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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Mischelle K. Henry and Eljay Scott,

No. CV 12-1055-PHX-JAT

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Plaintiffs,

**ORDER**

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vs.

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Arizona Deed of Trust Corporation, et al.,

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Defendants.

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“Inquiring whether the court has jurisdiction is a federal judge’s first duty in every case.” *Belleville Catering Co. v. Champaign Market Place, L.L.C.*, 350 F.3d 691, 693 (7<sup>th</sup> Cir. 2003). In this case, the notice of removal fails to sufficiently plead jurisdiction. *See* 28 U.S.C. § 1332; *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192; - - - U.S. - - - (2010) (discussing the citizenship of a corporation). Specifically, in this case the notice of removal fails to allege the principal place of business of FNBC Properties, Inc. (which Defendants claim Arizona Trust Deed Corporation merged into).<sup>1</sup>

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<sup>1</sup> The Court notes that Defendants claim Arizona Trust Deed Corporation/FNBC Properties, Inc., is fraudulently joined and that its citizenship should be disregarded. Defendants premise this argument on the theory that this company is the Trustee and that there is no cause of action against a Trustee under Arizona law. However, in *Hogan v. Washington Mutual Bank, N.A.*, 2012 WL 1835540, ¶ 5 (Ariz. 2012), the Arizona Supreme Court stated that there is liability on a Trustee for breach of fiduciary duty in certain circumstances. On this record, the Court cannot conclude the Trustee was fraudulently joined. (This holding is without prejudice to the Trustee moving to dismiss on this or any

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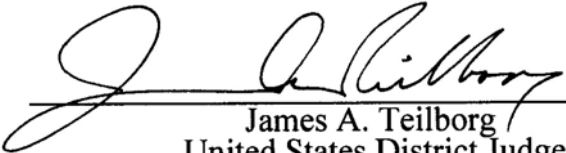
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Accordingly,

**IT IS ORDERED** that by July 16, 2012, the removing Defendants shall file a supplement to the notice of removal properly alleging federal subject matter jurisdiction, or this case will be remanded for lack of federal subject matter jurisdiction.

DATED this 25th day of June, 2012.

  
James A. Teilborg  
United States District Judge

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other basis.)