

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

AQUA FINANCE, INC.,

Plaintiff,

v.

THE HARVEST KING, INC.
and JOHN T. MADRID,

Defendants.

ORDER

07-C-015-C

In this civil action for monetary relief, plaintiff Aqua Finance, Inc. pleaded claims for breach of contract and fraudulent representation against defendants The Harvest King, Inc. and John T. Madrid. The lawsuit was filed originally in the Circuit Court for Marathon County, Wisconsin. On January 9, 2007, defendant Madrid removed the case to this court pursuant to 28 U.S.C. §§ 1332 and 1446.

Now before the court is defendants' motion to dismiss each of plaintiff's claims against them for failure to state a claim. I need not address the substance of defendants' motion because on March 6, 2007, well within the court's deadline for filing amended pleadings without prior leave of court, plaintiff filed an amended complaint that addresses

many, if not all, of the deficits about which defendants complained. Under normal circumstances, the filing of an amended complaint renders moot any pending motion to dismiss. See, e.g., Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 952, 956 (8th Cir. 2002) (“If anything, Pure Country’s motion to amend the complaint rendered moot Sigma Chi’s motion to dismiss the original complaint.”); Lim v. Central DuPage Hosp., 972 F.2d 758, 762 (7th Cir. 1992) (noting without comment trial judge’s denial of pending motion to dismiss as moot in light of amended complaint); Standard Chlorine of Delaware, Inc. v. Sinibaldi, 821 F. Supp. 232, 239-40 (D. Del. 1992) (holding that the plaintiff’s filing of an amended complaint rendered the defendants’ motion to dismiss the original complaint moot). Defendants are free to file a new motion in light of the amended complaint should they continue to believe that plaintiff’s claims would not survive a challenge under Fed. R. Civ. P 12(b)(6); however, for now, IT IS ORDERED that the motion to dismiss of defendants The Harvest King, Inc. and John T. Madrid is DENIED as moot.

Entered this 12th day of March, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge