

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

PORTFOLIO RECOVERY ASSOCIATES, LLC PLAINTIFF

v. Civil No. 10-2071

WILLIAM G. BORN DEFENDANT

WILLIAM G. BORN COUNTER-PLAINTIFF

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC,
and BYRON S. SOUTHERN, P.A.,
Individually and d/b/a SOUTHERN,
ALLEN & WITHROW; HENRY "GUS" ALLEN,
ATTORNEY, P.A., Individually and
d/b/a SOUTHERN, ALLEN & WITHROW;
LORI E. WITHROW, PLLC, Individually
and d/b/a SOUTHERN, ALLEN & WITHROW;
and TEAVEN STAMATIS

COUNTER-DEFENDANTS

O R D E R

Now on this 23rd day of July, 2010, the captioned matter comes on *sua sponte*, for consideration of the Court's subject matter jurisdiction.

1. This case arose in the District Court of Johnson County, Arkansas, as a Complaint alleging that defendant William G. Born ("Born") owed plaintiff Portfolio Recovery Associates, LLC ("Portfolio") \$1,168.44 for purchases made on a credit card account which had been assigned to Portfolio (the "Johnson County Case").

2. Born filed a Counterclaim and Third-Party Complaint in the Johnson County Case, asserting causes of action arising under

15 U.S.C. § 1962 et seq., the Fair Debt Collection Practices Act ("FDCPA"). He then removed the case to this Court, relying entirely on the causes of action asserted in his Counterclaim and Third-Party Complaint. Born admits in his Notice Of Removal that "[p]laintiff asserted only state claims against Defendant; no basis for removal existed in the original case until Defendant/Counter-Plaintiff asserted his federal claims against the parties adverse to him."

3. This removal was in error. A case is removable if it is one "brought in a State court of which the district courts of the United States have original jurisdiction." **28 U.S.C. § 1441(a)**.

As explained in **Gore v. Trans World Airlines**, **210 F.3d 944 (8th Cir. 2000)**,

[a] defendant may remove a state court claim to federal court only if the claim originally could have been filed in federal court, and the well-pleaded complaint rule provides that a federal question must be presented on the face of the properly pleaded complaint to invoke federal court jurisdiction. A defendant is not permitted to inject a federal question into an otherwise state-law claim and thereby transform the action into one arising under federal law.

210 F.3d at 948 (internal citation omitted).¹

It matters not how a defendant attempts to inject the federal question: "separate and independent claims or causes of action brought into a case by way of counterclaim, cross-claim or third-

¹There is a narrow exception to this doctrine, where federal law completely preempts state law, but the FDCPA does not fit the exception. Its exemptions are only partial. 15 U.S.C. § 1692n.

party complaint or intervention do not justify removal." Sexton v. Allday, 221 F.Supp. 169, 170-71 (8th Cir. 1963).

4. Here, there was no federal question in the Complaint, with the result that this Court lacks subject-matter jurisdiction over the removed case. Pursuant to **28 U.S.C. § 1447**, "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."

IT IS THEREFORE ORDERED that this case is **remanded** to the District Court of Johnson County, Arkansas.

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE