

CASE 2024-83297

DHI Holdings, LP,

Plaintiff,

v.

**Wilmington Savings Fund Society, FSB,
Not In Its Individual Capacity But Solely
As Trustee of Starwood Mortgage
Residential Trust 2021-2 and Select
Portfolio Servicing, Inc.,**

Defendants.

In the District Court

61st Judicial District

Harris County, Texas

DEFENDANTS' ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES

Defendants Wilmington Savings Fund Society, FSB, Not In Its Individual Capacity But Solely As Trustee of Starwood Mortgage Residential Trust 2021-2 and Select Portfolio Servicing, Inc. (**defendants**) answer plaintiff DHI Holdings, LP's original petition and assert affirmative defenses as follows:

I. GENERAL DENIAL

1. Defendants generally deny each and every allegation and claim for relief plaintiff asserts and demand strict proof thereof by a preponderance of credible evidence.

II. AFFIRMATIVE DEFENSES

2. Plaintiff's claims fail, in whole or in part, because it fails to state a claim upon which relief may be granted.

3. Plaintiff's claims fail, in whole or in part, because plaintiff has not performed all conditions precedent to recovery and performance of those conditions has not been waived or excused, including plaintiff's failure to (1) make timely loan payments, (2) tender the amount

necessary to avoid foreclosure, and (3) provide sufficient, timely, and/or proper notice to defendants of plaintiff's claims and/or demands.

4. Plaintiff's claims fail, in whole or in part, because of waiver, estoppel, ratification, privilege, and consent.

5. Plaintiff's claims fail, in whole or in part, to the extent plaintiff lacks standing to bring them and/or they do not authorize a private right of action.

6. Plaintiff's claims are barred, in whole or in part, because it failed to mitigate its damages, if any.

7. Plaintiff's claims fail, in whole or in part, because it has unclean hands.

8. Plaintiff's damages, if any, were caused or contributed to by plaintiff's own prior breach of contract.

9. Plaintiff's claims are barred, in whole or in part, because the actions complained of, if in error at all, were the result of a bona fide error.

10. Plaintiff's claims are barred, in whole or in part, because it is proportionately responsible for any damages it claims. Should plaintiff prove any damages, defendants hereby invoke Texas Civil Practice & Remedies Code chapter 33 and request the trier of fact determine the proportion of responsibility for said damages by plaintiff, any other party to this suit and any person or entity who may be designated as a responsible third-party, and to grant judgment against defendants, if at all, for only those damages for which defendants are found to be proportionately responsible, if any, and as reduced by all settlement amounts.

11. Defendants are entitled to an offset against any damages to be awarded to plaintiff for, among other things, the amount of the debt, the value of the use and occupation of the subject

property, defendants' attorneys' fees incurred in this suit, and amounts plaintiff recovered pursuant to the settlement of any claims related to this matter.

III. ATTORNEYS' FEES

12. Defendants retained the undersigned counsel to represent them against plaintiff's claims. Defendants contend one or more of the claims asserted against them in this litigation is: (1) groundless and brought in bad faith or groundless and brought for the purpose of harassment, in violation of the Texas Rules of Civil Procedure 13, (2) presented for an improper purpose, such as to harass or to cause unnecessary delay and needless increase in the cost of litigation, in violation Texas Civil Practice & Remedies Code § 10.001(1), (3) not warranted by existing law or by a non-frivolous argument for the extension, modification or reversal of existing law or the establishment of new law, in violation of Texas Civil Practice & Remedies Code § 10.001(2), or (4) without evidentiary support or, after a reasonable opportunity for discovery, likely to have evidentiary support, in violation of Texas Civil Practice & Remedies Code § 10.001(3). Defendants also seek to recover their attorneys' fees incurred in this case under any statute, common law rule, or contract authorizing the same. This specifically includes any attorneys' fees defendants incurred to defend against the declaratory relief plaintiff seeks.

V. PRAYER

Defendants respectfully request a judgment plaintiff takes nothing on its claims and awarding defendants all further relief to which they are justly entitled.

Date: December 17, 2024

Respectfully submitted,

/s/ C. Charles Townsend

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--Attorney in Charge

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

A true and correct copy of this document was served on December 17, 2024 as follows:

VIA TEXFILE

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Jeffrey Jackson & Associates, PLLC

11767 Katy Fwy., Ste. 813

Houston, Texas 77079

Plaintiff's Counsel

/s/ C. Charles Townsend

C. Charles Townsend

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C. Charles Townsend on behalf of Christopher Townsend

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Filing Code Description: Answer/ Response / Waiver

Filing Description: Defendants' Original Answer and Affirmative Defenses

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Case Contacts

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Plaintiff's Counsel

/s/ C. Charles Townsend
C. Charles Townsend

Unofficial Copy Office of Marilyn Burgess District Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DHI Holdings, LP

Plaintiff,

V.

**Wilmington Savings Fund Society, FSB,
Not In Its Individual Capacity, But Solely
as Trustee of Starwood Mortgage
Residential Trust 2021-2; and Select
Portfolio Servicing, Inc.**

Case 4:24-cv-4953

DEFENDANTS WILMINGTON AND SPS' FEDERAL REMOVAL NOTICE

Defendants Wilmington Savings Fund Society, FSB, Not In Its Individual Capacity But Solely As Trustee of Starwood Mortgage Residential Trust 2021-2 (**Wilmington**) and Select Portfolio Servicing, Inc. (**SPS**) remove plaintiff DHI Holdings, LP's (**DHI**) state court action to this court pursuant to 28 USC §§ 1332 and 1441.

I. STATEMENT OF THE CASE

1. On November 26, 2024, DHI sued Wilmington and SPS in the 61st judicial district court of Harris County, Texas, 2024-83297. (Ex. 1, orig. pet. (**pet.**)) DHI sued to enjoin a December 3, 2024 foreclosure sale of the property at 7703 Braesridge Court, Houston, Texas 77071. (*Id.* at ¶¶ 1, 23, 28, 41-49.) DHI alleges notice of sale was invalid because it identified the grantor in the deed of trust as Brandon Mendenhall, not DHI. (*Id.* at ¶¶ 12, 26, 34(b).) It also claims identifying 36 substitute trustees in the notice (1) was “unreasonable and creates confusion and uncertainty regarding who will actually carry out the sale,” (2) “undermines the trustee’s duty to act with absolute impartiality and fairness toward all parties involved,” and (3) “significantly

impedes potential bidders' ability to identify the correct trustee, location, or time of the auction.” (*Id.* at ¶¶ 20-21.) It asserts declaratory judgment and breach of contract claims. (*Id.* at ¶¶ 14-37.) It seeks actual damages, specific performance, injunctive relief, pre- and post-judgment interest, attorneys' fees and costs. (*Id.* at ¶¶ 41-49 & prayer.)

II. BASIS FOR DIVERSITY JURISDICTION

2. Diversity jurisdiction exists because the real parties in interest are completely diverse and the amount in controversy exceeds \$75,000. 28 USC § 1332(a); *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005). Diversity jurisdiction exists if there is “complete diversity between all named plaintiffs and all named defendants, and no defendant is a citizen of the forum state.” *Id.* at 84. Only the citizenship of the real parties in interest is considered for diversity jurisdiction purposes. *Corfield v. Dallas Glen Hills LP*, 355 F.3d 853, 857–58 (5th Cir. 2003).

A. The real parties in interest are diverse.

3. DHI is a Florida citizen. “The citizenship of a limited partnership is based upon the citizenship of each of its partners.” *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1079 (5th Cir. 2008). DHI's sole member is Brandon Mendenhall. Mr. Mendenhall resides in Florida and, upon information and belief, intends to remain there. (*See* pet. at ¶ 1 (identifying DHI's address as “4115 W. Spruce Street, Suite 205, Tampa, FL 33607.”).)

4. Wilmington is a Delaware citizen. Wilmington is sued in its capacity as trustee for Starwood Mortgage Residential Trust 2021-2. When a trustee is sued in its capacity as trustee of a trust, the trustee's citizenship controls so long as it is an active trustee whose control over the assets held in its name is real and substantial. *Bynane v. Bank of N.Y. Mellon*, 866 F.3d 351, 357 (5th Cir. 2017) (citing *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 464–465 (1980); *Americold Realty Tr. v.*

Conagra Foods, Inc., 577 U.S. 378, 283–238 (2016)). Wilmington’s citizenship controls because it holds legal title to, and broad authority over, the trust assets on the trust’s behalf.

5. As a federal savings association organized under the laws of the United States, Wilmington is a citizen of the state in which it has its home office. 12 U.S.C. § 1464(x) (a “federal savings association shall be considered to be a citizen only of the State in which such savings association has its home office”); *Id.* § 1464(a)(1) (definition of “federal savings associations” “include[s] federal savings banks”); *Wilmington Savs. Fund Soc’y, FSB v. Universitas Educ., LLC*, 164 F. Supp. 3d 273, 283 (D. Conn. 2016). Wilmington’s home office is in Wilmington, Delaware.

6. SPS is a Utah citizen. A corporation is a citizen of the state in which it is incorporated and the state where it maintains its principal place of business. 28 U.S.C. § 1332(c); *MidCap Media Fin., LLC v. Pathway Data, Inc.*, 929 F.3d 310, 314 (5th Cir. 2019). SPS is a Utah corporation with its principal place of business in Salt Lake City, Utah.

B. The amount in controversy exceeds \$75,000.

7. When a defendant removes on the basis of diversity jurisdiction, the amount in controversy may be established by the specific “good faith” sum demanded by the plaintiff in its state court petition. 28 USC § 1446(c)(2). If the plaintiff does not state the amount of damages it seeks, the burden falls on the defendant to prove the value of the plaintiff’s claims. *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998). In those instances, the removing defendant must “establish by a preponderance of the evidence that the amount in controversy exceeds \$75,000.” *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002). This requirement can be satisfied if “(1) it is apparent from the face of the petition that the claims are likely to exceed \$75,000, or, alternatively, (2) the defendant sets forth ‘summary judgment type evidence’ of facts in controversy that support a finding of the requisite amount.” *Id.*

(citing *Simon v. Wal-Mart Stores, Inc.*, 193 F.3d 848, 850 (5th Cir. 1999); *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995)).

8. “In actions seeking declaratory or injunctive relief the amount in controversy is measured by the value of the object of the litigation.” *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983); *Farkas v. GMAC Mortg., LLC*, 737 F.3d 338, 341 (5th Cir. 2013) (per curiam); see also *Nationstar Mortg., LLC v. Knox*, 351 F. App’x 844, 848 (5th Cir. 2009) (“[w]hen ... a right to property is called into question in its entirety, the value of the property controls the amount in controversy”) (quoting *Waller v. Prof’l Ins. Corp.*, 296 F.2d 545, 547–48 (5th Cir. 1961)).

9. The object of this litigation—7703 Braesridge Court, Houston, Texas 77071—is valued at \$310,780 by the Harris Central Appraisal District. (EX. 6, Harris central appraisal report.) See e.g., *Anderson v. Wells Fargo Bank, N.A.*, No. 4:12-cv-764, 2013 WL 1196535, at *3 (E.D. Tex. Feb. 22, 2013) (“The property at issue in this lawsuit has a current fair market value of \$114,000, according to the Denton County Central Appraisal District. Therefore, Defendant has met its burden of establishing that the amount in controversy exceeds \$75,000.”) The amount in controversy exceeds \$75,000, and the court may exercise diversity jurisdiction over this action.

III. PROCEDURAL REQUIREMENTS SATISFIED

10. Removal is timely under 28 USC § 1446(b) because it is filed within thirty days of Wilmington and SPS’ receipt of the petition and citation through service of process or otherwise. Venue is proper in this court because the United States District Court for the Southern District of Texas, Houston Division embraces the place in which the state court action was pending. 28 USC § 1441(a). Notice will be sent to the state court regarding this removal. A true and correct copy of all the process, pleadings, and orders on file in the state court action are attached as exhibits 1-5.

IV. CONCLUSION

This court should exercise diversity jurisdiction because the parties are completely diverse and the amount in controversy exceeds \$75,000.

Date: December 17, 2024

Respectfully submitted,

/s/ C. Charles Townsend

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ATTORNEYS FOR DEFENDANTS

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/s/ C. Charles Townsend

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Case Contacts

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