

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 13-cv-02381-BNB-MJW

FELIX A. DEJEAN, III, and
CAROLYNE DEJEAN,

Plaintiffs,

v.

COLLEN A. GROSZ, as Trustee of the Declaration of Trust for Benefit of Colleen A. Grosz,
dated 8/11/1989,
TIMOTHY C. RODELL, an individual, and
MARJORIE M. RODELL, an individual,

Defendants.

ORDER

This matter arises on the following:

- (1) **Defendants' Motion to Dismiss Pursuant to F.R.C.P. 12(b)(6) on the Grounds of *Res Judicata* (Claim Preclusion)** [Doc. # 7, filed 11/4/2013] (the "Motion to Dismiss"); and
- (2) The defendants' assertion in the Scheduling Order that the court lacks subject matter jurisdiction due to an insufficient amount in controversy.

The issue of subject matter jurisdiction must be determined first, because any action taken by the court while that issue remains undecided may be rendered a nullity by a finding of no jurisdiction. Consequently, it is inefficient to determine the Motion to Dismiss while subject matter jurisdiction is pending. I discussed the matter with counsel this afternoon during the scheduling conference, and defendants' counsel indicated the ability to file a motion to dismiss based on lack of jurisdiction by January 31, 2014.

IT IS ORDERED:

(1) The Motion to Dismiss [Doc. # 7] is DENIED without prejudice as premature;
and

(2) The defendants shall file a motion to dismiss based on lack of subject matter
jurisdiction on or before January 31, 2014.

DATED January 14, 2014.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge