

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 13-cv-00247-RBJ-KMT

NANCY KASPRYZK,

Plaintiff,

v.

PNC BANK, NATIONAL ASSOCIATION,

Defendant.

ORDER

This matter is before the court on “Motion to Strike Unnecessary Motion to Dismiss or Alternatively Motion to Stay Plaintiff’s Response to Motion to Dismiss” [Doc. No. 39]. Plaintiff argues correctly that on October 15, 2013 the court Ordered, “Plaintiff is directed to file a complaint that comports with Judge Jackson’s Order on or before October 25, 2013. A motion to amend the complaint shall be filed on or before November 25, 2013. The deadline to respond to the October 25, 2013 complaint is stayed pending further order of court. (Minutes, October 15, 2013 [Doc. No. 31] at 2.)

Plaintiff filed the First Amended Complaint before the deadline on October 17, 2013. [Doc. No. 32.] Plaintiff also beat the deadline for filing a Motion to Amend that Complaint. See “Motion to Amend Complaint” [Doc. No. 33] filed November 13, 2013. Defendant filed “Defendant PNC Bank, N.A.’s Response to Plaintiff’s Motion for Leave to Amend Complaint”

[Doc. No. 35] on December 9, 2013. That motion is not yet fully briefed; the Reply may be filed on or before December 26, 2013.

The parties and the court contemplated that the court would issue a ruling on the expected Motion to Amend prior to the Defendant being required to file a responsive pleading to either the First Amended Complaint or an anticipated proposed Second Amended Complaint [Doc. No. 33-2]. For an unknown reason Defendants have, however, filed “Defendant PNC Bank, N.A.’s Motion to Dismiss First Amended Complaint Pursuant to Fed.R.Civ.P. 12(B)(6).” [Doc. No. 36.] Pursuant to the court’s October 15, 2013 Order, this filing was unnecessary and by its existence creates unnecessary additional work for the Plaintiff and for the Court if not addressed.

Therefore, it is **ORDERED**

Plaintiff’s “Motion to Strike Unnecessary Motion to Dismiss or Alternatively Motion to Stay Plaintiff’s Response to Motion to Dismiss” [Doc. No. 39] is **GRANTED in part** as follows.

1. “Defendant PNC Bank, N.A.’s Motion to Dismiss First Amended Complaint Pursuant to Fed.R.Civ.P. 12(B)(6)” will be HELD IN ABEYANCE pending the court’s ruling or recommendation on Plaintiff’s Motion to Amend. No response will be required from Plaintiff except as noted herein at paragraph 3 below.
2. If the plaintiff’s Motion to Amend is granted and the Second Amended Complaint filed, “Defendant PNC Bank, N.A.’s Motion to Dismiss First Amended Complaint Pursuant to Fed.R.Civ.P. 12(B)(6)” will be denied as moot.

3. If this court recommends to the District Court that the Motion to Amend be denied, the Plaintiff will have 14 days from **the date of the Recommendation** to respond to “Defendant PNC Bank, N.A.’s Motion to Dismiss First Amended Complaint Pursuant to Fed.R.Civ.P. 12(B)(6).”

Dated this 26th day of December, 2013.

BY THE COURT:



Kathleen M. Tafoya
United States Magistrate Judge