

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JEFFREY SPESOCK, et al.,

Plaintiffs,

v.

U.S. BANK NA, et al.,

Defendants.

CASE NO. C18-0092JLR

ORDER TO SHOW CAUSE
REGARDING SUBJECT
MATTER JURISDICTION

Before the court is Defendant U.S. Bank NA, as successor trustee to Bank of America NA, as successor in interest to LaSalle Bank NA, as trustee for Washington Mutual Mortgage Pass-Through Certificate WMALT Series 2006-AR4's ("the Trust") notice of removal.¹ (Not. of Rem. (Dkt. # 1).) The court has reviewed the Trust's notice

//

¹ The Trust asserts that Plaintiffs erroneously named as defendants all previous successors or trustees that are listed in the Trust's full name. (Not. of Rem. at 1 n.1.) The Trust asserts that—as the holder of the note—it is the proper defendant. (*Id.*) The court need not rule on this issue for purposes of the present order to show cause.

1 and supporting documentation and concludes that the Trust has failed to establish that the
2 court has subject matter jurisdiction over this action.

3 The Trust invokes the court's diversity jurisdiction. (*Id.* at 2.) A federal court's
4 diversity jurisdiction extends to "all civil actions where the matter in controversy exceeds
5 . . . \$75,000 . . . and is between . . . citizens of different States." 28 U.S.C. § 1332(a)(1).
6 For the court to exercise diversity jurisdiction, each defendant must be citizen of a
7 different state from each plaintiff. *In re Digimarc Corp. Derivative Litig.*, 549 F.3d 1223,
8 1234 (9th Cir. 2008).

9 In its notice of removal, the Trust fails to demonstrate complete diversity of
10 jurisdiction between the parties. Plaintiffs allege that they are residents of Washington.
11 (Compl. (Dkt. # 1-1) ¶ 1.1.) On this basis, the Trust asserts that Plaintiffs are citizens of
12 Washington. (Not. of Rem. at 4); *Adams v. Matrixx Initiatives, Inc.*, No. CV-09-1529-
13 PHX-FJM, 2009 WL 3131459, at *2 (D. Ariz. Sept. 25, 2009) (citing *State Farm Mut.*
14 *Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 519 (10th Cir. 1994) and *Lew v. Moss*, 797 F.2d 747,
15 751 (9th Cir. 1986)) ("Allegations of residency in a state court complaint can create a
16 rebuttable presumption of domicile supporting diversity of citizenship."). The Trust also
17 asserts that it, U.S. Bank NA, LaSalle Bank NA, and Bank of America NA are all citizens
18 of Ohio.² (*See id.*) These alleged fact are good as far as they go, but they do not go far
19 enough to establish complete diversity of citizenship between all Plaintiffs and
20 Defendants in this action.

21
22 ² For purposes of diversity jurisdiction, a trust has the citizenship of its trustee or trustees.
Johnson v. Columbia Props. Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006).

1 Specifically, the Trust does account for the citizenship of Defendant Residential
2 Funding, LLC (“Residential Funding”). Plaintiffs do not allege Residential Funding’s
3 citizenship but simply state that it is “foreign limited liability company, [which] is
4 currently listed as ‘inactive’ on the Secretary of State’s website.”³ (Compl. ¶ 1.5.) In its
5 notice of removal, the Trust states that its counsel spoke to a former attorney for
6 Residential Funding, who stated that “Residential Funding is no longer in business,” that
7 it had “filed for Chapter 11 bankruptcy in New York,” and that it “chose to liquidate
8 rather than restructure.”⁴ (McEllrath Decl. ¶ 3.) The Trust implies that it can discount
9 the citizenship of Residential Funding for purposes of determining diversity jurisdiction
10 because Residential Funding is allegedly inactive and has apparently declared
11 bankruptcy. (*See id.* Not. of Rem. at 5 (concluding that “[c]omplete diversity is present,
12 as none of the defendants are citizens of the same state as the Plaintiffs”).) The Trust
13 cites no legal authority supporting this assumption.⁵

14 To the contrary, in *Stewart v. A.G. Edwards & Sons, Inc.*, the court found that
15 complete diversity of citizenship did not exist because the bankruptcy petition at issue did

16
17 ³ A court assessing diversity jurisdiction in a proceeding involving a limited liability
18 company must consider the citizenship of all members of the limited liability company. *Johnson*
v. Columbia Props. Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006) (“[A]n LLC is a citizen of
every state of which its owners/members are citizens.”).

19 ⁴ The Trust’s counsel also attempted to contact Residential Funding’s counsel in a
20 bankruptcy case in the Southern District of New York, but has not received a response.
(McEllrath Decl. (Dkt. # 2) ¶ 3.)

21 ⁵ The Trust also describes Residential Funding both as “served” and as “not yet . . .
22 served.” (Not of Rem. at 4.) In either event, the Supreme Court has held that the citizenship of
all defendants—both served and unserved—determines whether complete diversity has been
met. *Pullman Co. v. Jenkins*, 305 U.S. 534, 541 (1939).

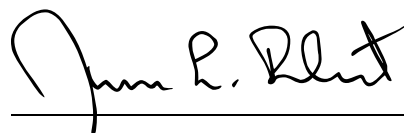
1 not operate as a dismissal of the non-diverse defendant but merely suspended the
2 proceedings against that defendant. 74 B.R. 26, 27 (D.S.C. 1987). Thus, the court
3 concluded that the diverse defendant’s removal to federal court was improper. *Id.*; *see*
4 *also Sutton Woodworking Mach. Co. v. Mereen-Johnson Mach. Co.*, 328 F. Supp. 2d 601,
5 605 (M.D.N.C. 2004) (“[Defendant’s] Chapter 7 petition for bankruptcy, without more,
6 does not create diversity of citizenship or otherwise permit removal on the basis of
7 diversity of citizenship. The automatic stay triggered by [the defendant’s] petition for
8 bankruptcy is not tantamount to dismissal of [the defendant] from the case, and merely
9 suspends the proceedings pending against [the defendant].”); *David v. Hooker, Ltd.*, 560
10 F.2d 412, 418 (9th Cir. 1977) (“[A] stay of a suit pending in another court against the
11 bankrupt is not a dismissal of the suit nor does it deprive the court of jurisdiction over the
12 matter; it merely suspends the proceedings.”); *Paws Up Ranch, LLC v. Green*, No. 2:12-
13 cv-01547-GMN-NJK, 2015 WL 4113113, at *3 (D. Nev. July 8, 2015) (considering the
14 citizenship of an inactive limited liability company in determining that the citizenship of
15 the parties was completely diverse).

16 The court is not assured that it has diversity jurisdiction over this action because
17 the court cannot determine the citizenship of Residential Funding from the Trust’s notice
18 of removal. The right to remove a case to federal court is entirely a creature of statute.
19 *See Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1062 (9th Cir. 1979). The Ninth
20 Circuit “strictly construe[s] the removal statute against removal jurisdiction,” and
21 “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in
22 the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). “The ‘strong

1 presumption' against removal jurisdiction means that the defendant always has the
2 burden of establishing that removal is proper." *Id.* If a federal court determines that it
3 lacks subject matter jurisdiction at any time during a dispute, the court must dismiss the
4 action. *See* Fed. R. Civ. P. 12(h)(3); *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010)
5 ("Courts have an independent obligation to determine whether subject-matter jurisdiction
6 exists, even when no party challenges it."); *Rosales v. United States*, 824 F.2d 799, 803
7 n.4 (9th Cir. 1987).

8 In sum, it appears to the court that subject matter jurisdiction may be lacking
9 because the Trust has failed to demonstrate that complete diversity of citizenship exists
10 between all Plaintiffs and Defendants in this action. Specifically, the Trust has failed to
11 demonstrate the citizenship of Residential Funding or provided the court with any
12 authority for discounting Residential Funding's citizenship. Accordingly, the court
13 ORDERS the Trust to SHOW CAUSE why this matter should not be dismissed pursuant
14 to Federal Rule of Civil Procedure 12(h)(3) for lack of subject matter jurisdiction. The
15 Trust must file a response within seven (7) days of the date of this order. If the Trust fails
16 to file a timely response that satisfies the court that it has subject matter jurisdiction, the
17 court will dismiss this action without prejudice and without further notice to the Trust.

18 Dated this 13th day of February, 2018.

19
20 

21 JAMES L. ROBERT
22 United States District Judge