

CAUSE NO. 2024-83598

IEISHA MASS,

Plaintiff,

- vs -

**WELLS FARGO BANK, NA as Trustee for
OPTION ONE MORTGAGE LOAN
TRUST 2005-4, PHH MORTGAGE
CORPORATION its/their successors and/or
assigns, and GLEANNLOCH FARMS
COMMUNITY ASSOCIATION, INC.,**

Defendants.

IN THE DISTRICT COURT

190TH JUDICIAL DISTRICT

OF HARRIS COUNTY, TEXAS

NOTICE OF FILING OF NOTICE OF REMOVAL

PHH Mortgage Corporation (“PHH MC”) and Wells Fargo Bank, National Association as Trustee for Option One Mortgage Loan Trust 2005-4, Asset-Backed Certificates, Series 2005-4 (“Wells Fargo”) (collectively, PHH MC and Wells Fargo are referred to herein as “Defendants”) filed a Notice of Removal with the United States District Court for the Southern District of Texas, Houston Division, to remove the above-entitled and numbered cause. A copy of the Notice of Removal, without the accompanying exhibits, is attached hereto as Exhibit “A,” and a full copy has been served on Plaintiff.

TAKE FURTHER NOTICE that, upon filing the Notice of Removal with the United States District Court for the Southern District of Texas, Houston Division, Defendants have effected removal under 28 U.S.C. §§ 1331, 1332 and 1441. Pursuant to 28 U.S.C. § 1446(d), this Court should proceed no further in this action.

DATED: December 9, 2024

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: /s/ José M. (Joe) Rubio

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**ATTORNEYS FOR DEFENDANT
PHH MORTGAGE CORPORATION**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon on all counsel of record on December 9, 2024, in compliance with the Texas Rules of Civil Procedure.

/s/ José M. (Joe) Rubio

José M. (Joe) Rubio

EXHIBIT A

Unofficial Copy Office of Marilyn Burgess District Clerk

“Property”), and obtained a Temporary Restraining Order on November 27, 2024 enjoining Defendants from proceeding with a scheduled December 3, 2024 foreclosure sale.² Currently, Plaintiff’s Application for Temporary Injunction is set to be heard in the Action on December 10, 2024.³

This removal is filed within 30 days of receipt of suit. As such, this removal is timely pursuant to 28 U.S.C. § 1446(b).

DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332

This Court has original jurisdiction over the Action pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 because: (1) there is complete diversity between Plaintiff and the *properly joined* Defendants; and (2) the amount in controversy exceeds \$75,000 exclusive of interest and costs.

A. Complete Diversity Exists.

There is complete diversity between Plaintiff and Defendants.

1. Plaintiff is a Citizen of Texas.

Plaintiff is an individual domiciled in Harris County, Texas.⁴ Plaintiff specifically alleges that she is a resident of Texas, living at 9514 Woodcliff Lake Drive, Spring, Texas 77379.⁵ For purposes of diversity jurisdiction, a person is a citizen of the state in which he or she is domiciled. *Coury v. Prot*, 85 F.3d 244, 251 (5th Cir. 1996). Therefore, for diversity purposes, Plaintiff is a citizen of Texas.

2. PHH Mortgage Corporation is a Citizen of New Jersey.

Defendant PHH is a citizen of New Jersey for the purposes of diversity jurisdiction. PHH is a corporation. When considering diversity of citizenship, “a corporation shall be deemed to be

² See Temporary Restraining Order, Exhibit E.

³ *Id.*

⁴ See Pet., Exhibit D-1, ¶ 2.

⁵ *Id.*

a citizen of every State...by which it has been incorporated and of the State...where it has its principal place of business.” 28 U.S.C. §1332(c)(1). A “principal place of business” refers to the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities. *See Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010). PHH is incorporated in New Jersey and has its principal place of business in New Jersey. Therefore, PHH is a citizen of New Jersey for diversity purposes. *See Bohannon v. PHH Mortg. Corp.*, 665 F. App’x 760, 761 n.2 (11th Cir. 2016) (PHH is a citizen of New Jersey).

3. Wells Fargo is a Citizen of South Dakota.

Wells Fargo is a citizen of South Dakota for purposes of diversity jurisdiction. Wells Fargo is a national banking association acting as trustee of a trust. As trustee, Wells Fargo’s citizenship controls for diversity purposes. *See Wells Fargo Bank, N.A. v. Am. Gen. Life Ins. 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 Sav. Ass’n v. Lee*, 446 U.S. 4558, 461 (1980) and *Bass v. Int’l Bhd. of Boilermakers*, 630 F.2d 1058, 1067 n. 17 (5th Cir. 1980)). In *Wachovia Bank, N.A. v. Schmidt*, the United States Supreme Court held that a national bank is a citizen of the state where its main office, as designated in its articles of association, is located. 546 U.S. 303, 307 (2006); *see also* 28 U.S.C. § 1348. Wells Fargo’s main office, as designated in its articles of association, is located in South Dakota. Therefore, Wells Fargo is a citizen of South Dakota for diversity purposes.

4. The HOA is Fraudulently Joined.

Here, Defendants may “prevent joinder by arguing that there is no colorable claim against” the HOA. *Cobb v. Delta Exps., Inc.*, 186 F.3d 675, 678 (5th Cir. 1999). The Fifth Circuit has determined that trial courts should apply the same legal standard relevant to a motion to dismiss

under Rule 12(b)(6) in determining whether the plaintiff has stated a valid claim for purposes of joinder. *See Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 873 (5th Cir. 2000) (“[T]o determine futility, we will apply the standard of legal sufficiency as applies under Rule 12(b)(6).”). The legal sufficiency standard applicable to motions under Rule 12(b)(6) and to fraudulent joinder is whether Plaintiff has pled sufficient facts “to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (construing pleading standard on Rule 12(b)(6) motion to dismiss). In the Petition, Plaintiff generically asserts claims for injunctive relief, statutory fraud in a real estate transaction, common law fraud and/or fraud by non-disclosure, and violations of the Texas Debt Collection Act against all defendants, including the HOA. However, Plaintiff fails to assert any specific allegations as to the HOA, and therefore fails to make any colorable claim against the HOA.

First, the HOA is not a proper party to this suit as Plaintiff’s complaints against the HOA concern a separate lien and foreclosure sale from those complained of in Plaintiff’s first cause of action for injunctive relief. Plaintiff specifically seeks relief to prevent Defendants from foreclosing or attempting to foreclose on Plaintiff’s homestead property, thereby divesting Plaintiff of her fee simple title and ownership interest in the Property, and references the December 3, 2024 foreclosure sale set by PFF MC’s and Wells Fargo’s agent in the Petition.⁶ This is further exemplified by Plaintiff’s admission that she “fell behind on her homeowner’s association dues.”⁷ By admitting that she failed to pay her dues to the HOA, Plaintiff has undermined any potential claim for extraordinary injunctive relief against the HOA.

Second, Plaintiff’s purported fraud claims against the HOA, both under Section 27.01 of the Texas Business and Commerce Code for fraud in a real estate transaction and common law

⁶ *Id.* at ¶¶ 51, 56.

⁷ *Id.* at ¶ 52.

claims for fraud and fraud by non-disclosure, fail because fraud claims are subject to a heightened pleading standard under Rule 9(b). Fraud claims “are subject to the heightened pleading requirements of Rule 9(b),” and thus must be pleaded with particularity. *Sullivan v. Leor Energy, LLC*, 600 F.3d 542, 550–51 (5th Cir. 2010). That requires the plaintiff to “specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent.” *Miller v. CitiMortgage Inc.*, 970 F. Supp. 2d 568, 582 (N.D. Tex. 2013) (citation omitted); *see also* FED. R. CIV. P. 9(b). Pertaining to her Section 27.01 claim, Plaintiff fails to identify (1) the real estate transaction complained of; (2) any fraudulent statement made by the HOA or failure to disclose; (3) how Plaintiff relied upon the HOA’s statement or nondisclosure; and (4) how Plaintiff was damaged by such fraudulent statement or nondisclosure. Similarly, Plaintiff’s common law fraud claims fail because she does not identify with particularity any fraudulent activity on behalf of the HOA.

Finally, Plaintiff fails to articulate a colorable claim against the HOA for violations of the Texas Debt Collection Act. Plaintiff generally identifies several subsections of the TDCA, then states that “Defendants, and/or its/their various officers, directors, agents, attorneys, or employees as described herein, supra acts, conduct or omissions as described herein” constitute violations thereof.⁸ Plaintiff’s bare allegations and mere statutory references fail to identify any plausible claims against the HOA.

B. Amount in Controversy Met.

The amount in controversy exceeds \$75,000 exclusive of interest and costs because Plaintiff seeks injunctive relief regarding the sale of the Property.⁹ “[I]n actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured

⁸ *Id.* at ¶ 67.

