

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

BRYAN SCOTT ROWLAND and  
KATHLEEN ROWLAND,

Plaintiffs,

v.

OCWEN LOAN SERVICING, LLC, and  
HSBC BANK USA, NATIONAL  
ASSOCIATION, AS TRUSTEE FOR ACE  
SECURITIES CORP. HOME EQUITY  
LOAN TRUST, SERIES 2006-NC1

Defendants.

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CIVIL ACTION NO.

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1332(a), Defendants, Ocwen Loan Servicing, LLC (“**Ocwen**”) and HSBC Bank USA, National Association, as Trustee for ACE Securities Corp. Home Equity Loan Trust, Series 2006-NC1 (“**HSBC Bank**”) (collectively “**Defendants**”) remove this action from the 398<sup>th</sup> Judicial District Court of Hidalgo County, Texas to the United States District Court for the Southern District of Texas, McAllen Division. Defendants state the following in support of removal.

**I. STATE COURT ACTION**

1. On March 28, 2014, Plaintiffs, Bryan Scott Rowland and Kathleen Rowland, (“**Plaintiffs**”) filed their Original Petition in the 398<sup>th</sup> Judicial District Court of Hidalgo County, Texas, styled *Bryan Scott Rowland and Kathleen Rowland v. Ocwen Loan Servicing, LLC, HSBC Bank, USA, National Association, as Trustee for ACE Securities Corp. Home Equity Loan Trust, Series 2006-NC1*, under Cause Number C-3015-14-I (the “State Court Action”).

2. Defendants Ocwen and HSBC Bank have not been served with process and no return of service is on file with the Court as of the date of this removal. Accordingly, Removal is timely under 28 U.S.C. § 1446(b)<sup>1</sup>.

## II. PROCEDURAL REQUIREMENTS

3. This action is properly removed to this Court, as the State Court Action is pending within this district and division.<sup>2</sup>

4. In accordance with 28 U.S.C. § 1446(a), this Notice of Removal is accompanied by copies of the following:

- a. Exhibit A: An index of documents being filed;
- b. Exhibit B: A copy of the State Court Docket Sheet;
- c. Exhibit C: All Pleadings and Process from the State Court, including:
  - i. Exhibit C1: Plaintiffs' Original Petition, filed on March 28, 2014;
  - ii. Exhibit C2: Temporary Restraining Order, signed April 1, 2014;
  - iii. Exhibit C3: Unexecuted Citation and Service of Process for Ocwen Loan Servicing, LLC, requested on April 2, 2014;
  - iv. Exhibit C4: Unexecuted Citation and Service of Process for HSBC Bank, requested on April 2, 2014;
  - v. Exhibit C5: Unexecuted Citation and Service of Process for Ace Securities Corporation Home Equity Loan Trust, Series 2006-NC1, requested on April 2, 2014;
  - vi. Exhibit C6: Rule 11 Agreement, filed on April 11, 2014;
  - vii. Exhibit C7: Defendants' Original Answer, filed on April 21, 2014;

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<sup>1</sup> *Murphy Bros., Inc. v. Michetti Pipe Stringing Inc.*, 526 U.S. 344, 347-48 (1999); *Schwartz v. Harang*, No. H-13-0038, 2013 U.S. Dist. LEXIS 51310, at \*6-7 (S.D. Tex. 2013).

<sup>2</sup> 28 U.S.C. § 1441.

- viii. Exhibit C8: Plaintiffs' Attorney, Antonio Villedas's, Motion to Withdraw as Attorney in Charge, filed on April 28, 2014;
  - ix. Exhibit C9: Order Setting Hearing on Plaintiffs' Attorney, Antonio Villedas's, Motion to Withdraw as Attorney in Charge, signed and filed on April 28, 2014;
  - x. Exhibit C10: Proposed Order Granting Plaintiffs' Attorney, Antonio Villedas's, Motion to Withdraw as Attorney in Charge, filed on April 28, 2014; and
  - xi. Exhibit C11: Agreed Order Granting Attorney, Antonio Villedas's, Motion to Withdraw as Attorney in Charge, signed by the judge on May 16, 2014.
- d. Exhibit D: Defendants' Rule 7.1 Corporate Disclosure Statement;
  - e. Exhibit E: Hidalgo County Central Appraisal District Report for Subject Property; and
  - f. Exhibit F: A list of all counsel or record.

5. Defendant is simultaneously filing a copy of this Notice of Removal in the 398<sup>th</sup> Judicial District Court of Hidalgo County, Texas pursuant to 28 U.S.C. § 1446(d).

### **III. DIVERSITY JURISDICTION**

6. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a) because there is complete diversity of the Parties, and the amount in controversy exceeds \$75,000.00.

#### **A. Complete Diversity Exists**

7. This controversy is entirely between citizens of different states as required for diversity jurisdiction by 28 U.S.C. § 1332.

8. Plaintiffs are citizens of Texas.

9. Ocwen is a limited liability company that is registered in Delaware. Ocwen's principal place of business is in West Palm Beach, Florida. As a result, Ocwen is a citizen of Delaware and Florida.<sup>3</sup>

10. HSBC Bank is a trustee of a trust. When determining citizenship of a trust for purposes of diversity jurisdiction, it is the citizenship of the trustee which controls, not the citizenship of the beneficiaries of the trust. HSBC Bank is a national banking association, so its citizenship is determined by the location of its main office as set forth in its articles of association. HSBC Bank's main office is in Virginia. Thus, HSBC Bank is a citizen of Virginia for diversity purposes.<sup>4</sup>

**B. The Amount in Controversy Exceeds \$75,000.**

11. The amount in controversy is over \$75,000.00.

12. Usually, the sum demanded in good faith in a plaintiff's petition establishes the amount in controversy.<sup>5</sup> When a plaintiff fails to demand a specific sum in its original petition, the notice of removal may assert the amount in controversy, and that amount must be supported by a preponderance of the evidence.<sup>6</sup> Plaintiffs do not demand a specific sum in their petition but state that they seek monetary relief over \$200,000.00 but not more than \$1,000,000.00.

13. Further, when declaratory or injunctive relief is sought, the amount in controversy is measured by the "value of the object of the litigation."<sup>7</sup> Specifically, when a party seeks to prevent foreclosure, the value of the property, as indicated by the tax assessor appraisals, determines the amount in controversy.<sup>8</sup>

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<sup>3</sup> See 28 U.S.C. § 1332(c)(1); *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 307 (2006); see also Ex. D.

<sup>4</sup> 28 U.S.C. § 1348; see *Wachovia Bank*, 546 U.S. at 318.

<sup>5</sup> 28 U.S.C. § 1446(c)(2)

<sup>6</sup> *Id.* § 1446(c)(2)(A)-(B).

<sup>7</sup> *Farkas v. GMAC Mortgage*, 737 F.3d 338, 341 (5th Cir. 2013).

<sup>8</sup> *Valadez v. Bank of America, N.A. et al.*, 2013 U.S. Dist. LEXIS 97092 at \*5-8 (W.D. Tex. July 11, 2013); *Zavala v. M&T Trust Co.*, 2011 U.S. Dist. LEXIS 147119 (W.D. Tex. Dec. 22, 2011).

14. Plaintiffs seek an injunction enjoining Defendants from foreclosing on the Property. Plaintiffs also seek damages for breach of contract; actual, consequential, and incidental damages; mental anguish damages; punitive damages in the amount of three times actual damages; and attorneys fees.

15. Plaintiffs seek to enjoin the foreclosure of property located at 2214 Village Drive, Mission, Texas 78572 (“Property”). The Hidalgo County Central Appraisal District values the Property at \$265,747.<sup>9</sup> As a result, the amount in controversy exceeds \$75,000.00.

## V. CONCLUSION

16. Removal of this action is proper under 28 U.S.C. §§ 1331 and 1441. This is a civil action brought in a state court, and the federal district courts have jurisdiction under 28 U.S.C. § 1332(a) because there is complete diversity, and the amount in controversy exceeds \$75,000.00.

17. As a result, Defendants remove this action from the 398<sup>th</sup> Judicial District Court in Hidalgo County, Texas to the United States District Court for the Southern District of Texas, McAllen Division, so that this Court may assume jurisdiction over the cause as provided by law.

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<sup>9</sup> See Ex. E.

Respectfully submitted,

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ATTORNEYS FOR OCWEN LOAN  
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FOR ACE SECURITIES CORP. HOME  
EQUITY LOAN TRUST, SERIES 2006-NC1

**Certificate of Service**

I certify that this document was served in accordance with the Federal Rules of Civil Procedure on May 20, 2014, by the manner indicated upon the following persons:

Via Regular Mail  
CM/RRR No. 7196 9008 9111 2115 8184

Bryan Scott Rowland  
and Kathleen Rowland, *Pro Se*  
2214 Village Drive  
Mission, Texas 78572

/s/ Lauren E. Hayes  
Lauren E. Hayes

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