

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

MMR CONSTRUCTORS

CIVIL ACTION

VERSUS

SYNGENTA CROP PROTECTION, ET AL

NO. 06-918-C

CONSOLIDATED WITH

ECOPRODUCT SOLUTIONS, LP

CIVIL ACTION

VERSUS

MMR CONSTRUCTORS, INC.

NO. 07-951-C

RULING ON MOTIONS TO DISMISS

This matter is before the court on a Rule 9(B) Motion to Dismiss Fraud-Based Claims (Doc. No. 36) filed by defendant, EcoProduct Solutions GP, LLC; a Motion to Dismiss for Lack of Personal Jurisdiction, and for Failure to State a Claim and for Failure to Plead with Particularity (Doc. No. 64) filed by defendant, W. Yandell Rogers, III; and a Motion to Dismiss for Failure to State a Claim and for Failure to Plead with Particularity (Doc. No. 65) filed by defendant, Priest River, Ltd. Plaintiff, MMR Constructors, has filed opposition to W. Yandell Rogers, III and Priest River, Ltd.'s motions to dismiss. Jurisdiction is allegedly based on 28 U.S.C. § 1332, diversity. There is no need for oral argument.

PROCEDURAL BACKGROUND

The Original Petition in this action was filed on December 4, 2006. A First
Doc#1857

Amended Complaint was filed on October 10, 2007. Ecoproduct Solutions GP, LLC's motion to dismiss was filed on May 13, 2008. A Second Amended Complaint was filed on May 21, 2008. W. Yandell Rogers, III and Priest River, Ltd.'s Motions to Dismiss were filed on June 13, 2008. A Third Amended Complaint was filed on June 10, 2009.


DISCUSSION

"An amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading."¹ Plaintiff's Third Amended Complaint does not refer to, adopt, or incorporate by reference earlier pleadings. Thus, plaintiff's operative Third Amended Complaint is the only effective complaint. The court notes that plaintiff's Third Amended Complaint repleads all of the claims underlying the motions to dismiss filed by EcoProducts Solutions GP; W. Yandell Rogers, III; and Priest River, Ltd. Because these Motions to Dismiss were filed before the operative Third Amended Complaint and address the non-operative Petition, First Amended Complaint and Second Amended Complaint, these motions to dismiss are moot. Therefore,

¹ **King v. Dogan**, 31 F.3d 344, 346 (5th Cir. 1994); see **Carroll v. Fort James Corp.**, 470 F.3d 1171, 1176 (5th Cir. 2006).

IT IS ORDERED that EcoProduct's Motion to Dismiss (Doc. No. 36); W. Yandell Rogers, III's Motion to Dismiss (Doc. No. 64); and Priest River, Ltd.'s Motion to Dismiss (Doc. No. 65) are DENIED AS MOOT.

Baton Rouge, Louisiana, this 28th day of May, 2010.



**RALPH E. TYSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**