

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

No. 7:14-CV-36-FL

RETIREMENT COMMITTEE OF DAK)
AMERICAS LLC, as Plan Administrator)
of the DAK Americas LLC Pension Plan;)
and TRANSAMERICA RETIREMENT)
SOLUTIONS CORPORATION,)

Plaintiffs,)

v.)

ORDER

DAVID W. ALLEN, MICHAEL LYNN)
BASS, JOSEPH ALEXANDER)
BELLAMY, MARK STEPHEN)
BREWER, JEROME BRYANT,)
HAROLD E. CORBETT, KELVIN L.)
GALLOWAY, WARREN ALBERT)
GARRISON, JAMES F. HOLLAND,)
WILLIAM LACEY NELSON, SIDNEY)
HUGH RHODES, JIMMIE RAY)
SELLERS, MENDELL W. SMITH,)
RODNEY B. SMITH, and OTELLA)
IRENE WEBB,)

Defendants.)

This matter comes before the court on motion by defendant Rodney B. Smith to dismiss for failure to state a claim upon which relief may be granted, pursuant to Federal Rule of Civil Procedure 12(b)(6) (DE 54). Plaintiff responded to the motion and defendant Smith replied. In this posture, the motion to dismiss is ripe for ruling. However, defendant Smith also recently filed, on February 17, 2015, a motion for summary judgment (DE 130). In his memorandum in support thereof, defendant Smith references and incorporates the arguments made in support of his motion to dismiss, while also raising further facts and details in support of his motion for summary

judgment. (See, e.g., DE 139 at 10-11, 27 n. 3). Where defendant Smith's arguments in support of summary judgment reference and incorporate the arguments made in support of his motion to dismiss, in the interest of efficient administration of the court's docket, the court will consider defendant Smith's arguments raised in support of his motion to dismiss also in support of his motion for summary judgment. Accordingly, the court DISMISSES AS MOOT defendant Smith's motion to dismiss (DE 54).

SO ORDERED, this the 2nd day of March, 2015.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style with a large initial "L".

LOUISE W. FLANAGAN
United States District Judge