

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

RANDY A. SCOTT,

Case No. 2:13-cv-157-FtM-38DNF

Plaintiff,

v.

LAWRENCE NORMAN YELLON, BOB
MUSSER, H. ERIC VENNES, LANCE
RANDALL, RONALD R. EZELL,
STEVEN D. GLENN, JILLINA A.
KWIATKOWSKI, RUTH A.
REYNOLDS, GARY CROWE,
NATIONAL ASSOCIATION OF
PROFESSIONAL PROCESS SERVERS,
PAUL TAMAROFF, FLORIDA
ASSOCIATION OF PROFESSIONAL
PROCESS SERVERS and JOHN
AND/OR JANE DOE 1-3,

Defendants.

DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S "Judicial NOTICE to respond to docket entry #97"

The Court should strike Plaintiff's "Judicial NOTICE to respond to docket entry #97" in its entirety. The Court lacks jurisdiction over this matter because it is on appeal. There is no legal basis for Plaintiff's request.

I. Procedural History

On July 11, 2013, the Court granted Defendants' motion to dismiss, but the Court allowed Mr. Scott until August 9, 2013, to file an amended complaint. On August 2, 2013, Plaintiff filed a Motion to Extend Time to file an amended complaint. On August 5, 2013, Plaintiff filed a Notice of Appeal to the Eleventh Judicial Circuit. Plaintiff never filed an

amended complaint before August 9, 2013, or otherwise. On August 20, 2013, the Court issued an order denying Plaintiff's Motion to Extend Time, noting that the Court had previously entered an order (Doc. 79) which dismissed this case and an Order (Doc. 88) denying Plaintiff's Motion for Reconsideration. The Court noted in the August 20, 2013, order that the case is on appeal. On August 21, 2013, Plaintiff filed the "Judicial NOTICE to respond to docket entry #97" that is the subject of this motion to strike.

II. Argument

This case is on appeal. The District court lacks jurisdiction following the order and final judgment noted above. When a District Court issues an order with a specified timeframe to file an amended complaint, the expiration of that timeframe is treated as a final decision and judgment. Schuurman v. The Motor Vessel Betty K V, 798 F2d 442 (11th Cir. 1986); Fogade v. ENB Revocable Trust, 236 F3d 1274, fn. 9 (11th Cir. 2001). Furthermore, FRAP 4(a)(2) states that "A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry." As a result, the case is now on appeal, and Plaintiff's "Judicial NOTICE to respond to docket entry #97" should be stricken. This Court has already announced that this case is on appeal.

Furthermore, there is no basis in rule or other law for Plaintiff's "Judicial NOTICE to respond to docket entry #97." It is unclear what relief or other action Plaintiff seeks. For this reason too, Plaintiff's pleading should be stricken in its entirety.

III. Conclusion

For the reasons stated above, Plaintiff's "Judicial NOTICE to respond to docket entry #97" should be stricken in its entirety.

Dated this 23rd day of August, 2013.

Respectfully submitted,

/s/Christopher A. Rycewicz

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2013, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to Richard Barton Akin, II, Henderson, Franklin, Starnes & Holt, P.A.
(richard.akin@henlaw.com).

Further, I certify that that I e-mailed and mailed a copy of the foregoing to non-CM/ECF participant Randy A. Scott, 343 Hazel Wood Avenue, Lehigh Acres, Florida 33936
(randy@allclaimsprocess.com and randyscott@randyscott.us).

/s/Christopher A. Rycewicz
Christopher A. Rycewicz (admitted Pro Hac Vice)
Attorney