

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

BANK OF AMERICA, N.A.

PLAINTIFF

v.

No. 4:09CV000234 JLH

BENJAMIN L. EAGLE and
OLANDIS MOORE

DEFENDANTS

OPINION AND ORDER

Benjamin Eagle and Olandis Moore, each acting pro se, initiated this action by removing two cases from Pulaski County Circuit Court, No. 2006-6641 and No. 2008-13550, to this Court. They say that they have been denied due process and equal protection under the Fifth Amendment and Fourteenth Amendment and that they have been subjected to unreasonable seizures under the Fourth Amendment. Bank of America argues that this action should be remanded to Pulaski County Circuit Court. For the following reasons, that motion is granted.

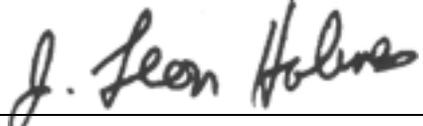
The first case which Eagle and Moore attempted to remove, No. 2006-6641, was originally initiated by Bank of America based on bank fraud, and Bank of America sought a money judgment for damages from the defendants as well as a judgment to impose a constructive trust, equitable lien, or mortgage on real property which was owned by Eagle and conveyed to Moore while that action was pending. The Honorable Willard Proctor granted a judgment and decree of foreclosure in Bank of America's favor on January 28, 2008. On March 20, 2008, Eagle attempted to remove the case to this Court. The Honorable William R. Wilson dismissed the action based on the *Rooker-Feldman* doctrine, which recognizes that federal courts other than the United States Supreme Court lack subject matter jurisdiction over challenges to state court judgments. *Bank of America, N.A. v. Eagle*, No. 4:08-CV-00223, 2008 WL 819023, at *1 (E.D. Ark. Mar. 25, 2008); *see also Lemonds v. St.*

Louis County, 222 F.3d 488, 492 (8th Cir. 2000). Since Eagle and Moore are attempting to remove a case which has already been addressed and dismissed in a previous action before this Court, case No. 2006-6641 should be dismissed from this Court based on res judicata and collateral estoppel and remanded to Pulaski County Circuit Court.

The second case identified in the notice of removal is No. 2008-1355. An action commenced in state court may be only removed by the defendant or defendants to federal court. 28 U.S.C. §§ 1441, 1443, 1446. Benjamin L. Eagle and Olandis Moore are plaintiffs in the second state court action, not defendants. As plaintiffs, Eagle and Moore cannot properly remove No. 2008-1355 to this Court, so the action is remanded to Pulaski County Circuit Court.

Because neither of the cases identified in the notice of removal is properly before the court, Bank of America's motion to remand is granted. Document #9.

IT IS SO ORDERED this 4th day of June, 2009.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE