

*Nat'l Coating & Supplies, Inc. v. Valley Forge Ins. Co.*

United States District Court for the Eastern District of North Carolina, Western Division

August 21, 2020, Decided; August 21, 2020, Filed

No. 5:20-CV-275-M

**Reporter**

2020 U.S. Dist. LEXIS 152067 \*; 2020 WL 4926282

NATIONAL COATING & SUPPLIES, INC.; and SINGLE SOURCE, INC., Plaintiffs, v. VALLEY FORGE INSURANCE COMPANY, Defendant.

**Counsel:** [\*1] For National Coatings & Supplies, Inc., Single Source, Inc., Plaintiffs: Gregg E. McDougal, LEAD ATTORNEY, Henry Denton Worrell, Lawrence Russell Duke, McDougal Worrell LLP, Raleigh, NC.

For Valley Forge Insurance Company, Defendant: Theodore B. Smyth, LEAD ATTORNEY, Jennifer A. Welch, Cranfill Sumner & Hartzog LLP, Raleigh, NC.

**Judges:** RICHARD E. MYERS II, UNITED STATES DISTRICT JUDGE.

**Opinion by:** RICHARD E. MYERS II

**Opinion**

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ORDER

This matter is before the Court on Defendant's "Consent Motion for Extension of Time to Answer or Otherwise Plead to Plaintiffs' Amended Complaint." [DE-17.] The Court ACCEPTS

Plaintiffs' Amended Complaint [DE-16] as properly filed as of right under [Rule 15\(a\)\(1\)\(B\) of the Federal Rules of Civil Procedure](#), GRANTS the consent motion for an extension of time [DE-17], and DENIES as MOOT the pending motion to dismiss [DE-13].

I. Amended Complaint

As an initial matter, Plaintiffs' Amended Complaint was properly filed as of right under [Rule 15\(a\)\(1\)\(B\) of the Federal Rules of Civil Procedure](#). Under [Rule 15\(a\)\(1\)](#), a party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 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\(a\)\(1\)](#). Here, the pleading at [\*2] issue is a complaint, which requires a responsive pleading, see, e.g., [Villery v. D.C., 277 F.R.D. 218, 219 \(D.D.C. 2011\)](#) ("A complaint is a pleading to which a responsive pleading is required."), and it may therefore be amended once as a matter of course under [Rule 15\(a\)\(1\)\(B\)](#) ("if the pleading is one to which a responsive pleading is required"). Under [Rule 15\(a\)\(1\)\(B\)](#), Plaintiffs had "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\(a\)\(1\)\(B\)](#). Defendant has not filed an answer, but did file a motion to dismiss pursuant to [Rule 12\(b\)\(6\)](#) on July 24, 2020. [DE-13.] Plaintiffs filed

their Amended Complaint on August 14, 2020, the twenty-first day after being served with Defendant's motion under [Rule 12\(b\)](#), within the time limit prescribed by [Rule 15\(a\)\(1\)\(B\)](#). Accordingly, Plaintiffs properly amended their complaint as of right. See [JTH Tax, Inc. v. Williams, No. 2:18CV26, 2018 U.S. Dist. LEXIS 234866, 2018 WL 10471107, at \\*1 \(E.D. Va. Apr. 4, 2018\)](#) ("[Rule 15\(a\)\(1\)\(A\)](#) is inapplicable" where the amended pleading was filed "more than twenty-one (21) days" after the original pleading, but the amended pleading "is [instead] properly considered an amendment as a matter of course pursuant to [Rule 15\(a\)\(1\)\(B\)](#)" when it was filed "within twenty-one (21) days from service of the [] Motion to Dismiss").

#### II. Defendant's Motion for an Extension of Time to Respond [\*3] to the Amended Complaint

Having reviewed the motion for an extension of time [DE-17], and with the consent of Plaintiffs, the Court finds that good cause exists to extend Defendant's deadline to serve an answer or otherwise respond to Plaintiffs' Amended Complaint.

#### III. Motion to Dismiss

It is well settled that the filing of an amended complaint renders the current complaint inoperative, [Young v. City of Mount Ranier, 238 F.3d 567, 573 \(4th Cir. 2001\)](#) ("The general rule . . . is that an amended pleading supersedes the original pleading, rendering the original pleading of no effect"), and that any motions directed at the superseded pleading must be denied as moot, [JTH Tax, Inc., 2018 WL 10471107, at \\*2](#) (denying, in light of amended pleading, motion to dismiss as moot); [Parsons v. North Carolina Dep't of Revenue, No. 5:18-cv-452-FL, 2019 U.S. Dist. LEXIS 84074, 2019 WL 2181913, at \\*2 \(E.D.N.C. May 20, 2019\)](#) ("Where an amended complaint has been filed with leave of court, motions to dismiss earlier complaints are denied as moot."). Accordingly, the pending motion to dismiss [DE-13] is DENIED as MOOT.

#### IV. Conclusion

For the foregoing reasons, the Court finds that the Amended Complaint [DE-16] was properly filed as of right under [Rule 15\(a\)\(1\)\(B\)](#), and, in light of the new, operative pleading, the pending motion to dismiss [DE-13] is DENIED as MOOT.

The Court also GRANTS the consent motion [\*4] for an extension of time to respond to the Amended Complaint. [DE-17.] Defendant shall have up to and including September 11, 2020, to serve an answer or otherwise respond to Plaintiffs' Amended Complaint.

SO ORDERED, this the 21st day of August, 2020.

/s/ Richard E. Myers II

RICHARD E. MYERS II

UNITED STATES DISTRICT JUDGE

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