

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
SKULL VALLEY BAND OF GOSHUTE INDIANS OF UTAH, :
a federally recognized Native American Tribe; BOSTON :
MORTGAGE INVESTMENTS XIII, LLC, a Skull Valley Band :
of Goshutes' Tribal Limited Liability Company; BOSTON :
MORTGAGE INVESTMENTS XVI, LLC, a Skull Valley Band :
of Goshutes' Tribal Limited Liability Company; CRISPIN :
KOEHLER HOLDING III, LLC, a Skull Valley Band of :
Goshutes' Tribal Limited Liability Company; ESOPUS :
MORTGAGES, LLC, a Skull Valley Band of Goshutes' Tribal :
Limited Liability Company; FANCHER MORTGAGES, LLC, a :
Skull Valley Band of Goshutes' Tribal Limited Liability :
Company; HILER MORTGAGES, LLC, a Skull Valley Band of :
Goshutes' Tribal Limited Liability Company; KISMET :
MORTGAGES, LLC, a Skull Valley Band of Goshutes' Tribal :
Limited Liability Company; LANSING MORTGAGES, LLC, a :
Skull Valley Band of Goshutes' Tribal Limited Liability :
Company; REMSEN MORTGAGES, LLC, a Skull Valley Band :
of Goshutes' Tribal Limited Liability Company; SALEM :
MORTGAGES, LLC, a Skull Valley Band of Goshutes' Tribal :
Limited Liability Company; THORNWOOD MORTGAGES, :
LLC, a Skull Valley Band of Goshutes' Tribal Limited Liability :
Company; UPTON MORTGAGES, LLC, a Skull Valley Band of :
Goshutes' Tribal Limited Liability Company; VERNON :
MORTGAGES, LLC, a Skull Valley Band of Goshutes' Tribal :
Limited Liability Company; WINDHAM MORTGAGES, LLC, :
a Skull Valley Band of Goshutes' Tribal Limited Liability :
Company; XEBEC MORTGAGES, LLC, a Skull Valley Band of :
Goshutes' Tribal Limited Liability Company; and YORKSHIRE :
MORTGAGES, LLC, a Skull Valley Band of Goshutes' Tribal :
Limited Liability Company, :
:

Plaintiffs, :

-against- :

U.S. BANK NATIONAL ASSOCIATION, :

Defendant. :

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Case No.

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant U.S. Bank National Association (“Defendant”) hereby removes this action from the Supreme Court of the State of New York, New York County, to the United States District Court for the Southern District of New York. In support of its Notice of Removal, Defendant states as follows:

I. PROCEDURAL BACKGROUND

1. On or about January 28, 2020, Plaintiffs Skull Valley Band of Goshute Indians of Utah, Boston Mortgage Investments XIII, LLC, Boston Mortgage Investments XVI, LLC, Crispin Koehler Holdings III, LLC, Esopus Mortgages, LLC, Fancher Mortgages, LLC, Hiler Mortgages, LLC, Kismet Mortgages, LLC, Lansing Mortgages, LLC, Remsen Mortgages, LLC, Salem Mortgages, LLC, Thornwood Mortgages, LLC, Upton Mortgages, LLC, Vernon Mortgages, LLC, Windham Mortgages, LLC, Xebec Mortgages, LLC, and Yorkshire Mortgages, LLC (together “Plaintiffs”) filed this civil action in the Supreme Court of the State of New York, New York County, Index No. 650640/2020 (the “State Court Action”). A true and correct copy of the summons and complaint (the “Complaint”) and the exhibits attached thereto are attached hereto as Exhibit A. Attached hereto as Exhibit B are other papers filed in the State Court Action. Exhibits A and B constitute all process, pleadings and orders in the State Court Action of which Defendant is aware. *See* 28 U.S.C. § 1446(b).
2. Plaintiffs’ Complaint alleges a single cause of action for breach of contract. Compl. ¶¶ 30-35.
3. Defendant was served with the Complaint on or about January 31, 2020.
4. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely filed within 30 days after the receipt by Defendant of a copy of the Complaint.

5. No previous Notice of Removal has been filed or made with this Court for the relief sought herein.

II. REMOVAL IS PROPER PURSUANT TO 28 U.S.C. § 1331

6. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 in that this is a civil action arising under the laws of the United States and raises a federal question.

7. Plaintiffs Boston Mortgage Investments XIII, LLC, Boston Mortgage Investments XVI, LLC, Crispin Koehler Holdings III, LLC, Esopus Mortgages, LLC, Fancher Mortgages, LLC, Hiler Mortgages, LLC, Kismet Mortgages, LLC, Lansing Mortgages, LLC, Remsen Mortgages, LLC, Salem Mortgages, LLC, Thornwood Mortgages, LLC, Upton Mortgages, LLC, Vernon Mortgages, LLC, Windham Mortgages, LLC, Xebec Mortgages, LLC, and Yorkshire Mortgages, LLC allegedly are residual holders and beneficiaries of residential mortgage-backed securitization trusts for which Defendant acted as trustee (the “Trusts”). Compl. ¶¶ 1, 2.¹

8. Each Trust is governed by a Trust Agreement that incorporates standard terms from a document entitled “Standard Trust Provisions for REMIC” (the “Standard Trust Provisions”). Compl. ¶ 7, n.2. The Trust Agreement and Standard Trust Provisions for each Trust “are substantively the same . . . as they relate to [Defendant’s] obligations and the rights of holders of Residual Securities.” *Id.* A sample Trust Agreement and Standard Trust Provisions are annexed to the Complaint as Exhibits A and B.

9. The Government National Mortgage Association (“Ginnie Mae”) is a “self-financing, wholly-owned U.S. Government corporation within” the United States Department of Housing

¹ Plaintiff Skull Valley Band of Goshutes Indians of Utah (the “Tribe”) is a Native American Tribe. Plaintiffs do not allege that the Tribe has any contractual relationship with Defendant.

and Urban Development.² Each Trust’s assets “consist primarily of Ginnie Mae Certificates guaranteed pursuant to Ginnie Mae programs for first lien, single-family, fixed rate, residential mortgage loans.” *See* Offering Circular Supplement, Compl. Exhibit A, at Schedule B.

10. Specifically, under the Ginnie Mae program, Ginnie Mae guarantees payments to holders of certain certificates of the Trusts pursuant to the terms of the Trust Agreements and federal tax law (IRC 860). Compl. ¶ 18. The Offering Circular Supplement explains that Ginnie Mae guarantees payment with respect to the residual Certificates that Plaintiffs claim to own:

**THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION,
PURSUANT TO SECTION 306(G) OF THE NATIONAL HOUSING ACT,
GUARANTEES THE TIMELY PAYMENT OF PRINCIPAL AND
INTEREST ON THIS SECURITY IN ACCORDANCE WITH THE TERMS
AND CONDITIONS SET FORTH HEREIN AND IN THE RELATED
TRUST AGREEMENT.**

Offering Circular Supplement, Compl. Exhibit A, at Exhibits RR, RI, RP (emphasis in original).

11. The Offering Circular Supplement also discloses that “**THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA IS PLEDGED TO THE PAYMENT OF ALL AMOUNTS THAT MAY BE REQUIRED TO BE PAID UNDER THIS GUARANTY.**”

Id. (emphasis in original).

12. The Standard Trust Provisions make clear that “**THE TRUST AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES OF AMERICA.**” Standard Trust Provisions for REMIC Trusts, Compl. Exhibit B, at § 8.05. (emphasis in original).

² GINNIE MAE, *About Us*, available at: https://www.ginniemae.gov/about_us/who_we_are/Pages/our_history.aspx (last visited Feb. 25, 2020).

13. In light of the United States Government's critical role through Ginnie Mae as guarantor of payments to certificateholders of the Trusts and a third-party beneficiary of the contract,³ the United States has a substantial interest in the contract being litigated.

14. In the Complaint, Plaintiffs assert a single cause of action: breach by Defendant of a contract that is required to be construed under the laws of the United States of America. Stated differently, the question raised by the Complaint is whether Defendant's conduct violated federal law. Accordingly, Plaintiffs' Complaint raises a question of federal law and is removable pursuant to 28 U.S.C. § 1331.

15. For the foregoing reason, this Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. Accordingly, removal is proper.

16. Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly provide written notice of removal of this action to Plaintiffs and will promptly file a copy of this Notice of Removal with the Clerk of Court, New York County, in the Supreme Court of the State of New York.

III. VENUE

17. The United States District Court for the Southern District of New York embraces the county in which the State Court Action is now pending, and thus this Court is the proper District Court to which this case should be removed. *See* 28 U.S.C. §§ 1441(a) & 1446(a).

IV. NO BOND OR VERIFICATION REQUIRED

18. Pursuant to Section 1016 of the Judicial Improvements and Access to Justice Act of 1988 (the "Act"), no bond is required in connection with this Notice of Removal. Pursuant to Section 1016 of the Act, this Notice need not be verified. *See* 102 Stat. 4642, § 1016 (1988).

³ *See* Standard Trust Provisions for REMIC Trusts, Compl. Exhibit B, at § 8.05.

V. CONCLUSION

Based upon the foregoing, this Court has jurisdiction over this matter, and the claims properly are removed to this Court. In filing this notice of removal, Defendant does not waive, and specifically reserves, all defenses, objections, denials, exceptions, rights, and motions. No statement herein or omission shall be deemed to constitute an admission by Defendant of any of the allegations of, or damages sought in, Plaintiffs' pleadings.

WHEREFORE, Defendant removes this action from the Supreme Court of the State of New York, New York County (Index No. 650640/2020) to the United States District Court for the Southern District of New York.

Dated: New York, New York
February 26, 2020

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