

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

VERSATA SOFTWARE, INC., §
f/k/a TRILOGY SOFTWARE, INC., and §
VERSATA DEVELOPMENT GROUP, §
INC., f/k/a TRILOGY DEVELOPMENT §
GROUP, INC., §

Plaintiffs, §

V. §

AMERIPRISE FINANCIAL, INC., §
AMERIPRISE FINANCIAL §
SERVICES, INC., AMERICAN §
ENTERPRISE INVESTMENT §
SERVICES, INC., §

Defendants, §

CAUSE NO. _____

AMERIPRISE FINANCIAL, INC. §

Counter-Plaintiff, §

V. §

VERSATA SOFTWARE, INC., f/k/a §
TRILOGY SOFTWARE, INC., and §
VERSATA DEVELOPMENT GROUP §
INC., f/k/a TRILOGY DEVELOPMENT §
GROUP, INC., §

Counter-Defendants §

NOTICE OF REMOVAL

Plaintiffs Versata Software, Inc., f/k/a Trilogy Software, Inc. and Versata Development Group, Inc., f/k/a Trilogy Development Group, Inc. (collectively "Versata") file this Notice of Removal of this matter to the United States District Court for the Western District of Texas, Austin Division, pursuant to 28 U.S.C. § 1454, 28 U.S.C. § 1338 and 28 U.S.C. § 1446.

BACKGROUND

1. This case was originally filed by Plaintiffs on November 13, 2012, in the District Court in Travis County, Texas, which is located within the Western District of Texas. On October 31, 2013, Defendants Ameriprise Financial, Inc., Ameriprise Financial Services, Inc., and American Enterprise Investment Services, Inc. (collectively, "Ameriprise") served its First Amended Counterclaim. On December 20, 2013, Versata served its Second Amended Answer in which Versata claimed that certain of Ameriprise's counterclaims were preempted by copyright law. On January 7, 2014, Ameriprise removed this case to Federal Court on that basis where it was assigned Dtk. No. 14-cv-00012-SS.

2. Versata filed motions to remand and for summary judgment. Ameriprise filed motions for summary judgment. The Court considered the pending motions ruled that certain claims in the state court were preempted by copyright law and then remanding the case back to state court. See Dtk No. 28. In that order the court noted "The Court fully recognizes Versata may seek to amend its state court petition after the case is remanded, assert copyright infringement, and thus trigger a new removal. Though procedurally inefficient, this resulted is mandated." *Id.* at 10.

3. Versata has now done as the court suggested, filing a Third Amended Complaint in State Court alleging copyright infringement on March 12, 2014, accordingly Versata is now removing this case back to federal court.

STATEMENT OF JURISDICTION

4. This is an action for copyright infringement under the laws of the United States Title 17 of the United States Code. Therefore, this Court has original, and in fact, exclusive jurisdiction over this action pursuant to 28 U.S.C. § 1338 and 28 U.S.C. § 1331.

BASIS FOR REMOVAL

5. Versata can remove this action pursuant to 28 U.S.C. § 1454(a) which reads in part: “A civil action in which any party asserts a claim for relief arising under any Act of Congress relating to patents, plant variety production, or copyrights may be removed to the district court of the United States of America for the district and division embracing the place where the action is pending.” 28 U.S.C. § 1454(a). “The removal of an action under this section shall be made in accordance with section 1446, except that if the removal is based solely on this section— (1) the action may be removed by any party.” See 28 U.S.C. § 1454(b).

10. This Notice of Removal is timely filed within thirty days of this case becoming removable as required by 28 U.S.C. § 1446(b)(1). This case became removable only after the assertion of copyright claims in Versata’s March 12, 2014, petition. Alternatively, this case falls within the exception to that rule described in 28 U.S.C. § 1454(b)(2).

11. In accordance with 28 U.S.C. § 1446(d), Versata is serving Ameriprise with a copy of this Notice of Removal.

12. Pursuant to 28 U.S.C. § 1446(d), Versata is also filing this Notice of Removal in the District Court of Travis County, and has served the same upon Ameriprise.

13. The District Court for Travis County is located within the Western District of Texas, Austin Division. 28 U.S.C. § 124(d)(1). This Notice of Removal is therefore properly filed in this Court pursuant to 28 U.S.C. § 1441(a) and 28 U.S.C. § 1391.

14. Pursuant to 28 U.S.C. § 1446(a) defendant has attached to this notice as Exhibit A, copies of all process, motions and pleadings filed in the State Court action.

Respectfully submitted,

MCGINNIS, LOCHRIDGE & KILGORE, L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of March 2014, a copy of the foregoing was served on the following party by facsimile and electronically through the U.S. District Court, Western District of Texas ECF system to all counsel of record all of whom are Filing Users of the Court's Electronic Filing System:

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