

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been delivered to all counsel of record pursuant to the Texas Rules of Civil Procedure via the below described method on March 3, 2025.

Jeffrey Jackson
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via eFileTexas

/s/ Robert L. Negrin
Rob Negrin

Unofficial Copy Office of Marilyn Burgess District Clerk

should consider this litigation. 11 U.S.C. §124(a)(2).

2. To-date, neither Defendant has been served with a citation or summons. This removal is filed within the period contemplated under the removal statute, 28 U.S.C. §1446. The removal is timely.

3. Pending before the state court is Plaintiff's application for *ex parte* temporary restraining order et for hearing on March 3, 2025. The request for the temporary restraining order seeks to prevent a foreclosure sale of real property made the basis of the suit set for Tuesday, March 4, 2025. This removal is filed before the hearing on the TRO.

II. PLEADINGS AND NOTICE TO STATE COURT

4. True and correct copies of all pleadings, process, orders, and other filings in the State Court Action will be filed under separate cover. Pursuant to 28 U.S.C. §1446(d), written notice of the removal will be served on Plaintiff and filed in the State Court Action.

III. Short and Plain Statement of the Grounds for Removal

5. To-date, neither U.S. Bank nor Fay have been properly joined and served in this suit. Consent for removal is accordingly not required. 28 U.S.C.A. § 1446.

- Citizenship of Plaintiff

6. The action removed by U.S. Bank is a civil action brought in a state court of which the district courts of the United States have original jurisdiction. This Court has original subject matter jurisdiction over this proceeding pursuant to 28 USC §1332 (a) – Diversity of Citizenship. Plaintiff, DHI Holdings, LP Plaintiff a Delaware limited partnership. The citizenship of a partnership is determined by the citizenship of its members. *See Harvey v. Grey Wolf Drilling Co.*,

542 F.3d 1077, 1080 (5th Cir. 2008). Brandon Dutch Mendenhall is Plaintiff's General Partner. According to a May 13, 2022, Texas Franchise Tax Public Information Report for DHI Holdings, LP. Mr. Mendenhall is citizen of Florida. Therefore, Plaintiff is a citizen of Florida for diversity purposes.

- Citizenship of Defendants

7. U.S. Bank Trust National Association is a national banking association, organized and existing under the laws of the United States. A national bank, for diversity purposes, "is a citizen of the State in which its main office as set forth in its articles of association is located. U.S. Bank Trust, N.A.'s main office is in Delaware. Therefore, Trustee is a citizen of Delaware for diversity purposes.

8. Plaintiff has also named Fay in its capacity as loan servicer as a defendant. Fay is a Delaware Limited Liability Company. The citizenship of a limited liability company for diversity purposes is determined by the citizenship of all of its members. Upon information and belief there is a member in the chain of ownership of Fay who is a Texas resident, therefore Fay does not contend that it is diverse in citizenship from Plaintiff for diversity purposes. However, Fay has been improperly joined as discussed below and therefore its citizenship is irrelevant for diversity purposes.

9. Fay has been improperly joined or is a nominal party at best, therefore its citizenship does not count for purposes of diversity jurisdiction. Fay is not alleged to be and is not the actual mortgagee for the subject loan and is either a nominal party or was improperly joined, therefore its citizenship is not counted for purposes of diversity jurisdiction. Fay as mortgage

servicer is not alleged to have had and has no actual contract with Plaintiff. At most Fay is a nominal party whose citizenship does not count for diversity purposes.

10. Fay was improperly joined. To establish an improper joinder a party must show either: “(1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court.” *Smallwood v. Illinois Central Railroad Company*, 385 F.3d 568, 573 (5th Cir. 2004).

11. In applying the test for improper joinder, the court conducts “a Rule 12(b)(6)-type analysis, looking initially at the allegations of the complaint to determine whether, under state law, the complaint states a claim against the in-state defendant.” However, unlike a 12(b)(6) analysis, the Court retains discretion to pierce the pleadings and review evidence on whether plaintiff has a viable cause of action under state law. A mere theoretical possibility of recovery under local law will not preclude a finding of improper joinder. *Id.*

12. From the face of the Complaint, it is evident that Plaintiff has not stated a legally viable a cause of action against Fay under Texas law. *Larroquette v. Cardinal Health 200, Inc.*, 466 F.3d 373, 376 (5th Cir. 2006); A removing party may establish improper joinder by showing that the plaintiff is unable to establish a cause of action against the non-diverse defendant under state law. *Id.* A “mere theoretical possibility” of recovery under state law does not suffice to preclude removal. *Badon v. RJR Nabisco Inc.*, 236 F.3d 282, 286 n.4 (5th Cir. 2000). Defendants have established that Fay has been improperly joined.

13. Accordingly, because complete diversity exists between Plaintiff and Trustee, the actual mortgagee for the subject loan, and because Fay is either a nominal party or has been improperly joined, complete diversity exists between all relevant parties.

- Amount in Controversy

14. This case involves the rights of the parties related to a mortgage loan secured by real property in Tarrant County, Texas. In the proceeding, Plaintiffs allege, among other claims for relief, that they are entitled to injunctive relief, specifically to prevent Defendants from foreclosing Plaintiffs' mortgage loan. Plaintiffs' pleading specifies no amount of liquidated damage.

15. *Farkas v. GMAC Mortg., L.L.C.*, 737 F.3d 338, 341 (5th Cir. 2013), was an action where Plaintiff, much like Plaintiff here, sought injunctive relief and damages. In reviewing the elements needed to satisfy the amount in controversy requirement for diversity jurisdiction, the Fifth Circuit reiterated established law that in actions seeking injunctive relief, for diversity jurisdiction purposes, the amount in controversy is measured by the value of the object of the litigation, citing the United States Court of Appeals opinion in *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 347, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977). The *Farkas* court held that in 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. *Farkas* at 341, citing *Garfinkle v. Wells Fargo Bank*, 483 F.2d 1074, 1076 (9th Cir.1973).

16. The Harris County Appraisal District values Plaintiffs' property, located at 16419

Salinas Lane, Houston, Texas 76104 the property at issue at \$217,334.00. Based on the claims pled, filtered through the precedent cited, diversity jurisdiction is inarguably established.

Processes, Pleadings and Orders

17. Pleadings, papers and documents filed in the Harris County District Court action will be subsequently provided in accordance with federal standards and requirements.

Respectfully submitted,

McCARTHY HOLTHUS, LLP

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I certify that a true and correct copy of the foregoing document was served on plaintiff's counsel of record via United States First Class mail, postage prepaid, pursuant to the Federal Rules of Civil Procedure on March 3, 2025:

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Houston, Texas 77079

/s/ Robert L. Negrin

Robert L. Negrin

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Robert Negrin on behalf of Robert Negrin
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Envelope ID: 97989640
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Case Contacts

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