

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

U. S. DISTRICT COURT
Southern District of Ga.
Filed in Office

6/30/14

Deputy Clerk

JILL E. MACK,)
)
Plaintiff,)
)
v.)
)
HERTY ADVANCED MATERIALS)
DEVELOPMENT CENTER,)
)
Defendant.)

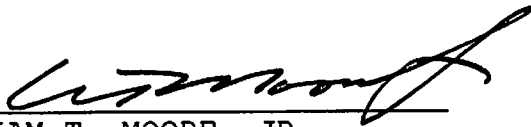
CASE NO. CV415-196

O R D E R

Before the Court is a Motion to Dismiss filed by the Board of Regents of the University System of Georgia ("BOR"). (Doc. 6.) In the motion, the BOR alleges that it is "the successor to and a continuation of the former board of trustees of the [Herty Advanced Materials Development] center." (Doc. 6, Attach. 1 at 1.) However, the BOR has not filed a motion to intervene or to substitute party, but is rather entered on the record merely as an "interested party." A motion to intervene is the proper method to assert an interest in a lawsuit. See Georgia v. U.S. Army Corps of Eng'rs, 302 F.3d 1242, 1248 (11th Cir. 2002) (denying non-party's motion to intervene and motion to dismiss where non-party's motion had "no issues of law or fact in common with [plaintiff's] claims"); see also MasterCard Int'l Inc. v. Visa Int'l Serv. Ass'n, Inc., 471 F.3d 377, 382 (2d Cir. 2006) (noting that Federal Rule of Civil Procedure 24 contemplates the

method "by which non-parties who believe they have a valid and sufficient interest in a litigation can assert their rights"). Moreover, entities may file a motion to substitute party on the basis that they are the real party in interest. See Acme Roofing & Sheet Metal Co., Inc. v. Air Team USA, Inc., 2013 WL 3381372 (N.D. Ala. July 8, 2013). Because the BOR did not intervene or file a motion to substitute party in this case, any motion to dismiss filed by the BOR is improper. Accordingly, the Motion to Dismiss (Doc. 6) filed by the BOR is **DISMISSED AS MOOT**. The BOR is **DIRECTED** to file a motion to intervene or to substitute party—if it so desires—within **15 days** from the date of this order. Should the Court grant the BOR's motion to intervene, the BOR shall have **30 days** refile a motion to dismiss.

SO ORDERED this 29th day of June 2016.



WILLIAM T. MOORE, JR.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA