

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**FELIPE DE JESUS SOTO and
MARIA G. SOTO,**

Plaintiffs,

vs.

WELLS FARGO BANK, N.A.,

Defendant.

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Civil Action No. _____

NOTICE OF REMOVAL

Notice is hereby given that pursuant to 28 U.S.C. §§ 1332(a), 1441, and 1446, Defendant Wells Fargo Bank, N.A. ("Wells Fargo") removes this action from the 367th Judicial District Court of Denton County, Texas to the United States District Court for the Eastern District of Texas, Sherman Division.

**I.
STATE COURT ACTION**

1. On May 2, 2011, Plaintiffs Felipe De Jesus Soto and Maria G. Soto ("Plaintiffs") filed Plaintiffs' Original Petition (the "Petition") in the 367th Judicial District Court of Denton County, Texas in an action styled *Felipe De Jesus Soto and Maria G. Soto v. Wells Fargo Bank, N.A.*, Cause No. 2011-50286-367 (the "State Court Action").

2. Wells Fargo was served with citation on May 4, 2011. Accordingly, Wells Fargo is timely filing this Notice of Removal within thirty days of the May 4, 2011 service date. 28 U.S.C. § 1446(b).

3. The United States District Court for the Eastern District of Texas, Sherman Division has jurisdiction over this action based on diversity of citizenship between the parties in that Wells Fargo is now, and was at the time this action commenced, diverse in citizenship from Plaintiffs, and the amount in controversy exceeds the minimum jurisdictional amount, exclusive of interest and cost. *See* 28 U.S.C. § 1332(a).

II. **PROCEDURAL REQUIREMENTS**

4. This action is properly removed to this Court because the State Court Action is pending within this district and division. 28 U.S.C. § 1441; 12 U.S.C. § 124(c)(3).

5. Pursuant to Local Rule CV-81, and 28 U.S.C. § 1446(a), this Notice of Removal is accompanied by copies of the following:

- a. A list of all parties to the case is attached hereto as **Exhibit A**;
- b. A certified copy of the state court docket sheet, a copy of all pleadings that assert causes of action, all answers to such pleadings, all processes and orders served upon the party removing the case are attached hereto as **Exhibit B**;
- c. A list of all counsel of record, including bar number, address, telephone number, and the party represented by him/her is attached hereto as **Exhibit C**;
- d. A record of which parties have requested trial by jury is attached hereto as **Exhibit D**; and
- e. A record of the name and address of the Court from which the case is being removed is attached hereto as **Exhibit E**.

III. **DIVERSITY OF CITIZENSHIP**

6. A case may be removed to federal court if it could have been brought in federal court originally. 28 U.S.C. § 1441. Lawsuits between citizens of different states in which the

amount in controversy exceeds \$75,000, exclusive of interest and costs may be brought in federal court. 28 U.S.C. § 1332.

A. THERE IS COMPLETE DIVERSITY AMONG THE PARTIES

7. Plaintiffs are citizens of Texas. *See Margetis v. Ray*, No. 3:08-CV-958-L, 2009 WL 464962, *3 (N.D. Tex. Feb. 25, 2009) (citing *Freeman v. Northwest Acceptance Corp.*, 754 F.2d 553, 555-56 (5th Cir. 1985) for the proposition that "[a] natural person is considered a citizen of the state where that person is domiciled").

8. Wells Fargo is a national banking association pursuant to federal law. Under its articles of association, Wells Fargo's main office is located in South Dakota. Therefore, Wells Fargo is a citizen of South Dakota for diversity purposes. 28 U.S.C. § 1348; *Wachovia Bank v. Schmidt*, 546 U.S. 303, 318 (2006).

9. Because Plaintiffs are citizens of Texas and Wells Fargo is a citizen of South Dakota, there is complete diversity among the parties. *See* 28 U.S.C. § 1332(c)(1).

B. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00

10. Although the Petition does not allege an amount in controversy, the amount at issue more likely than not exceeds \$75,000.00, exclusive of interest and costs. Removal is proper where a defendant can show by a preponderance of the evidence that the amount in controversy is greater than the jurisdictional minimum. *See St. Paul Reins. Co. Ltd. v. Greenburg*, 134 F.3d 1250, 1254 n.13 (5th Cir. 1998) ("The test is whether it is more likely than not that the amount of the claim will exceed [the jurisdictional minimum]."); *see also White v. FCI U.S.A., Inc.*, 319 F.3d 672, 675 (5th Cir. 2003) (affirming district court's conclusion that it was "more probable than not" that damages were over \$75,000.00 where the total amount of relief was not stated in the petition). When the right to property is in question, the value of the property determines the jurisdictional amount in controversy. *See Waller v. Prof'l Ins. Corp.*,

296 F.2d 545, 547-48 (5th Cir. 1961); *Comprehensive Addiction Programs v. Mendoza*, 50 F. Supp. 2d 581, 582-83 (E.D. La. 1999).

11. It is well established that in actions where declaratory or injunctive relief is sought, the amount in controversy for jurisdictional purposes is measured by the value of the object of the litigation and the right plaintiff seeks to protect, or the extent of the injury to be prevented. *See Martinez v. BAC Home Loans Servicing*, -- F.Supp.2d.--, 2010 WL 6511713, at *4 (W.D. Tex. Sept. 24, 2010); (citing *Hunt v. Washington State Apple Adv. Comm'n*, 432 U.S. 333, 347 (1977); *Seaboard Fin. Co. v. Martin*, 244 F.2d 329, 331 (5th Cir. 1957); *Burks v. Texaco*, 211 F.2d 443, 445 (5th Cir. 1954)); *see also Nationstar Mortgage LLC v. Knox*, 351 Fed. Appx. 844, 848 (5th Cir. 2009) (noting in an action to prevent foreclosure that amount in controversy is measured by value of object of litigation). To put it another way, in the case at bar, the Court must determine the "value of the object" of Plaintiffs' request for injunctive relief, or the "value of the extent of" Plaintiffs' injury if the injunctive relief is not granted. *See Hartford Ins. Group v. Lou-Con Inc.*, 293 F.3d 908, 911-912 (5th Cir. 2002) ("The amount in controversy is 'the value of the right to be protected or the extent of the injury to be prevented.'") (quoting *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983)); *St. Paul Reins. Co.*, 134 F.3d at 1252-1253.

12. Where a plaintiff files suit seeking to rescind or set aside a foreclosure sale or to enjoin foreclosure of real property, the amount in controversy is the value of the property because "absent judicial relief [the plaintiff] could be divested of all right, title and interest to the property." *Berry v. Chase Home Fin.*, No. C-09-116, 2009 WL 2868224 at *3 (S.D. Tex. Aug. 27, 2009); *see also Hartford Ins.*, 293 F.3d at 911-912; *Griffin v. HSBC Bank USA*, No. 3:10-cv-728-L, 2010 WL 4781297, at *3 (N.D. Tex. November 24, 2010) (holding that where plaintiff

seeks determination as to rightful titleholder of property, value of the property is to be used in determining amount in controversy). Moreover, Texas district courts have routinely held that the amount in controversy is determined by the value of property where the plaintiff seeks declaratory or injunctive relief to permanently prevent or rescind a foreclosure sale, regardless of whether the sale has occurred. *See Martinez*, 2010 WL 6511713, at *8 (holding that if the plaintiff seeks to permanently enjoin the bank from selling or transferring the subject property, then the property is the object of the litigation and the value of the property controls for amount in controversy purposes).

(1) ***The Injunctive Relief and Rescission Plaintiffs Seek Reflect That the Amount in Controversy Exceeds \$75,000, Exclusive of Interest and Costs***

13. Here, it is more probable than not that the total amount in controversy exceeds \$75,000.00, exclusive of interest and costs based on the value of the note and property at issue. Plaintiffs purchased property located at 2012 Rose Hill Road, Carrollton, Texas 75007 (the "Property") in 2005. In connection with the purchase, Maria Soto executed a promissory note ("Note") in the original principal sum of \$120,607.00. The Denton County Appraisal District's preliminary assessment of value of the Property is \$114,909.00 for 2011. In 2010, the Denton County Appraisal District valued the Property at \$123,624.00. A true and correct copy of the Denton County Appraisal District print out is attached hereto as **Exhibit F**.

14. Plaintiffs contend that Wells Fargo cannot prove it is the holder of the Note and does not have authority to collect on the Note. Plaintiffs further claim that Wells Fargo does not have authority to foreclose on the Property. Plaintiffs assert actions for wrongful debt collection practices, common law fraud, and violations of Texas Deceptive Trade Practices Consumer Protection Act ("DTPA") and Section 3.301 of the Texas Commerce Code. Plaintiffs seek a plethora of declaratory relief and temporary and permanent injunctive relief to preclude Wells

Fargo from foreclosing, taking possession of the Property, or otherwise disturbing or attempting to disturb Plaintiffs' peaceable possession and enjoyment of the Property. Plaintiffs also seek to rescind any foreclosure sale of the Property.

15. The amount in controversy is satisfied in this case because Plaintiffs seek to permanently enjoin Wells Fargo from foreclosing on or disturbing their possession of the Property and to rescind any foreclosure sale should one occur. The amount of the Note was \$120,607.00 when Plaintiffs purchased the Property and currently the Property is valued at or around \$114,909.00. The Note and Property independently are valued in excess of \$75,000, exclusive of interest and costs and Plaintiffs seek to permanently enjoin any foreclosure sale and rescind any foreclosure sale that could occur. Therefore, the "value of the extent of" Plaintiffs' injury if injunctive relief or a rescission is not granted is in excess of the jurisdictional required amount and removal is proper based on diversity. *See Waller*, 296 F.2d at 547-48.

(2) Plaintiffs Seek Damages in Excess of \$75,000, Exclusive of Interest and Costs

16. In addition to the evidence Wells Fargo has presented, it is also facially apparent from the Petition that the amount in controversy exceeds \$75,000, exclusive of interest and costs. Plaintiffs seek economic damages, exemplary damages, and mental anguish and treble damages under the DTPA. Plaintiffs also seek to recover their attorney fees. For jurisdictional purposes, the amount in controversy includes treble damages and exemplary damages. *See St. Paul Reins. Co.*, 134 F.3d at 1253 n.7. Exemplary damages are capped under Texas law to the greater of: (1)(A) two times the amount of economic damages plus (B) an amount equal to any noneconomic damages found by the jury, not to exceed \$750,000; or (2) \$200,000. *See TEX. CIV. PRAC. & REM. § 41.008*. Plaintiffs claim that Wells Fargo committed wrongful debt collection practices and violations of the DTPA willingly and intentionally. As such, Plaintiffs contend that they are entitled to treble damages, which are three times the amount of mental

anguish and economic damages. TEX. BUS. & COM. CODE. § 17.50(b)(1). Although Wells Fargo vehemently denies that Plaintiffs are entitled to any damages, when these figures are included in the amount in controversy calculus, Plaintiffs' alleged potential damages well exceed the \$75,000 jurisdictional requirement. *See Rawlings v. Travelers Property Cas. Ins. Co.*, Civ. Action No. 3:07-CV-1608-O, 2008 WL 2115606, at **8-9 (N.D. Tex. May 20, 2008) (considering plaintiff's request for exemplary damages and potential recovery pursuant to TEX. CIV. PRAC. & REM. § 41.008, and finding that the amount in controversy "more likely than not" exceeded \$75,000).

17. It is also well established in the Fifth Circuit that potential attorney fees are part of the amount-in-controversy calculus. *White*, 319 F.3d at 675-677 (affirming a district court's finding that attorney fees are part of the amount in controversy); *Grant v. Chevron Phillips Chemical Co. L.P.*, 309 F.3d 864, 874 (5th Cir. 2002) ("[W]e hold that when there is state statutory authority for the court to award attorney's fees . . . such fees may be included in the amount in controversy."); *Ray Mart, Inc. v. Stock Building Supply of Texas, L.P.*, 435 F. Supp. 2d 578, 588 (E.D. Tex. 2006) (including potential award of attorney fees in calculating the amount in controversy).

18. Based on the value of Plaintiffs' request for injunctive relief and rescission, economic, mental anguish, punitive and treble damages, and attorney fees, it is facially apparent that the amount in controversy more likely than not exceeds \$75,000, exclusive of interests and costs.

27. Because there is complete diversity among the parties and the amount in controversy requirement is satisfied, this Court has jurisdiction pursuant to 28 U.S.C. § 1332(a). Removal is therefore proper.

Respectfully submitted,

/s/ Robert T. Mowrey

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ATTORNEYS FOR DEFENDANT

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CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of June, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel:

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/s/ Jason L. Sanders

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