

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

DONNA J. GARRETT, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 4:09CV01252 ERW
	)	
J. DOUGLAS CASSITY,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

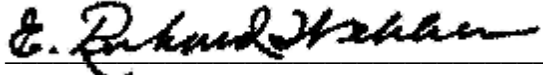
This matter comes before the Court on Defendant Howard Wittner’s Motion to Dismiss Counts Ten, Twelve and Thirteen of Plaintiffs’ Second Amended Complaint [doc. #614].

In the Court’s December 21, 2010 Memorandum and Order [doc. #589], the Court dismissed without prejudice Plaintiffs’ claims against Defendant Howard Wittner (“Wittner”) for breach of promissory notes, for violation of the Texas Receivership Act, and for violation of the Texas Insurance Code. Plaintiffs subsequently filed their Second Amended Complaint [doc. #594], in which Plaintiffs appear to re-assert those claims against Wittner. This led Wittner to file this Motion, to which Plaintiffs have responded that they are not, in fact, asserting Counts Ten, Twelve, and Thirteen of their Second Amended Complaint against Wittner. Because this is not apparent from the face of the Second Amended Complaint, the Court will grant Wittner’s Motion, instead of denying it as moot.

Accordingly,

**IT IS HEREBY ORDERED** that Defendant Howard Wittner's Motion to Dismiss Counts Ten, Twelve and Thirteen of Plaintiffs' Second Amended Complaint [doc. #614] is **GRANTED**.

Dated this 18th Day of July, 2011.



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E. RICHARD WEBBER  
SENIOR UNITED STATES DISTRICT JUDGE