

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

Civil Action No. \_\_\_\_\_

TRISHA J. MUNHOLLAND and  
BELLA HOMES, LLC,

Plaintiffs,

v.

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Trustee for the Certificateholders of Structured Asset  
Mortgage Investments II Inc. Bear Stearns Mortgage Funding  
Trust 2007-AR5 Mortgage Pass-Through Certificates, Series  
2007-AR5,  
JPMORGAN CHASE BANK, N.A.,  
EMC MORTGAGE CORPORATION, and  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

Defendants.

---

**NOTICE OF REMOVAL**

---

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLORADO:

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, Defendants Wells Fargo Bank, National Association, as Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc. Bear Stearns Mortgage Funding Trust 2007-AR5 Mortgage Pass-Through Certificates, Series 2007-AR5 (“Wells Fargo”), JPMorgan Chase Bank, N.A. (“Chase”), EMC Mortgage LLC (formerly known as EMC Mortgage Corporation) (“EMC”), and Mortgage Electronic Registration Systems, Inc. (“MERS,” and collectively, the “Bank Defendants”), hereby remove to this Court the above-captioned state court civil action pending in the District Court for Douglas County, State of Colorado.

### **STATEMENT OF GROUNDS FOR REMOVAL**

1. On November 7, 2011, Plaintiffs Trisha J. Munholland and Bella Homes, LLC (collectively, the “Plaintiffs”) filed their Complaint (the “Complaint”) in the District Court for Douglas County, Colorado (the “State Court”), Case No. 2011cv2682, entitled *Trisha J. Munholland and Bella Homes, LLC v. Wells Fargo Bank, National Association, as Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc. Bear Stearns Mortgage Funding Trust 2007-AR5 Mortgage Pass-Through Certificates, Series 2007-AR5; JP Morgan Chase Bank, N.A.; EMC Mortgage Corporation; and Mortgage Electronic Registration Systems, Inc.* (the “State Court Action”). A true and correct copy of the Complaint in the State Court Action is attached hereto as **Exhibit A**. On December 8, 2011, Plaintiffs served the Summons and Complaint on Wells Fargo, Chase, and MERS.<sup>1</sup> The Affidavits of Service filed on the docket in the State Court are attached hereto as **Exhibit B**.

2. The Bank Defendants hereby remove the State Court Action to this Court on the basis of federal subject matter jurisdiction over federal questions pursuant to 28 U.S.C. §§ 1331, 1441(a), 1441(b), and 1441(c). Specifically, the district courts of the United States have original jurisdiction over certain of Plaintiffs’ claims pursuant to 28 U.S.C. § 1331 because, in the Complaint, Plaintiffs invoke the laws of the United States including the Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (the “FDCPA”), and the Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009, 12 U.S.C. § 5201, *et seq.* (the “ARRA”), as the basis for the requests for relief they assert against the Bank Defendants. *See* Complaint, ¶¶ 50-68, 95-109, 116-121.

---

<sup>1</sup> As of the date of this Notice of Removal, the Bank Defendants are unaware of any properly perfected service on EMC.

3. Pursuant to 28 U.S.C. § 1441(a), a defendant may remove “any civil action brought in a state court of which the district courts of the United States have original jurisdiction.” Further, pursuant to 28 U.S.C. § 1441(b), [a]ny civil action of which the district courts have original jurisdiction founded on a claim or right arising under the . . . laws . . . of the United States shall be removable without regard to the citizenship or residence of the parties.” As set forth above, the Court has original jurisdiction over Plaintiffs’ FDCPA and ARRA claims under 28 U.S.C. § 1331 because they arise under the laws of the United States. Accordingly, Plaintiffs’ FDCPA and ARRA claims may be removed under 28 U.S.C. §§ 1441(a) and (b). Further, Plaintiffs’ other claims, including their state-law claims, may be removed pursuant to 28 U.S.C. § 1441(c), which provides in relevant part:

Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed . . .

In light of the foregoing, this entire case is removable to this Court pursuant to 28 U.S.C. § 1441.

4. In addition, the Bank Defendants also remove the State Court Action to this Court on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332 and 1441(a). As alleged in the Complaint and as set forth below, the parties in this action are citizens of different states:

- a. Wells Fargo is a National Bank Association organized under the laws of the United States, chartered by the Comptroller of the Currency of the United States Treasury, and has its main office in Sioux Falls, South Dakota, as designated in its Articles of Association. As such, Wells Fargo is a citizen of the State of South Dakota for purposes of diversity jurisdiction. *See* 28 U.S.C. §§ 1332, 1348; *see also Wachovia Bank, N.A.*,

546 U.S. 303, 307 (2006) (“a national bank, for §1348 purposes, is a citizen of the State in which its main office, as set forth in its articles of association, is located.”).

- b. Chase is a National Bank Association organized under the laws of the United States, chartered by the Comptroller of the Currency of the United States Treasury, and has its main office in Columbus, Ohio, as designated in its Articles of Association. As such, Chase a citizen of the State of Ohio for purposes of diversity jurisdiction. *See* 28 U.S.C. §§ 1332, 1348; *see also Wachovia Bank, N.A.*, 546 U.S. at 307.
- c. MERS is a Delaware corporation with its principal place of business in Reston, Virginia. *See* Complaint, ¶ 7; *See* 28 U.S.C. § 1332(c)(1) (“[f]or the purposes of this section . . . a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.”). As such MERS is a citizen of Delaware and Virginia for purposes of diversity jurisdiction.
- d. EMC is a limited liability company. For purposes of 28 U.S.C. § 1332, “a limited liability company is a citizen of the states of which its members are citizens, and is not a citizen of the state in which it was organized unless one of its members is a citizen of that state.” *Hale*, 93 F.Supp.2d at 1112 (adopting rule from other jurisdictions). EMC’s sole member is the Bear Stearns Companies LLC, a limited liability company. On information and belief, the Bear Stearns Companies LLC’s sole member is

JPMorgan Chase & Co., a Delaware corporation with its principal place of business in the State of New York. *See* 28 U.S.C. § 1332(c)(1). As such EMC is a citizen of Delaware and New York for purposes of diversity jurisdiction.

- e. Trisha J. Munholland is a citizen of the State of Colorado. For purposes of 28 U.S.C. § 1332, “a natural person is a citizen of the state in which they are domiciled.” *Hale v. Mastersoft Intern. Pty. Ltd.*, 93 F.Supp.2d 1108, 1112 (D. Colo. 2000). When the record includes references to a person’s residence, “the place of residence is *prima facie* the domicile.” *State Farm Mut. Automobile Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994). Trisha J. Munholland alleges that she “is and was” a resident of the State of Colorado “[a]t all times material [to the Complaint].” *See* Complaint, ¶1. Trisha J. Munholland is thus a Colorado citizen, and her citizenship is diverse from Bank Defendants’ South Dakota, Ohio, Delaware, Virginia, and New York citizenship.
- f. On information and belief, Bella Homes, LLC is a citizen of the State of Arizona. Bella Homes, LLC is a limited liability company. *See* Complaint, ¶ 2. On information and belief, the member of Bella Homes, LLC is Mark Diamond, an individual domiciled in Arizona. Inasmuch as Mr. Diamond is domiciled in Arizona and a citizen of the State of Arizona, Bella Homes, LLC is a citizen of the State of Arizona, and its citizenship is diverse from Bank Defendants’ South Dakota, Ohio,

Delaware, Virginia, and New York citizenship. *Hale*, 93 F.Supp.2d at 1112.

5. The amount in controversy in this action exceeds the sum of \$75,000, exclusive of interest and costs. As here, “in cases seeking declaratory . . . relief, the amount in controversy is measured by the value of the object of the litigation.” *Garcia v. Berkshire Life Ins. Co. of America*, Case No. 10-cv-00912-REB-MEH, 2010 WL 2691692, \*4 (D. Colo. Jul. 6, 2010) (quoting *Lovell v. State Farm Mut. Auto. Ins. Co.*, 466 F.3d 893, 897 (10th Cir. 2006)). In analyzing the “value of the object of the litigation,” the Tenth Circuit Court of Appeals follows the “‘either viewpoint rule,’ which ‘considers either the value to the plaintiff or the cost to the defendant of . . . declaratory relief as the measure of the amount in controversy for purposes of meeting the jurisdictional minimum.’” *Id.*; see also *City of Moore v. Atchison, Topeka, & Santa Fe Ry.*, 699 F.2d 507, 509 (10th Cir. 1983) (“To determine the amount in controversy, we look to the pecuniary effect an adverse declaration will have on either party to the lawsuit.”). Moreover, “if suit is brought to quiet title to land . . . and the cloud affects the entire title, then the value of the property . . . plaintiff seeks to protect is the measure of the amount in controversy.” *Ehrenfeld v. Webber*, 499 F. Supp. 1283, 1292-93 (D. Me. 1980).

6. Here, in Plaintiffs’ First Claim for Relief (Declaratory Judgment), Plaintiffs seek, among other things, a declaratory judgment that “Defendants have no legal or equitable rights” in a \$488,000 note and related deed of trust executed to secure Plaintiff Trisha Munholland’s home mortgage loan. See Complaint, ¶¶ 12, 70, 79(g). In their Second Claim for Relief (Quiet Title), Plaintiffs also seek to quiet title to the property pledged as collateral for Plaintiff Trisha Munholland’s mortgage loan. See Complaint, ¶¶ 12, 94 (Plaintiffs request “a decree . . .

determining that the Defendants and each of them has no interest, estate or claim of any kind whatsoever in the said real Property, forever barring and enjoining the Defendants from asserting any claim or title thereto, quieting the title of the Plaintiff in and to the real property and adjudging that Plaintiff is the owner if fee simple and entitled to possession of the real Property . . . .”). In addition, Plaintiffs assert claims for relief for, among other things, alleged breach of contract, fraud, and promissory estoppel, seeking unspecified amounts. *See* Complaint, ¶¶ 98-121. Stated differently, Plaintiffs are seeking (i) a declaration to invalidate the Bank Defendants’ rights to and interests in an obligation in the principal sum of \$488,000, (ii) the complete value of the property offered as collateral for Plaintiff Trisha J. Munholland’s mortgage loan through their quiet title action, and (iii) other unspecified amounts. Under such circumstances and for purposes of diversity jurisdiction, the amount in controversy far exceeds the sum of \$75,000.

7. Accordingly, there is complete diversity among the parties and the matter in controversy exceeds the jurisdictional minimum. This Court, therefore, has original jurisdiction over this action under 28 U.S.C. § 1332, in addition to 28 U.S.C. § 1331. In light of the foregoing, this action is also removable to this Court pursuant to 28 U.S.C. § 1441(a) (a defendant may remove “any civil action brought in a state court of which the district courts of the United States have original jurisdiction.”).

8. This removal is timely pursuant to 28 U.S.C. § 1446(b). The U.S. Supreme Court has held that “a named defendant’s time to remove is triggered by simultaneous service of the summons and complaint.” *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999). Plaintiffs first served the Bank Defendants with the Summons and Complaint on December 8, 2011, less than thirty days before the date of this Notice of Removal. *See* Exhibit

B. Thus, this removal is timely under 28 U.S.C. § 1446(b), because this Notice of Removal is being filed within thirty days after Plaintiffs first served the Bank Defendants with the Summons and Complaint. *See* 28 U.S.C. § 1446(b).

9. Venue is proper in this District under 28 U.S.C. § 1391 as a substantial part of the alleged events or omissions giving rise to Plaintiffs' claims occurred in this District.

10. All named and properly served defendants to this action consent to this removal.

11. Pursuant to 28 U.S.C. § 1446(a) and D.C.COLO.LCivR 81.1, the Bank Defendants are filing herewith a copy of the State Court initiating documents, petitions, and complaint and any orders served upon the defendants. Within 14 days of the filing of this Notice of Removal, the Bank Defendants will separately file a current docket sheet and each pending motion, petition, and related response, reply, and brief filed in the State Court Action.

12. As of the date of this Notice of Removal, no hearings or other proceedings have been set in the State Court Action.



Respectfully submitted this 28<sup>th</sup> day of December, 2011.

By: s/ Mark C. Willis

Mark C. Willis  
Kelly S. Kilgore  
Adam L. Hirsch  
KUTAK ROCK LLP  
1801 California Street, Suite 3100  
Denver, CO 80202  
Telephone: (303) 292-7848  
Facsimile: (303) 292-7799  
Email: mark.willis@kutakrock.com  
kelly.kilgore@kutakrock.com  
adam.hirsch@kutakrock.com

ATTORNEYS FOR DEFENDANTS WELLS FARGO  
BANK, NATIONAL ASSOCIATION, AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS OF STRUCTURED  
ASSET MORTGAGE INVESTMENTS II INC. BEAR  
STEARNS MORTGAGE FUNDING TRUST 2007-AR5  
MORTGAGE PASS-THROUGH CERTIFICATES,  
SERIES 2007-AR5, JPMORGAN CHASE BANK, N.A.,  
EMC MORTGAGE LLC (FORMERLY EMC  
MORTGAGE CORPORATION), AND MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS, INC.

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2011, I electronically mailed the foregoing to the Clerk of the Court and served a copy via U.S. Mail, postage prepaid of such filing to the following addresses:

Donald T. Emmi  
William J. Hunsaker, P.C.  
4465 Kipling Street, Suite 200  
Wheat Ridge, Colorado 80033

Attorneys for Plaintiffs

*s/ Edna M. Slagle*

Edna M. Slagle