

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 10-cv-02481-WYD-MJW

TERRY D. HAMILTON, an individual; and
CHEM-AWAY, INC., a Colorado Corporation,

Plaintiffs,

v.

WALTER POENISCH, a/k/a James “Jim” Poenisch, an individual;
SUZANNE CONRY, an individual;
CHEYENNE, WY DEVELOPMENT CORPORATION, a Wyoming Corporation;
EUGENE H. BARKER, an individual;
BERNARD C. MAYNES, an individual;
B&B 2ND MORTGAGE, LLC, a Colorado Limited Liability Company;
B&B VENTURES, LLC, a Colorado Limited Liability Company;
HIGH POINTE, LLC, a Colorado Limited Liability Company;
THOMAS W. METCALF, an individual;
THOMAS W. METCALF, ATTORNEY AT LAW, a professional law firm;
GARY L. BUTLER, an individual; and
CENTENNIAL BANK OF THE WEST, a/k/a GUARANTY BANK AND TRUST
COMPANY, a Colorado Corporation,

Defendants.

ORDER

The Notice of Removal [of] Action Under 28 U.S.C. Section 1446(b) (ECF No. 3) is **STRICKEN** from the record in this case. This filing is improper for numerous reasons under both federal law and the rules of this Court. Among the many problems¹ with this filing is the fact that 28 U.S.C. § 1446 does not provide a procedure for removal of a state action by a plaintiff.

¹ While Plaintiffs’ filing is improper for numerous reasons, in the interest of judicial economy, I decline to address all of the problems and merely highlight a few in this Order.

Moreover, § 1446 provides that the Notice of Removal "shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, . . . whichever period is shorter." 28 U.S.C. § 1446. Here, Plaintiffs are attempting to "remove" a state court action from 2001 into a separate federal action. This is clearly improper and will not be considered by the Court.

Dated: November 4, 2010

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge