

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:14-CV-215-FL

THE ADVOCACY FOR CONSUMER)
RIGHTS, LLC,)
)
Plaintiff,)
)
v.)
)
STEVE RHODE, JOHN DOES I-X, JANE)
DOES I-X, ABC PARTNERSHIPS I-X,)
DEF LIMITED LIABILITY COMPANIES)
I-X, and XYZ CORPORATIONS I-X,)
)
Defendants.)

ORDER

This matter comes now before the court upon defendants’ motion to dismiss for failure to state a claim (DE 12), and motion for sanctions (DE 14). Plaintiff has responded through amended complaint (DE 18) and in separate responses (DE 21, 22). While reply time has not yet run, in its discretion the court dispenses with any reply.

As plaintiff notes, there is adhered to the instant motion to dismiss a plethora of ancillary materials on which defendants rely and to which it objects. The court finds the issues raised under Rule 12 by defendants are not susceptible to decision thereunder where defendants have swept well outside the bounds of the complaint in their presentation. Rather, in order to proceed, the motion would have to be converted to a Rule 56 motion.

No doubt, in that event, plaintiff then would urge the court to stay briefing and its decision pending conduct of discovery. No doubt, too, defendants would seek to supplement their motion

with additional materials and new arguments.

In short, conversion at this time would not comport with the mandate of Rule 1. For all of these reasons, the motion to dismiss (DE 12) is DENIED. At this juncture in the case, good cause is not shown for imposition of sanctions as requested, and, therefore, that motion (DE 14) is DENIED as well.

The court now has cause to revisit its ruling July 2, 2014, and release the stay put into effect. Defendants' response to the amended complaint has not yet been made. Upon that response, unless good cause be shown why a further stay should be imposed, separate order will issue in the form of the court's initial order on scheduling, triggering the parties' scheduling conference activities.

SO ORDERED, this the 30th day of July, 2014.

A handwritten signature in black ink that reads "Louise W. Flanagan". The signature is written in a cursive, flowing style.

LOUISE W. FLANAGAN
United States District Judge