

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
8

9 RICHARD N. BATSON,
10 BEVERLY J. JONES-BATSON,
11 Plaintiffs,
12 v.
13 DEUTSCHE BANK TRUST
14 AMERICAS, INDEPENDENT TRUSTEE
15 FOR SASTA 2005-3 MORTGAGE
16 BACKED ASSETS 2005-3,
17 MORGAN STANLEY FINANCIAL,
18 OCWEN MORTGAGE SERVICES,
19 NORTH CASCADE TRUSTEE
20 SERVICES,
21 DOES 1-10,
22 ALL OTHERS WITH SECURED
23 INTEREST,
24 Defendants.
25

No. 2:15-cv-00193-SAB

**ORDER DENYING MOTION TO
REMAND AND DENYING
COSTS**

26 Before the Court is Plaintiffs' Motion for Remand and Awarding of Costs,
27 ECF No. 17, filed on August 21, 2015. Defendants removed this case from
28 Spokane County Superior Court, Case No. 15-2-02434-0, to this Court, on July 24,

ORDER DENYING MOTION TO REMAND AND DENYING COSTS ~ 1

1 2015. ECF No. 1. For the reasons set forth below, Plaintiffs’ requests to remand
2 and for costs are **DENIED**.

3 28 U.S.C. § 1441(a) allows a defendant to remove a case from a state court
4 to a federal district court so long as the district court has “original jurisdiction.” 28
5 U.S.C. § 1332(a)(1) grants subject matter jurisdiction to this Court when there is
6 diversity of citizenship of parties, and the amount in controversy exceeds \$75,000.

7 The Court finds that diversity of citizenship exists. The Court takes notice
8 that Plaintiffs are citizens of Washington; that Defendant Morgan Stanley is a
9 citizen of New York and Delaware; that Defendant Deutsche Bank Trust Company
10 Americas as Indenture Trustee for the registered holders of Saxon Asset Securities
11 Trust 2005-3 Mortgage Loan Asset Backed Notes, Series 2005-3 is a citizen of
12 New York; and that Defendant Ocwen Loan Servicing, LLC is a citizen of Florida
13 and the U.S. Virgin Islands. See Notice of Removal, ECF Doc. 1, 3-4.

14 The Court also finds that Defendant North Cascade Trustee Services, Inc. is
15 a nominal defendant. Federal courts must disregard formal or nominal parties
16 when considering diversity of citizenship for subject matter jurisdiction. *Navarro*
17 *Sav. Ass’n v. Lee*, 446 U.S. 458, 461, 100 S. Ct. 1779, 64 L. Ed. 2d 425 (1980). A
18 nominal defendant is one “who holds the subject matter of the litigation in a
19 subordinate or possessory capacity and to which there is no dispute.” *SEC v.*
20 *Colello*, 139 F.3d 674, 676 (9th Cir. 1998). Most courts consider trustees in
21 foreclosure suits as nominal parties, unless plaintiffs have alleged direct claims
22 against them. *Prasad v. Wells Fargo Bank, N.A.*, No. C11-894-RSM, 2011 WL
23 4074300, at *4 (W.D. Wash. Sept. 13, 2011); see also *McPherson v. Purdue*, 21
24 *Wn. App.* 450 (1978).

25 Plaintiffs have alleged no specific claims against North Cascade or raised a
26 cause of action at law that North Cascade is responsible for. Instead, Plaintiffs
27 state they have “not named North Cascade as a Defendant.” Notice of Removal,
28 ECF Doc. 1, Ex. 1(b) at ¶ 27 (Plaintiffs’ complaint stating behavior of North

1 Cascade “not unlawful enough to include”). Without any real claims, North
2 Cascade is a neutral and nominal defendant, not recognized for diversity
3 jurisdiction.¹ Thus, because Plaintiffs are citizens of Washington, and because
4 Defendants are citizens of New York, Delaware, Florida, and the U.S. Virgin
5 Islands, there is complete diversity of citizenship for purposes of 28 U.S.C.
6 § 1332(a)(1).

7 Additionally, Plaintiffs have claimed over \$75,000 in this case. See, e.g.,
8 Notice of Removal, ECF Doc. 1, Ex. 1(b) at ¶ 97 (Plaintiffs’ complaint claiming,
9 for example, \$203,750 in restitution of expenditures). Because there is complete
10 diversity, and the amount in controversy exceeds \$75,000, this court has subject
11 matter jurisdiction and is unable to remand; the motion to remand is **DENIED**.

12 The Court has broad discretion to award fees and costs, but in this
13 circumstance costs are appropriate only if the removing party lacks an objectively
14 reasonable basis in seeking removal. *Martin v. Franklin Capital Corp.*, 546 U.S.
15 132, 141, 126 S. Ct. 704, 163 L. Ed. 2d 547 (2005). Because the case will not be
16 remanded, an award of costs is improper, 28 U.S.C. § 1447(c), and the Plaintiffs’
17 request is **DENIED**.

18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///

27 ¹ North Cascade’s nominal status also defeats application of the Forum Defendant Rule. See 28
28 U.S.C. § 1441(b)(2); *Strotek Corp. v. Air Transp. Ass’n of Am.*, 300 F.3d 1129, 1132 (9th Cir.
2002).

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiffs' Motion to Remand is **DENIED.**

3 2. Plaintiffs' request to award costs is **DENIED.**

4 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
5 file this Order and provide copies to counsel and to the pro se plaintiffs.

6 **DATED** this 11th day of September, 2015.



10 A handwritten signature in blue ink that reads "Stanley A. Bastian".

11
12 Stanley A. Bastian
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28