

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FEDERAL DEPOSIT INSURANCE
CORPORATION

as receiver for
The Buckhead Community Bank,

Plaintiff,

v.

R. CHARLES LOUDERMILK, SR., et
al.,

Defendants.

CIVIL ACTION FILE
NO. 1:12-CV-4156-TWT

OPINION AND ORDER

This is a negligence case brought by the FDIC against the former officers and directors of a failed bank. It is before the Court on the Plaintiff's Motion for Summary Judgment on Affirmative Defenses [Doc. 106]. The Plaintiff, the FDIC, moves for summary judgment on the Defendants' Sixth, Seventh, Eighth, Ninth, Tenth, Twelfth, Thirteenth, Sixteenth, Seventeenth, Eighteenth, Twentieth, Twenty-First, Twenty-Second, and Twenty-Third affirmative defenses. In their response to the motion for summary judgment, the Defendants agreed to withdraw the challenged affirmative

defenses.¹ The Plaintiff's motion for summary judgment should therefore be denied as moot. The Defendants will be prohibited from presenting evidence as to the withdrawn affirmative defenses at trial.

In its reply brief, however, the Plaintiff asks for more. It asks that all facts in its statement of material facts be treated as established for the purpose of trial. Federal Rule of Civil Procedure 56(g) states that “[i]f the court does not grant all the relief requested by the motion, it *may* enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.”² Given that the Defendants have agreed to withdraw the challenged affirmative defenses and that this Court will bar them from presenting evidence related to those defenses, there is no need to enter an order as would be permitted, but not required, under Rule 56(g). The Plaintiff's request is denied. For the reasons stated above, the Plaintiff's Motion for Summary Judgment on Affirmative Defenses is DENIED as moot. The Defendants' Sixth, Seventh, Eighth, Ninth, Tenth, Twelfth, Thirteenth, Sixteenth, Seventeenth, Eighteenth, Twentieth, Twenty-First, Twenty-Second, and Twenty-Third affirmative defenses are withdrawn.

¹ Defs.' Resp. to Pl.'s Mot. for Summ. J., at 2.

² Fed. R. Civ. P. 56(g) (emphasis added).

SO ORDERED, this 23 day of March, 2016.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge