

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) APACHE TRIBE OF OKLAHOMA)	
)	
Plaintiff,)	Case No. _____
)	
vs.)	On Removal From the District Court
)	of Caddo County, State of Oklahoma
(1) TGS ANADARKO, LLC, and)	Case No. CJ-2011-108
(2) WELLS FARGO BANK,)	
NATIONAL ASSOCIATION,)	
)	
Defendants.)	

NOTICE OF REMOVAL

Defendant Wells Fargo Bank, National Association (“Wells Fargo”), hereby gives notice of the removal this action pursuant to 28 U.S.C. §§ 1441 and 1446 from the District Court of Caddo County, State of Oklahoma, to the United States District Court for the Western District of Oklahoma. In support of this Notice of Removal, Wells Fargo sets forth as follows:

1. On or about August 29, 2011, plaintiff, the Apache Tribe of Oklahoma (the “Tribe”) filed a Petition for Declaratory and Injunctive Relief in the District Court of Caddo County, State of Oklahoma. (A copy of the Petition is attached as Exhibit 1.)
2. Plaintiff is a federally-recognized Indian tribe with its tribal headquarters located in the Western District of Oklahoma.

3. Wells Fargo received notice of the Petition through an email communication from counsel for the Tribe on August 29, 2011. (A copy of this email is attached as Exhibit 2.)

4. Summonses were issued for Wells Fargo and TGS, dated August 31, 2011. (A copy of the Summonses is attached as Exhibit 3.)

5. This Notice of Removal is timely because it has been filed within thirty (30) days of service of the Petition or notice of the filing of the Petition on Wells Fargo as required by 28 U.S.C. § 1446(b).

6. Co-defendant TGS Anadarko, LLC (“TGS”) consents to this Notice of Removal, as indicated by the attached Consent to Removal, which accompanies and is made a part of this Notice of Removal. TGS first received notice of the Petition through the August 29, 2011 email, Ex. 2.

7. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331, and this action may be removed to this Court pursuant to 28 U.S.C. § 1441(a) and (b).

8. In its Petition, the Tribe seeks to resolve the federal question of whether its waiver of sovereign immunity was valid with respect to an Equipment Lease Agreement dated December 27, 2007. Under 28 U.S.C. § 1331, a federal district court “shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” “Federal common law as articulated in rules that are fashioned by court decisions are ‘laws’ as that term is used in § 1331.” *Nat’l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 850 (1985); *Nahno-Lopez v. Houser*, 625 F.3d

1279 (10th Cir. 2010) (relying on *Nat'l Farmers* in holding that the district court had subject-matter jurisdiction under 28 U.S.C. § 1331 “as a federal common-law suit provides federal question jurisdiction”). Thus, the assertion of a claim “arising under” federal law invokes a federal district court’s jurisdiction under § 1331. *Id.*

9. In this case, the Tribe’s claim that its waiver of sovereign immunity was invalid asserts a claim “arising under” federal law. *Kiowa Tribe of Oklahoma v. Mfg. Technologies, Inc.*, 523 U.S. 751, 754 (1998) (“As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.”). Indeed, as the Tribe itself states, the sovereign immunity from suit of a federally-recognized Indian tribe “is a matter of federal law, and may not be diminished by the states.” (Petition ¶ 19.) Thus, whether the Tribe validly waived its sovereign immunity is a matter of federal law, and therefore a federal question under § 1331. *Nat'l Farmers*, 471 U.S. at 850.

10. In accordance with 28 U.S.C. § 1446(a), attached to this Notice of Removal are copies of all process, pleadings and orders that have been served in this action. (*See* Exhibits 1 and 3 through 14.)

Exhibit 1: Petition for Declaratory Relief and Injunctive Relief;

Exhibit 3: Summonses issued to Wells Fargo and TGS;

Exhibit 4: Return of Service for Wells Fargo;

Exhibit 5: Return of Service for TGS;

Exhibit 6: Defendants’ Motion to Transfer;

- Exhibit 7: Entry of Appearance by Patrick M. Ryan and Phillip G. Whaley for Wells Fargo;
- Exhibit 8: Entry of Appearance by John H. Tucker and Colin H. Tucker for TGS;
- Exhibit 9: Application for Stay of Arbitration Proceedings and Preliminary Injunction;
- Exhibit 10: Civil Motion Docket Notice;
- Exhibit 11: Motion to Associate Counsel by Wells Fargo;
- Exhibit 12: Order Admitting to Practice;
- Exhibit 13: Wells Fargo Bank's Unopposed Motion for Extension of Time to Answer, Move Against or Otherwise Respond to Petition; and
- Exhibit 14: Agreed Order Granting Wells Fargo Bank's Unopposed Motion for Extension of Time to Answer, Move Against or Otherwise Respond to Petition.

11. A copy of the docket sheet in Case No. CJ -2011-108 in the Caddo County District Court is attached hereto as Exhibit 15.

CONCLUSION

This Court has original jurisdiction over this action under 28 U.S.C. § 1331, as it involves a federal question, and it may be removed to this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446.

No admission of fact, law or liability is intended by this Notice of Removal, and Wells Fargo expressly reserves all defenses, affirmative defenses and motions otherwise available to it.

WHEREFORE, Wells Fargo prays that this Court will assume jurisdiction over this action and make such further orders herein as may be needed to properly resolve this controversy.

Dated: September 27, 2011

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ATTORNEYS FOR DEFENDANT,
WELLS FARGO BANK, NATIONAL
ASSOCIATION

CERTIFICATE OF SERVICE

This is to certify that on this 27th day of September, 2011, a true and correct copy of the above and foregoing instrument was mailed via U.S. Mail, first-class, postage prepaid and via email to:

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Bryan J. Nowlin – bnowlin@dnda.com
Doerner, Saunders, Daniel & Anderson, L.L.P.
Two West Second Street, Suite 700
Tulsa, OK 74103

s/Phillip G. Whaley
PHILLIP G. WHALEY