

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:12CV451

REGINA BOSTON,)
)
 Plaintiff,)
)
 vs.)
)
 OCWEN LOAN SERVICING, LLC,)
 HSBC BANK USA, National Association,)
 HUNOVAL LAW FIRM, PLLC,)
)
 Defendants.)
 _____)

ORDER

This matter is before the Court upon Defendants’ Motion to Dismiss Plaintiff’s Second Amended Complaint. Plaintiff filed her initial Complaint, captioned as the Affidavit of Regina Boston [Doc. #1], on or about July 23, 2012. The initial Complaint was served on Defendant Ocwen by the U.S. Marshal on August 3, 2012. Ocwen filed a Motion for Extension of Time to respond to Plaintiff’s initial Complaint on August 13, 2012. The Court granted the Motion and extended the time to answer or otherwise respond to September 5, 2012. Plaintiff filed her First Amended Complaint, captioned as the Amended Complaint of Regina Boston AFFIDAVIT [Doc. #6], on August 13, 2012. In the First Amended Complaint, Plaintiff adds two additional Defendants: HSBC Bank USA (“HSBC”) and Hunoval Law Firm, PLLC (“HLF”). No Summonses were issued in connection with this pleading as to these two Defendants. Plaintiff subsequently filed her Second Amended Complaint, captioned as the “Amended Affidavit of Regina Boston,” on August 21, 2012. It does appear that Summonses were issued as to HSBC Bank and HLF in connection with this third pleading filed by Plaintiff. However, neither of the Defendants has been properly served with the complaints filed in this action.

Federal Rule of Civil Procedure 15(a)(1) provides that a party may amend its pleading once, “as a matter of course.” In this case, Plaintiff amended her initial pleading for the first time on August 13, 2012. Federal Rule of Civil Procedure 15(a)(2) further provides that a party may amend its pleadings in other circumstances only by satisfying a precondition, either obtaining leave of court or obtaining the opposing party's written consent. Therefore, when Rule 15(a)(1) gives a party one opportunity to amend “as a matter of course,” the rule is providing a single opportunity to amend without seeking either leave of court or the opposing party’s consent. In this case, Plaintiff did not seek Defendants’ consent or leave of Court prior to filing her Second Amended Complaint on August 21, 2012. Accordingly, this Second Amended Complaint is hereby stricken and Defendants shall have twenty days from the date of this Order to respond to Plaintiff’s First Amended Complaint (Doc. #6) filed on August 13, 2012.

IT IS HEREBY ORDERED that Plaintiff’s Second Amended Complaint is hereby stricken; and Defendants’ Motion to Dismiss is hereby denied as moot;

IT IS FURTHER ORDERED that Defendants shall have twenty (20) days from the date of this Order to respond to Plaintiff’s First Amended Complaint.

Signed: September 12, 2012



Graham C. Mullen
United States District Judge

