

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO: 5:13-CV-66-DSC**

DIANA LOUISE HOUCK, et. al.,)
)
Plaintiffs,)
)
v.)
)
LIFESTORE BANK, et. al.,)
)
Defendants.)

ORDER

THIS MATTER is before the Court on Defendant Substitute Trustee Services, Inc.’s “Motion to Dismiss” (document #22), Plaintiffs’ “Motion to Allow Second Amended Complaint” (document #35), and “Defendant’s ... Motion to Strike Plaintiff’s Response ... to Defendant’s ... Reply ...” (document #39).

The parties have consented to Magistrate Judge jurisdiction under 28 U.S.C. § 636 (c). These Motions are now ripe for determination.

Rule 15 of the Federal Rules of Civil Procedure governs amendments to pleadings. Rule 15(a)(1) grants a party the right to “amend its pleading once as a matter of course,” if done within twenty-one (21) days after serving the pleading, Fed. R. Civ. P. 15(a)(1)(A), or, “if the pleading is one to which a responsive pleading is required,” a party may amend once as a matter of course, provided that it does so within “21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1)(B). The Rule further provides that “leave [to amend the pleadings] shall be freely given where justice so requires.” Fed.R.Civ.P. 15(a).

The Court has carefully examined the record, the parties' arguments, and the applicable authorities. For the reasons stated in Plaintiffs' briefs, their Motion to Allow Second Amended Complaint will be granted.

It is well settled that an amended pleading supersedes the original pleading, and that motions directed at superseded pleadings are to be denied as moot. Young v. City of Mount Ranier, 238 F. 3d 567, 573 (4th Cir. 2001) (amended pleading renders original pleading of no effect); Turner v. Kight, 192 F. Supp. 2d 391, 397 (D. Md. 2002) (denying as moot motion to dismiss original complaint on grounds that amended complaint superseded original complaint).

IT IS THEREFORE ORDERED THAT:

1. Plaintiffs' "Motion to Allow Second Amended Complaint" (document #35) is **GRANTED**. Plaintiffs shall file their Second Amended Complaint within five (5) days of this Order.


2. Defendant Substitute Trustee Services, Inc.'s "Motion to Dismiss" (document #22) is **DENIED** as moot without prejudice.

3. "Defendant's ... Motion to Strike Plaintiff's Response ... to Defendant's ... Reply ..." (document #39) is **DENIED** as moot.

4. The Clerk is directed to send copies of this Order to the parties' counsel.

SO ORDERED.

Signed: August 27, 2013



David S. Cayer
United States Magistrate Judge

