

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 02-50016

AGAPE METRO HOUSING, INC; DOMICILE PROPERTY MANAGEMENT INC;
PEPPERIDGE PARTNERS, LP

Plaintiffs-Appellants,

VERSUS

GENERAL STAR INDEMNITY COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Texas
(01-CV-978)

December 11, 2002

Before HIGGINBOTHAM, DUHÉ and DeMOSS, Circuit Judges.

PER CURIAM*:

Appellants Agape Metro Housing, Inc., Domicile Property Management, Inc. and Pepperidge Partners, L.P. (collectively "Agape") filed suit in Texas state court against General Star Indemnity Co. ("General Star") alleging breach of contract, breach of good faith, and violations of the Texas Insurance Code Articles

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

21.21 and 21.55. The complaint stemmed from an insurance policy issued by General Star to Agape for apartments located in San Antonio, Texas. General Star removed the action to federal court and Agape sought to remand the action back to state court pursuant to a "service of suit" clause contained in the insurance policy. The district court denied the motion to remand and *sua sponte* dismissed the action on res judicata grounds because a federal court had already entered a declaratory judgment as to the applicability of the insurance policy at issue as to Agape. Agape now appeals.

Having carefully reviewed the record of this case and the parties' respective briefing, we conclude that the district court did not err in denying Agape's motion to remand to state court and did not err in dismissing Agape's claims *sua sponte* based on res judicata. We therefore AFFIRM the district court's decision.

AFFIRMED.