UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HEIKO GOLDENSTEIN, Plaintiff. v. REPOSSESSORS INC., CHAD LATVAAHO, SHADY OAK ENTERPRICES, INC., d/b/a PREMIER FINANCE ADJUSTERS, PHILIP J. HOURICAN & WILLIAM McKIBBIN, Defendants.	: : : : : : : : : :	NO. 5:13-cv-02797-JKG

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS, REPOSSESSORS, INC., CHAD LATVAAHO AND SHADY OAK ENTERPRISES, INC., d/b/a/ PREMIER FINANCE ADJUSTERS

Defendants, Repossessors, Inc., Chad Latvaaho, and Shady Oak Enterprises, Inc., d/b/a Premier Finance Adjusters (hereafter referred to individually as "Repossessors" and "Premier" and collectively as the "Repossession Defendants"), by and through their undersigned counsel, respectfully submit this Brief in support of their Motion for Summary Judgment.[1]

[1] Defendants anticipate that Defendant, Philip J. Hourican, will join in the arguments advanced in this Brief and have no objection to his doing so. Plaintiff's Complaint against William McKibbin was dismissed for lack of service.

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PRELIMINARY STATEMENT

Defendants, collectively, are entitled to summary judgment, as Plaintiff cannot prove that they lacked a "present right to possession of the property claimed as collateral through an enforceable security interest," as required by the Fair Debt Collection Practices Act, 15 U.S.C. § 1692f(6)(A). Plaintiff alleges that his vehicle was repossessed to enforce the security interest of Sovereign Lending Solutions, d/b/a Title Loan America, whom he claims issued him an auto title loan bearing interest rates "illegal" under Pennsylvania law. Based on his mistaken belief that the auto title loan is void and unlawful, Plaintiff claims that Defendants violated the FDCPA, Pennsylvania's Fair Credit Extension Uniformity Act, and RICO, 18 U.S.C. § 1692(c).

Initially, Plaintiff cannot establish the illegality of the loan, as he never produced a copy of a promissory note or other instrument setting forth its terms and conditions, including the annual percentage rate or repayment term. However, even assuming that the loan he obtained carried an interest rate in violation of Pennsylvania's Anti-Usury statute, 41 P.S. § 201, he admittedly defaulted on the loan after making just two payments, and he never exercised his right under 41 P.S. § 501 to void the loan by providing notice to the creditor. When his vehicle was repossessed, Plaintiff had paid only $415.80 to Sovereign, which is less than half of the principal amount of the loan, and he had never attempted to contact Sovereign to discuss repayment of the loan after he received the funds. Therefore, the Repossession Defendants had a present right to repossess Plaintiff's automobile, and all counts of his Complaint fail as a matter of law.

Defendants submit that (1) Plaintiff cannot establish that the loan he allegedly received from Sovereign was "illegal"; (2) that even if the loan Plaintiff obtained violated Pennsylvania's anti-usury laws, the Repossession Defendants had a present right to repossess his vehicle by virtue of his failure to make payments on the loan or exercise his rights under the anti-usury law;

and (3) that the waiver and release agreements that Plaintiff signed when recovering his vehicle, while under no threat of bodily harm and after speaking with his attorney, are enforceable and bar his claims against all Defendants. Alternatively, Defendants argue that (4) the legality of loan must be determined by the Tribal Dispute Resolution Procedure established by the Lac Vieux Desert Band of Chippewa Indians, and that absent a ruling by that tribunal, this suit is unripe. Lastly, Plaintiff's RICO claims fail as a matter of law, as no Defendant engaged in an enterprise to collect "unlawful debt." For any and all of these reasons, summary judgment is warranted, and Defendants respectfully request that this Honorable Court dismiss Plaintiff's Complaint with prejudice.

STATEMENT OF FACTS

Defendants incorporate the attached Statement of Material Facts with Exhibits into this Brief, and set forth an abbreviated version below.

In April of 2012, Plaintiff obtained an auto title loan from Sovereign Lending Solutions, d/b/a Title Loan America, an online lender that is an economic development arm of the Lac Vieux Desert Band of Chippewa Indians, a federally-recognized Indian Tribe. While he alleges in his Complaint that the loan carried an interest rate in excess of the 6% permitted under Pennsylvania law to unlicensed lenders under 41 P.S. § 201, he evidently did not retain a copy of a promissory note or other instrument setting forth the terms of the loan, and was unable to produce one when requested to by Defendants. He alleges, and Defendants do not dispute, that the principal amount of the loan was $1,000.00. After receiving the proceeds of the loan, Plaintiff never again attempted to contact Sovereign.

In June and July of 2012, two debits in the amount of $207.90 were made from his checking account by "Sovereign Payroll." Although he discovered that this was, in fact, the same Sovereign that loaned him $1,000.00, Plaintiff did not attempt to contact Sovereign to discuss the repayment terms of his loan; rather, he simply opened a new checking account, ceased depositing funds into the account that had been debited, and made no further attempt to repay the remaining principal on the loan or any accrued interest.

Sovereign attempted to debit Plaintiff's checking account in August of 2012, but was unable to obtain payment due to insufficient funds. On August 20, 2012, RS Financial, LLC, who services loans on behalf of Sovereign, retained Repossessors to recover Plaintiff's automobile, which he had pledged as collateral for the loan. As Repossessors is not licensed to conduct repossessions in Pennsylvania, it subcontracted the job to Premier, who effected the repossession on the evening of October 6, 2012, at Plaintiff's place of employment. In the interim, from July 1 until the date of the repossession, Plaintiff had not contacted Sovereign or made any attempt to repay his loan, and he still owed $584.20 in principal. The repossession was accomplished without a breach of the peace.

When Plaintiff recovered his vehicle at Premier's place of business, Premier requested that he sign various documents relating to the redemption of the collateral and waiving any and all claims, whether known or unknown, against the Repossession Defendants and their officers and employees. Plaintiff has admitted that he was not threatened with physical violence or otherwise coerced into signing the forms; rather, he availed himself of the opportunity to speak to his attorney before signing the releases. He recovered his vehicle without incident.

Plaintiff filed suit against Repossession Defendants, claiming that because the loan he obtained had an interest rate in excess of the 6% permitted under Pennsylvania's Anti-Usury

Law, the loan itself was void. While Plaintiff does not allege that Sovereign lacked a valid security interest in his automobile, he claims that it was illegal for Defendants to repossess his vehicle to enforce the security interest. Furthermore, he alleges that Premier violated unspecified provisions of Pennsylvania's Fair Credit Extension Uniformity Act, 73 P.S. § 2270.4, when it presented him with waiver and release agreements that he voluntarily signed after speaking with his attorney. Lastly, he alleges that the principals of Repossessors, Premier, and RS Financial, violated the RICO Act by engaging in an enterprise to collect unlawful debt. For the reasons that follow, Plaintiff Complaint fails in its entirety as a matter of law, and must be dismissed pursuant to Fed. R. Civ. P. 56.

LEGAL ARGUMENT

I. LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is material if proof of its existence or nonexistence might affect the outcome of the suit under the applicable substantive law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

Where there is no material fact in dispute, the moving party need only establish that it is entitled to judgment as a matter of law. Where, however, there is a disputed issue of material fact, summary judgment is appropriate only if the factual dispute is not a genuine one. See Id. at 248. An issue of material fact is genuine if "a reasonable jury could return a verdict for the nonmoving party." Ibid.

All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party, and the entire record must be examined in the light most favorable to the nonmoving party. See White v. Westinghouse Elec. Co., 862 F.2d 56, 59 (3d Cir.1988). Once the moving party has satisfied its initial burden, the burden shifts to the nonmoving party to either present affirmative evidence supporting its version of the material facts or to refute the moving party's contention that the facts entitle it to judgment as a matter of law. Anderson, 477 U.S. at 256-57.

The Court need not accept mere conclusory allegations, whether they are made in the complaint or a sworn statement. Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990). In deciding a motion for summary judgment, "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson, 477 U.S. at 249.

II. PLAINTIFF'S FDCPA CLAIM AGAINST THE REPOSSESSION DEFENDANTS FAILS AS A MATTER OF LAW

A. PLAINTIFF CANNOT PROVE THAT THE TERMS OF THE LOAN HE OBTAINED FROM SOVEREIGN VIOLATED PENNSYLVANIA LAW

At its most basic level, Plaintiff's suit fails as a matter of law because he cannot prove that the terms of the loan he obtained from Sovereign violated Pennsylvania law.[2] He has not produced a copy of the promissory note, pawn ticket agreement, or any other documents that set forth the APR of the loan, the term of the loan, a payment schedule, or anything else to confirm

[2] Defendants do not concede that Pennsylvania law does, in fact, apply to the loan Plaintiff obtained, but assume that it does for the purpose of the arguments advanced in Sections II A and B of this Brief. Although the Pennsylvania Supreme Court has ruled that online lenders must comply with Pennsylvania lending laws and regulations, see Cash America Net v. Com. of Penna., 8 A.3d 282 (Pa. 2010), the courts of the Commonwealth have never considered the issue of whether tribal lenders are subject to Pennsylvania's laws.

his allegations that the loan carried an interest rate of about 300%, and that interest payments needed to be made each month to maintain the loan in good standing. ***See*** *Complaint at ¶-21.* As such, Plaintiff cannot even begin to meet his burden of proof in this matter.

"In a civil case it is the Plaintiff who bears the burden of proving its claim by a preponderance of the evidence, and it is the Plaintiff who bears the burden of providing evidence from which its claim can be established." Compagnie des Bauxites de Guinee v. Ins. Co. of N. Am., 551 F. Supp. 1239, 1242-43 (W.D. Pa. 1982). Where a party attempts to prove the content of a writing, the best evidence rule requires the production of the original writing. F.R.E. 1002. Thus, as the linchpin of Plaintiff's case is the alleged illegality of the loan he entered into with Sovereign, his case fails due to the fact that he has not come forward with any documents to establish the terms of the loan and to satisfy his burden of proof.

While there are exceptions to the best evidence rule, none apply here. F.R.E. 1004 provides:

> An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:
>
> **(a)** all the originals are lost or destroyed, and not by the proponent acting in bad faith;
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> **(b)** an original cannot be obtained by any available judicial process;
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> **(c)** the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or
>
> **(d)** the writing, recording, or photograph is not closely related to a controlling issue.

Here, Plaintiff testified that he believes he saw a copy of a pawn ticket agreement or promissory note, but that he never kept a copy for himself. He admittedly never attempted to

contact Sovereign to obtain a copy of the note at any point in time up until the present day, and he can make no showing that he could not obtain a copy via subpoena. The validity of the loan agreement is the controlling issue of this case; therefore subsections (a), (b) and (d) do not apply. The only possible exception Plaintiff could claim is (c), but Plaintiff cannot make the required showings.

As set forth in the Affidavit of Michael Jansons, attached to the Statement of Material Facts as ***Exhibit G***, Repossessors is an independent contractor that performs collateral recovery services for a number of lenders. Premier's role in the repossession of Plaintiff's vehicle was that of a subcontractor. When taking on an assignment, Repossessors does not require that a lender provide an actual copy of a promissory note or agreement, but instead requires the lender to verify that a loan exists and that it is in default; identify the collateral used to secure the loan; and to provide the amount owed and the length of time the loan has been in default. Repossessors never had control over the original document, and has never come into possession of a copy at any time.

To the extent that Plaintiff may argue that Defendants failed to exercise due diligence in determining the validity of the loan prior to repossessing his automobile, there is no applicable statute, case law, regulation, or industry standard that mandates that a repossession company obtain a copy of a loan agreement and instrument showing that a lender has a security interest in collateral prior to undertaking a repossession. Indeed, no public interest would be served by such a requirement, as such documents contain borrowers' personal information, including social security and drivers' license numbers, the disclosure of which is unnecessary to perform a repossession and would violate anti-disclosure laws.

Therefore, no exceptions to the best evidence rule apply, and plaintiff cannot establish the terms of the loan he obtained from Sovereign as a matter of law. His failure to produce the very document that is the foundation of this lawsuit is fatal to his claims, as he cannot satisfy his burden of proof. Summary judgment is warranted on this basis.

B. EVEN ASSUMING THAT THE LOAN'S INTEREST RATE VIOLATED PENNSYLVANIA'S ANTI-USURY LAW, PLAINTIFF FAILED TO EXERCISE HIS RIGHT TO VOID THE LOAN

Under Pennsylvania law, a loan issued by an unlicensed lender that has an interest rate in excess of 6% is not void *per se*; rather, it is voidable upon written notice to the lender from the borrower. Here, Plaintiff never attempted to exercise his right to declare the loan void, to renegotiate its terms, or to repay the principal plus interest at 6%. His vehicle was repossessed because he accepted a loan of $1,000.00, made payments totaling $415.80, and then failed to make any additional payments or contact Sovereign to discuss repayment. Even assuming that Sovereign's lending activities are subject to Pennsylvania law, Plaintiff cannot advance any credible claim that the Repossession Defendants lacked the "present right to possession of the property claimed as collateral through an enforceable security interest" at the time his vehicle was repossessed. 15 U.S.C. § 1692f(6)(A). His Complaint must be dismissed accordingly.

Act of Jan. 30, 1974, P.L. 13, No. 6, sec. 201, as amended, 41 P.S. § 201 provides, in relevant part, that "the maximum lawful rate of interest for the loan or use of money in an amount of fifty thousand dollars ($50,000) or less in all cases where no express contract shall have been made for a less rate shall be six per cent per annum." In the event that a loan carries an interest rate in excess of 6%, 41 P.S. § 501 provides as follows:

> When a rate of interest for the loan or use of money, exceeding that provided by this act or otherwise by law shall have been reserved or contracted for, the borrower or debtor shall not be required to pay to the creditor the excess over such maximum interest rate and it shall be lawful for such borrower or debtor, at his option, to retain and deduct such excess from the amount of such debt providing the borrower or debtor gives notice of the asserted excess to the creditor. (emphasis added).
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> Act of Jan. 30, 1974, P.L. 13, No. 6, sec. 205, as amended, 41 P.S. § 501

In Mulcahy v. Loftus, 267 A.2d 872 (Pa. 1970), Pennsylvania's Supreme Court observed that when a note calls for a usurious rate of interest, this defect does not render the note void, "but only voidable as to the interest specified beyond the lawful rate." Id. at 873. Judge Legrome D. Davis, in a similar suit brought by Plaintiff's counsel against a repossession company and its owner, dismissed the plaintiff's FDCPA claim on this basis, holding that:

> In this case, even if we assume that [the lender]'s interest rate violates Pennsylvania's usury statute, the loan is not invalidated. Rather, the usurious loan would entitle Plaintiff to pursue a claim against [the lender] for recovery of statutory damages. Moreover, Plaintiff concedes that she did not make a timely payment as required by the valid loan agreement. Plaintiff's failure to make a timely minimum interest payment permitted [the lender] to find Plaintiff in default of the loan, which it did on September 27, 2011. Once Plaintiff was in default of the loan, Defendant had the right to possess Plaintiff's Cadillac when it towed her vehicle. Accordingly, Plaintiff fails to state a claim under the FDCPA and her claim must be dismissed.
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> Gonzalez v. DRS Towing, LLC, No. 12-cv-5508 (Davis, J.) (E.D. Pa. Feb. 28, 2013). Copy attached to this Brief as ***Exhibit A.***

Here, Defendants submit that Judge Davis' reasoning is sound and directly applicable to the case at bar. In fact, it was more recently followed by Judge Jeffrey L. Schmehl in Collins v. Siani's Salvage, LLC, 2014 WL 1244057 (E.D. Pa. Mar. 26, 2014) (copy attached as ***Exhibit B***). In Collins, as here, plaintiff admittedly defaulted on an auto title loan, and then sued the repossession company for violations of the FDCPA and RICO statutes. Judge Schmehl fully

concurred with Judge Davis' reasoning concerning the dismissal of the FDCPA and RICO counts, and it is respectfully requested that this Honorable Court follow its colleagues in dismissing Plaintiff's Complaint, as this matter is indistinguishable from Gonzalez and Collins.

Plaintiff's FDCPA claim is premised on the notion that the Repossession Defendants lacked the present right to repossess his vehicle on October 6, 2012. He has admitted, however, that he defaulted on the loan after paying less than half of the principal amount, and that he never attempted to discuss the terms of the loan with Sovereign. After making payments on the first business day of June and July of 2012, he paid nothing in August, September and October. It is undisputed, therefore, that the loan was in default because Plaintiff missed three payments at the time his vehicle was repossessed. Further, at no time prior to the repossession did Plaintiff place Sovereign on notice that the interest rate of his loan exceeded the rate permitted by law. As such, there is no genuine issue of material fact as to whether the Repossession Defendants had the present right to possess Plaintiff's vehicle on October 6, 2012. They did, and summary judgment is therefore warranted.

C. THE WAIVER AND RELEASE AGREEMENTS BAR PLAINTIFF'S SUIT

As Plaintiff signed waiver and release agreements in which he relinquished his right to sue the Repossession defendants for any and all claims, known or unknown, arising out the repossession of his vehicle after speaking with his attorney and under no compulsion, it is respectfully submitted that these agreements are enforceable and bar his claims against all Defendants.

It is well-settled that Pennsylvania law applies to the validity of releases. Wahsner v. Am. Motors Sales Corp., 597 F. Supp. 991, 997 (E.D. Pa. 1984). "State law customarily governs the

field of contracts and it is to state law rather than federal law that private parties are likely to refer when formulating the terms of a contractual release." Three Rivers Motor Co. v. Ford Motor Co., 522 F.2d 885, 891 (3d Cir. 1975). Under Pennsylvania law, the parties'intention governs in the construction of releases and this intention must be determined from the language of the release. Id. The signed release binds "the parties unless executed and procured by fraud, duress, accident or mutual mistake." Id. at 892. Thus, releases that are executed due to fraud, duress or the like are voidable under Pennsylvania law. Wahsner, 597 F. Supp. at 997.

While Plaintiff may claim that he signed the release documents under duress, it is well-settled that "in the absence of threats of actual bodily harm there can be no duress where the contracting party is free to consult with counsel." Carrier v. William Penn Broad. Co., 233 A.2d 519, 521 (Pa. 1967). While he may claim that the releases were void for lack of consideration, 33 P.S. § 6, "When written instruments without consideration valid", provides:

> A written release or promise, hereafter made and signed by the person releasing or promising, shall not be invalid or unenforceable for lack of consideration, if the writing also contains an additional express statement, in any form of language, that the signer intends to be legally bound.

The "Agreement to Redeem Property" signed by Plaintiff contains language indicating an intent to be legally bound. The Agreement releases any and all "claims, demands, and liabilities whatsoever of every name and nature, both in law and in equity, which I may now have or ever had against Company(s) whatsoever with respect to the repossession and storage of…the 1998 Lincoln Town Car." ***See*** *Statement of Material Facts, ¶-38.* Plaintiff consulted with his attorney prior to signing the release, and was not threatened with physical violence, so he cannot claim duress. The release was not procured by fraud, accident, or mutual mistake, and if a mistake was made, it was solely on Plaintiff's part. Lastly, Defendants were unable to locate any case law holding that a release of liability under the FDCPA is void for public policy concerns; rather, it

appears that a clear and unambiguous release will be enforced. See Hines v. G. Reynolds Sims Assoc., P.C., 2013 WL1774938 (E.D. Mich. 2013) (finding that release of FDCPA claims enforceable if fact finder determines that parties intended to release such claims).

For these reasons, it is respectfully submitted that even if Defendants lacked the present right to possess Plaintiff's automobile, Plaintiff's signature on the Agreement to Redeem Property bars his claims against all Defendants. Summary judgment is again warranted.

D. THE LEGALITY OF THE LOAN PLAINTIFF OBTAINED FROM SOVEREIGN CAN ONLY BE DECIDED THROUGH THE TRIBAL DISPUTE RESOLUTION PROCEDURE ESTABLISHED BY THE LAC VIEUX DESERT BAND OF CHIPPEWA INDIANS

Although Plaintiff does not have a copy of his loan agreement, he produced screenshots of the Title Loan America website and a sample Pawn Ticket Agreement that both provide that any disputes arising out of the loan must be submitted solely to a Tribal Dispute Resolution Procedure established by the Lac Vieux Desert Band of Chippewa Indians (hereafter referred to as the "Tribe"). There is no reason to expect that the loan he received contained different terms, but he has admittedly never attempted to raise a grievance to the Tribe. Rather, by filing this lawsuit, he seeks to establish that the loan he received from a federally-recognized Indian Tribe was illegal *per se*, that the Tribe's lending practices are subject to Pennsylvania law, and he seeks to do so without notice to the Tribe, and without joining the Tribe as a party to this suit. The implications of what Plaintiff seeks to accomplish are far-reaching, as he essentially seeks to (1) obtain a judgment by default that tribal lending is subject to regulation by the States, notwithstanding the fact that federally-recognized Tribes enjoy limited sovereign immunity in their financial affairs; to (2) bypass a contractual arbitration forum despite controlling precedent

affirming lenders' ability to enforce arbitration clauses in their loan agreements, see Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440 (2006), and Kaneff v. Delaware Title Loans, Inc., 587 F.3d 616 (3d Cir. 2009); and to (3) obtain a declaration from this Court that the loan he obtained is void, without joining the true party in interest – the Tribe. Although Defendants rely primarily on the arguments advanced in Parts A-C of this Brief in support of their entitlement to summary judgment, the Court is urged to consider the argument advanced below – that Plaintiff's claim is unripe – as an alternative ground for dismissal of this action.

In Walker v. Int'l Recovery Systems, Inc., 2103 WL 3380579 (E.D. Pa. Jul. 8, 2013), Judge Robert F. Kelly *sua sponte* dismissed plaintiff's claims for violations of the FDCPA and RICO statutes as unripe. In Walker, plaintiff obtained an auto title loan from a Delaware lender, defaulted on the loan, and her vehicle was repossessed. There, as here, Plaintiff did not file suit against the lender, as the loan contained an arbitration agreement, but instead filed suit only against the repossession entities and their respective owners. The repossession entities moved to dismiss for failure to join an indispensable party under Fed. R. Civ. P. 12(b)(7). Judge Kelly denied the motion to dismiss on the grounds advanced by defendants, but determined that the matter was not ripe for disposition because the issue of the legality of the title loan could only be resolved through arbitration, as provided for in the loan agreement itself.

Notably, Judge Kelly observed that in plaintiff's suit against the repossession entities,

> The cornerstone of this litigation is the loan agreement between Plaintiff and [the lender]. Plaintiff's claims under the FDCPA, the PAFCEAU, the RICO Act and Defendants' liability therefrom, all hinge on the legality of the loan agreement. In essence, Defendants' actions can only be considered malfeasance if the loan agreement was illegal and, therefore, void. If this is the case, Defendants would have had no right to repossess the vehicle because it did not belong to DTL.
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> Id. at *2.

Building from this foundation, Judge Kelly noted that "it is not the District Court's prerogative to determine the validity of such a loan," and that "the United States Supreme Court made abundantly clear in Buckeye Check Cashing, Inc., [supra], 546 U.S. 440, that unless the challenge is to an arbitration clause itself, the issue of the validity of a contract is considered by the arbitrator in the first instance." Ibid. Therefore, the court held that as the legality of the loan had not been determined, "we find that the facts of the case are not sufficiently developed to provide us with enough information to decide the matter conclusively, and Plaintiff's claims are not "fit" for judicial determination." Id. at *3.

Here, the title loan agreement between Plaintiff and Sovereign provided that all complaints arising out of the title loan must be submitted to a Tribal Dispute Resolution Procedure. Plaintiff has not submitted such a claim, and it is clear from Buckeye Check Cashing, supra, and Kaneff v. Delaware Title Loans, Inc., 587 F.3d 616 (3d Cir. 2009) that this jurisdictional requirement is enforceable. To the extent that Plaintiff may claim that the Tribal Dispute Resolution Procedure amounts to nothing more than a kangaroo court, the Supreme Court held in Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9 (1987), that tribal jurisdiction must be honored by the federal courts, even where a plaintiff alleges bias or incompetence on the part of the tribal court. Accordingly, Defendants allege that Plaintiff has not proven that the loan was illegal in the first instance, rendering this matter unripe for review. Absent Sovereign's participation in this suit, the District Court is not the proper venue to determine the validity or legality of the loan at issue.

III. PLAINTIFF'S RICO CLAIMS FAIL AS A MATTER OF LAW, AS HE CANNOT PROVE THAT DEFENDANTS COLLECTED UNLAWFUL DEBT

Plaintiff has asserted two counts against Defendants, Chad Latvaaho and Philip Hourican, the principals of the Repossession Defendants, alleging that they engaged in an enterprise dedicated to the collection of unlawful debt, contrary to RICO, 18 U.S.C. § 1692(c). These counts fail for two reasons: Plaintiff cannot demonstrate that any "unlawful debt" was collected, because he cannot show that the loan violated Pennsylvania law or that he exercised his right to void the loan; and because the recovery of collateral used to secure a debt is not tantamount to collection of debt. Plaintiff's RICO claims are therefore subject to dismissal, as there are no material facts in dispute.

In Gonzalez v. DRS Towing, supra, Judge Davis observed that there are no reported cases holding a repossession agency liable for the "collection of unlawful debt" in violation of § 1962(c). Judge Schmehl made the same observation over one year later in Collins, and in the three weeks that have passed since his opinion was released, there have been no cases reported that hold otherwise. Plaintiff's litigation tactic has been rejected by every court to consider it. Defendants, therefore, urge this Honorable Court to adopt the reasoning set forth in those opinions, and request that Plaintiff's RICO claims be dismissed with prejudice.

CONCLUSION

For the foregoing reasons, Defendants, Repossessors, Inc., Chad Latvaaho, and Shady Oak Enterprises, Inc., d/b/a Premier Finance Adjusters respectfully request that this Honorable Court enter an Order dismissing Plaintiff's Complaint with prejudice.

Respectfully submitted,

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