

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

WEST COAST PRODUCTIONS,
INC.,

Plaintiff,

v.

CIVIL ACTION FILE
NO. 4:11-CV-0211-HLM

ROBIN POPHAM,

Defendant.

ORDER

This case is before the Court on Plaintiff's Motion to Dismiss Voluntarily Without Prejudice [29].

I. Background

On August 25, 2011, Plaintiff filed this action. (Docket Entry No. 1.) On November 16, 2011, the Clerk entered a default against Defendant. (Unnumbered Docket Entry

Dated Nov. 15, 2011.) On November 21, 2011, Defendant filed a Motion to Set Aside Clerk's Entry of Default. (Docket Entry No. 7.) Plaintiff did not oppose that Motion, and, on December 5, 2011, the Court granted the Motion and set aside the entry of default in this case. (Order of Dec. 5, 2011.)

On April 3, 2012, Plaintiff filed a Motion to Dismiss Voluntarily Without Prejudice, requesting that the Court dismiss this action without prejudice. (Docket Entry No. 29.) Defendant has filed a response in opposition to the Motion, arguing that the Court should condition any dismissal of this action upon payment of Defendant's costs, expenses, and attorneys' fees. (Docket Entry No. 32.) The briefing

process for the Motion is complete, and the Court therefore finds that the Motion is ripe for resolution.¹

II. Discussion

Federal Rule of Civil Procedure 41 governs a plaintiff's request to dismiss a case voluntarily and without prejudice. Fed. R. Civ. P. 41. Here, Rule 41(a)(2) applies because Defendant has answered Plaintiff's Complaint. Pontenberg v. Boston Scientific Corp., 252 F.3d 1253, 1255 (11th Cir. 2001) (per curiam). Under Rule 41(a)(2), "an action may be

¹On April 27, 2012, Defendant filed a Notice of Corrected Statement of Law and Fact. (Docket Entry No. 35.) The Court requires parties to seek and obtain leave from the Court before filing corrected or supplemental briefs. The Court, however, has considered the information contained in the Notice in issuing this Order. The Court further finds that no oral arguments or additional briefs are necessary. N.D. Ga. R. 7.1E ("Motions will be decided by the court without oral hearing, unless a hearing is ordered by the court.").

dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

The Court has "broad discretion" to permit a voluntary dismissal under Rule 41(a)(2). Pontenberg, 252 F.3d at 1255. The Court should grant a voluntary dismissal in most cases, "unless the defendant will suffer clear legal prejudice, other than the mere prospect of a subsequent lawsuit, as a result." Id. (quoting McCants v. Ford Motor Co., 781 F.2d 855, 857 (11th Cir. 1986)) (emphasis in original). In determining whether a voluntary dismissal is appropriate, "[t]he crucial question to be determined is, would the defendant lose any substantial right by the dismissal." Id. (quoting Durham v. Fla. E. Coast Ry. Co.,

385 F.2d 366, 368 (5th Cir. 1967)). The Court “must ‘weigh the relevant equities and do justice between the parties in each case, imposing such costs and attaching such conditions to the dismissal as are deemed appropriate.’” Id. at 1256 (quoting McCants, 781 F.2d at 857).

Here, although Defendant may be subject to a later lawsuit if the Court dismisses this action without prejudice, potential exposure to additional lawsuits does not constitute “clear legal prejudice” sufficient to warrant denial of Plaintiff’s request for a voluntary dismissal. Pontenberg, 252 F.3d at 1255. Further, although Defendant contends that Plaintiff failed to conduct a reasonable inquiry into the facts of her case, constituting bad faith, the Court cannot find at this point that Plaintiff or her counsel acted in bad

faith or failed to investigate the underlying facts. The Court therefore finds that those concerns do not warrant denying Plaintiff's Motion. Additionally, although Defendant argues that the Court should condition any dismissal of this case upon Plaintiff paying Defendant's costs, expenses, and attorneys' fees, the Court simply cannot find that Defendant has, as she argues, incurred "considerable" expense, or that Plaintiff pursued this action against Defendant in bad faith. The Court therefore declines to impose that condition on a voluntary dismissal without prejudice. The Court will, however, place the following condition on the voluntary dismissal without prejudice: Plaintiff must pay Defendant's reasonable costs, expenses, and attorneys' fees incurred in defending this action before refiling this case against

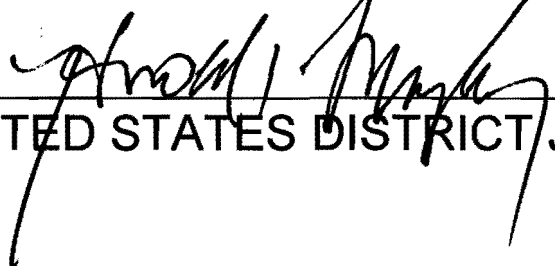
Defendant in this Court or in any other Court. Under those circumstances, the Court will grant Plaintiff's Motion and dismiss this action without prejudice.

III. Conclusion

ACCORDINGLY, the Court **GRANTS** Plaintiff's Motion to Dismiss Voluntarily Without Prejudice [29], and **DISMISSES** this action **WITHOUT PREJUDICE**, with the parties to bear their own respective costs and expenses at this point. The Court places the following condition on the dismissal without prejudice: if Plaintiff re-files this action against Defendant in this Court or in any other Court, Plaintiff must pay Defendant her reasonable costs, expenses, and attorneys' fees incurred in defending this

lawsuit. Finally, the Court **DIRECTS** the Clerk to **CLOSE** this case.

IT IS SO ORDERED, this the 27th day of April, 2012.


UNITED STATES DISTRICT JUDGE