

**United States District Court  
Northern District of Indiana  
Hammond Division**

AMI ATCHISON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 2:08-CV-311 JVB
	)	
HOWARD HOWE,	)	
	)	
Defendant.	)	

**OPINION AND ORDER**

This matter is before the Court on Plaintiff’s motion to dismiss Defendant’s counterclaim for attorney fees (DE 13). Defendant filed no response to the Plaintiff’s motion.

**A. BACKGROUND AND SUMMARY OF ARGUMENT.**

Plaintiff Ami Atchison filed a complaint against Defendant Howard Howe for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. Defendant filed an answer, affirmative defenses, and a counterclaim for attorney fees. In the counterclaim Defendant asserts that he is entitled to recover his reasonable attorney fees because Plaintiff’s action was brought in bad faith and for purposes of harassment.

Plaintiff argues that Defendant has failed to state a claim for relief under Federal Rule of Civil Procedure 12(b)(1). To summarize Plaintiff’s argument, although the FDCPA provides that if the court finds that an action brought under 15 U.S.C. § 1692k was brought in bad faith and for the purpose of harassment, the court may award attorney fees to the defendant, the provision does not constitute an independent claim. Accordingly, any claim Defendant might

ultimately have to attorney fees should be presented to the Court by means of a motion under Federal Rule of Civil Procedure 54(d) rather than as a counterclaim. Rule 54(d) provides that a claim for attorney's fees must be made by motion filed within fourteen days of the entry of a final judgment in the case, unless the substantive law requires those fees to be proved at trial as an element of damages.

**B. DISCUSSION AND CONCLUSION.**

The Court agrees with Plaintiff that a request for attorney fees under 15 U.S.C. § 1692k(a)(3) is not an independent claim which must be proved at trial. Accordingly, it is technically not the proper subject of a counterclaim. *See Hardin v. Folger*, 704 F.Supp 355, 356–57 (W.D.N.Y. 2002). Plaintiff's motion to dismiss Defendant's counterclaim (DE 13) is GRANTED.

SO ORDERED on July 17, 2009.

s/ Joseph S. Van Bokkelen  
Joseph S. Van Bokkelen  
United States District Judge