

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

HOPKINS PROPERTIES, LLC,  
VOLUSIA BROADCASTING  
COMPANY, LLC, THE  
PERFORMANCE GROUP, INC., and  
JOSEPH H. HOPKINS,

Plaintiffs,

v.

Case No: 6:13-cv-349-Orl-28TBS

KEVIN GEDDINGS, GLK  
CONSULTANTS, LLC, JOSEPH  
MILES, DAYTONA REPAIR PO, INC.,  
GO TO STUGIS, LLC, GREGORY  
NEWLUN, CRI-MO, LLC, and BRIAN  
NEWLUN,

Defendants.

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ORDER

This case is before the Court on Plaintiffs' Motion to Remand (Doc. 27) and the Opposition (Doc. 30) filed by Defendants Kevin Geddings and GLK Consultants, LLC. Plaintiffs originally brought suit against Defendants in state court, asserting various claims under state law. (See Verified Compl., Doc. 3). Defendant GLK Consultants, LLC then filed a counterclaim for Foreclosure of a Preferred Ship's Mortgage and removed the case to this court on the basis that its foreclosure counterclaim arises under 46 U.S.C. § 31325. (See Notice of Removal, Doc. 1, ¶ 5 (stating that "[t]his action is a civil action for which this Court has original jurisdiction under 28 U.S.C. § 1441(c) in that it arises under 46 U.S.C. § 31325(c)"). Geddings and GLK Consultants, LLC argue:

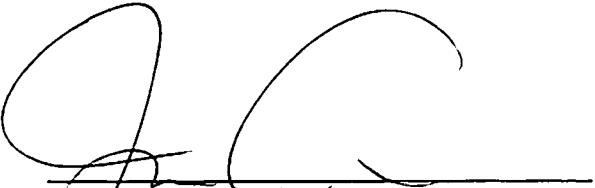
The basis for the removal of this case to Federal Court was premised upon the Amended Counterclaim which purports to allege an *in rem* action . . . to foreclose upon a preferred ship's mortgage and note pursuant to 46 U.S.C. 31325(b)(1), 46 U.S.C. 31325(b)(2)(A), [and] 46 U.S.C. 31325(b)(2)(B), and therefore jurisdiction was proper and is exclusive in this Court pursuant to 46 U.S.C. 31325(c).

(Opp'n Mot. Remand, Doc. 30 ¶ 1).

As Plaintiffs point out, however, federal jurisdiction cannot rest upon a counterclaim. The Supreme Court has squarely held that "a federal counterclaim, even when compulsory, does not establish 'arising under' jurisdiction." Vaden v. Discover Bank, 556 U.S. 49, 60 (2009); see also Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 831 (2002).

Accordingly, Plaintiffs' Motion to Remand is **GRANTED** and this case is **REMANDED** to the Circuit Court, Seventh Judicial Circuit, in and for Volusia County, Florida, Case Number 2012-32676-CICI. All other pending motions are **DENIED** as moot. Additionally, this Court will retain jurisdiction solely to decide the issue of any attorney's fees that Plaintiffs may seek.

**DONE and ORDERED** in Orlando, Florida on June 13, 2013.

  
JOHN ANTOON II  
United States District Judge

Copies furnished to:

Counsel of Record