

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

PSA CONSTRUCTION, INC.

CIVIL ACTION

VERSUS

NO: 10-1103

ST. MARY'S ACADEMY OF THE HOLY  
FAMILY, et al.

SECTION "C"(3)

ORDER AND REASONS<sup>1</sup>

Before the Court comes the Plaintiff's Motion to Dismiss Without Prejudice or in the Alternative to Stay the matter. (Rec. Doc. 35). Having considered the memorandum of counsel, the record, and the applicable law, the motion is GRANTED for the following reasons.

The Court has great discretion in determining the propriety of dismissal without prejudice under Fed. R. Civ. P. 41(a)(2), which allows the court to grant a dismissal at the plaintiff's request "only by court order, on terms that the court considers proper." "Many courts have taken the sensible position that dismissals without prejudice generally should be granted by the district court if no prejudicial effects would result for the opposing party." Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2364 (2008). While the Court has a liberal power under Rule 41(a)(2), it must consider the interests of the defendant. *Id.* Here the defendant has failed to demonstrate that it will

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<sup>1</sup>Helen Meaher, a third year student at Tulane University School of Law assisted in preparing this Order and Reasons.

suffer any prejudice by granting this motion.

On August 5, 2010, this Court dismissed St. Mary's Academy of the Holy Family from federal court litigation and allowed the Plaintiff to initiate the same claims in state court. (Rec. Doc. 35-1). Currently, WSFM, LLC is the only party resisting voluntary dismissal from federal court litigation, however, WSFM has stated that it will accept an dismissal provided that the Court order the Plaintiff to pay WSFM's attorneys costs and fees. (Rec. Doc. 36). While courts can require plaintiffs to pay the attorney's fees of dismissed defendant, here the defendant has failed to show that it be entitled to such an order from the Court. *Mortgage Guar. Inc. Corp. v. Richard Carolyn Co.*, 904 F.2d 298 (5th Cir. 1990). Granting the Defendant's request would only serve to penalize the Plaintiff. State court provides the only venue in which all claims against all parties can be tried in a single proceeding.

Accordingly,

IT IS ORDERED that the Plaintiff's Motion to Dismiss without Prejudice is GRANTED.

New Orleans, Louisiana, this 25th day of October, 2010.



HELEN G. BERRIGAN

UNITED STATES DISTRICT JUDGE