

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

BRENDA ARCHER, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO.
)	2:09cv888-MHT
)	(WO)
MORGAN KEEGAN & COMPANY,)	
INC., a foreign)	
corporation, et al.,)	
)	
Defendants.)	

OPINION AND ORDER

This cause, in which the plaintiffs charged the defendants with various state-law claims based on fraud, deceptive trade practices, negligence, wantonness, breach of contract, and violation of the Blue Sky Law, is now before the court on the plaintiffs' motion to remand. The court is of the opinion that the defendants have merely shown that there are parallel federal claims which the plaintiffs could have relied upon but did not. In other words, the defendants have failed to show that "a

right or immunity created by the Constitution or laws of the United States [is] an element, and essential one, of the plaintiff[s'] cause of action." Gully v. First Nat. Bank in Meridian, 299 U.S. 109, 112 (1936). At most, "a question of federal law is lurking in the background." Id. at 117. The remand motion should therefore be granted. See Pearson v. Regions Bank, 2009 WL 1328083 (M.D. Ala. 2009) (Thompson, J.) (federal trial court lack removal jurisdiction based on federal question where plaintiffs asserted only state-law claims against investment advisers for fraud and breach of fiduciary duty in mishandling investments).

Accordingly, it is ORDERED as follows:

(1) The plaintiffs' motion to remand (Doc. No. 9) is granted.

(2) Pursuant to 28 U.S.C. § 1447(c), this cause is remanded to the Circuit Court of Montgomery County, Alabama for lack of subject-matter jurisdiction.

It is further ORDERED that the motion to stay (Doc. No. 13) is denied.

It is further ORDERED that any other outstanding motion is left for resolution by the state court after remand.

The clerk of the court is DIRECTED to take appropriate steps to effect the remand.

DONE, this the 12th day of November, 2009.

 /s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE