

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

GRICELDA SEEDERS; and ALMA RODRIGUEZ

PLAINTIFF

v.

Case No. 5:13-CV-05147

KEVIN R. NAIL; and FENCE BROKERS, INC.

DEFENDANTS

**MEMORANDUM OPINION AND ORDER**

Currently before the Court are Defendants' motion (Doc. 5) to dismiss for lack of jurisdiction and brief in support (Doc. 6) and Plaintiffs' motion (Doc. 7) to remand.

Plaintiffs originally filed this case in this Court, generally asserting that this Court had jurisdiction. (Doc. 1, ¶ 7). The complaint, however, does not appear to set forth any federal causes of action, and states that both Plaintiffs and Defendants are residents of Arkansas. As the party invoking the Court's jurisdiction, it is Plaintiffs' burden to properly plead the existence of federal jurisdiction. *Walker v. Norwest Corp.*, 108 F.3d 158, 161 (8th Cir. 1997). They have failed to do so and admit, in their motion to remand (Doc. 7), that diversity does not exist. While Plaintiffs request remand of the action to state court, pursuant to 28 U.S.C. § 1447, the Court finds that remand is not appropriate in this case as 28 U.S.C. § 1447 applies only to removed cases, and Plaintiffs did not originally file this action in state court. The appropriate resolution is a dismissal without prejudice for lack of jurisdiction.

IT IS THEREFORE ORDERED that Defendants' motion (Doc. 5) to dismiss is GRANTED; Plaintiffs' motion (Doc. 7) to remand is DENIED; and Plaintiffs' complaint is DISMISSED WITHOUT PREJUDICE for lack of subject matter jurisdiction.

IT IS SO ORDERED this 21st day of August, 2013.

*/s/ P. K. Holmes, III*

P.K. HOLMES, III  
CHIEF U.S. DISTRICT JUDGE