

21CV31124-209

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

DATE FILED: May 18, 2021
CASE NUMBER: 2021CV31124

Civil Action No. _____

GARY SCHWARTZ,
Court-Appointed Receiver for Mark Ray,
Custom Consulting & Product Services, LLC,
MR Cattle Production Services, LLC,
Universal Herbs, LLC,
DBC Limited, LLC,
RM Farm & Livestock, LLC,
Sunshine Enterprises,
and real property/equipment/inventory at 12700 East Lone Chimney Road, Glencoe, OK 74032,

Plaintiff,

v.

RONALD THROGMARTIN,

Defendant.

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RECEIVED
U.S. DISTRICT COURT
DISTRICT OF COLORADO

DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Ronald Throgmartin ("Throgmartin") hereby gives notice of removal of this action to the United States District Court for the District of Colorado. Throgmartin states the following as the basis of removal:

1. Plaintiff Gary Schwartz, Court-Appointed Receiver for Mark Ray, Custom Consulting & Product Services, LLC, MR Cattle Production Services, LLC, Universal Herbs, LLC, DBC Limited, LLC, RM Farm & Livestock, LLC, Sunshine Enterprises, and real property/equipment/inventory at 12700 East Lone Chimney Road, Glencoe, OK 74032 ("Schwartz"), has an address of 633 Seventeenth Street, Suite 1640, Denver, Colorado 80202. (Complaint at Ex. 1, Order Appointing Receiver, at ¶4). Therefore, Schwartz is a citizen of the State of Colorado for purposes of diversity jurisdiction.

2. A receiver's citizenship for diversity purposes is established by reference to his citizenship, not that of the corporations or persons whose interests he represents. *Office of the Attorney General v. Hess*, 2008 WL 4952477 at *1 (S.D. FL Nov. 18, 2008). Regardless, in this case, all the corporate entities and persons Schwartz represents are citizens of states different than Throgmartin, and there would be complete diversity in any event.

3. Throgmartin resides in the State of Georgia. (Complaint at ¶ 3). Therefore, Throgmartin is a citizen of the State of Georgia for purposes of diversity jurisdiction.

4. There is complete diversity of citizenship such that the United States District Court for the District of Colorado has original jurisdiction over this matter under 28 U.S.C. § 1332(a)(1) if "the matter in controversy exceeds the sum of value of \$75,000, exclusive of interest and costs."

5. The Complaint alleges that over \$2,000,000 was fraudulently transferred to Throgmartin and seeks recovery of those funds from Throgmartin. (Complaint at ¶¶ 19, 27, 28, 32, 33, 35, 42). Therefore, the amount in controversy exceeds the jurisdictional threshold.

6. The Affidavit of Service notes that Throgmartin was served on April 14, 2021, less than 30 days ago. Therefore, removal is timely under 28 U.S.C. § 1446 (b)(1).

7. For the foregoing reasons, removal is proper pursuant to 28 U.S.C. §§ 1441 and 1446.

8. True and correct copies of the Complaint, Civil Cover Sheet, Summons, and Notice of Related Case filed in the District Court, Denver County, State of Colorado by Schwartz are attached hereto as Exhibit 1 (with bank account information contained in Ex. 6 to the Complaint redacted by the undersigned).

9. A true and correct copy of the Affidavit of Service is attached hereto as Exhibit 2.

10. Pursuant to D.C.Colo.LCivR 81.1(c), Throgmartin is not aware of any hearing that has been set in the state court.

RONALD THROGMARTIN, Defendant.

By: s/ Michael J. Mullen
Michael J. Mullen
9850 Nicholas Street, Suite 305
Omaha, NE 68114
T: 402-558-5000
F: 402-558-1100
E: mike@mjmlawyer.com
Attorney for Defendant Ronald Throgmartin

Certificate of Service

Michael J. Mullen certifies that on May 13, 2021, the foregoing Notice of Removal was served upon the following individuals via email and sent to the District Court, Denver County, State of Colorado for filing:

John Chanin
Katherine Roush
Foster Graham Milstein & Calisher, LLP
360 S. Garfield Street, #600
Denver, CO 80209

s/ Michael J. Mullen