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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Orion Photo Industries, Inc.,)
)
 Plaintiff,)
)
 vs.)
)
 Heartwood Creation, Inc., et al.,)
)
 Defendants.)

No. CV-09-8109-PCT-PGR

ORDER

On July 2, 2010, the plaintiff and defendants Heartwood Creation, Inc., Michael Fisher, Joseph Goldberg, and Warren Slabaugh filed a Stipulated Notice of Settlement (Doc. 88) and a Stipulated Notice of Dismissal With Prejudice (Doc. 89). On July 6, 2010, non-settling defendant/counterclaimant Judy Ewing filed an Objection to Stipulated Notice of Dismissal With Prejudice and Stipulated Notice of Settlement (Doc. 90), wherein she noted that a voluntary dismissal without a court order was improper because she had not signed the settling parties' stipulations regarding their settlement as required by Fed.R.Civ.P. 41(a)(1)(A)(ii) (which provides that a plaintiff may voluntarily dismiss an action without a court order by filing "a stipulation signed by all parties who have appeared.")

In light of Ewing's objection, the Court entered an order on July 6, 2010

1 (Doc. 91), wherein it construed the settling parties' Stipulated Notice of Dismissal
2 With Prejudice as a motion for voluntary dismissal pursuant to Fed.R.Civ.P.
3 41(a)(2) and required the parties to brief the motion. See Quad/Graphics, Inc. v.
4 Fass, 724 F.2d 1230, 1233 (7th Cir.1983) ("In the context of a partial settlement,
5 Rule 41(a)(2) is usually the mechanism by which the settling defendants are
6 eliminated from the case.")

7 In her Opposition to Motion for Voluntary Dismissal (Doc. 93), filed July 16,
8 2010, Ewing requests that the Court deny the settling parties' motion on the
9 ground that she will suffer legal prejudice if the settling defendants do not remain
10 as parties until the plaintiff's complex trade secret claims against her are resolved
11 since (1) those claims are inextricably entangled with those alleged against
12 defendant Heartwood, which she describes as the "primary defendant" in this
13 action, such that she will not be able to untangle the plaintiff's claims and defend
14 herself adequately without Heartwood's continued involvement, and (2) her rights
15 and liabilities will be seriously prejudiced if Heartwood or any of the other settling
16 defendants have made any admissions as part of their settlement, such as any
17 acknowledgment of any patent or trade secret violations, that the plaintiff may use
18 against her, which she does not know at this time because she has not had
19 access to the settlement documents.

20 In its reply in support of the voluntary dismissal (Doc. 95), filed July 23,
21 2010, the plaintiff argues that while the dismissal of the settling defendants may
22 possibly cause Ewing some factual injury or inconvenience, there is no indication
23 that it would cause prejudice to any legal interest, claim or argument of hers as
24 the settling defendants will still be subject to discovery. The plaintiff further states
25 that since the settlement terms are confidential no admission made by the settling
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1 defendants would ever come to light in this action, and avows that, in any case,
2 the settling defendants have made no admissions of any kind as part of the
3 settlement.

4 In their reply in support of the voluntary dismissal (Doc. 96), filed July 23,
5 2010, the settling defendants, noting that Ewing's objection to the settlement
6 focuses largely on the plaintiff's tort claims, argue that their continued presence in
7 this action is not necessary to protect Ewing since under Arizona's comparative
8 fault system Ewing can only be held responsible for her own fault, regardless of
9 the settling defendants' fault. They further note that the settlement agreement
10 does not contain a provision that it remain entirely confidential.

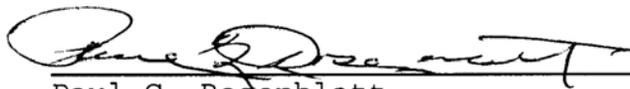
11 Rule 41(a)(2) provides in relevant part that in circumstances in which Rule
12 41(a)(1)(A)(ii) is not applicable a court may dismiss an action "at the plaintiff's
13 request only by court order, on terms that the court considers proper." The
14 general rule is that a non-settling defendant lacks standing to object to a partial
15 settlement unless the non-settling defendant demonstrates that it will sustain
16 some formal legal prejudice as a result of the settlement. Smith v. Arthur
17 Andersen LLP, 421 F.3d 989, 998 (9th Cir.2005); Waller v. Financial Corp. of
18 America, 828 F.2d 579, 582-83 (9th Cir.1987). Cognizable legal prejudice exists,
19 for example, where a settlement agreement purports to strip the non-settling
20 defendant of a legal claim or cause of action, such as an action for indemnity or
21 contribution, or invalidates the contract rights of the non-settling defendant.
22 Waller, 828 F.2d at 583. A mere showing of a factual injury to the non-settling
23 party is insufficient to provide standing to object to a partial settlement as some
24 disadvantage to the non-settling defendant is bound to occur with such a
25 settlement, Quad/Graphics, Inc. v. Fass, 724 F.2d at 1233; also insufficient to
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1 provide standing is a mere showing of the loss of some practical or strategic
2 advantage in litigating the non-settling party's case. In re Integra Realty
3 Resources, Inc., 262 F.3d 1089, 1102 (10th Cir.2001).

4 The Court concludes that Ewing has no standing to object to the settlement
5 because she not made any sufficient showing of any plain legal prejudice to her
6 stemming from the settlement. Nothing in Ewing's opposition to the settlement
7 persuades the Court that she cannot adequately litigate the plaintiff's claims
8 against her or her own counterclaims if the plaintiff is allowed to settle with the
9 other defendants. The settling defendants will still be subject to Ewing's discovery
10 requests, as will the plaintiff, and she still has an ample opportunity to seek such
11 discovery as the discovery deadline is not until January 3, 2011. Therefore,

12 IT IS ORDERED that the motion for voluntary dismissal (Doc. 89) is
13 granted and that all of plaintiff Orion Photo Industries, Inc.'s claims against
14 defendants Heartwood Creation, Inc., Michael Fisher, Joseph Goldberg, and
15 Warren Slabaugh and all of these defendants' respective counterclaims against
16 the plaintiff are dismissed with prejudice, with the settling parties bearing their
17 own attorneys' fees and costs.

18 DATED this 26th day of July, 2010.

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20 
21 Paul G. Rosenblatt
United States District Judge