

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 95-10336  
USDC No. 3:95-CV-114-T

---

RICHARD C. HOWARD and ASSOCIATES, INC., et al.

Plaintiffs,

RICHARD C. HOWARD,

Plaintiff-Appellant,

versus

ANDREW STOVER, individually and in his  
official capacity, et al.

Defendants-Appellees.

---

Appeal from the United States District Court  
for the Northern District of Texas

---

June 30, 1995

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

BY THE COURT:

Because Richard C. Howard moved to substitute himself as plaintiff before a responsive pleading had been filed, no leave of court was required to file an amended complaint. Fed. R. Civ. P. 15(a); see Sherman v. Hallbauer, 455 F.2d 1236, 1242 (5th Cir. 1972) (opposition memoranda to summary-judgment motion raised a new issue and should have been construed as an amendment to the complaint). Therefore, the corporate entities which were originally identified as plaintiffs were no longer parties to the lawsuit, and the district court erred in dismissing the complaint

O R D E R  
No. 95-10336

-2-

for failure to prosecute. The district court's order is VACATED and the case REMANDED for further proceedings.

Howard's motion to stay state judgments and proceedings, petition for writ of habeas corpus ad testificandum, and motion for change of venue of the district court are DENIED AS MOOT.