

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

NEIL J. GILLESPIE,

Plaintiff,

v.

Case No. 5:10-cv-503-Oc-10DAB

THIRTEENTH JUDICIAL CIRCUIT, FLORIDA,  
et al.,

Defendants.

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ORDER

Pending before the Court is pro se Plaintiff, Neil J. Gillespie's Motion to Strike or Set Aside Mr. Rodems' Notice of Assignment of Claims and Motion for Dismissal of Action with Prejudice and Motion to Strike or Set Aside Settlement Agreement and General Mutual Release (Doc. 33).

When Mr. Gillespie instituted this lawsuit he included as defendants the law firm of Barker, Rodems & Cook, P.A. (the "Firm") and attorney Ryan Christopher Rodems (Doc. 1). Mr. Gillespie sought and was granted leave to amend his complaint (Doc. 13) but he chose instead to voluntarily dismiss his claims against the Firm and Mr. Rodems (Doc. 22). Upon receipt of Mr. Gillespie's notice of voluntary dismissal the Court directed the Clerk to enter judgment dismissing all claims against the Firm and Mr. Rodems without prejudice (Doc. 25). The Judgment was entered on November 23, 2010 (Doc. 26).

On June 21, 2011, Ryan Christopher Rodems, Chris A. Barker and William J. Cook (the "Assignees"), filed their Notice of Assignment of Claims and Motion for Dismissal of Action with Prejudice (the "Notice") (Doc. 32). Attached to the Notice is a

document entitled “Settlement Agreement and General Mutual Release” (the “Settlement Agreement”) (Id.). The parties to the Settlement Agreement are Mr. Gillespie, the Assignees and the Firm. In the Settlement Agreement, Mr. Gillespie assigned “all claims pending or which could have been brought, based on the allegations of [Mr. Gillespie], against any person or entity, without limitation, in [this case].” In return, he received the satisfaction of a judgment.

Mr. Gillespie has motioned this Court to strike or set aside both the Notice and the Settlement Agreement (Doc. 33). The Assignees served a response to the motion in which they dispute certain facts alleged by Mr. Gillespie, assert that he does not have standing to bring his motion to strike and they say this Court does not have subject matter jurisdiction (Doc. 40).

Federal Rule of Civil Procedure 12(f) states that “[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” (Emphasis supplied). The only pleadings allowed are: (1) a complaint; (2) the answer to the complaint; (3) the answer to a counterclaim; (4) the answer to a cross-claim; (5) a third-party complaint; (6) an answer to a third-party complaint; and (7) if the Court orders one, a reply to an answer. Fed. R. Civ. P. 7. Because the Notice and Settlement Agreement are not pleadings they are not subject to a motion to strike. *McNair v. Monsanto Co.*, 279 F.Supp.2d 1290, 1298 (M.D. Ga. 2003)(“motion to strike is only appropriately addressed toward matters contained in the pleadings.”); *Merritt v. Hubb Intern. Southwest Agency Ltd.*, 2011 WL 4026651, \*2 (N.D. Ga. 2011)(motion to strike declaration held procedurally improper because Rule 12(f) only applies to pleadings.); *Certain Underwriters at Lloyd’s London v. Belu*, 2009

WL 2848995, \*3 (N.D. Ga. 2009)(explaining that Rule 12(f) only applies to pleadings); and Morgan v. Sears, Roebuck & Co., 700 F.Supp. 1574, 1576 (N.D. Ga. 1988)(noting that the proper method of challenging evidence is by filing a notice of objection).

Therefore, Plaintiff, Neil J. Gillespie's Motion to Strike or Set Aside Mr. Rodems' Notice of Assignment of Claims and Motion for Dismissal of Action with Prejudice and Motion to Strike or Set Aside Settlement Agreement and General Mutual Release (Doc. 33) is DENIED.

IT IS SO ORDERED.

DONE and ORDERED in Ocala, Florida on the 6<sup>th</sup> day of October, 2011.



THOMAS B. SMITH  
United States Magistrate Judge

Copies furnished to:

Neil J. Gillespie  
Counsel of Record