

**ATTORNEYS FOR DEFENDANTS PHH
MORTGAGE CORPORATION AND
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2023, a copy of the above and foregoing was filed electronically with the Clerk of Court. Notice of this filing has been forwarded to all parties via email and first class mail.

Anthony Welch
dba Superior Consulting Group
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Karlton Woodson
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By: /s/ Kathryn B. Davis
KATHRYN B. DAVIS

Unofficial Copy Office of Marilyn Burgess District Clerk

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.

Angelia Foster on behalf of Kathryn Davis
Bar No. 24050364
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Envelope ID: 81882271
Filing Code Description: Notice
Filing Description: Notice of Removal to Federal Court
Status as of 11/21/2023 4:13 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Anthony Welch		anthonywelch562@gmail.com	11/21/2023 4:10:03 PM	SENT
Kasey Davis		kdavis@mcglinchey.com	11/21/2023 4:10:03 PM	SENT
Angelia Foster		afoster@mcglinchey.com	11/21/2023 4:10:03 PM	SENT

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EXHIBIT “A”

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2. In their Petition, Plaintiffs assert claims for: (a) statutory fraud; (b) common law fraud; (c) breach of contract; (d) quiet title; and (e) violation of the Texas Debt Collection Act. Plaintiffs also seek declaratory and injunctive relief related to the real property commonly known as 16107 Sheldon Ridge Way, Harris County, Houston, TX (the “*Property*”).

3. On August 31, 2023, the State Court entered an Order Granting Temporary Restraining Order. The State Court thereafter entered an Order Extending Temporary Restraining Order on September 7, 2023.

4. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, orders, and other papers filed in the State Court and obtained by Defendants are attached hereto and marked as composite **Exhibit A** and incorporated herein by reference.

II. TIMELINESS OF NOTICE OF REMOVAL

5. As of the date of this notice, Defendants have not been served with a citation. Therefore, pursuant to 28 U.S.C. § 1446(b)(1), this removal is timely.¹

III. BASIS FOR REMOVAL: DIVERSITY JURISDICTION

6. This Court has original jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1332 because it is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs, as discussed more fully below.

A. Complete Diversity Exists.

7. For purposes of diversity, the citizenship of an individual is determined by their state of domicile.² Woodson alleges that he is a resident of Harris County, Texas.³ By virtue of this allegation, Woodson is a citizen of Texas for purposes of diversity jurisdiction.⁴

¹ See 28 U.S.C. § 1446(b)(1); see also *Thompson v. Deutsche Bank Nat'l Tr. Co.*, 775 F.3d 298, 303 (5th Cir. 2014) (the federal removal and jurisdiction statutes “clearly provide that a defendant’s right to removal runs from the date on which it is formally served with process.”) (citations omitted).

² See *Stine v. Moore*, 213 F.2d 446, 448 (5th Cir. 1954).

³ See Petition, ¶ 2.

8. Under Texas law, a sole proprietorship has no legal existence apart from its owners.⁵ Thus, a sole proprietorship lacks the capacity to sue independent from its sole proprietor.⁶ Plaintiffs allege that Superior Consulting is a sole proprietorship.⁷ Because Superior Consulting has no legal existence or capacity to sue under Texas law, its citizenship can be disregarded. Even if Superior Consulting's citizenship were considered, there is still complete diversity between the parties. Indeed, the citizenship of a sole proprietorship is determined by the citizenship of its owner.⁸ Upon information and believe, the sole proprietor of Superior Consulting is Anthony Welch, who is a citizen of the State of Texas.⁹

9. PHH is a New Jersey Corporation with its principal place of business located at 1 Mortgage Way, Mt. Laurel, New Jersey 08054. A corporation is a citizen of the state where it is incorporated and the state where it has its principal place of business.¹⁰ Therefore, for diversity purposes, PHH is a citizen of New Jersey.

10. MERS is a corporation incorporated in the State of Delaware. Its principal place of business is Atlanta, Georgia. As noted above, a corporation is a citizen of the state where it is incorporated and the state where it has its principal place of business.¹¹ Therefore, for diversity purposes, MERS is a citizen of Delaware and Georgia.

⁴ *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011) (For purposes of determining citizenship, “[e]vidence of a person’s place of residence [] is prima facie proof of his domicile.”).

⁵ See *Brantley v. Kuntz*, 98 F.Supp.3d 884, 887 (W.D. Tex. 2015).

⁶ See *Horie v. Law Offices of Art Dula*, 560 S.W.3d 425, 434 (Tex. App.—Houston [14th Dist.] 2018) (“[T]he assumed name of a sole proprietorship is not a separate legal entity or even a different capacity of the individual sole proprietor.”).

⁷ See Petition, ¶ 2.

⁸ See *Nyamtsu v. Melgar*, 2013 WL 6230454, at *3 (S.D. Tex. 2013).

⁹ See Petition, p. 12 (reflecting that Anthony Welch does business as Superior Consulting and is identifying a Houston, Texas, address).

¹⁰ 28 U.S.C. § 1332(c)(1); *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 88-90 (2005).

¹¹ See *id.*

11. Guild Mortgage Company (“**Guild**”) is a California limited liability company. The citizenship of a limited liability company is determined by the citizenship of its members.¹² The sole member of Guild is Guild Holdings Company (“**GHC**”). GHC is incorporated in Delaware and has its principal place of business in San Diego, California. Therefore, for diversity purposes, Guild is a citizen of California and Delaware.¹³ Regardless, Guild’s citizenship is irrelevant and may be disregarded because Guild is a nominal party and is not a real and substantial party to the controversy as it has no interest in the Property. *See Larroquette v. Cardinal Health 200, Inc.*, 466 F.3d 373, 376 (5th Cir. 2006); *Corfield v. Dallas Glen Hills LP*, 355 F.3d 853, 857 (5th Cir. 2003)(“The ‘citizens’ upon whose diversity a plaintiff grounds jurisdiction must be real and substantial parties to the controversy.”).

12. Because Plaintiffs are citizens of Texas and Defendants and Guild are not citizens of Texas, complete diversity of citizenship exists between Defendants, Guild, and Plaintiffs.

B. The amount in controversy exceeds \$75,000.00.

13. Although Defendants deny that Plaintiffs are entitled to recover any amount, and specifically deny that Plaintiffs are entitled to any relief, Plaintiffs seek declaratory relief, quiet title, and injunctive relief with respect to the Property. When this type of relief is sought, the amount in controversy is measured by the value of the property at issue.¹⁴ According to the Harris County Appraisal District’s records, the total value of the Property is at least \$232,089.¹⁵ Therefore, based on the relief Plaintiffs seek in the Petition, the amount in controversy exceeds \$75,000.00.

¹² *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008).

¹³ *See* 11 U.S.C. § 1332(c)(1).

¹⁴ *Nationstar Mortg. LLC v. Knox*, 351 F. App’x 844, 848 (5th Cir. 2009); *Waller v. Pro Ins. Corp.*, 296 F.2d 545, 547 (5th Cir. 1961).

¹⁵ *See* Harris County Appraisal District Summary attached as **Exhibit B**. The Court may take judicial notice of this document because it is a public record and the information it provides is readily ascertainable and the source—the Harris County Appraisal District—cannot reasonably be questioned. *See Funk v. Stryker*, 631 F.3d 777, 783 (5th Cir. 2011).

IV. VENUE

14. Venue for this removal is proper in the United States District Court for the Southern District of Texas, Houston Division, because this district and division includes Harris County, Texas, which is the location of the pending State Court action.¹⁶

V. ADDITIONAL REQUIREMENTS

15. Written Notice of Removal will be provided to Plaintiffs and filed with the District Clerk of Harris County, Texas.

16. In the event that Plaintiffs seek to remand this case, or the Court considers remand *sua sponte*, Defendants respectfully request the opportunity to submit such additional argument or evidence in support of removal as may be necessary.

WHEREFORE, having satisfied the requirements for removal, Defendants give notice that Cause No. 2023-57379, originally filed in the 152nd Judicial District, Harris County, Texas, has been removed to this Court.

Respectfully submitted,

By: /s/ Kathryn B. Davis

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¹⁶ See 28 U.S.C. § 1441(a); 28 U.S.C. § 124(b)(2) (stating that the Houston Division of the Southern District includes Harris County).

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