⁹ *See generally id.*

by the value of the object of the litigation.” *Hunt v. Washington State Apple Advertising Comm’n*, 432 U.S. 333, 97 S. Ct. 2434, 2443, 53 L. Ed. 2d 383 (1977). “[W]hen 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.” *Waller v. Professional Ins. Corp.*, 296 F.2d 545, 547–48 (5th Cir. 1961). A common method of establishing the value of real property is to look to a county appraisal district’s assessment. *Statin v. Deutsche Bank Nat. Trust Co.*, 599 F. App’x 545, 546-47 (5th Cir. 2014). Where “[t]he purpose of the injunctive [or] declaratory relief [is] to stop the foreclosure sale of . . . properties, ‘the amount in controversy . . . is the value of the right to be protected or the extent of the injury to be prevented.’” *Farkas v. GMAC Mortgage LLC*, 737 F.3d 338, 341 (5th Cir. 2013) (quoting *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983)). Here, Plaintiff seeks to enjoin the sale of the Property.¹⁰ The Harris County Appraisal District most recently set the value of the Property at \$603,498.00.¹¹ Accordingly, the amount in controversy for the relief sought by Plaintiff in this action exceeds \$75,000, exclusive of interest and costs.

NOTICE OF REMOVAL IS TIMELY

Defendants timely filed this Notice of Removal within 30 days of its receipt of a copy of the initial pleading establishing that this case is removable to this Court. 28 U.S.C. § 1446(b). Plaintiff filed this lawsuit on November 27, 2024, and Defendants filed their Notice of Removal on December 9, 2024. Notice of this removal is also being filed in the state court where the action is currently pending, and this Notice of Removal is also being served on Plaintiff through her counsel, pursuant to 28 U.S.C. § 1446(d). A copy of Defendant’s Notice of Removal to be filed in the state court is attached hereto as Exhibit H.

¹⁰ *Id.*

¹¹ See Harris County Appraisal District Report, Exhibit G.

VENUE IS PROPER IN THIS COURT

Venue in this Court is proper under 28 U.S.C. §§ 1441(a) and 1446(a), which provide for removal of any civil action to the federal district court for the district and division embracing the place where the state court action is pending. This Court embraces the 190th Judicial District Court of Harris County, Texas, which is the state court in which this Action was filed and pending. *See* 28 U.S.C. § 124(b)(2) (specifying that Harris County falls within the jurisdiction of the United States District Court for the Southern District of Texas, Houston Division).

ALL PROCEDURAL REQUIREMENTS FOR REMOVAL SATISFIED

Pursuant to 28 U.S.C. §1446(a), true and correct copies of all process, pleadings, orders and docket sheets from the state court file of the Action are being filed with this Notice of Removal. Defendants are filing with the clerk of the state district court in which this Action is pending, and are serving upon Plaintiff, a Notice of Removal together with Notice of Removal and supporting documentation, pursuant to 28 U.S.C. §1446(d).

Specifically, pursuant to 28 U.S.C. § 1446(a), and Local Rule 81.1, the following documents are attached to this Notice:

1. An index of matters being filed is attached as **Exhibit A**;
2. The state court's docket sheet is attached as **Exhibit B**;
3. All state court executed process, issued citations, and/or requests for issuance of citations in this case are attached as **Exhibit C**;
4. State court pleadings, answers, and other filings are attached as **Exhibit D-1 to D-5**;
5. All orders signed by the state judge and other notices are attached as **Exhibits E**;

6. Federal Certificate of Interested Persons and Corporate Disclosure Statement is attached as **Exhibit F**;
7. Harris County Appraisal District Report in support of federal Notice of Removal is attached as **Exhibit G**; and
8. A copy of Defendant's Notice of Filing Notice of Removal to be filed in the state court action is attached as **Exhibit H**.

REMOVAL IS PROPER TO THIS COURT

Defendants have met the requirements for removal of this Action to this Court under 28 U.S.C. §§ 1331, 1332, 1441, and 1446. This Notice of Removal is filed subject to and without waiver of all rights and defenses of Defendants to Plaintiff's claims herein.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants PHH MC and Wells Fargo hereby removes this matter from the District Court in Harris County, Texas, to this Honorable Court.

DATED: December 9, 2024

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: /s/ José M. (Joe) Rubio

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**ATTORNEYS FOR DEFENDANTS
PHH MORTGAGE CORPORATION AND
WELLS FARGO BANK**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon all parties or counsel of record on December 9, 2024, in compliance with the Federal Rules of Civil Procedure.

/s/ José M. (Joe) Rubio

José M. (Joe) Rubio

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.

Kathy Lowery on behalf of Jose Rubio

Bar No. 24084576

KLowery@dykema.com

Envelope ID: 95117527

Filing Code Description: Notice

Filing Description: Defendants Notice of Filing Notice of Removal

Status as of 12/10/2024 9:47 AM CST

Case Contacts

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