

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

SHERMA JOHNSON,

Plaintiff,

v.

Case No: 6:23-cv-1585-CEM-LHP

THE PRESERVES AT STONEBRIAR  
HOMEOWNERS ASSOCIATION  
INC. and DOES 1-10,

Defendants

---

**ORDER**

This cause came on for consideration without oral argument on the following motion filed herein:

**MOTION: DEFENDANT, THE PRESERVE AT STONEBRIAR HOMEOWNERS ASSOCIATION, INC'S, MOTION FOR JUDGMENT ON THE PLEADINGS AND TO DISMISS PLAINTIFF'S AMENDED COMPLAINT (Doc. No. 20)**

**FILED: April 3, 2024**

---

**THEREON it is ORDERED that the motion is DENIED without prejudice.**

Plaintiff Sherma Johnson, appearing *pro se*, instituted this action against Defendant The Preserves at Stonebriar Homeowners Association, Inc. by complaint filed on August 18, 2023. Doc. No. 1. Plaintiff's operative pleading is her amended complaint, filed on November 13, 2023. Doc. No. 8.<sup>1</sup>

Defendant has not answered the amended complaint. Instead, on April 3, 2024, Defendant filed the above-styled motion seeking judgment on the pleadings under Federal Rule of Civil Procedure 12(c), and dismissal of the amended complaint under Federal Rule of Civil Procedure 12(b)(6). Doc. No. 20. According to the motion, conferral with Plaintiff prior to filing was not required due to the nature of the motion. *Id.* at 21; *see* Local Rule 3.01(g) (excluding motions for judgment on the pleadings from its application). Plaintiff has responded in opposition. Doc. No. 21.<sup>2</sup>

On November 13, 2024, Defendant's motion was referred to the undersigned. On review, however, the motion (Doc. No. 20) is due to be denied without prejudice.

---

<sup>1</sup> Plaintiff's initial complaint was dismissed pursuant to review under 28 U.S.C. § 1915. Doc. No. 7; *see also* Doc. No. 6. Plaintiff paid the filing fee upon filing the amended complaint. Doc. No. 8.

<sup>2</sup> On September 11, 2024, while the motion was still pending, the case was dismissed for failure to comply with Court Orders, but the case was ultimately reopened. Doc. Nos. 32, 35. A Case Management and Scheduling Order issued September 30, 2024. Doc. No. 36.

Specifically, the motion is styled as one for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). Doc. No. 20. However, Defendant has not yet answered the amended complaint. “When only a single pleading has been filed, ‘competing pleadings’ do not exist, so a motion for judgment on the pleadings is not appropriate.” *Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1336 (11th Cir. 2014); *see also Lillian B. ex rel. Brown v. Gwinnett Cty. Sch. Dist.*, 631 F. App’x 851, 853 (11th Cir. 2015) (“By the plain language of Rule 12(c), a party may not move for judgment on the pleadings until ‘[a]fter the pleadings are closed.’ The pleadings are closed only when a complaint and answer have been filed.” (citing Fed. R. Civ. P. 7(a))).<sup>3</sup>

Given that Defendant does not appropriately seek relief under Rule 12(c), the Court considers the motion only as it relates to Defendant’s arguments under Rule 12(b)(6). However, in this regard, the motion fails to comply with Local Rule 3.01(g) because Defendant did not confer with Plaintiff prior to filing the motion. *See* Doc. No. 20, at 21; *see also* Local Rule 3.01(g) (excluding motions for judgment on the pleadings, but not motions to dismiss, from its application).

Accordingly, for these reasons, Defendant’s motion (Doc. No. 20) is **DENIED without prejudice**. Defendant may file a renewed motion to dismiss within

---

<sup>3</sup> Unpublished opinions of the Eleventh Circuit are cited as persuasive authority. *See* 11th Cir. R. 36-2.

**fourteen (14) days** of the date of this Order, in full compliance with all applicable Federal Rules of Civil Procedure and Local Rules. Alternatively, **on or before this same deadline**, Defendant shall answer the amended complaint (Doc. No. 8).

**DONE and ORDERED** in Orlando, Florida on November 19, 2024.

A handwritten signature in blue ink that reads "Leslie Hoffman Price". The signature is written in a cursive style and is positioned above a horizontal line.

LESLIE HOFFMAN PRICE  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record  
Unrepresented Parties