

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Civil Action No. 08-cv-01179-MSK-KMT

QDOBA RESTAURANT CORPORATION,

Plaintiff and Counterclaim Defendant,

v.

TAYLORS, LLC,

Defendant and Counterclaimant.

ORDER DENYING MOTION TO DISMISS AS MOOT

THIS MATTER Comes before the Court on Defendant's Motion to Dismiss for Lack of Jurisdiction (**#20**), Plaintiff's Response (**#29**), and Defendant's Reply (**#31**).

On June 20, 2008, Plaintiff filed its Amended Complaint asserting one claim for declaratory judgment (**#6**). On August 20, 2008, Defendant filed their Motion to Dismiss (**#20**) pursuant to Fed. R. Civ. P. 12(b)(1). On September 25, 2008, Plaintiff was granted leave to file its Second Amended Complaint (**#34**). Plaintiff's Second Amended Complaint adds an additional claim for breach of contract (**#35**).

The Motion to Dismiss (**#20**) is directed to the Amended Complaint. In it, the Defendant requests dismissal or stay of this action in favor of a state court action which it contends is essentially a "mirror-image" of the claims asserted here. The Defendant argues that in seeking a declaratory judgment, the Plaintiff actually seeks no affirmative relief, but instead is improperly attempting to circumvent the state court action.

The Second Amended Complaint supercedes the Amended Complaint to which

Defendant's Motion to Dismiss is directed. Because it is unclear whether, or to what degree, the contentions of the Motion to Dismiss would apply to the Second Amended Complaint, and the Defendant will have an opportunity to assert appropriate arguments in response to it, the Motion (#20) is **DENIED**.

Dated this 5th day of March, 2009

BY THE COURT:



Marcia S. Krieger
United States District Judge