

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FRANK L.O'ROURKE,
MARY C. O'ROURKE,

Plaintiffs,

DECISION AND ORDER

11-CV-6061L

v.

SELECT PORTFOLIO SERVICING, INC.,

Defendant.

Plaintiffs, Frank and Mary O'Rourke, commenced this action in New York State Supreme Court, Monroe County, in December 2010, by filing a Summons with Notice. Defendant Select Portfolio Servicing, Inc. ("SPS") removed the action to this Court on February 4, 2011.

By letter to this Court dated March 4, 2011, defendant has requested that the Court direct plaintiffs to serve a complaint upon SPS pursuant to Rule 4 of the Federal Rules of Civil Procedure. In a responding letter dated March 7, 2011, plaintiffs' counsel contends that "this action ought never have been removed to federal court" in the first place.

It is obvious from the Summons with Notice that this action was properly removed, however. That document states that "the object of this action and relief sought is to recover damages for fraud, breach of contract, violations of *federal* and state law, including the Truth in Lending Act and the Real Estate Settlement Procedures Act" Dkt. #1 at 26 (emphasis added). Both of the latter two named acts are federal statutes. *See* 15 U.S.C. § 1601 *et seq.*; 12 U.S.C. § 2601 *et seq.*

Plaintiffs are therefore directed to file their complaint in this Court within twenty (20) days of the date of entry of this Order, and to effect service upon defendant in accordance with the

Federal Rules of Civil Procedure. Defendant must file its answer or other response to the complaint within twenty (20) days thereafter.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
March 17, 2011.