

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

DAVID J. PALADINO; PALADINO
DEVELOPMENT GROUP; PALADINO
RELATED COMPANIES LLC; BAYVIEW
APARTMENTS, LLC; BAYVIEW
APARTMENTS LLC; CHOPS HOLDINGS;
CHOPS HOLDINGS LLC; PL
PARTNERSHIP; PARIS INVESTMENTS,
LLC; PARIS INVESTMENTS; NORTH
OMAHA, LLC; NORTH OMAHA LLC;
17TH STREET LLC; 5132 NWR, LLC;
5132 NWR LLC; ST. MARY'S
APARTMENTS L.L.C.; ST. MARY'S
APARTMENT LLC; 44TH STREET, L.L.C;
44TH STREET LLC; PINE PARK
PROPERTIES, LLC; PINE PARK
APARTMENTS; HAMILTON STREET,
LLC; HAMILTON STREET LLC; 20TH
STREET LLC; ANDERSON APARTMENTS
LLC; LANDMARK REAL ESTATE; and
LANDMARK MANAGEMENT GROUP,
INC.,

Plaintiffs,

vs.

CHUBB CUSTOM INSURANCE
COMPANY,

Defendant.

Case No. 8:19-cv-00530

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441(b) and 1446, Defendant Chubb Custom Insurance Company ("Chubb"), by counsel, hereby files its Notice of Removal for this action to the United States District Court for the District of Nebraska from the District Court of Douglas County, Nebraska, and in support thereof states as follows:

Procedural Background

1. On June 28, 2019, Plaintiffs David J. Paladino, *et al.* (“Plaintiffs”), filed a complaint (“Complaint”) against Chubb in the suit styled *David J. Paladino et al., v. Chubb Custom Insurance Co.*, Case No. CI 19-5205, (Dist. Ct. Douglas Cty., Neb.) (“State Court Suit”). A true and correct copy of the Complaint is attached as Exhibit A.

2. Chubb was served with the Complaint on July 22, 2019. Chubb was granted an extension by the court to file its responsive pleading by September 13, 2019. Chubb filed its answer to the Complaint on September 13, 2019.

3. Chubb now files its Notice of Removal, which is timely under the “other paper” provision of 28 U.S.C. § 1446(b)(3).

Removal Requirements

4. As described in detail below, complete diversity of citizenship exists between Plaintiffs and Chubb.

5. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(a)(1).

6. The amount in controversy is in excess of the Court’s jurisdictional minimum of \$75,000. Plaintiffs seek recovery of \$19,746,769.00 in damages, as well as business interruption damages in the amount of \$750,000.00. (*See* Exhibit A, Complaint ¶ VI).

7. Venue is proper in the United States District Court for the District of Nebraska pursuant to 28 U.S.C. § 1446(a), as the State Court Suit originated in Douglas County, Nebraska.

8. In accordance with 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings, and orders filed in the State Court Suit is attached as Exhibit B.

9. A copy of this Notice of Removal will be filed by Chubb with the state court where the State Court Suit is pending promptly after the filing of this Notice of Removal, pursuant to 28 U.S.C. §1446(d).

10. Upon receiving a file-marked copy of this Notice of Removal, Chubb will serve a file-marked copy of this Notice of Removal upon counsel for Plaintiffs.

Removal is Timely

11. A notice of removal is timely filed when it is filed within 30 days after receipt by the defendant of an initial pleading or, if insufficient facts are pled in the complaint to establish diversity jurisdiction, then within 30 days after receipt by the defendant of a copy of an amended pleading, motion, order, or other paper from which it may first be ascertained that the case is one which is or has become removable. *See* 28 U.S.C. §§ 1446(b)(1) & (b)(3).

12. As pled, the Complaint did not allege sufficient facts to establish diversity jurisdiction. The 30 days for filing a notice of removal did not begin on Chubb's receipt of the initial pleading on July 22, 2019. The Complaint identifies twenty-seven separate plaintiffs, twenty-five of which are entities. The Complaint does not identify the citizenship of any of the Plaintiffs.

13. Counsel for Chubb has been diligent in their efforts to establish the citizenship of the Plaintiffs:

- (a) Counsel for Chubb conducted various searches on the Nebraska Secretary of State website to ascertain information about citizenship of each of the Plaintiffs. The search did not provide any further information relating to citizenship of the Plaintiffs. On August 8, 2019, counsel contacted Plaintiffs' counsel asking for identification relating to the members, partners, partnerships, and individuals listed in the Complaint. (*See* August 8, 2019 email correspondence from Jonathan Barger to Plaintiffs' counsel ("August 8, 2019 Correspondence"). A true and correct copy of the August 8, 2019 Correspondence is attached as Exhibit C.).

- (b) Counsel for Plaintiffs responded to this request but failed to provide any new information relating to the citizenship of the members, partners, partnerships, or individuals listed in the Complaint. (*See* August 20, 2019 email correspondence from Ryan Sewell to Chubb's counsel ("August 20, 2019 Correspondence"). A true and correct copy of the August 20, 2019 Correspondence is attached as Exhibit D.).
- (c) On October 4, 2019, Chubb served its First Set of Interrogatories to Plaintiff ("October 2019 Interrogatories"), specifically requesting citizenship information on each of the members, partners, partnerships, and individuals listed in the Complaint. (A true and correct copy of the October 2019 Interrogatories is attached as Exhibit E). The October 2019 Interrogatories again attempted to determine the citizenship of the Plaintiffs. (Exhibit E).
- (d) On November 4, 2019, counsel for Plaintiffs served Plaintiffs' Responses to the October 2019 Interrogatories ("Plaintiffs' Responses to Chubb's October 2019 Interrogatories"). A true and correct copy of Plaintiffs' Responses to Chubb's October 2019 Interrogatories is attached as Exhibit F.
- (e) After reviewing Plaintiffs' Responses to Chubb's October 2019 Interrogatories, counsel for Chubb still needed additional information to determine the citizenship of all the Plaintiffs and sent another email on November 5, 2019 ("November 5, 2019 Correspondence"), requesting clarification on Plaintiffs' responses. A true and correct copy of the November 5, 2019 Correspondence is attached as Exhibit G.
- (f) By email correspondence to Chubb's counsel dated November 12, 2019 ("November 12, 2019 Correspondence"), Plaintiffs' counsel finally provided sufficient information to determine the citizenship of the Plaintiffs. A true and correct copy of the November 12, 2019 Correspondence is attached as Exhibit H. On November 12, 2019, Chubb received "other paper" sufficient to ascertain that the Complaint was removable. (Exhibit H).

14. Based upon Plaintiffs' Responses to Chubb's October 2019 Interrogatories and the representations of Plaintiffs' counsel in the November 12, 2019 Correspondence, Chubb has confirmed complete diversity of citizenship exists between Plaintiffs and Chubb. (Exhibit F; Exhibit H).

15. Pursuant to 28 U.S.C. §1446(b)(3), the time for filing the Notice of Removal commenced November 12, 2019, and a notice of removal must be filed thirty (30) days from November 12, 2019, or December 10, 2019. Thus, this Notice of Removal is timely.

Diversity of Citizenship

16. Under 28 U.S.C. § 1332 (a)(1), the district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds \$75,000 and is between citizens of different states. A natural person is a citizen of the state in which he or she is domiciled. A corporation is a citizen of its jurisdiction of incorporation and the jurisdiction in which it maintains its principal place of business. The rule for citizenship of a limited liability company is that the organization has the citizenship of each of its “members”. See 28 U.S.C. § 1332(c)(1); *GMAC Commercial Credit LLC v. Dillard Dept. Stores, Inc.*, 357 F.3d 827, 828 (8th Cir. 2004). Where a suit has been brought by or against an artificial entity other than a corporation, such as a limited partnership, the existence of diversity jurisdiction depends on the citizenship of all the members of the entity. Similarly, for unincorporated entities, diversity jurisdiction in a suit by or against such an entity depends on the citizenship of all its members. *Americold Realty Trust v. Conagra Foods, Inc.*, 136 S. Ct. 1012, 1015 (2016); *Carden v. Arkoma Assocs.*, 110 S. Ct. 1015, 1021 (1990).

Citizenship of Plaintiffs

17. Each of the Plaintiffs is a citizen of Nebraska. Based on Plaintiffs’ verified responses and supplemental responses, the citizenship of the Plaintiffs has been established as of November 12, 2019. (*See* Exhibit F; Exhibit H).

- a) There is one individual Plaintiff, David J. Paladino. (Exhibit A at 1). Mr. Paladino is a citizen of Nebraska. (*See* Exhibit H).
- b) There is one Plaintiff listed in the Complaint that is a trade name: Paladino

Development Group. (Exhibit A at 1). The trade name is registered as an individual. David J. Paladino is the applicant and owner of the trade name. (See Exhibit F ¶ 3). He is a citizen of Nebraska. (*Id.*; Exhibit H).

- c) There is one Plaintiff listed in the Complaint that is a partnership: PL Partnership. (Exhibit A at 1). David J. Paladino and Lisa Little are identified as the only partners of PL Partnership. (Exhibit F ¶ 5). David J. Paladino and Lisa Little (aka Lisa Paladino) are citizens of Nebraska. (*Id.*; Exhibit G; Exhibit H).
- d) There are nineteen Plaintiffs listed in the Complaint that are LLCs. David J. Paladino is the only member of those LLCs. He is a citizen of Nebraska. (See Exhibit F ¶ 7; Exhibit G; Exhibit H).
- e) There are three corporations listed as Plaintiffs in the Complaint: Landmark Management Group, Inc., Chops Holdings, and Paris Investments. Each are Nebraska corporations with their principal place of business in Nebraska. Each of these corporations is a citizen of Nebraska. (See Exhibit F at 4, Exhibit H).
- f) Two of the named Plaintiffs were named in error by Plaintiffs' counsel: Landmark Real Estate and Pine Park Apartments. Plaintiffs' counsel has advised they will voluntarily dismiss these two Plaintiffs. (See Exhibit F ¶ 8; Exhibit H).

Chubb Custom Insurance Company

18. Chubb Custom Insurance Company is a corporation, incorporated in the state of New Jersey with its principal place of business located in Whitehouse Station, New Jersey.

19. Chubb is a citizen of New Jersey for purposes of determining diversity under 28 U.S.C. § 1332(c)(1).

Conclusion

20. This Notice of Removal is timely filed and the Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332(a)(1) because (a) complete diversity exists between Plaintiffs and Chubb and (b) the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

WHEREFORE, Defendant Chubb hereby removes the State Court Suit now pending in the District Court of Douglas County, Nebraska to this Court, and prays the above-captioned matter proceed in this Court as an action properly so removed.

Dated: December 2, 2019

CHUBB CUSTOM INSURANCE COMPANY,
Defendant

/s/ Brooke H. McCarthy

Brooke H. McCarthy #25077

Joselyn Marroquin #26361

KUTAK ROCK LLP

1650 Farnam Street

Omaha, NE 68102-2186

Telephone: (402) 346-6000

Email: brooke.mccarthy@kutakrock.com

Email: joselyn.marroquin@kutakrock.com

*Attorneys for Defendant Chubb Custom
Insurance Company*

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and facilitated service via electronic mail to the following:

Ryan M. Sewell, Esq.
INSERRA KELLEY SEWELL
6790 Grover Street, Suite 200
Omaha, NE 68106-3612
Email: rsewell@inserra.com

-and-

Sean M. Patterson, Esq.
MCCLENNY MOSELEY & ASSOCIATES, PLLC
516 Heights Boulevard
Houston, TX 77007
Email: sean@mma-pllc.com

Attorneys for Plaintiffs

/s/ Brooke H. McCarthy

Brooke H. McCarthy