The Travelers Indemnity Company of America et al v. W.S. Newell, Inc. et al Doc. 71

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

THE TRAVELERS INDEMNITY COMPANY OF AMERICA,	)	
Plaintiff,	)	
	)	
vs.	)	**CIVIL ACTION NO.: 11-00481-KD-N**
	)	
W.S. NEWELL, INC., *et al.*,	)	
Defendants.	)	

ORDER

This matter is before the Court on Defendant Hoar Construction, LLC's "Unopposed Motion for Leave to File Amended Answer," to add the affirmative defense of voluntary payment (Doc. 70). It is **ORDERED** that Defendant Hoar Construction, LLC's unopposed Motion (Doc. 70) is **GRANTED**. Accordingly, Defendant Hoar Construction, LLC is **DIRECTED** to file an Amended Answer[1] which sets out in full -- rather than by adopting and/or incorporating by reference – its allegations and counterclaim(s).[2]

DONE and **ORDERED** this the **2nd** day of **May 2012.**

/s/ Kristi K. DuBose
KRISTI K. DUBOSE
UNITED STATES DISTRICT JUDGE

---

1 To replace the proposed Amended Answer (Doc. 70-2) which simply "incorporates by reference" Defendant Hoar Construction, LLC's counterclaim against Plaintiff. (Id. at 2 at note 1).

2 See, e.g., Pintando v. Miami-Dade Housing Agency, 501 F.3d 1241, 1243 (11th Cir. 2007) (stating that "[a]s a general matter, '[a]n amended pleading supersedes the former pleading; the original pleading is abandoned by the amendment, and is no longer a part of the pleader's averments against his adversary[]'" (citing Dresdner Bank AG v. M/V Olympia Voyager, 463 F.3d 1210, 1215 (11th Cir. 2006)); Land Clearing Co., LLC v. Navistar, Inc., Slip Copy, 2012 WL 206171, *1 at note 2 (S.D. Ala. Jan. 24, 2012) (finding that "the Amended Complaint was not an integrated, standalone pleading…it only set forth plaintiff's new claims and allegations…without reciting the previously alleged facts and causes of action from the original Complaint…[It] expressly 'adopt[ed] and realleg[ed] all claims, demands and averments as are set forth in the original Complaint.'...More careful pleading by plaintiff--and adherence to the best practice of filing all-inclusive amended pleadings rather than piecemeal amended pleadings that incorporate by reference (rather than re-alleging) large swaths of earlier filings--would have alleviated…confusion[]"); and Security Life of Denver Ins. Co. v. Shah, Slip Copy, 2012 WL 1099844, *1 (S.D. Ga. Mar. 30, 2012) (specifying that "[t]he Court will not accept any filing…that incorporates by reference any factual allegation or argument contained in any documents already filed…Any further motions or responses must be stand-alone filings that independently contain all the factual allegations and arguments that the filing party wishes the Court to consider[]").

Dockets.Justia.com