

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 THOMAS JESSUP, LLC, SERIES III,)
5)
6 Plaintiff,)
7 vs.)
8 STEPHEN M. BORYS, an individual; STONE)
9 RIDGE CONDOMINIUM ASSOCIATION;)
10 WELLS FARGO BANK, N.A.; MTC)
11 FINANCIAL INC. d/b/a TRUSTEE CORPS.;)
12 and any and all other persons unknown)
13 claiming any right, title, estate, lien or interest)
14 in the Property adverse to the Plaintiff’s)
15 ownership, or any cloud upon Plaintiff’s title)
16 thereto (DOES 1 through 10, inclusive),)
17 Defendants.)

Case No.: 2:13-cv-01926-GMN-CWH

ORDER

15 Pending before the Court is the Emergency Motion to Remand to State Court (ECF No.
16 8) filed by Plaintiff Thomas Jessup, LLC, Series III (“Plaintiff”). Defendant Wells Fargo Bank,
17 N.A. filed a Response (ECF No. 16) and Defendant filed a Reply (ECF No. 22).

18 **I. BACKGROUND**

19 This case arises from a dispute over the ownership of real property located at 2053
20 Quartz Cliff Street, Unit 203, Las Vegas, Nevada 89117 (“Subject Property”). (Compl. ¶ 8,
21 ECF No. 1-3.) Plaintiff claims that it “purchased [the Subject Property] . . . at a properly
22 noticed foreclosure sale in accordance with NRS 116.3116 through 116.31168, inclusive.” (Id.)
23 Plaintiff’s Complaint recognizes that Defendant Stephen M. Borys, the former owner,
24 (“Borys”); Defendant Stone Ridge Condominium Association (“HOA”); Defendant Wells
25 Fargo Bank, N.A. (“Wells Fargo”); and Defendant MTC Financial Inc. d/b/a Trustee Corps.,

1 may all claim interest in the Property. (Id. ¶¶ 2–5, 11.) However, Plaintiff’s Complaint further
2 alleges that “none of the Defendants had a valid interest in the Property subsequent to at [sic]
3 the time of the foreclosure sale.” (Id. ¶ 12.) For this reason, Plaintiff filed the instant action in
4 Nevada state court seeking (1) Quiet Title; and (2) Declaratory Relief. (Id. ¶¶ 14–19.)
5 Subsequently, on October 21, 2013, Wells Fargo removed the action to this Court claiming that
6 this Court has subject matter jurisdiction under 28 U.S.C. § 1332(a). (See Notice of Removal
7 1:26–5:2, ECF No. 1.) Wells Fargo further claims that complete diversity exists among the
8 parties because Plaintiff is a citizen of Nevada (id. at 2:2–3) and because the only defendants
9 alleged to be from Nevada, Borys and the HOA (the “Nevada Defendants”), are fraudulently
10 joined and should not be considered when determining whether complete diversity exists (id. at
11 2:11–4:10).

12 **II. LEGAL STANDARD**

13 If a plaintiff files a civil action in state court, the defendant may remove that action to a
14 federal district court if the district court has original jurisdiction over the matter. 28 U.S.C.
15 § 1441(a). Removal statutes are strictly construed against removal jurisdiction. *Ritchey v.*
16 *Upjohn Drug Co.*, 139 F.3d 1313, 1317 (9th Cir. 1998). “Federal jurisdiction must be rejected
17 if there is any doubt as to the right of removal in the first instance.” *Gaus v. Miles*, 980 F.2d
18 564, 566 (9th Cir. 1992) (quoting *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th
19 Cir. 1979)). The defendant always has the burden of establishing that removal is proper. *Gaus*,
20 980 F.2d at 566.

21 “If at any time before final judgment it appears that the district court lacks subject matter
22 jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). District courts have jurisdiction
23 in two instances. First, district courts have subject matter jurisdiction over civil actions that
24 arise under federal law. 28 U.S.C. § 1331. Second, district courts have subject matter
25 jurisdiction over civil actions where no plaintiff is a citizen of the same state as a defendant and

1 the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). In this case, Wells Fargo
2 asserts only that this Court has subject matter jurisdiction over this case pursuant to 28 U.S.C.
3 § 1332(a). District courts have subject matter jurisdiction over civil actions where no plaintiff
4 is a citizen of the same state as a defendant and the amount in controversy exceeds \$75,000.
5 28 U.S.C. § 1332(a).

6 **III. DISCUSSION**

7 For the reasons discussed below, the Court concludes that Wells Fargo has failed to
8 establish diversity of citizenship between the Plaintiff and all of the Defendants.

9 Wells Fargo provides extensive argument as to the reasons that a potential claim by
10 Borys and/or the HOA would fail. Essentially, Wells Fargo contends that, because, in Wells
11 Fargo's opinion, such a claim would fail, these claimants need not be included in the instant
12 quiet title action. Accordingly, Wells Fargo asserts that these claimants are fraudulently joined.

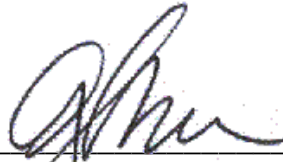
13 Wells Fargo's opinion demonstrates its misunderstanding of the applicable legal
14 standard. It is well established that "fraudulently joined defendants will not defeat removal on
15 diversity grounds." *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998). There
16 are two ways to establish fraudulent joinder: (1) the defendant may facially attack plaintiff's
17 complaint by showing the inability of the plaintiff to establish a cause of action against the non-
18 diverse defendant based on the plaintiff's allegations or (2) the defendant may attempt to
19 disprove jurisdictional facts alleged in the plaintiff's pleadings. See *Hunter v. Philip Morris*
20 *USA*, 582 F.3d 1039, 1044 (9th Cir.2009) (citing *Smallwood v. Ill. Cent. R.R. Co.*, 385 F.3d
21 568, 573 (5th Cir. 2004) (en banc)). The fact that Plaintiff is likely to prevail over the Nevada
22 Defendants does not amount to a failure to establish a cause of action against these Defendants.
23 Therefore, the Nevada Defendants are properly named parties and, as such, destroy complete
24 diversity and deprive this Court of subject matter jurisdiction. Wells Fargo has failed to carry
25 its burden of establishing that this Court has subject matter jurisdiction over this case.

1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that this case is remanded to the Eighth Judicial District
3 Court.

4 **IT IS FURTHER ORDERED** that the Clerk of the Court shall close this case.

5 **DATED** this 21st day of November, 2013.

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10 Gloria M. Navarro
11 United States District Judge
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