

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SALVATORE J. REGO, et al.,)	CASE NO. 1:09-cv-2052
)	
Plaintiffs,)	
)	MAGISTRATE JUDGE
v.)	NANCY A. VECCHIARELLI
)	
)	
)	MEMORANDUM OPINION & ORDER
MEYERS, ROMAN, FRIEDBERG, &)	
LEWIS,)	
)	
Defendant.)	

This matter is before the Court on Plaintiffs’ Motion to Dismiss Counts I, II, and III of Plaintiffs’ Complaint without Prejudice (“Motion to Dismiss”) (Doc. # 15) and Defendant’s Motion for Judgment on the Pleadings (Doc. # 10). For the reasons set forth in Plaintiffs’ Motion to Dismiss, Plaintiffs’ Motion to Dismiss Counts I, II, and III of Plaintiffs’ Complaint without prejudice is GRANTED, and the remainder of Plaintiffs’ claims are REMANDED to Cuyahoga County, Ohio Common Pleas Court. Defendant’s Motion for Judgment on the Pleadings is DENIED as moot.

I.

On August 4, 2009, plaintiffs Salvatore Rego and Ann Marie Rego filed a Complaint against defendant Meyers, Roman, Friedberg and Lewis in Cuyahoga County, Ohio Common Pleas Court. Counts I,II, and III of plaintiffs’ Complaint alleged violations for the Fair Debt Collection Practices Act (“FDCPA”) 15 U.S.C. § 1692 et seq.; counts IV and V of plaintiffs’ Complaint allege wrongful execution/conversion and wrongful garnishment, respectively. On September 3, 2009, defendant filed a Notice of Removal

to this Court based federal question jurisdiction. (Doc. #1).

On November 2, 2009, defendant filed a Motion for Judgment on the Pleadings alleging, among other things, that plaintiffs failed to state a claim for relief under the FDCPA. On November 18, 2009, plaintiffs filed their Motion to Dismiss. As grounds for their Motion, plaintiffs assert that they no longer believe that the debt forming the basis of Counts I-III of their Complaint is subject to the FDCPA. Accordingly, plaintiffs seek to have these claims dismissed without prejudice. Defendant does not oppose plaintiffs' Motion to Dismiss. The Court finds plaintiffs' Motion well taken.

Plaintiffs remaining claims allege wrongful execution/conversion and wrongful garnishment, which are state law claims. Jurisdiction in this case is based solely on the existence of a federal question, and this Court has jurisdiction over state law claims only insofar as they are pendent to the federal claim. Federal courts have the power to exercise pendent jurisdiction where the state and federal claims derive from a common nucleus of facts such that plaintiff would ordinarily be expected to try them all in one judicial proceeding, and when the federal claim has sufficient substance to confer subject matter jurisdiction. [28 U.S.C. § 1367](#); [Mine Workers v. Gibbs, 383 U.S. 715, 725 \(1966\)](#). Since plaintiffs' federal claims are dismissed, and plaintiffs' remaining claims involve issues of state law only, there is no independent basis of federal jurisdiction, and it is appropriate for this Court to remand the case to the Cuyahoga County, Ohio Common Pleas Court. See [Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343 \(1988\)](#).

Because the Court has dismissed Counts I-III of plaintiffs' Complaint and remanded plaintiffs' remaining claims to Cuyahoga County, Ohio Common Pleas Court,

defendant's Motion for Judgment on the Pleadings is denied as moot.

II.

For the foregoing reasons, Plaintiffs' Motion to Dismiss Counts I, II and III of Plaintiffs' Complaint without Prejudice (Doc. # 15) is GRANTED; Counts I, II, and III of Plaintiffs' Complaint are dismissed without prejudice, and plaintiffs' remaining claims are REMANDED to Cuyahoga County, Ohio Common Pleas Court. Defendant's Motion for Judgment on the Pleadings (Doc. # 10) is DENIED as moot.

IT IS SO ORDERED.

Date: November 24, 2009

s/ Nancy A. Vecchiarelli
NANCY A. VECCHIARELLI
U.S. MAGISTRATE JUDGE