

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CIVIL FILE NO. 05-00094 JMR/FLN**

Barbara Shipp, Barbara Johnson, Joanne Taylor, Lynn Parkkila, Patricia Lamont, and Gary Thompson on behalf of themselves and all others similarly situated,

Plaintiffs,

**PLAINTIFFS' REPLY TO
DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION FOR REMAND**

v.

Messerli and Kramer, P.A., Derrick N. Weber, Jefferson C. Pappas, Jeffrey J. Cohen, and Matthew R. Smith,

Defendants.

I. Defendants do not Appear to Contest that this Court Lacks Subject Matter Jurisdiction.

In their response, defendants acknowledge that the relief plaintiffs seek necessarily implicates the Rooker-Feldman Doctrine. Applying Rooker-Feldman, this Court lacks subject matter jurisdiction to issue the relief plaintiffs seek, a conclusion that defendants do not appear to contest. Defendants instead focus almost exclusively on an issue not before the Court: whether the doctrines of *res judicata* or preclusion compel the dismissal of plaintiffs' case.

II. The Court Should Not Address any Issues of *Res Judicata* or Preclusion, but Rather Should Simply Remand the Case to State Court.

Apparently conceding that Rooker-Feldman applies, defendants argue that this Court should dismiss the case *sua sponte*. Defendants argue that because plaintiffs Shipp, Johnson,

Taylor and Parkkila¹ failed to appeal their default judgments, their claims are barred by the doctrine of *res judicata*.² All such questions - whether the class is barred by collateral estoppel or *res judicata*, and whether the class may litigate its claims in Ramsey County District Court - are for the state court to determine upon remand. Similarly without merit is the suggestion that the entire case should be dismissed. Plaintiffs' claims include allegations of numerous other violations of law and respective claims for relief.

Even if this issue were properly before the Court, the Court lacks the authority to dismiss the claims in this case. As plaintiffs noted in their initial brief, in *Mills v. Harmon Law Offices, P.C.*, 344 F.3d 42 (1st Cir. 2003), the district court dismissed the case based on the applicability of Rooker-Feldman, but was reversed on appeal. The First Circuit concluded that pursuant to 28 U.S.C. § 1447(c), once it appears that the court lacks subject matter jurisdiction the court had no authority to dismiss the action, but could only remand it to state court. The First Circuit correctly noted that the existence of any subject matter jurisdiction defect divested the court of authority to dismiss or remove the case on the merits, and that remand was the only option.³

¹ Defendants wrongly imply on page 1 of their response that some of the named plaintiffs were represented by the Legal Aid Society prior to entry of judgments against them by defendants.

²A Messerli-initiated collection lawsuit is pending against plaintiff Patricia Lamont. Defendants suggest that Lamont's claims have failed to state a claim upon which relief can be granted because the Rule 119 documents in her case allegedly comply with the rule. This is incorrect. In all of the plaintiffs' cases, defendants filed requests with the court that attorneys fees be entered administratively pursuant to Rule 119.05. The rule clearly requires the affidavit required by Rule 119.02 and there is no exception for claims under \$1,000.00. Defendants brought their motions for fees pursuant to Rule 119.05 and asserted compliance with the rule by filing the affidavits attached to plaintiffs' complaint.

³Defendants' *res judicata* argument would not succeed even if properly before the Court. The Court considered this precise issue in *Egge v. Health Span Services Co.*, 115 F. Supp. 2d. 1126 (D. Minn. 2000). Health Plan sued and obtained a judgment. Egge did not appeal, but later sued Health Span alleging a violation of the Fair Debt Collection Practices Act for charging usurious interest in pre-lawsuit collection. Health Span sought to dismiss the FDCPA action based on *res judicata*. The court refused to apply *res judicata*, finding that a FDCPA claim based on collection activity does not rise out of the same transaction as the creation of the debt. The court, applying a compulsory counterclaim analysis, found that Egge's FDCPA claim was not barred by collateral estoppel, rejecting what is essentially the same argument defendants are making herein.

Defendants also assert at page 3 of their response that courts in Minnesota have rejected PDCPA claims that were made after failing to appeal collection judgments, but do not cite any authority for this assertion.

Defendants argue in the alternative that a ruling on Rooker-Feldman is premature. This is in essence a request that litigation continue in this Court. Plaintiffs assert that pursuant to Rooker-Feldman this Court lacks subject matter jurisdiction. Even in cases where jurisdiction is uncertain, courts have ruled that it is only prudent to resolve all doubts in favor of remand. *Abels v. State Farm Fire & Casualty Co.*, 770 F.2d 26, 29 (3rd Cir. 1985); *Collins v. American Red Cross*, 724 F. Supp 353, 338 (E.D. Pa. 1989). The threshold questions in this case derive from defendants' failure to comply with a state court rule permitting administrative entry of attorneys fees awards in default proceedings. The state court is the appropriate forum to litigate plaintiffs' claims because the federal courts cannot grant their relief.

LEGAL AID SOCIETY OF MINNEAPOLIS

Dated: March 25, 2005

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