

IN THE SUPREME COURT OF OHIO

SANDRA J. TAYLOR JARVIS, : Case No: 2013-0118
 :
 Plaintiff-Appellee, : On Appeal from the
 : Summit County Court of Appeals,
 v. : Ninth Appellate District
 :
 FIRST RESOLUTION INVESTMENT : Court of Appeals
 CORP., et al. : Case No. CA26042
 :
 Defendants-Appellants

Motion to Strike

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Motion

The undersigned moves this Court to strike the Motion to Dismiss Counts IV and V, which was filed by Appellants First Resolution Investment Corp. (“FRIC”) and First Resolution Management Corp. (“FRMC”) for the reasons set forth in the Memorandum in Support of this Motion.

Respectfully submitted,

s/ James F. Burke, Jr.

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Memorandum in Support of the Motion

Facts

FRIC, FRMC, and the other Appellants filed their joint notice of appeal in this case on Jan. 22, 2013.

This Court decided to accept Appellants' appeal on April 24, 2013.

All parties presented their oral arguments to this Court on Nov. 20, 2013, *i.e.*, almost two (2) years ago.

On July 9, 2015, Appellee, Sandra Taylor Jarvis ("Sandra") died.

On Sept. 25, 2015 the undersigned notified this Court that Sandra had passed *via* a Suggestion of Death. That Suggestion of Death states in pertinent part:

The undersigned intends to move to (A) admit Sandra's will to probate in the Summit Cty. Common Pleas Court and (B) have Sandra's brother, Brian Lee Taylor ("Brian") appointed as Executor. Once Brian has been appointed as Sandra's executor, the undersigned intends to file a motion to substitute Brian as a party to this action.

Brian was appointed as Sandra's Executor on Oct. 26, 2015.

Four days after Brian was appointed as Sandra's Executor, *i.e.*, on Oct. 30, 2015, the undersigned filed a Motion to Substitute Brian for Sandra as a party to this case.

No Appellee filed an objection to the Motion to Substitute.

On Nov. 13, 2015 this Court granted the Motion to Substitute Brian as Sandra's Executor as the Appellee in this case in lieu of the now deceased Sandra.

On the same day, *i.e.*, Nov. 13, 2015, FRIC and FRMC filed a "Motion to Dismiss Counts IV and V of Appellee's First Amended Class Action Counterclaim." The Motion

to Dismiss specifically references both the Suggestion of Death and the Motion to Substitute.

Law and Argument

S.Ct.Prac.R. 4.01(B)(1) states:

If a party files a motion with the Supreme Court, any other party may file a response to the motion within ten days from the date the motion is filed, unless otherwise provided in these rules or by order of the Supreme Court. [Emphasis added.]

Based on this rule, FRIC and FRMC’s Motion to Dismiss should be denied.

Appellee’s Motion to Substitute was filed on Oct. 30, 2015. Contrary to S.Ct.Prac.R. 4.01(B)(1), FRIC and FRMC filed their response, denominated as a “Motion to Dismiss”, fourteen (14) days latter. See *e.g.*, State ex. rel Tracie M. Hunter v. Hon. Penelope Cunningham, Sup.Ct. Case No., 2015-1193 (Oct. 1, 2015) (“Upon review of the memorandum in response to respondents’ motion to dismiss, it is ordered by the court, *sua sponte*, that the memorandum in response is stricken as untimely filed pursuant to S.Ct.Prac.R. 4.01(B)(1).”

While characterizing their response to Appellee’s Motion to Substitute as a “Motion to Dismiss”, it is clear that they are objecting to the survival of the causes of action set forth in Appellee’s Counterclaim and directly objecting to Appellee’s Motion to Substitute Parties. See, “Motion to Dismiss” at “Memorandum of Law” p. 2, “since Appellee does not expressly withdraw the CSPA and Abuse of Process causes of action, ***, FRIC respectfully requests that the Court dismiss these claims because they abated at [Sandra’s] death.” Accordingly, FRIC and FRMC’s “Motion to Dismiss” constitutes an out-of-time response to the Motion to Substitute.

Conclusion

The Motion to Dismiss should be stricken as untimely filed. Almost more than two (2) years have elapsed since this case was argued and no further delay is warranted.

Respectfully submitted,

s/ James F. Burke, Jr. _____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on this
16th day of November 2015, via regular U.S. mail to the following:

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