

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BRENDA WOODWARD-WELLS, §
§
Plaintiff, §
§
v. §
§ Civil Action No. 3:14-cv-2945
OCWEN LOAN SERVICING, LLC AND §
HSBC BANK USA, NATIONAL §
ASSOCIATION, AS TRUSTEE FOR ACE §
SECURITIES CORP. HOME EQUITY LOAN §
TRUST SERIES 2005-HE1, ASSET BACKED §
PASS THROUGH CERTIFICATES §
§
Defendants. §

NOTICE OF REMOVAL

Defendants Ocwen Loan Servicing, LLC and HSBC Bank USA, National Association, as Trustee for Ace Securities Corp. Home Equity Loan Trust, Series 2005-HE1, Asset Backed Pass Through Certificates ("Defendants"), hereby file this their Notice of Removal pursuant to 28 U.S.C. Sections 1332, 1348, 1441, and 1446. In support of this Notice, Defendants state as follows:

SUMMARY

1. Plaintiff filed this action on or about July 21, 2014, in the 116th District Court for Dallas County, Texas, Cause No. DC-14-07671 in the matter styled *Brenda Woodward-Wells v. Ocwen Loan Servicing, LLC and HSBC Bank USA, National Association, as Trustee for Ace Securities Corp. Home Equity Loan Trust Series 2005-HE1, Asset Backed Pass Through Certificates* (the "State Court Action"). Pursuant to Sections 1441 and 1446 of Title 28 of the United States Code, Defendants remove this case to the United States District Court for the Northern District of Texas, Dallas Division, the Judicial District and Division in which this

action is pending.

2. The allegations in *Plaintiff's First Amended Original Petition and Application for Temporary Restraining Order* (the "Petition") relate to the servicing and foreclosure of Plaintiff's loan secured by the property located at 924 Darby Road, Grand Prairie, Texas 75052 (the "Property"). (*See Pl.'s First Am. Orig. Pet. and Appl. for TRO* at ¶11.) Plaintiff brings claims for: (1) breach of contract; (2) negligent misrepresentation; (3) promissory estoppel; and (4) violations of the Dodd-Frank Wall Street Reform and Consumer Protection Act. (*See id.* at ¶¶ 37–41.) Plaintiff further seeks temporary and permanent injunctive relief, an accounting, declaratory relief, and attorneys' fees and costs. (*See id.* at ¶¶ 32–46, 44, Prayer.) Plaintiff's claims are based on her contentions that Defendants: (1) improperly denied a Request for Mortgage Assistance completed by Plaintiff; (2) subsequently assured Plaintiff that she had a period of 30 days in which to appeal the denial, during which Plaintiff was also assured the property would not be sold; and (3) instead foreclosed on the property prior to the expiration of the 30-day period, despite Defendants' prior assurances to the contrary. (*Id.* at ¶¶ 10–25.) Plaintiff further alleges that Defendants "initiated a course of action to foreclose the alleged debt without proper proof of any contractual or legal right." (*Id.* at ¶34.)

3. Attached hereto as Exhibit B is a copy of the Docket Sheet from the State Court Action, and true and correct copies of all pleadings filed in the State Court Action are attached within the contents of Exhibit C1 and C2.

4. This Notice of Removal is timely under the provisions of 28 U.S.C. Section 1446(b), as it is being filed within thirty (30) days after the case was initially filed. 28 U.S.C. § 1446(b)(2).

5. In accordance with 28 U.S.C. § 1446(a) and Local Rule 81.1, this Notice of Removal is accompanied by copies of the following:

- Exhibit A: An index of documents being filed
- Exhibit B: A copy of the State Court Docket Sheet
- Exhibit C: All Pleadings, Process, and Orders from the State Court, including:
- Exhibit C1: Plaintiff's Original Petition and Application for Temporary Restraining Order.
 - Exhibit C2: Plaintiff's First Amended Original Petition and Application for Temporary Restraining Order, filed July 21, 2014.
 - Exhibit C3: Temporary Restraining Order, filed July 21, 2014.
 - Exhibit C4: Rule 11 Agreement, filed August 11, 2014.
 - Exhibit C5: Notice of Hearing.
 - Exhibit C6: Defendant's Original Answer.
- Exhibit D: Notice of Removal filed with State Court on August 15, 2014
- Exhibit E: Certificate of Interested Persons and Rule 7.1 Disclosures
- Exhibit F: List of all counsel of record, including address, telephone numbers, and parties represented
- Exhibit G: Declaration of John M. Lynch

BASIS FOR REMOVAL – FEDERAL QUESTION

6. This action arises under and presents substantial questions of federal law under the Dodd-Frank Wall Street Reform and Consumer Protection Act, 124 Stat. 1376 *et seq.* Plaintiff appears to allege that at least one of the Defendants is in violation of the Act because it conducted a foreclosure sale on the property described above, despite receiving a completed loss mitigation application more than 37 days before that foreclosure sale.¹ (*Pl. 's First Am. Orig. Pet. and Appl. for TRO* at ¶11.). Plaintiff further alleges that “none of the conditions precedent to

¹Though Plaintiff asserts a claim under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the federal law allegedly violated is actually found under Title VII of the Code of Federal Regulations, at 12 C.F.R. § 1024.41(g).

conducting a foreclosure sale have occurred as such concerns the property.” (*Id.*) Accordingly, Plaintiff claims a violation of the Act and corresponding injury to Plaintiff.

7. Because this action arises under the laws of the United States, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. Section 1331, and removal of this entire cause is therefore proper under 28 U.S.C Section 1441(c).

BASIS FOR REMOVAL: DIVERSITY JURISDICTION

A. There is complete diversity.

8. Removal of the State Court Action to this Court is also proper pursuant to 28 U.S.C. Sections 1332, 1441(a) and (b) because the amount in controversy is well in excess of \$75,000.00 exclusive of interest, costs, and attorneys’ fees.

9. Plaintiff is a citizen of the State of Texas. (*See id.* at ¶3.)

10. Ocwen Loan Servicing, LLC is a Delaware limited liability company with its principal place of business in Florida, but for diversity jurisdiction purposes, its citizenship is determined by the citizenship of its members. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). The sole member of Ocwen Loan Servicing, LLC is Ocwen Mortgage Servicing, Inc., which is a U.S. Virgin Islands corporation with its principal place of business in the U.S. Virgin Islands. Therefore, Ocwen is a citizen of the U.S. Virgin Islands for the purposes of diversity jurisdiction.

11. Defendant HSBC Bank USA, National Association, as Trustee for Ace Securities Corp. Home Equity Loan Trust, Series 2005-HE1, Asset Backed Pass Through Certificates, is the trustee of a trust. When determining the 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. *Navarro Sav. Assoc. v. Lee*, 446 U.S. 458, 464–66 (1980). HSBC Bank

USA, National Association is a national banking association with its main office in Virginia. As a national banking association, HSBC Bank USA, National Association's citizenship is determined solely by the location of its main office, as designated in its articles of association. *Wachovia Bank v. Schmidt*, 546 U.S. 303, 307 (2006); 28 U.S.C. §1348. Accordingly, HSBC Bank USA is a citizen of Virginia.

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

12. The amount in controversy exceeds the sum or value of \$75,000.00. Plaintiff seeks, *inter alia*, injunctive relief and attorneys' fees and costs. (*See Pl.'s First Am. Orig. Pet. and Appl. for TRO at Prayer.*)

1. Plaintiff's request for declaratory relief exceeds \$75,000.

13. In the Fifth Circuit, when declaratory or injunctive relief is sought, the amount in controversy is measured by the value of the object of the litigation, and the value of that right is measured by the losses that will follow. *Webb v. Investacorp, Inc.*, 89 F.3d 252, 256 (5th Cir. 1996). Stated differently, "the amount in controversy, in an action for declaratory and injunctive relief, is the value of the right to be protected or the extent of the injury to be prevented." *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983); see also *Lamarr v. Chase Home Finance, LLC*, 2008 WL 4057301 (N.D. Miss. 2008) (finding amount in controversy requirement was satisfied where plaintiff sought to set aside foreclosure sale and home appraised for \$83,000.00, plus unspecified amount of monetary damages); *Bank of America National Trust and Sav. Assoc. v. Reeves*, 1995 WL 96617, *1 (E.D. La. 1995) (court held that the amount in controversy was met in action seeking to enjoin foreclosure on property because the suit "puts at issue the entire value of the property on which they attempt to enjoin defendants from foreclosing").

14. Plaintiff seeks an injunction preventing Defendants from exercising their right to

conduct a foreclosure sale of the property. (*See Pl.'s First Am. Orig. Pet. and Appl. for TRO* at ¶¶ 26–33, Prayer.) Plaintiff also seeks a declaration by the court that Defendants have no legal right to foreclose on the Property. (*Id.* at ¶34.) Further, Plaintiff seeks a declaration by the court to either eliminate or reduce the amount of the debt alleged. (*Id.* at ¶35). If such relief is granted, Defendants will lose their interest in the Property. The Dallas County Central Appraisal District values the property at \$161,660.00. (Exhibit G) For this reason, the amount in controversy exceeds \$75,000.00.

2. Attorneys' fees are included in the amount in controversy.

15. Plaintiff also seeks attorneys' fees. (*See Pl.'s First Am. Orig. Pet. and Appl. for TRO* at ¶44.) Attorneys' fees claimed under a contractual or statutory provision are included as part of the amount in controversy. *See Graham v. Henegar*, 640 F.2d 732, 736 (5th Cir. 1981) (citing *Missouri State Life Ins. Co. v. Jones*, 290 U.S. 199 (1933)); *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998) (attorney's fees authorized by statute are considered in determining the amount in controversy); *Grant v. Chevron Phillips Chem. Co.*, 309 F.3d 864 (5th Cir. 2002) (though considering attorney's fees in a putative class action, to like effect). Similar cases have awarded attorneys' fees exceeding the jurisdictional minimum. *See, e.g., Moreno v. Kleberg First National Bank of Kingsville*, 105th District of Kleberg County, Texas. For this reason, it is facially apparent from the Petition that Plaintiff's claims exceed the jurisdictional threshold.

16. Defendants categorically deny that Plaintiff is entitled to an award of damages in any amount whatever, but there can be no question that Plaintiff's Petition places an amount in controversy that significantly exceeds \$75,000.00.

VENUE

17. Venue for removal is proper in this District and Division under 28 U.S.C. Section

1441(a) because this district and division embrace the 116th District Court of Dallas County, Texas, the forum in which the removed action was pending.

NOTICE

18. Concurrently with the filing of this Notice, Defendant will file a copy of this Notice of Removal with the Clerk of the 116th District Court of Dallas County, Texas.

Respectfully Submitted,

/s/Jeremy J. Overbey

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ATTORNEYS FOR DEFENDANT

Certificate of Service

I certify that this document was served in accordance with the Federal Rules of Civil Procedure on August 15, 2014, by the manner indicated upon the following persons:

Via CM/RRR No. 9414 7266 9904 22003 5481 02

David Gonzales

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Patrick Murphy

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Attorney for Plaintiff

/s/ John M. Lynch
John M. Lynch

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