

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

**JEFF SAMUELS,**

**Plaintiff,**

v.

**AVT TITLE SERVICES, LLC,  
DEUTSCHE BANK NATIONAL  
TRUST CO., PHH MORTGAGE  
CORP., POWER DEFAULT SERVICES  
INC.**

**Defendants.**

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**CIVIL ACTION NO. 4:23-cv-4687**

**DEFENDANTS’ RESPONSE TO PLAINTIFF’S MOTION TO REMAND**

Defendants PHH Mortgage Corporation (“*PHH*”), Deutsche Bank National Trust Company, as Trustee for FFMLT TRUST 2004-FF3, Mortgage Pass-Through Certificates, Series 2004-FF3 (“*Deutsche Bank*”), and Power Default Services, Inc. (“*Power Default*”) file this Response to Plaintiff’s Motion to Remand [Dkt. 8]. Remand is improper because this Court has jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441(a) and (b) because: (1) there is complete diversity between Plaintiff and the properly named parties, and (2) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

**I. INTRODUCTION AND BACKGROUND**

1. Plaintiff filed this Complaint under Cause No. 2023-59141 in Harris County District Court styled *Jeff Samuels v. AVT Title Services, LLC, Deutsche Bank National Trust Co., PHH Mortgage Corp., and Power Default Services, Inc.*, seeking injunctive relief to prevent foreclosure of the real property commonly known as 14810 Winding Waters Drive, Cypress, Texas

77429 (the “*Property*”). Plaintiff alleges that a loan modification is under review and seeks injunctive relief to prevent the scheduled foreclosure sale.

2. PHH, Deutsche Bank, and Power Default removed the case to this Court on December 15, 2023 [Dkt. 1]. Plaintiff now seeks to remand this case back to state court [Dkt. 8]. Plaintiff contends that there is a lack of diversity between the parties, removal was untimely, and there is no federal question which would create a basis for federal question jurisdiction. Plaintiff does not take issue with the amount in controversy requirement for diversity jurisdiction.

## **II. ARGUMENTS AND AUTHORITIES**

### **A. Removal was timely.**

3. First, Plaintiff alleges that removal to federal court was untimely. Plaintiff alleges that “on September 1, 2023, Plaintiff filed and served his Application for Temporary Restraining Order and Injunctive Relief.”<sup>1</sup> However, PHH, Deutsche Bank, and Power Default were never served with process. Plaintiff provides no proof of service of process with his Motion to Remand to support his assertion that he served PHH, Deutsche Bank, and Power Default. Likewise, neither the docket for the state court action nor this action reflect any return of service for PHH, Deutsche Bank, or Power Default. Because PHH, Deutsche Bank, and Power Default were never served, their removal was timely pursuant to 28 U.S.C. § 1446(b)(1).<sup>2</sup>

### **B. PHH, Deutsche Bank, and Power Default removed the case based on diversity jurisdiction, not federal question jurisdiction.**

4. Next, Plaintiff asserts that “no federal question exists” and therefore “Defendant

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<sup>1</sup> Plain. Motion to Remand, Par. 9.

<sup>2</sup> 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) (citing *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48, 119 S.Ct. 1322, 143 L.Ed. 448 (1999) (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.”)).

cannot remove this matter on the basis of federal question.”<sup>3</sup> However, PHH, Deutsche Bank, and Power Default removed this case to federal court based on diversity jurisdiction, not federal question jurisdiction. Accordingly, this argument is misplaced.

**C. This Court has diversity jurisdiction because AVT Title Services, LLC and Power Default are both improperly joined parties whose citizenship is disregarded for diversity jurisdiction.**

5. Finally, Plaintiff argues that since Defendant AVT Title Services, LLC (“*AVT Title*”) is a citizen of Texas, there is not complete diversity of citizenship and therefore this Court lacks diversity jurisdiction.<sup>4</sup> However, as explained in detail in Defendants’ Notice of Removal, AVT Title and Power Default are improperly joined parties and are therefore disregarded for purposes of diversity jurisdiction. Under Section 28 U.S.C. § 1441(b), while complete diversity of citizenship must exist between plaintiff and all defendants to establish federal subject matter jurisdiction, only the citizenship of properly joined parties is considered for federal subject matter jurisdiction.<sup>5</sup> The doctrine of improper joinder “prevents defeat of federal removal jurisdiction premised on diversity jurisdiction by an improperly joined, non-diverse defendant.”<sup>6</sup> Citizenship of an improperly joined defendant is disregarded entirely in determining whether complete diversity exists.<sup>7</sup>

6. As the Fifth Circuit held in *Int’l Energy Ventures Management, LLC v. United Energy Group, LTD.*, federal courts should use the federal pleading standard when conducting the rule 12(b)(6)-type analysis for an improper joinder claim to determine if the plaintiff has stated a

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<sup>3</sup> Complaint, ¶ 15.

<sup>4</sup> Complaint, ¶ 17.

<sup>5</sup> 28 U.S.C. § 1441(b); *Smallwood v. Illinois Cent. R. Co.*, 385 F.3d 568, 572 (5th Cir. 2004).

<sup>6</sup> *Borden v. Allstate Ins. Co.*, 589 F.3d 168, 171 (5th Cir. 2009).

<sup>7</sup> *Smallwood*, 385 F.3d at 572.

claim against a non-diverse defendant.<sup>8</sup> A plaintiff fails to state a claim on which relief may be granted as required under rule 12(b)(6) when a plaintiff's factual allegations do not show a right to relief that is plausible and rises above mere speculation.<sup>9</sup> "[A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."<sup>10</sup> To do so, the plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."<sup>11</sup> This plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully."<sup>12</sup>

7. Here, Plaintiff's Complaint is entirely void of specific facts or actions taken by either AVT Title or Power Default which would create a basis for any claims against them. AVT Title and Power Default both filed Verified Denials pursuant to Tex. Prop. Code Sec. 51.007 asserting they were not necessary parties to this action by virtue of their reasonable belief that they were named as parties solely in their capacity as substitute trustee under the Deed of Trust.<sup>13</sup> AVT Title was the Substitute Trustee appointed by the mortgagee in the Notice of Sale attached to the Complaint.<sup>14</sup> Power Default sent Notice of Acceleration to Plaintiff on behalf of the mortgagee, also attached as an exhibit to the Complaint.<sup>15</sup> This is the extent of the involvement of AVT Title and Power Default with the mortgage loan at issue in this case. Plaintiff does not contest this in his Motion to Remand and provides no evidence to suggest further involvement or action by AVT

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<sup>8</sup> *Smallwood*, 385 f.3d at 572.

<sup>9</sup> *Ashcroft v. Iqbal*, 556 u.s. 662, 677 (2009).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 678.

<sup>12</sup> *Id.*

<sup>13</sup> See Defendants Notice of Removal Dkt. 1; Exhibit A-16, Defendant's Original Answer and Verified Denial. See also Defendants Notice of Removal Exhibit A-7, Defendant AVT Title Services, LLC's Original Answer and Verified Denial.

<sup>14</sup> See Notice of Trustee Sale, Exhibit C to Complaint.

<sup>15</sup> See Notice of Acceleration of Loan Maturity, Exhibit E to Complaint.

Title or Power Default. Plaintiff provided no argument as to why AVT Title and Power Default are properly joined parties. As such, AVT Title and Power Default are improperly joined defendants and their citizenship is disregarded for diversity jurisdiction.

8. Deutsche Bank is a national banking association and trustee of a mortgage-securitization trust. A national banking association is considered a citizen of the state in which it is located, as determined by the state of its main office as set forth in its articles of association.<sup>16</sup> Deutsche Bank's main office as designated in its articles of association is in California. Accordingly, Deutsche Bank is a citizen of California.

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.<sup>17</sup> Therefore, for diversity purposes, PHH is a citizen of New Jersey.

10. Because Plaintiff is a citizen of Texas, Deutsche Bank is a citizen of California, PHH is a citizen of New Jersey, and the citizenship of AVT Title and Power Default is disregarded, complete diversity of citizenship exists between plaintiff and the properly joined defendants.

### **III. CONCLUSION**

This Court has subject matter jurisdiction and Plaintiff's Motion to Remand should be denied. Defendants' Notice of Removal was timely because neither PHH, Deutsche Bank, nor Power Default were ever served with process. Further, Plaintiff's arguments regarding federal question jurisdiction are misguided because Defendant's Notice of Removal was based on diversity jurisdiction, not federal question jurisdiction. Finally, this Court has diversity jurisdiction

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<sup>16</sup> *Wachovia Bank, NA v. Schmidt*, 546 U.S. 303, 318 (2006) (citing 28 U.S.C. § 1348).

<sup>17</sup> 28 U.S.C. § 1332(c)(1); *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 88-90 (2005).

because complete diversity of citizenship exists between plaintiff and the properly joined defendants. Accordingly, this Court should deny Plaintiff's Motion to Remand and grant all further relief to which PHH, Deutsche Bank, and Power Default are justly entitled.

Respectfully submitted,

By: /s/ Emily Stroope

**EMILY STROOPE**

State Bar No. 24070692

**ALEXIS DEL RIO**

State Bar No. 24120796

**BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, P.C.**

5956 Sherry Lane, 20<sup>th</sup> Floor

Dallas, Texas 75225

Telephone: (713) 650-9700

Facsimile: (713) 650-9701

estroope@bakerdonelson.com

adelrio@bakerdonelson.com

***Attorneys for Defendants PHH Mortgage  
Corporation, Power Default Services, Inc., and  
Deutsche Bank National Trust Company, as  
Trustee for FFMLT TRUST 2004-FF3, Mortgage  
Pass-Through Certificates, Series 2004-FF3***

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon counsel of record pursuant to the Federal Rules of Civil Procedure on February 6, 2024, as indicated below:

***Via e-mail [Jeff.uben@gmail.com](mailto:Jeff.uben@gmail.com)  
and CMRRR No. 7022 3330 0000 7770 1411***

Jeff Samuels  
14810 Winding Waters Drive  
Cypress, TX 77429

***Pro Se Plaintiff***

***Via e-mail [joanna@2dobermans.com](mailto:joanna@2dobermans.com)  
and CMRRR No. 7022 3330 0000 7770 1053***

Joanna Burke  
46 Kingwood Greens Dr  
Kingwood, Texas 77339

***Pro Se Intervenor***

***Via E-Mail [mcronenwett@mwzmlaw.com](mailto:mcronenwett@mwzmlaw.com)***

Mark D. Cronenwett  
Mackie Wolf Zientz & Mann, P.C.  
14160 N. Dallas Parkway, Suite 900  
Dallas, Texas 75254

***Attorneys For Defendant  
AVT Title Services, LLC***

*/s/ Emily Stroope*

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Emily Stroope

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**CIVIL ACTION NO. 4:23-cv-4687**

**ORDER DENYING PLAINTIFF’S MOTION TO REMAND**

After reviewing Plaintiff’s Motion to Remand and the Response filed by Defendants PHH Mortgage Corporation (“*PHH*”), Deutsche Bank National Trust Company, as Trustee for FFMLT TRUST 2004-FF3, Mortgage Pass-Through Certificates, Series 2004-FF3 (“*Deutsche Bank*”), and Power Default Services, Inc. (“*Power Default*”), the Court hereby DENIES Plaintiff’s Motion to Remand.

SIGNED ON \_\_\_\_\_, 2024.

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HONORABLE JUDGE PRESIDING