

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

James Griffin,)	C/A No. 0:10-489-JFA
)	
Plaintiff,)	
)	ORDER
v.)	
)	
Wilcohes, LLC, d/b/a Wendy's,)	
)	
Defendant.)	
_____)	

The plaintiff has moved to strike certain defenses asserted in the answer, or in the alternative, to make statements more definite and certain. After reviewing the positions of the parties set forth in their pleadings, the court has determined that a hearing is not necessary and that the motion should be denied.

As an initial proposition, the defendant notes that a motion for a more definite statement of a pleading is proper only when directed to a pleading “to which a responsive pleading is allowed.” Fed. R. Civ. P. 12(e). Since the motion for a more definite statement is made with reference to the defendant’s answer (a pleading to which a response is not required), the motion is defective.

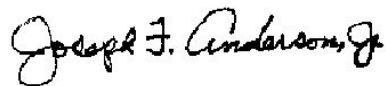
With regard to the motion to strike, as the defendant correctly observes, all that is required in federal court is notice pleading, and the particulars of a party’s claim or defense are to be more fully developed during the discovery process. Here, the defendant has asserted various defenses available (such as intervening negligence of a third party) for

which discovery may be appropriate. If and when it is determined that some or all of these defenses have no merit, the defendant may withdraw them, or the plaintiff may move for summary judgment on those defenses.

For these reasons, the plaintiff's motion [Doc. No. 7] is denied. The court notes that the third defense alleges improper venue, suggesting that the alleged food poisoning occurred in Cherokee County, South Carolina, but that the action was filed in York County. The case was thereafter removed to this court. Cherokee County is in the Greenville/Spartanburg Division of this Federal District and York County is in the Columbia Division. Thus, it is not clear whether the defendant is affirmatively seeking to have this case transferred to the Greenville Division. If that is the defendant's intention, an appropriate motion should be filed and the court will rule upon it in due course. If, on the other hand, the defendant does not wish to transfer venue, then the defendant should timely file a notice indicating that the third defense is abandoned.

IT IS SO ORDERED.

April 8, 2010
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge