

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SPRING CITY CORPORATION,	:	CIVIL ACTION
trading as SPRING II ASSOCIATES,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
AMERICAN BUILDINGS COMPANY,	:	
Defendant/	:	
Third-Party Plaintiff,	:	
	:	
v.	:	
	:	
CONTRACTORS OF AMERICA, INC.	:	NO. 97-8127
Third-Party	:	
Defendant	:	NO. 98-105

**MEMORANDUM**

**Padova, J.**

December , 1999

Before the Court is a Motion for Voluntary Dismissal of this matter filed by Plaintiff Spring City Corporation pursuant to Fed. R. Civ. P. 41(a)(2). For the reasons discussed below, the Court will dismiss the above matter with prejudice. The Court further rejects Defendant's request for costs and attorney's fees.

**I. FACTUAL BACKGROUND**

Plaintiff filed three lawsuits concerning the collapse of a roof of a metal building that occurred on January 12, 1996. The first, Civil Action No. 98-28 ("Spring City I"), was brought against Contractors of America and its president, Lynn Bradeen. Subsequently, Plaintiff amended its complaint to add American Buildings Company (ABC) to the suit. This action was then removed to federal court, but this Court remanded it back to state court. At that point, the

Court stayed the other two lawsuits, deeming them parallel suits under Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976). These suits are Civil Action No. 97-8127 (“Spring City II”), originally brought by Plaintiff in state court against ABC and removed to federal court, and Civil Action No. 98-105 (“Spring City III”), brought against ABC in federal court.

On October 4, 1999, the United States Court of Appeals for the Third Circuit upheld this Court’s decision to remand Spring City I to state court, and also lifted the stay of Spring City II and Spring City III.

ABC filed a Motion for Summary Judgment in Spring City II and III on Oct. 25, 1999. At the Preliminary Pretrial Conference held on Nov. 2, 1999, Spring City raised the instant Motion to Voluntarily Dismiss. The Federal Rule of Civil Procedure 16 Pretrial Scheduling Order set a discovery deadline of February 2, 2000 and a trial date of February 14, 2000.

## II. LEGAL STANDARD

Rule 41(a)(2) of the Federal Rules of Civil Procedure provides, in part:

[A]n 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. . . . Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

Fed. R. Civ. P. 41(a)(2). A district court in this circuit should generally grant a Rule 41(a)(2) dismissal in the absence of plain legal prejudice to defendant. Barron v. Caterpillar, Inc., No. CIV. A. 95-5149, 1996 WL 460086, at \*1 (E.D. Pa. Aug. 7, 1996) (citations omitted). In assessing whether “legal prejudice exists, the court must weigh the relevant equities and do

justice between the parties in each case.” Id. at \*2 (citation omitted). “Courts generally consider any excessive and duplicative expense of a second litigation; the effort and expense incurred by a defendant in preparing for trial; the extent to which the pending litigation has progressed; and the claimant’s diligence in moving to dismiss.” Id. (citation omitted).

If the plaintiff moves under Rule 41(a)(2) for voluntary dismissal, specifically requesting dismissal with prejudice, it has been held that the district court must grant that request. On the other hand, if the plaintiff either moves for dismissal without prejudice or fails to specify whether the request is for dismissal with or without prejudice, the matter is left to the discretion of the court. The court may grant dismissal without prejudice or may require that the dismissal be with prejudice.

Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 2367 (1995).

### III. DISCUSSION

Plaintiff argues that its Motion to Voluntarily Dismiss does not prejudice Defendant because the federal action is in its “infancy.” (Mot. at 2). Buttressing this contention is Plaintiff’s assertion that the parties “have not conducted any discovery in the matter,” and no trial date has been set. (Mot. at 3). Plaintiff further insists that the state court action is much closer to completion than the federal case, given Plaintiff’s filing of a certificate of readiness in state court on November 15, 1999.

Defendant correctly counters that a trial date in federal court of February 14, 2000 has been set. Defendant further claims that it has already conducted extensive discovery in this matter, and that its pending Motion for Summary Judgment shifts the burden to the Plaintiff to make a “strong showing” in support of dismissal.

While the Court agrees that the instant suit is no longer in its “infancy,” neither has it

advanced to the geriatric stage. The Rule 16 conference was only recently held, and the discovery deadline and trial date set at this conference are still two months in the future. Discovery taken thus far has been taken in state court.

The pending Motion for Summary Judgment is Defendant's strongest argument that this case is too far along to dismiss. Defendant points out that "[once] a motion for summary judgment has been served, the plaintiff no longer has the right to dismiss and, unless all of the parties stipulate to dismissal, a plaintiff who wishes to dismiss must obtain an order of the district court." Wright & Miller, supra, § 2364. However, this quotation merely reiterates the standard for a Rule 41(a)(2) voluntary dismissal: it is not a right of the Plaintiff, but must be granted by the Court. A summary judgment motion is simply one of the factors to be weighed by the Court in deciding how far along a lawsuit is, and therefore whether the non-moving party would be prejudiced by granting a motion to voluntarily dismiss.

This Court's opinion in Barron illustrates this principle. In Barron, a final pretrial conference had taken place, and the Court had granted Defendant's Motion in Limine for Bifurcation. Pretrial memoranda had been filed. Barron, 1996 WL 460086 at \*3. That lawsuit clearly was on the eve of trial. The instant suit is not. Absent substantial prejudice to the defendant, the mere filing of a summary judgment motion is insufficient reason to refuse to dismiss voluntarily. Wright & Miller, supra, § 2364. In sum, even with the pending Motion for Summary Judgment, the Court concludes that this case has not proceeded to the point that dismissal would substantially prejudice the Defendant.

Defendant argues that the third factor weighed by courts in considering a motion for voluntary dismissal, namely the claimant's diligence in moving to dismiss, weighs against the

Plaintiff. While Defendant correctly points out that Plaintiff originally moved to stay this suit rather than to voluntarily dismiss, given the complexities of this litigation the Court does not find Plaintiff's course deliberately dilatory. Once the stay of this action was lifted, Plaintiff did move promptly to voluntarily dismiss. The Court, therefore, concludes that this factor does not weigh strongly in favor of either party.

Plaintiff is agreeable to a dismissal with prejudice as long as such a dismissal does not prejudice the right of contribution of Defendants Contractors of America and Lynn Bradeen against ABC in the state court action. (Mot. at 5 n.2). The Court agrees that a dismissal with prejudice thus best balances the "relevant equities" among all parties to this litigation, and does not harm Defendant. Moreover, because dismissal is with prejudice, the Court denies Defendant's request for costs and attorney's fees. Selas Corp. of America v. Wilshire Oil Co. of Texas, 57 F.R.D. 3, \*7 (E.D. Pa. 1972); see also Wright & Miller, supra, § 2366 (noting if the dismissal is with prejudice, courts lack the power to require payment of attorney's fees unless the case is of kind in which attorney's fees might otherwise be ordered after termination on the merits).

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SPRING CITY CORPORATION,	:	CIVIL ACTION
trading as SPRING II ASSOCIATES,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
AMERICAN BUILDINGS COMPANY,	:	
Defendant/	:	
Third-Party Plaintiff,	:	
	:	
v.	:	
	:	
CONTRACTORS OF AMERICA, INC.	:	NO. 97-8127
Third-Party	:	
Defendant	:	NO. 98-105

**ORDER**

AND NOW, this      day of December, 1999, upon consideration of Plaintiff's Motion for Voluntary Dismissal (Doc. No. 33), Defendant's Response thereto (Doc. No. 34), Plaintiff's Reply to Defendant's Response (Doc. No. 35), and Defendant's Sur Reply (Doc. No. 36), **IT IS HEREBY ORDERED** that said Motion (Doc. No. 33) is **GRANTED**, and further that this matter is **DISMISSED** with prejudice.

BY THE COURT:

\_\_\_\_\_  
John R. Padova, J.