

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**PISHNY REAL ESTATE
SERVICES, INC.,**

Plaintiff,

v.

LEWIS C. MUSSER, et al.,

Defendants.

CIVIL ACTION

No. 07-2186-KHV

ORDER

Pishny Real Estate Services, Inc. (“Pishny”) brought suit against Lewis C. Musser, Mary Ann Musser and Lewis C. Musser, Inc. in Kansas state court. See Petition attached as Exhibit A to Notice Of Removal (Doc. #1) filed May 2, 2007. Defendants removed the action pursuant to 28 U.S.C. §§ 1441 and 1446. See Notice Of Removal (Doc. #1). On May 8, 2007, the Court remanded the action to the District Court of Johnson County, Kansas because defendants’ notice of removal did not properly establish subject matter jurisdiction. See Order (Doc. #3) at 2. This matter is before the Court on Defendants’ Motion And Suggestions To Reconsider Remand (Doc. #4) filed May 9, 2007. For reasons stated below, the Court overrules the motion.

28 U.S.C. § 1447(d) provides in part that “[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise.”¹ Because the Court remanded the action on the ground that defendants did not properly establish subject matter jurisdiction, the Court’s

¹ Section 1447(d) includes an exception to the general rule prohibiting review of a remand order for cases removed under 28 U.S.C. § 1443, which applies to certain civil rights actions. Here, plaintiff does not bring a civil rights action and defendants did not remove the action under Section 1443. This exception is therefore not applicable in this case.

order is not reviewable either on direct appeal or through a motion to reconsider. See Scherer v. Merck & Co., No. 05-2019-CM, 2006 WL 2255689, at *2-3 (D. Kan. Aug. 7, 2006) (Section 1447(d) creates jurisdictional bar to appellate review or district court reconsideration of remand order for lack of subject matter jurisdiction); Chaara v. Intel Corp., No. CIV-05-278, 2006 WL 4060670, at *5 (D.N.M. Nov. 21, 2006) (Section 1447(d) forecloses reconsideration of remand order); Topeka Housing Auth. v. Johnson, No. 04-4062-SAC, 2004 WL 2457803, at *1 (D. Kan. Oct. 14, 2004) (court may not entertain motion to reconsider remand for lack of subject matter jurisdiction). Because the Court lacks jurisdiction to reconsider its remand order, it overrules Defendants' Motion And Suggestions To Reconsider Remand (Doc. #4) filed May 9, 2007.

IT IS SO ORDERED.

Dated this 15th day of May, 2007 at Kansas City, Kansas.

s/ Kathryn H. Vratil
Kathryn H. Vratil
United States District Judge