

AUG 31 2015

TONY R. MOORE, CLERK
BY MB DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

MARCIA OLSON, ET AL.

CIVIL ACTION NO. 14-3464

VERSUS

JUDGE DEE D. DRELL

BIOSONIX, LLC

MAGISTRATE JUDGE KIRK

ORDER

Before the court is the Report and Recommendation of the Magistrate Judge [R. 12] recommending that the Motion to Dismiss [R. 7] be granted and, accordingly, that all claims by Plaintiffs in the above-captioned suit be dismissed with prejudice. The court has carefully reviewed the entire record, including the objections filed in response to the Report and Recommendation and finds that Defendant's motion should not be granted. Specifically, the court finds that, although the Rooker-Feldman doctrine¹ would bar Plaintiffs from asserting a collateral attack on the prior judgment of a court in which the issue of whether or not that court possessed personal jurisdiction over Plaintiffs had been "fully and fairly litigated[.]" this case does not present such facts.² Rather, the facts show that Plaintiffs made no appearance in the prior Texas state court proceeding and,

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¹District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923).

²Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 706 (1982) citing Baldwin v. Traveling Men's Assn., 283 U.S. 522 (1931).

therefore, the issue of that court's personal jurisdiction over them was not litigated.³

It is well established that a party is free to ignore proceedings at the risk of default judgment and to challenge any such judgment collaterally.⁴ Plaintiffs' instant suit alleges that the default judgment, entered by the 95th Judicial District Court for Dallas County, State of Texas, violated her due process rights.³ Thus, Plaintiff's suit presents federal question jurisdiction on its face.⁴

Based upon these findings, we decline to adopt the Report and Recommendation of the Magistrate Judge, previously entered herein and it is, further

ORDERED that the Motion to Dismiss filed by the Defendant in this matter is **DENIED** in all respects and all claims by Plaintiff are preserved for further proceedings.

THUS DONE AND SIGNED this 31st day of August, 2015.



**DEE D. DRELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT**

³Final Default Judgment issued 5/27/2013 by 95th Judicial District Court [R. 1-2] at pp. 1-2, verifying that Marcia Olson filed no answer, nor made any appearance in that proceeding.

⁴Id.; Cooper v. Newell, 173 U.S. 555, 568-69 (1899).

³R. 1, generally.

⁴28 U.S.C. § 1331; Jacuzzi v. Pimienta, 762 F.3d 419, 421 (5th Cir. 2014) citing Broad Music, Inc. v. M. T. S. Enters., Inc., 811 F.2d 278, 281 (5th Cir. 1987).