

CAUSE NO. 2023-59141

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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IN THE DISTRICT COURT

234TH JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

**DEFENDANTS' NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT
COURT, SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION**

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, 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**") filed removal papers with the Clerk of the United States District Court for the Southern District of Texas, Houston Division, regarding the above-styled action. A copy of the Notice of Removal to Federal Court (without its accompanying exhibits) is attached hereto as Exhibit A and incorporated by reference.

Respectfully submitted,

**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ
A Professional Corporation**

By: /s/ Emily Stroope

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Trustee for FFMLT TRUST 2004-FF3,
Mortgage Pass-Through Certificates, Series
2004-FF3*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been forwarded in accordance with the Texas Rules of Civil Procedure on December 15, 2023, as follows:

*Via e-mail Jeff.uben@gmail.com
and CMRRR No. 7022 3330 0000 7770 3774*

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/s/ Emily Stroope

Emily Stroope

EXHIBIT “A”

Unofficial Copy Office of Marilyn Burgess District Clerk

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’ NOTICE OF REMOVAL

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**”) hereby give notice of the removal of the state court civil action described below on the basis of diversity jurisdiction. As grounds for the removal, PHH, Deutsche Bank, and Power Default respectfully state as follows:

I. INTRODUCTION

1. On June 1, 2023, Plaintiff Jeff Samuels (“**Plaintiff**”) filed his Application for Temporary Restraining Order and Injunctive Relief (“**Complaint**”) in the 234th Judicial District, Harris County, Texas numbered and styled as Cause No. 2023-59141, *Jeff Samuels v. AVT Title Services LLC, Deutsche Bank National Trust Co., PHH Mortgage Corp., and Power Default Services, Inc.*

2. In his Complaint, Plaintiff seeks injunctive relief to prevent foreclosure of the real property commonly known as 14810 Winding Waters Drive, Cypress, Texas 77429 (the “**Property**”). Plaintiff also seeks actual damages and attorney’s fees and costs.

3. Defendant AVT Title Services, LLC filed its Original Answer and Verified Denial pursuant to Section 51.007 of the Texas Property Code on November 15, 2023.

4. An individual named Joanna Burke, a stranger to this mortgage loan and property, then filed a “Verified Petition in Intervention Seeking Declaratory Judgment with Application for Injunctive Relief.” In this pleading, Ms. Burke states that she lives at 46 Kingwood Greens Drive, Kingwood, Texas 77339. All of Ms. Burke’s exhibits reference the same property. This is not the real property secured by the mortgage loan in this lawsuit. Ms. Burke is not a borrower on the mortgage loan at issue in this case and does not allege that she has any connection to Plaintiff’s property or the subject mortgage loan. In her pleading, Ms. Burke references a federal case in Minnesota in which she is the plaintiff.

5. PHH, Deutsche Bank, and Power Default filed their Original Answer on December 15, 2023. Power Default included a Verified Denial pursuant to Section 51.007 of the Texas Property Code.

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

II. TIMELINESS OF NOTICE OF REMOVAL

7. PHH, Deutsche Bank, and Power Default have not been formally served with process as such this removal is timely pursuant to 28 U.S.C. § 1446(b)(1).¹

III. BASIS FOR REMOVAL: DIVERSITY JURISDICTION

8. 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.

9. Plaintiff is a resident and citizen of Harris County, Texas.²

10. Deutsche Bank is a national banking association and trustee of a mortgage-securitization trust. When a trustee is the real party in interest to the suit, its citizenship controls for purposes of diversity jurisdiction. 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.³ Deutsche Bank's main office as designated in its articles of association is in California. Accordingly, Deutsche Bank is a citizen of California.

11. 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

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) (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.")).

² See Plaintiff's Complaint; see also *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.").

³ *Wachovia Bank, NA v. Schmidt*, 546 U.S. 303, 318 (2006) (citing 28 U.S.C. § 1348).

incorporated and the state where it has its principal place of business.⁴ Therefore, for diversity purposes, PHH is a citizen of New Jersey.

12. Because Plaintiff is a citizen of Texas and Deutsche Bank and PHH are not citizens of Texas, complete diversity exists between Plaintiff, Deutsche Bank, and PHH.

