NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ALBERT J. HARLOW, JR., et al., Plaintiffs, v. CHANREE CONSTRUCTION COMPANY, INC., et al., Defendants.	Civil Action No. 16-8360-BRM-DEA **MEMORANDUM ORDER**

MARTINOTTI, DISTRICT JUDGE

This matter comes before the Court upon a Motion to Dismiss filed by defendant Arch Insurance Company ("Arch"). (ECF No. 13.) In response to Arch's motion, Plaintiffs filed an Amended Complaint. (ECF No. 16.) Therefore, Arch's Motion to Dismiss is moot and, for the reasons discussed below, is **DENIED without prejudice**.

I. Background

On November 8, 2016, Plaintiffs filed a two-count Complaint against defendants for breach of contract and unjust enrichment in connection with a certain construction contract. (ECF No. 1.) Arch moved to dismiss the Complaint on January 13, 2017. (ECF No. 13.) In response to Arch's motion, Plaintiffs filed an Amended Complaint on February 6, 2017. (ECF No. 16.) No reply to the motion to dismiss was filed.[1]

[1] The motion was returnable on February 6, 2017.

II. Discussion

"Rule 15(a)(1)(B) makes clear that 'an amended complaint is a permissible response to a Rule 12(b) motion.'" *Harnish v. Widener Univ. School of Law*, 2012 WL 2576353, at *2 (D.N.J. July 3, 2012) (quoting *Alliance Solutions, Inc. v. Quest Software, Inc.*, Civ. No. 11-2115, 2012 WL 692883 (D.Md. March 1, 2012)). Additionally, the Advisory Committee Notes to the 2009 Amendments to Rule 15(a) state that "[a] responsive amendment may avoid the need to decide the motion or reduce the number of issues to be decided, and will expedite determination of issues that otherwise might be raised seriatim."

Where, as here, a motion to dismiss is directed at an original pleading, the motion is mooted when an amended pleading is filed. *See, e.g.*, *Harnish*, 2012 WL 2576353, at *3; *Croker v. Applica Consumer Prods., Inc.*, 2006 WL 626425, at *1 (D.N.J. Mar. 10, 2006) ("because Plaintiffs have now amended their Complaint, Defendants' motion to dismiss is moot and will be denied without prejudice") (collecting cases). This is because "[a]n amended complaint supersedes the original version in providing the blueprint for the future course of a lawsuit." *Snyder v. Pascack Valley Hospital*, 202 F.3d 271, 276 (3d Cir. 2002). Plaintiffs' Amended Complaint is the operative pleading in this case and Arch's motion to dismiss, directed at Plaintiffs' original Complaint, is moot and must be denied accordingly. *See Cofield v. United States Dep't of Justice*, 2016 WL 4499103, at *1 (D.N.J. Aug. 25, 2016).

III. Conclusion

For the reasons set forth above, Defendant Arch Insurance Company's Motion to Dismiss (ECF No. 13) is **DENIED without prejudice**.

SO ORDERED.

Date: February 17, 2017

/s/ Brian R. Martinotti
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE