the defendant’s rights under the Fair Housing Act. Sofarelli, 931 F.2d at 724-25. In contrast, the parties here do contest this issue, and the act which Turner and Keeys claim violated their rights was Townline’s decision not to renew their lease, rather than Townline’s decision to sue to enforce a valid judgment for possession obtained in state court. Because Turner and Keeys’ counterclaims can be heard in state court, the loss of their federal rights is not “inevitable irrespective of the outcome of the state proceeding,” and thus do not support removal under § 1443 (1). Water’s Edge, 837 F. Supp. at 506 (citing Strauder v. West Virginia, 100 U.S. 303 (1880); Virginia v. Rives, 100 U.S. 313 (1880)); City of Greenwood v. Peacock, 384 U.S. 808, 834 (1966).