B. AVT Title Services, LLC and Power Default Services, Inc. are improperly joined parties and should be disregarded for diversity jurisdiction.

13. Under Section 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 can establish federal subject matter jurisdiction.⁵ The doctrine of improper joinder “prevents defeat of federal removal jurisdiction premised on diversity jurisdiction by an improperly joined, non-diverse defendant.”⁶ Citizenship of an improperly joined defendant is disregarded entirely in determining whether complete diversity exists.⁷ “Normally, a court reviewing allegations of fraudulent joinder should refrain from conducting an evidentiary hearing but may utilize a summary judgment-like procedure.”⁸ The court may consider affidavits and deposition testimony filed with a defendant’s removal petition.⁹

14. Improper joinder is established when the removing party meets the burden of showing either (1) there was actual fraud in pleading the jurisdictional facts or (2) the plaintiff is

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

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

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

⁷ *Smallwood*, 385 F.3d at 572.

⁸ *Delgado v. Shell Oil Co.*, 231 F.3d 165, 179 (5th Cir. 2000) (citing *Burchett v. Cargill*, 48 F.3d 173, 176 (5th Cir. 1995)).

⁹ *TAJ Properties, LLC v. GAB Robins North America, Inc.*, H-10-4134, 2011 WL 2162321, at *2 (S.D. Tex. 2011) (citing *Carriere v. Sears, Roebuck & Co.*, 893 F.2d 98, 100 (5th Cir. 1990)).

unable to establish a cause of action against the non-diverse defendant under state law.¹⁰ In order to establish the second ground for improper joinder, the removing party bears the burden of proving that there is “no reasonable basis for the district court to predict that the plaintiff might be able to recover against an in-state defendant.”¹¹ The potential recovery “must be reasonable, not merely theoretical.”¹² “[W]hether the plaintiff has stated a valid state law cause of action depends upon and is tied to the factual fit between the Plaintiff’s allegations and the pleaded theory of recovery.”¹³

15. 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 claim against a non-diverse defendant.¹⁴ 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.¹⁵ “[A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”¹⁶ 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.”¹⁷ This plausibility standard “asks for more than a sheer possibility that a defendant has acted unlawfully.”¹⁸

¹⁰ *Smallwood*, 385 F.3d at 572; *Cantor v. Wachovia Mortg., FSB*, 641 F.Supp.2d 602, 606 (N.D. Tex. 2009); *Rodriguez v. Casa Chapa S.A. de C.V.*, 394 F.Supp.2d 901, 905 (W.D. Tex. 2005).

¹¹ *Smallwood*, 385 F.3d at 572.

¹² *Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 312 (5th Cir. 2002).

¹³ *Griggs v. State Farm Lloyds*, 181 F.3d 694, 701 (5th Cir. 1999).

¹⁴ *Smallwood*, 385 f.3d at 572.

¹⁵ *Ashcroft v. Iqbal*, 556 u.s. 662, 677 (2009).

¹⁶ *Id.*

¹⁷ *Id.* at 678.

¹⁸ *Id.*

16. 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. Both AVT Title and Power Default filed Verified Denials pursuant to Tex. Prop. Code Sec. 51.007. In those Verified Denials, both AVT Title and Power Default declared that they were not necessary parties to this case by reason of their reasonable belief that they were named as parties solely in their capacity as substitute trustee under the Deed of Trust. AVT Title is the Substitute Trustee appointed by the mortgagee in the Notice of Sale attached to the Complaint.¹⁹ Power Default sent Notice of Acceleration to Plaintiff on behalf of the mortgagee, also attached as an exhibit to the Complaint.²⁰ This is the extent of the involvement of AVT Title and Power Default with the mortgage loan at issue in this case. As such, they are improperly joined defendants and their citizenship should be disregarded for diversity jurisdiction analysis.

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

17. Diversity jurisdiction is proper if “‘it is facially apparent’ from the plaintiffs’ complaint that their ‘claims are likely above [\$75,000]’ . . . If the value of the claims is not apparent, then the defendants ‘may support federal jurisdiction by setting forth the facts—[either] in the removal petition [or] by affidavit—that support a finding of the requisite amount.’”²¹ Diversity jurisdiction exists where a removing defendant establishes by a preponderance of the evidence that the amount in controversy exceeds \$75,000.²²

18. The Fifth Circuit has held that “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

¹⁹ See Notice of Trustee Sale, Exhibit C to Complaint.

²⁰ See Notice of Acceleration of Loan Maturity, Exhibit E to Complaint.

²¹ *Govea v. JPMorgan Chase Bank, N.A.*, No. CIV.A. H-10-3482, 2010 WL 5140064, at *2 (S.D. Tex. Dec. 10, 2010) (quoting *Garcia v. Koch Oil Co. of Tex. Inc.*, 351 F.3d 636, 639 (5th Cir. 2003) (quoting *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995))).

²² *Garcia*, 351 F.3d at 638-39 (quoting *De Aguilar v. Boeing Co.*, 11 F.3d 55, 58 (5th Cir. 1993)).

litigation.”²³ When “a right to property is called into question in its entirety, the value of the Property controls the amount in controversy.”²⁴ And, where the “object of the mortgagor’s litigation [is] the protection of his entire property,” the fair market value of the property is the proper measure of the amount in controversy.²⁵

19. When a plaintiff seeks a declaration that the mortgagee is barred from foreclosing on its interest in the property, it calls into question a right to the property in its entirety and the amount in controversy is equal to the value of the property.²⁶ Additionally, the Fifth Circuit held that [i]n actions enjoying 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.”²⁷

20. Here, Plaintiff seeks injunctive relief to prevent Deutsche Bank and PHH from selling the subject real property at foreclosure. Therefore, the fair market value of the property is the proper measure of the amount in controversy. The property has a value of \$476,358.²⁸ As such, the amount in controversy is \$476,358.

²³ *Farkas v. GMAC Mortg., L.L.C.*, 737 F.3d 338, 341 (5th Cir. 2013) (citing *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 347 (1977)).

²⁴ *McDonald v. Deutsche Bank Nat’l Trust Co., as trustee*, No. 3:11-cv-2691, 2011 WL 6396628 at *2 (N.D. Tex. Dec. 20, 2011) (quoting *Waller v. Prof’l Ins. Corp.*, 296 F.2d 545, 547-48 (5th Cir. 1961)); see also *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir., 1983) (“In actions seeking declaratory or injunctive relief, the amount in controversy is measured by the value of the object of the litigation.”).

²⁵ *Martinez v. BAC Home Loans Servicing, L.P.*, No. SA-09-CA-951, 2010 WL 6511713, at *7 (W.D. Tex. Sep. 24, 2010).

²⁶ *Bardwell v. BAC Home Loans Servicing, LP*, No. 3:11-cv-1002-B, 2011 WL-4346328, at *2 (N.D. Tex. Sept. 16, 2011) (holding the amount in controversy is equal to the value of the property when plaintiff was seeking a declaration that defendant was barred from foreclosing on its interest the property); see also *Hayward v. Chase Home Finance, LLC*, 2011 WL 2881298, *4-5 (N.D. Tex. July 8, 2011).

²⁷ *Id.*

²⁸ See Harris County Appraisal District Summary attached as **Exhibit “B”**. It is appropriate for the court to 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

21. 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—the location of the pending state court action.²⁹

V. ADDITIONAL REQUIREMENTS

22. Written Notice of Removal will be provided to Plaintiff and filed with the District Clerk of Hidalgo County, Texas.

23. In the event that Plaintiff seeks to remand this case, or the Court considers remand *sua sponte*, PHH, Deutsche Bank, and Power Default respectfully request the opportunity to submit such additional argument or evidence in support of removal as may be necessary.

24. Plaintiff did not make jury demand in the Complaint.

25. WHEREFORE, having satisfied the requirements for removal, PHH, Deutsche Bank, and Power Default give notice that Cause No. 2023-59141 originally filed in Harris County District Court styled *Jeff Samuels v. A/T Title Services, LLC, Deutsche Bank National Trust Co., PHH Mortgage Corp., and Power Default Services, Inc.* is effectively removed to this Court.

²⁹ See 28 U.S.C. § 1441(a); 28 U.S.C. § 124(b) (stating that the Houston Division of the Southern District includes Harris County).

Respectfully submitted,

By: /s/ Emily Stroope

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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 December 15, 2023, as indicated below:

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/s/ Emily Stroope

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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.

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