

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**NOGALES INVESTORS
MANAGEMENT, LLC,**)
)
)
 Plaintiff,)
)
 V.)
)
 BK ENTERTAINMENT, INC., and)
 WELLS FARGO Foothill, INC.,)
)
 Defendants.)

CASE NO: 8:06CV53

ORDER

This matter is before the Court on Plaintiff Nogales Investors Management’s Motion for a Temporary Restraining Order. (Filing No. 3). Defendant Wells Fargo Foothill (“Foothill”) filed a Notice of Removal to this Court on February 14, 2006. (Filing No. 1). Because the Court is not satisfied that it has subject matter jurisdiction over this matter, the case will be dismissed for lack of subject matter jurisdiction and remanded to the District Court of Douglas County, Nebraska.

Foothill is the party that sought to remove the case to federal court and, therefore, Foothill has the burden of demonstrating that this Court has subject matter jurisdiction. *Altimore v. Mount Mercy College*, 420 F.3d 763 (8th Cir. 2005). The Notice of Removal alleges that this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332; however, it is not apparent from the Notice of Removal nor the Complaint that there is full diversity among the parties.

The Complaint alleges that both Nogales Investors Management (“Nogales”) and VKGS LLC (“VKGS,” the alleged plaintiff real-party-in-interest) are Delaware LLCs, and that the Defendant BK Entertainment, Inc. (“BKE”), is a Delaware corporation. (Complaint,

at Filing No. 1, ¶¶ 1-2). Furthermore, the Complaint alleges that both Plaintiff Nogales and Defendant Foothill have their principal places of business in California. (*Id.* ¶¶ 1, 3). Although the Notice of Removal alleges that Foothill is the only party against whom relief is sought, the Plaintiff's First Cause of Action seeks a declaration that Foothill cannot sell BKE's assets in a foreclosure sale without assigning a Promotion Agreement and the Non-Competition Agreement. (*Id.* at p. 6). It appears, therefore, that Defendant BKE has an interest in this matter.

Accordingly, Defendant Foothill has failed to meet its burden of proof of establishing full diversity.

IT IS ORDERED:

1. This matter is dismissed for lack of subject matter jurisdiction and remanded to the District Court of Douglas County, Nebraska; and
2. Plaintiff Nogales Investors Management's Motion for Temporary Restraining Order (Filing No. 3) is denied without prejudice.

DATED this 14th day of February, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge