





IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JOEL REYES MARTINEZ  
*Plaintiff*

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v.

Cause No. 4:22-cv-3173

BANC OF AMERICA FUNDING  
CORPORATION 2006-7, U.S. BANK  
NATIONAL ASSOCIATION,  
AS TRUSTEE  
*Defendant*

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**DEFENDANT’S NOTICE OF REMOVAL**

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TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS:

COME NOW Defendant, Banc of America Funding Corporation 2006-7, U.S. Bank National Association, As Trustee, and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, gives notice that it hereby removes the action styled *Joel Reyes Martinez v Banc of America Funding Corporation 2006-7, U.S. Bank National Association, As Trustee*, Cause No. 2022-55355 – In the 127<sup>th</sup> Judicial District Court of Harris County, Texas (the “State Court Action”), to the United States District Court for the Southern District of Texas, Houston Division. Defendant provides the following in support of this removal:

**I.**  
**REQUIREMENTS FOR REMOVAL**

1. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process and pleadings in the State Court Action are being filed along with this Notice of Removal.

2. This Court has original jurisdiction of this suit based upon diversity jurisdiction under 28 U.S.C. § 1332(a). With certain limitations, any civil action brought in a state court may be removed to the district court of the United States for the district and division that encompasses the county wherein the action is pending. *See* 28 U.S.C. § 1441. The Houston Division of the Southern District of Texas is the proper court for removal from a district court in Harris County, Texas. *See* 28 U.S.C. § 124(b)(2).

3. As required by 28 U.S.C. § 1446(d), the removing Defendant is promptly giving all parties written notice of the filing of this Notice of Removal and will promptly file a notice of removal with the Clerk of the 127th Judicial District Court in Harris County, Texas.

## **II.** **REMOVAL IS TIMELY**

4. Plaintiff Joel Reyes Martinez filed their Original Petition and Application for Temporary Restraining Order on September 1, 2022. This removal is filed within thirty days of the filing of the suit and is timely under 28 U.S.C. § 1446(b).

## **III.** **DIVERSITY JURISDICTION**

### **A. All parties are diverse**

5. **Joel Reyes Martinez.** Plaintiff, Joel Reye Martinez, is an individual citizen and resident of Harris County, Texas.

6. **Banc of America Funding Corporation 2006-7, U.S. Bank National Association, As Trustee.** Banc of America Funding Corporation 2006-7, U.S. Bank National Association, As Trustee. National bank citizenship is determined by the state in which its main office, as designated in the articles of incorporation, is located. *Wachovia Bank N.A. v. Schmidt*,

546 U.S. 303, 307, 126 S. Ct. 941, 163 L. Ed. 2d 797 (2006). U.S. Bank's main office is located in Ohio, and therefore U.S Bank is a citizen of Ohio for purposes of diversity.

7. As to all properly joined parties in this lawsuit, there is complete diversity of citizenship. The District Courts of the United States have jurisdiction over this action based on diversity of citizenship among the properly joined parties so long as the amount in controversy requirement is also satisfied.

**B. The amount in controversy exceeds the jurisdictional minimum amount of \$75,000.00**

8. Plaintiff's Original Petition seeks injunctive and declaratory relief regarding the property at issue and states the Plaintiff has a sales contract for the property for \$135,000 (Plaintiff's Original Petition Page 3 at ¶ 10 and Exhibit A). "It is well established that 'when equitable and injunctive relief is sought 'the amount in controversy is measured by the value of the object of the litigation,' and '[t]he value of that right is measured by the losses that will follow.'" *Berry v. Chase Home Fin., LLC*, No. C-09-116, 2009 U.S. Dist. LEXIS 77124, 2009 WL 2868224, at \*2-3 (S.D. Tex. Aug. 27, 2009) (Rainey, J.); *Waller v. Prof'l Ins. Corp.*, 296 F.2d 545, 547-48 (5th Cir. 1961) ("When the validity of a contract or a right to property is called into question in its entirety, the value of the property controls the amount in controversy.").

9. The Fifth Circuit and district courts in each district of the state hold that the amount in controversy in suits seeking to prevent or rescind a foreclosure is the value of the property that is the object of the litigation. *Farkas v. GMAC Mortgage, LLC*, 737 F.3d 338, (5th Cir. 2013); *Green v. Bank of America, N.A.*, No. 4:13CV92, 2103 U.S. Dist. LEXIS 66320, at \*4 (E.D. Tex. 2013); *McDonald v. Deutsche Bank Nat'l Tr. Co.*, No. 3:11-CV-2691-B, 2011 U.S. Dist. LEXIS 146040 (N.D. Tex. Dec. 20, 2011); *Martinez v. BAC Home Loans Servicing, LP*, 777 F. Supp. 2d 1039, 1047-48 (W.D. Tex. 2010) ("[T]he value of the property is the object of

the litigation for the purposes of determining whether the amount-in-controversy requirement has been met so long as the plaintiff is seeking injunctive relief to prevent or undo the lender's sale of the property."); *Berry v. Chase Home Finance, LLC*, No. C-09-116, 2009 WL 2868224, at \*3 (S.D. Tex. Aug. 27, 2009)(holding that the value of declaratory and injunctive relief is the current appraised fair market value of the property, because "[a]bsent judicial relief, Plaintiff could be divested of all right, title and interest to the Property"). Because Plaintiff seeks to avoid foreclosure of the Property through injunctive relief, the amount in controversy is the value of the Property.

10. The value of the Property according to the Harris County Appraisal District for 2022 is no less than \$256,961.00 (Exhibit D to this Notice of Removal).

11. Because Plaintiff's claims seek injunctive and declaratory relief concerning the property which Plaintiff contends is worth at least \$135,000, the amount of Plaintiff's claims exceeds \$75,000.00.

#### **IV.** **JURY DEMAND**

12. Plaintiff has not made any known jury demand in the State Court Action.

#### **V.** **CONCLUSION**

13. Because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00, diversity jurisdiction exists and this Court has subject matter jurisdiction over all of Plaintiff's claims.

**VI.**  
**PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendant, Banc of America Funding Corporation 2006-7, U.S. Bank National Association, As Trustee, respectfully files this Notice of Removal thereby removing this action from the 127th Judicial District Court of Harris County, Texas, to this Court.

Respectfully submitted,

By: /s/ William Jennings

William Jennings  
State Bar No. 24127205  
SDTX No. 3747546  
H. Gray Burks, IV  
State Bar No. 03418320  
The Law Office of Gerald M. Shapiro LLP  
13105 Northwest Freeway, Suite 960  
Houston, Texas 77040  
Telephone: (713) 462-2565  
Facsimile: (847) 879-4823  
Email: [wjennings@logs.com](mailto:wjennings@logs.com)  
Email: [gburks@logs.com](mailto:gburks@logs.com)

Attorneys for Banc of America Funding  
Corporation 2006-7, U.S. Bank National  
Association, As Trustee.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2022 a true and correct copy of the foregoing was sent to:

Jason A. LeBoeuf  
LeBoeuf Law Firm PLLC  
675 Town Square Blvd., Suite 200  
Building 1A  
Garland, Texas 75040  
Telephone: (214) 206-7423  
Facsimile: (214) 730-5944  
Via email to [jason@leboeufllawfirm.com](mailto:jason@leboeufllawfirm.com)

/s/ William Jennings  
William Jennings



### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

William Jennings on behalf of William Jennings

Bar No. 24127205

wjennings@logs.com

Envelope ID: 68338722

Status as of 9/16/2022 1:35 PM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jason LeBoeuf		jason@LeBoeufLawFirm.com	9/16/2022 1:28:53 PM	SENT
William Jennings		wjennings@logs.com	9/16/2022 1:28:53 PM	SENT