

FILED

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

COVESTRO, LLC
Plaintiff,

v.

Civil Action No.: 18-C-202
Presiding Judge: Wilkes
Resolution Judges: Carl and Nines

AXIALL CORPORATION,
ALLTRANSTEK, LLC, and
RESCAR COMPANIES,
Defendants,

and

AXIALL CORPORATION,
Third-Party Plaintiff,

v.

SUPERHEAT FGH SERVICES, INC.,
Third-Party Defendant.

---CONSOLIDATED WITH---

AXIALL CORPORATION,
Plaintiff,

Civil Action No. 18-C-203
Presiding Judge: Wilkes
Resolution Judges: Carl and Nines

v.

ALLTRANSTEK LLC, RESCAR, INC.
t/d/b/a RESCAR COMPANIES, and
SUPERHEAT FGH SERVICES, INC.,
Defendants.

FILED
2019 JUN 27 AM 10:28**ORDER DENYING DEFENDANT'S MOTION TO DISMISS AS MOOT**

This matter came before the Court this 27th day of June 2019, upon Defendants AllTranstek LLC's (hereinafter "AllTranstek") and Rescar Companies' (hereinafter "Rescar") Motion to Dismiss of Defendants, AllTranstek LLC and Rescar Companies, In Response to Plaintiffs' Complaint, filed October 4, 2018 in Marshall County Civil Action No. 18-C-203. The parties have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules and finds that Defendants' motion shall be DISMISSED as MOOT.

On October 4, 2018, Defendants AllTranstek and Rescar filed a Motion to Dismiss of Defendants, AllTranstek LLC and Rescar Companies, In Response to Plaintiff's Complaint, seeking dismissal of the Complaint pursuant to Rules 12(b)(1), 12(b)(3), and 12(b)(6) of the West Virginia Rules of Civil Procedures. *See* Defs' Mot, p. 3, 6. On January 22, 2019, Plaintiff Axiall Corporation filed a Response. A Notice of Hearing was filed December 3, 2018, wherein the Circuit Judge set the matter for hearing February 4, 2019; however, an Order Staying Case was filed January 28, 2019, staying all proceedings in this matter pending further order of the Court. *See* Ord., 1/28/19.

Subsequently, a Motion to Lift Stay was filed on February 19, 2019, and an Order Lifting Stay was entered by the Circuit Judge on February 25, 2019, returning the case to the active docket¹. *See* Ord., 2/25/19.

¹ The Court notes that on March 1, 2019, a Motion to Reconsider Order Lifting Stay was filed, and is currently pending before the undersigned.

On March 28, 2019, Defendants AllTranstek and Rescar filed a Notice of Withdrawal of Motion to Dismiss in 18-C-203, formally withdrawing "its Motion to Dismiss filed on October 4, 2018 in Civil Action No. 18-C-203. Finally, the Court notes that on March 1, 2019, a Judicial Motion to Refer Case to the Business Court Division was filed by the Circuit Judge, and on May 30, 2019, an Order Assigning Presiding Judge and Resolution Judges to Case was filed, assigning the undersigned as Presiding Judge in this civil action in the West Virginia Business Court Division.

The Court finds that as Defendants AllTranstek and Rescar have validly withdrawn their Motion to Dismiss of Defendants, AllTranstek LLC and Rescar Companies, In Response to Plaintiff's Complaint, filed October 4, 2018 in Civil Action No. 18-C-203, the Court finds it shall be ORDERED that the aforementioned Motion to Dismiss of Defendants, AllTranstek LLC and Rescar Companies, In Response to Plaintiff's Complaint shall be DISMISSED as MOOT.

It is hereby ADJUDGED and ORDERED that the Motion to Dismiss of Defendants, AllTranstek LLC and Rescar Companies, In Response to Plaintiff's Complaint filed October 4, 2018 in Civil Action No. 18-C-203 is hereby DISMISSED as MOOT.

The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.



JUDGE CHRISTOPHER C. WILKES
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION

A Copy Teste:

Joseph M. Rucki, Clerk

By Donna Orzelle Deputy