

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

REACH & ASSOCIATES, P.C., and :
BIRD & ASSOCIATES, P.C., :
Plaintiffs, :
v. : Civil Action No. 02-1355 JJF
F. TAYTON DENCER, IMPERIAL :
RUBBER INDUSTRIES, INC., :
IMPERIAL RUBBER DEVELOPMENT :
CO., INC., IMPERIAL RUBBER :
HOLDINGS, INC., and JOHN :
DOES 1-2, :
Defendants. :

Timothy Jay Houseal, Esquire of YOUNG, CONAWAY, STARGATT &
TAYLOR, Wilmington, Delaware.
Attorney for Plaintiffs.

David S. Eagle, Esquire of KLEHR, HARRISON, HARVEY, BRANZBURG &
ELLERS, Wilmington, Delaware.
Attorney for Defendants.

MEMORANDUM OPINION

February 9, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is Plaintiffs' Motion To Approve Voluntary Dismissal (D.I. 53-1), Or In The Alternative To Transfer To California Action. (D.I. 53-2.) For the following reasons, the Court will grant Plaintiffs' Motion To Approve Voluntary Dismissal. (D.I. 53-1.)

BACKGROUND

Plaintiffs filed the instant lawsuit on August 5, 2002. On August 6, 2002, Plaintiffs filed a virtually identical lawsuit in the Central District of California (the "California Action"). The Central District of California stayed the California Action pending resolution of the instant lawsuit. In a June 19, 2003, Memorandum Opinion and Order, the Court dismissed Plaintiffs' action against two Defendants based on lack of personal jurisdiction. (D.I. 45.) Thereafter, Plaintiffs filed the instant motions so that they could proceed in the California Action as the Central District of California has personal jurisdiction over all Defendants.

I. Parties' Contentions

Plaintiffs contend that the Court should grant their motion for voluntary dismissal because the instant action is not at such an advanced stage of litigation that Defendants would suffer legal prejudice if the Court were to grant dismissal. Plaintiffs also contend that little discovery has occurred. Plaintiffs

alternatively request the Court to transfer the instant action to the Central District of California.

In response, Defendants contend that the Court should deny Plaintiffs' motion for voluntary dismissal because the instant action has been pending for over one year and discovery has taken place. Further, Defendants contend that Plaintiffs are attempting to manipulate the federal court system by selecting, after filing identical lawsuits in two fora, the most favorable jurisdiction for their action.

DISCUSSION

Rule 41(a)(2) of the Federal Rules of Civil Procedure provides, in relevant part, "an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper[.]" Fed. R. Civ. P. 41(a)(2). The purpose of Rule 41(a)(2) is to prevent dismissals that prejudice an opposing party and to permit the court to impose curative conditions it deems necessary. Mobil Oil Corp. v. Advanced Env'tl Recycling Techs., Inc., 203 F.R.D. 156, 158 (D. Del. 2001). Ordinarily, a court should grant a Rule 41(a)(2) dismissal unless the defendant will suffer plain legal prejudice. Spring City Corp. v. Am. Bldgs. Co., 1999 WL 1212201 at *1 (E.D. Pa. Dec. 17, 1999). The mere prospect that a defendant will face a subsequent lawsuit is not legal prejudice. DuToit v. Strategic Minerals Corp., 136 F.R.D. 82, 85 (D. Del.

1991). In determining prejudice, a court should consider 1) "any excessive and duplicative expense of a second litigation; [2)] the effort and expense incurred by a defendant in preparing for trial; [3)] the extent to which the pending litigation has progressed; and [4)] the claimant's diligence in moving to dismiss." Spring City, 1999 WL 1212201 at *1 (interior quotation omitted); James Wm. Moore, et al., 8 Moore's Federal Practice § 41.40[6] (3d ed. rev. 2003). Applying these principles to Plaintiffs' actions, the Court will grant Plaintiffs' motion for voluntary dismissal.

The Court concludes that Defendants have not demonstrated that they will suffer legal prejudice sufficient to justify the Court's departure from the Third Circuit's liberal practice of granting Rule 41(a)(2) dismissals. DuToit, 136 F.R.D. at 85 (citing In re Paoli R.R. Litig., 916 F.2d 829, 863 (3d Cir. 1990). Beginning with the first two Spring City factors, the Court concludes that dismissal of the instant action will not unduly prejudice Defendants. As Defendants note in their opposition brief, Plaintiffs filed a "virtually identical case against defendants in the Central District of California." (D.I. 55 at 1.) Thus, the discovery already conducted and attorney work product generated in litigating the instant action will not be wasted when opposing an "identical case" in California.

Next, although the instant action has been pending for over

one year, the pretrial, discovery, and dispositive motion deadlines have not yet passed. More importantly, the instant action is not on the eve of trial. Therefore, the Court views the instant action as distinct from a case where a defendant would suffer undue prejudice after "having been ready for trial in [one] federal court and then [being] told that the proceedings would be started once again." Ferguson v. Eakle, 492 F.2d 26, 29 (3d Cir. 1974). Instead, the prejudice Defendants face following dismissal of the instant action is the "prospect of another lawsuit," which does not amount to prejudice sufficient to preclude the Court from granting dismissal. See DuToit, 136 F.R.D. at 85.

The Court also concludes that Plaintiffs did not unduly delay in filing the instant motion following the Court's June 19, 2003, Memorandum Opinion and Order dismissing two defendants for lack of personal jurisdiction. Once Plaintiffs became aware that they could not litigate the instant action against all Defendants in Delaware, they filed the instant motion.

Based upon the absence of any undue prejudice to Defendants, the Court will grant Plaintiffs' Motion To Approve Voluntary Dismissal. (D.I. 53-1.)

An appropriate Order will be entered.

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Defendants. :

ORDER

At Wilmington, this 9th day of February, 2004, for the
reasons discussed in the Memorandum Opinion issued this date;

NOW THEREFORE, IT IS HEREBY ORDERED that:

- 1) Plaintiffs' Motion To Approve Voluntary Dismissal (D.I.
53-1) is **GRANTED**;
- 2) Plaintiffs' Alternative Motion To Transfer To
California Action (D.I. 53-2) is **DENIED** as moot.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE