

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 12-cv-02716-WJM

LISA KAY BRUMFIEL,

Plaintiff,

v.

U.S. BANK,
LARRY CASTLE, in his individual and corporate capacity, and
CASTLE STAWIARSKI, LLC,
ROBERT J. HOPP, in his and corporate and individual capacities,
CYNTHIA MARES, Public Trustee in her official capacity,
MERS, a division of MERSCorp, and
DOES 1-100,

Defendants.

ORDER DENYING AS MOOT DEFENDANTS' MOTION TO DISMISS

Plaintiff Lisa Kay Brumfiel ("Plaintiff") has filed this action against Defendants Larry Castle and Castle Stawiariski, LLC (jointly the "Castle Defendants"), U.S. Bank, Robert J. Hopp, Cynthia Mares, MERS, and Does 1-100 (collectively the "Defendants"), contesting the foreclosure of Plaintiff's real property. (ECF No. 45.) This matter is before the Court on the Castle Defendants' Motion to Dismiss for Lack of Jurisdiction ("Motion") (ECF No. 9), and Magistrate Judge Michael E. Hegarty's Recommendation on the Motion (ECF No. 35.)

The Motion was filed on November 2, 2012. (ECF No. 9.) Subsequently, Plaintiff's Amended Complaint was filed on March 22, 2013. "It is well established that an amended complaint ordinarily supersedes the original and renders it of no legal

effect.” *Davis v. TXO Prod. Corp.*, 929 F.2d 1515, 1517 (10th Cir. 1991) (internal quotation marks omitted). “Because the original complaint has been superseded and nullified, there is no longer a live dispute about the propriety or merit of the claims asserted therein; therefore, any motion to dismiss such claims is moot.” *Glass v. The Kellogg Co.*, 252 F.R.D. 367, 368 (W.D. Mich. 2008); *Ky. Press Ass’n, Inc. v. Ky.*, 355 F. Supp. 2d 853, 857 (E.D. Ky. 2005) (“Plaintiff’s amended complaint supersedes the original complaint, thus making the motion to dismiss the original complaint moot.”).

Accordingly, the Court ORDERS that, because the initial Complaint (ECF No. 1) has been superseded by the Amended Complaint (ECF No. 45), the Castle Defendants’ Motion (ECF No. 9) is DENIED AS MOOT. In addition, Plaintiff’s Objection to the Recommendation (ECF No. 40) is OVERRULED, given that the underlying Motion has been denied as moot. As a consequence of these rulings, the Court need not adopt nor reject the Magistrate Judge’s Recommendation on the Motion (ECF No. 35), and therefore it takes no action with regard to same.

Dated this 16th day of May, 2013.

BY THE COURT:



William J. Martinez
United States District Judge