

I. STATE COURT ACTION

1. On January 17, 2024, Plaintiffs Avery Shepherd and Ninora Shepherd (“Plaintiffs”) filed their *First Amended Petition*¹ (the “Complaint”) in the 434th Judicial District Court of Fort Bend County, Texas, in an action styled *Deutsche Bank National Trust Company, as Trustee for Argent Securities Inc., Asset-Backed Pass Through Certificates, Series 2005-W2 vs. PHH Mortgage Corporation*, under Cause No. 23-DCV-310977 (the “State Court Action”).

2. In the State Court Action, Plaintiffs seek to preclude the foreclosure sale of real property located at 31 Pembroke Street, Sugar Land, Texas 77479 (the “Property”) set for December 5, 2023.² Plaintiffs allege that PHH wrongfully breached a trial payment program (“TPP”) that should have resulted in a permanent loan modification when PHH misrepresented that Plaintiffs failed to comply with certain payment obligations.³ In connection with these allegations, Plaintiffs assert claims for breach of contract, negligent misrepresentation, fraud by non-disclosure, and violations of the Real Estate Settlement Procedures Act (“RESPA”).⁴ Plaintiffs seek unspecified actual damages, exemplary damages, attorneys’ fees, and court costs.⁵

3. A hearing on Plaintiffs’ Application for Temporary Restraining Order was held on December 5, 2023, at 9:00 a.m.⁶ Plaintiffs’ request for a temporary restraining order was denied.⁷

¹ Plaintiffs filed their *Original Petition and Application for Temporary Restraining Order* on December 1, 2023.

² Compl., *See generally*.

³ Compl., ¶¶ 16-22.

⁴ Compl., ¶¶ 25– 69.

⁵ Compl., Prayer for Relief.

⁶ *See* Ex. C, p. 3.

⁷ *Id.*

4. Defendants have not yet been properly served the Complaint or Plaintiffs' initial pleading.⁸ Thus, this Notice of Removal is timely under 28 U.S.C. § 1446(b).⁹

5. As discussed below, Defendants removed the State Court Action to this Court on the basis of diversity, federal question, and supplemental jurisdiction.

II. PROCEDURAL REQUIREMENTS

6. This action is properly removed to this Court, as the State Court Action is pending within this district and division. 28 U.S.C. §§ 124(b)(2), 1441, 1446(a).

7. The United States District Court for the Southern District of Texas, Houston Division has original jurisdiction over this action based on diversity, federal question, and supplemental jurisdiction, as set forth below.

8. Pursuant to 28 U.S.C. § 1446(a) and Southern District of Texas Local Rule 81, this Notice of Removal is accompanied by copies of the following:

Exhibit A Index of Matters Being Filed.

Exhibit B Civil Cover Sheet.

Exhibit C State Court Action Docket Sheet/Signed Court Order.

Exhibit D Plaintiffs' First Amended Petition.

Exhibit E List of All Counsel of Record.

Exhibit F Fort Bend Central Appraisal District Real Property Details.

⁸ Deutsche Bank and PHH are non-resident defendants with designated registered agents for service of process in Texas. Defendants were improperly served *Plaintiffs' Original Petition and Application for Temporary Restraining Order* via the Texas Secretary of State, rather than their registered agent, on December 8, 2023. Plaintiffs' have not yet served Defendants with their amended Complaint filed on January 17. Thus, this Notice of Removal is timely filed because Defendants have not been properly served "a copy of the **initial** pleading" (or the live pleading), per FRCP 1446(b)(1). *See* Ex. C and Ex. G.

⁹ Per FRCP 1441(b)(1), Defendants must remove the case to federal court within 30 days of service of the initial pleading. Defendants were not properly served the initial pleading through their registered agent. Nevertheless, Defendants timely file this notice of removal despite Plaintiffs' failure to effectuate service of process.

Exhibit G Service of Process (Texas Secretary of State).

9. Simultaneously with the filing of this Notice of Removal, Defendants are: (1) serving Plaintiffs with a copy of this Notice of Removal. 28 U.S.C. § 1446(d).

III. DIVERSITY JURISDICTION

10. Where there is complete diversity among the parties and the amount in controversy exceeds \$75,000, an action may be removed to federal court. *See* 28 U.S.C. §§ 1332(a), 1441(a). Complete diversity exists in this case because neither Deutsche Bank nor PHH is a citizen of Texas or of the same state as Plaintiffs. *See Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005). The amount-in-controversy requirement is also satisfied as outlined below.

A. DIVERSITY OF CITIZENSHIP

11. For purposes of diversity jurisdiction, “[a] natural person is considered a citizen of the state where that person is domiciled, that is, where the person has a fixed residence with the intent to remain there indefinitely.” *Margetis v. Ray*, No. 3:08-CV-958-L, 2009 WL 464962, *3 (N.D. Tex. Feb. 25, 2009) (citing *Freeman v. Northwest Acceptance Corp.*, 754 F.2d 553, 555–56 (5th Cir. 1985)). Plaintiffs are natural persons and have claimed Fort Bend County, Texas, as their residence and domicile.¹⁰ Accordingly, Plaintiffs are citizens of Texas for diversity purposes.

12. PHH is a New Jersey corporation with its principal place of business located in Mt. Laurel, New Jersey. A corporation is a citizen of the state where it is incorporated and the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 88–89 (2005). Therefore, for diversity purposes, PHH is a citizen of New Jersey.

13. With respect to Deutsche Bank (as Trustee), the citizenship of the Trustee controls the citizenship of the trust for diversity purposes. *See Wells Fargo Bank, N.A. v. Am. Gen. Life Ins.*

¹⁰ Compl., ¶¶ 1-2.

Co., 670 F. Supp. 2d 555, 561 (N.D. Tex. 2009) (“[T]he citizenship of a trust, for diversity jurisdiction purposes, is determined by the citizenship of its trustee.”) (citing *Navarro Say. Ass’n v. Lee*, 446 U.S. 458, 461 (1980), and *Bass v. Int’l Bhd. of Boilermakers*, 630 F.2d 1058, 1067 n.17 (5th Cir. 1980)). As a national banking association organized under federal law, Deutsche Bank (as Trustee) for diversity purposes, “is a citizen of the State in which its office, as set forth in its Articles of Association, is located.” *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 202, 307 (2006). The main office of Deutsche Bank (as Trustee) is located in New York. Therefore, Deutsche Bank (as Trustee) is a citizen of New York for diversity purposes, and consequently the trust is a citizen of New York for diversity purposes. 28 U.S.C. § 1348; *Wachovia Bank*, 546 U.S. at 307. *See Bynane v. Bank of New York Mellon, as Trustee*, 866 F.3d 351, 356 (5th Cir. 2017).

14. As shown herein, *supra*, there is complete diversity between Plaintiffs and the Defendants, Deutsche Bank and PHH. *See* 28 U.S.C. § 1332(c)(1).

B. AMOUNT IN CONTROVERSY

15. Where a defendant can show, by a preponderance of evidence, that the amount in controversy more likely than not exceeds the jurisdictional minimum, removal is proper. *White v. FCI U.S.A., Inc.*, 319 F.3d 672, 675–76 (5th Cir. 2003). A defendant can meet this burden if it is apparent from the face of the petition that the claims are likely to exceed \$75,000, or, alternatively, if the defendant introduces other evidence to show that the amount in controversy more likely than not exceeds \$75,000. *See St. Paul Reins. Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *Berry v. Chase Home Fin., LLC*, No. C-09-116, 2009 WL 2868224, at *2 (S.D. Tex. Aug. 27, 2009) (mem. op.).

16. From a review of the Complaint, it is apparent that the amount at issue more likely than not exceeds \$75,000, exclusive of interest and costs. Plaintiffs seek unspecified actual and exemplary damages, attorneys' fees, and court costs.¹¹

17. "In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation." *Farkas v. GMAC Mortg., LLC*, 737 F.3d 338, 341 (5th Cir. 2013) (citing *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 347 (1977)). Specifically, the *Farkas* court held that: "[i]n actions enjoining a lender from transferring property and preserving an individual's ownership interest, it is the property itself that is the object of the litigation; the value of that property represents the amount in controversy." *Id.* (citing *Garfinkle v. Wells Fargo Bank*, 483 F.2d 1074, 1076 (9th Cir. 1973)). Thus, "'when . . . a right to property is called into question in its entirety, the value of the property controls the amount in controversy.'" *Nationstar Mortg. LLC v. Knox*, 351 F. App'x 844, 848 (5th Cir. 2009) (quoting *Waller v. Prof'l Ins. Corp.*, 296 F.2d 545, 547–48 (5th Cir. 1961)); *see also* *Alsobrook v. GMAC Mortg., L.L.C.*, 541 F. App'x 340, 342 n.2 (5th Cir. 2013); *Copeland v. U.S. Bank Nat'l Ass'n*, 485 F. App'x 8, 9 (5th Cir. 2012) (relying on the value of the property to satisfy the amount in controversy in exercising diversity jurisdiction over appeal of foreclosure-related claims).

18. Here, the amount in controversy is readily apparent from the face of the Complaint. Plaintiffs seek to preclude Defendants from foreclosing on the Property.¹² As a result, the entire value of the Property is squarely at issue, and the current fair market value of the Property is therefore an appropriate measure of the amount in controversy. *Nationstar Mortg. LLC*, 351 F.

¹¹ Compl., Prayer for Relief.

¹² Compl., ¶ 24

App'x at 848; *Waller*, 296 F.2d at 547–48. According to the Fort Bend Central Appraisal District, this value for tax purposes is \$720,584.¹³ Therefore, the value of the Property independently and cumulatively satisfies the amount-in-controversy requirement. *See, e.g., Farkas*, 737 F.3d at 342–43.

19. Moreover, to determine the amount in controversy, the Court may consider actual damages and attorneys' fees. *White*, 319 F.3d at 675; *Greenberg*, 134 F.3d at 1253, n.7 (citing *Allstate Ins. Co. v. Hilbun*, 692 F. Supp. 698, 700 (S.D. Miss. 1988)); *Johnson v. Carmax Auto Superstore, Inc.*, Civ. A. No. SA–08–CA–820–FB, 2008 WL 5686083, at *3 (W.D. Tex. Dec. 22, 2008) (considering attorney's fees, common law damages, statutory damages, and treble damages in determining the amount in controversy). Here, Plaintiffs seek actual and exemplary damages, as well as attorneys' fees and costs.¹⁴

20. Based on the foregoing, it is apparent from the face of the Complaint and the current tax records for the Property that the value of the damages sought by Plaintiffs more likely than not exceeds the \$75,000 jurisdictional minimum.

21. Because there is complete diversity among the parties and because the amount in controversy requirement is satisfied, this Court has jurisdiction pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, removal is proper.

IV. FEDERAL QUESTION JURISDICTION

22. The district courts of the United States have original jurisdiction over all civil actions arising under the Constitution, laws, and treaties of the United States. *See* 28 U.S.C. §

¹³ Defendants respectfully requests that the Court take judicial notice of Exhibit F, pursuant to Federal Rule of Evidence 201. FED. R. EVID. 201. Defendants do not contend that this particular appraisal constitutes the most accurate valuation of the Property. Such appraisal is provided only for the purpose of establishing a base line value to prove that the amount in controversy requirement is satisfied. Furthermore, Defendants reserve the right to offer additional evidence of the Property's market value in the future.

¹⁴ Compl., Prayer for Relief

1331. A case may be removed to federal court if it could have been brought in federal court originally. *See* 28 U.S.C. § 1441; *see also Beneficial Nat’l Bank v. Anderson*, 539 U.S. 1, 6 (2003). A claim “arises under” federal law when either (1) the well-pleaded complaint establishes that federal law creates the cause of action; or (2) the plaintiff’s right to relief necessarily depends on the resolution of a substantial question of federal law. *See Singh v. Morris*, 538 F.3d 334, 338 (5th Cir. 2008) (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 27–28 (1983)); *see also Empire HealthChoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 690 (2006).

23. Removal of the State Court Action is proper under 28 U.S.C. §§ 1331 and 1441, as the case arises under the laws of the United States. Specifically, Plaintiffs allege violations of RESPA and Regulation X of the CFR.¹⁵ RESPA expressly grants this Court original jurisdiction to hear such a claim. *See* 12 U.S.C. § 2614 (any RESPA action “may be brought in any United States district court . . .”). Thus, Plaintiffs allege violations of federal law, and their right to relief will necessarily depend upon the resolution of federal law. Accordingly, this Court has jurisdiction based on federal question, and removal is proper in accordance with 28 U.S.C. § 1441(a) and 28 U.S.C. § 1331.

V. SUPPLEMENTAL JURISDICTION

24. This Court also has jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. § 1367(a). As noted by the Supreme Court, “[s]ection 1367(a) is a broad grant of supplemental jurisdiction over other claims within the same case or controversy, as long as the action is one in which the district courts would have had original jurisdiction.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 558 (2005); *see also State Nat’l Ins. Co. Inc. v. Yates*, 391

¹⁵ Comp., ¶¶ 33-40

F.3d 577, 579 (5th Cir. 2004) (explaining that 28 U.S.C. § 1367 grants the federal courts jurisdiction to hear “claims that do not independently come within the jurisdiction of the district court but form part of the same Article III “case or controversy”).

25. It is well established that federal district courts have supplemental jurisdiction over state law claims that share a “common nucleus of operative fact” with federal claims. *Jamal v. Travelers Lloyds of Tex. Ins. Co.*, 97 F. Supp. 2d 800, 805 (S.D. Tex. 2000) (quoting *City of Chicago v. Int’l Coll. of Surgeons*, 522 U.S. 156, 164-65 (1977)). This principle applies not only to cases originally brought in federal court, but also to those cases removed to federal court. *Id.* at 806. Here, Plaintiffs’ state law claims (breach of contract, negligent misrepresentation, and fraud by non-disclosure) share a common nucleus of operative facts with Plaintiffs’ federal RESPA claim in that Plaintiffs’ claims in this matter are all based on the same alleged wrongful conduct to foreclose the Property.¹⁶ Therefore, supplemental federal jurisdiction exists over Plaintiffs’ state law claims.

VI. RESERVATION OF RIGHTS

26. In filing this Notice of Removal, Defendants do not waive, and specifically reserve, any and all objections as to service, personal jurisdiction, defenses, rights, and motions.

VII. CONCLUSION

WHEREFORE, Defendants remove this action from the 434th Judicial District Court of Fort Bend County, Texas to the United States District Court for the Southern District of Texas, Houston Division, so that this Court may assume jurisdiction over the cause as provided by law.

¹⁶ Compl., *See generally*.

Respectfully submitted,

/s/ Taneska L. Jones

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**COUNSEL FOR DEFENDANTS
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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February 2024, a true and correct copy of the foregoing instrument was served on the following counsel of record *via ECF and/or email* according to the Federal Rules of Civil Procedure:

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