

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JAMES and DEBRA SCHWOEGLER,

Plaintiffs,

v.

MEMORANDUM AND ORDER
06-C-111-S

AMERICAN FAMILY FINANCIAL SERVICES,
LAURA DUANE, FRYBERGER, BUCHANAN, SMITH
& FREDERICK, PAUL LORAAS and DANETTE
PLATO,

Defendants.

Plaintiffs James and Debra Schwoegler commenced this action under 15 U.S.C. §1692k against defendants American Family Financial Services, Inc., Laura Duane, Fryberger, Buchanan, Smith & Frederick (Fryberger), Paul Lorass and Danette Plato. Defendants Fryberger, Loraas and Plato moved to dismiss plaintiffs' complaint on April 10, 2006. That same date defendants American Family and Laura Duane moved to dismiss plaintiffs' complaint. These motions have been fully briefed and are ready for decision.

Plaintiffs move to strike defendants American Family Financial Service and Laura Duane's affidavits which introduce matters outside the pleadings. The Court will grant plaintiffs' motion to strike because the Court will decide defendants' motions to dismiss pursuant to Rules 12(b)(1) and 12(h)(3), Federal Rules of Civil

Procedure on the pleadings and on the state court judgment of which the Court takes judicial notice.

A complaint should be dismissed for failure to state a claim only if it appears beyond a reasonable doubt that the plaintiffs can prove no set of facts in support of the claim which would entitle the plaintiffs to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In order to survive a challenge under Rule 12(b)(6) a complaint "must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Car Carriers, Inc. v. Ford Motor Co., 745 F. 2d 1101, 1106 (7th Cir. 1984).

FACTS

For purposes of deciding defendants' motions to dismiss plaintiffs' complaint the facts as alleged in plaintiffs' complaint are taken as true.

On August 1, 2005 plaintiffs entered into a stipulated judgment of foreclosure with American Family Financial Services in Dane County Circuit Court. In this state court action American Family Financial Services were represented by Fryberger, Buchanan, Smith & Frederick (Fryberger). Defendant Laura Duane is an employee of American Family Financial Services and defendants Paul Lorass and Danette Plato are employed by Fryberger.

Plaintiffs allege that during the course of this foreclosure action defendants violated federal law. They seek money damages.

MEMORANDUM

Defendants move to dismiss plaintiffs' complaint based on the Rooker-Feldman doctrine. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476, 582 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). This doctrine provides that a federal district court lacks jurisdiction to review the final judgments of a state court in judicial proceedings. Further, the doctrine bars federal claims that are "inextricably intertwined" with the underlying state court judgment. Exxon Mobile Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005).

In Bullock v. Credit Bureau of Greater Indianapolis, Inc., 272 F.Supp. 2d 789, 783 (S.D. Ind. 2003) the Court held that plaintiff's Fair Debt Collection Practices Act claims were barred by the Rooker-Feldman doctrine. The Court stated that it could not rule in plaintiff's favor without holding that the state court erred which is prohibited by the Rooker-Feldman doctrine.

In this case plaintiffs are claiming that defendants violated the Fair Debt Collection Practice Act. To rule in plaintiffs' favor the Court would have to find that the state court erred in entering its judgment. Accordingly, the Rooker-Feldman doctrine

bars plaintiffs' action because their claims are "inextricably intertwined" with the state court judgment.

Defendants' motions to dismiss for lack of subject matter jurisdiction will be granted.

ORDER

IT IS ORDERED that plaintiffs' motion to strike is GRANTED as described herein.

IT IS ORDERED that defendants' motions to dismiss are GRANTED.

IT IS FURTHER ORDERED that plaintiffs' complaint is DISMISSED for lack of subject matter jurisdiction.

Entered this 16th day of May, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge