

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

VANESSA GRIFFIN, et al.

PLAINTIFFS

v.

Civil No. 4:14-cv-4065

TONY ALAMO, et al.

DEFENDANTS

ORDER

Before the Court is Plaintiffs' Motion for Default Judgment as to Armful of Help, Gloryland Christian Church, Greg Seago and Twenty First Century Holiness Tabernacle Church (hereinafter referred to as "Defendants"). (ECF No. 108). Separate Defendants Advantage Food Groups, Inc.; Advantage Sales, LLC; Ron Decker; Don Wolf; Steve Lovellette; and Jeanne Estates Apartments, Inc. have filed a response (hereinafter referred to as "Separate Defendants"). (ECF No. 112). Plaintiffs have replied. (ECF No. 118). The Court finds this matter ripe for consideration.

On June 5, 2015, Plaintiffs filed their Second Amended Complaint. (ECF No. 85). Service was effected on Defendants Armful of Help, Gloryland Christian Church, Greg Seago and Twenty First Century Holiness Tabernacle Church, Inc. on July 13, 2015. All of the aforementioned Defendants have failed to answer, appear or otherwise defend against the Second Amended Complaint. On August 24, 2015, Plaintiffs filed the instant Motion for Default Judgment as to Defendants. Separate Defendants filed a response asking the Court to deny Plaintiffs' motion to avoid any improper prejudice to Separate Defendants during the adjudication of the merits. In their reply, Plaintiffs agreed that default judgment should not be entered and requested that the Court hold the Motion for Default Judgment in abeyance until the non-defaulting defendants' claims are resolved.

Before the Court ruled on the Motion for Default Judgment, Plaintiffs requested leave to file a Third Amended Complaint to remove some claims and amend the facts surrounding the existing claims to conform with discovery. (ECF No. 126). On December 21, 2015, the Court granted Plaintiffs' request for leave to file the Third Amended Complaint. (ECF No. 132). Plaintiffs filed the Third Amended Complaint on December 30, 2015. (ECF No. 135).

Upon consideration, the Court finds that Plaintiffs' motion should be denied. Plaintiffs' Third Amended Complaint rendered the Second Amended Complaint a legal nullity. 6 Charles Alan Wright et al., *Federal Practice and Procedure* § 1476 (2d ed. 1990) ("Once an amended pleading is interposed, the original pleading no longer performs any function in the case."); *see also Best W. Int'l, Inc. v. Melbourne Hotel Inv'rs, LLC*, No. CV 06-2276-PHX-MHM, 2007 WL 2990132, at *1 (D. Ariz. Oct. 11, 2007) (denying as moot plaintiff's motion for default judgment where amended complaint subsequently filed). Thus, the filing of the Third Amended Complaint mooted Plaintiffs' request for a default judgment as it is based upon the Second Amended Complaint.

Accordingly, Plaintiffs' Motion for Default Judgment as to Armful of Help, Gloryland Christian Church, Greg Seago and Twenty First Century Holiness Tabernacle Church (ECF No. 108) is **DENIED WITHOUT PREJUDICE**. Plaintiffs may request default judgment based upon the Third Amended Complaint in compliance with Rule 55 of the Federal Rules of Civil Procedure at a later date.

IT IS SO ORDERED, this 30th day of December, 2016.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge