

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THE ANTIOCH COMPANY
LITIGATION TRUST,

Plaintiff,
vs.

LEE MORGAN, *et al.*,

Defendants.

Case No. 3:10-cv-156

Judge Timothy S. Black

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS (Doc. 120)

This civil action is before the Court on Defendants Kim Lipson-Wilson, Stephen Bevelhymer, Karen Felix, and G. Robert Morris's (collectively "Defendants") motion to dismiss (Doc. 120) and Plaintiff's memorandum in opposition (Doc. 128).¹

Defendants seeks dismissal of Count Seven (Lipson-Wilson, Bevelhymer, and Felix) and County Nine (Morris and Lipson-Wilson) for aiding and abetting breach of fiduciary duty. In its Order granting Defendants' motion for reconsideration (Doc. 71), the Court ruled that the opinion of the Supreme Court of Ohio in *DeVries Dairy, LLC v. White Eagle Coop. Ass'n*, 974 N.E.2d 1194 (Ohio 2012), invalidated a cause of action for aiding and abetting breach of fiduciary duty under Ohio law. That ruling applies to the cause of action asserted against Defendants in Counts Seven and Nine.

¹ While Plaintiff opposes the motion, it acknowledges that this Court has previously held that Ohio law does not recognize a cause of action for aiding and abetting breach of fiduciary duty, and, absent a reconsideration of the Order, the Court's previous ruling applies to Defendants. (Doc. 128 at 1-2).

Accordingly, Defendants Lipson-Wilson, Bevelhymer, Felix, and Morris's motion to dismiss Counts Seven and Nine for aiding and abetting breach of fiduciary duty (Doc. 120) is **GRANTED**.

IT IS SO ORDERED.

Date: 4/1/13

s/ Timothy S. Black
Timothy S. Black
United States District Judge