

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

|                               |   |                              |
|-------------------------------|---|------------------------------|
| DR. LAKSHMI ARUNACHALAM,      | : |                              |
|                               | : |                              |
| Plaintiff,                    | : |                              |
|                               | : |                              |
| v.                            | : | Civil Action No. 13-1333-RGA |
|                               | : |                              |
| FULTON FINANCIAL CORPORATION, | : |                              |
|                               | : |                              |
| Defendants.                   | : |                              |

MEMORANDUM

By separate order, I am granting Plaintiff's motion to voluntarily dismiss without prejudice. I am not going to condition the dismissal on the payment of \$23,470 in attorney's fees. I am influenced by the discussion in *DuToit v. Strategic Minerals Corp.*, 136 F.R.D. 82, 87-88 (D.Del. 1991), which seems to be directly on point.

There are two considerations that I think suggest the correct result here. First, the later in the case that dismissal is sought, the greater the justification for conditioning dismissal on payment of fees or expenses. In this case, dismissal was sought shortly after Defendants answered the complaint. The answer was filed March 14, 2014; the motion to dismiss was filed April 23, 2014. No motions were filed, and the docket reflects no activity between March 14<sup>th</sup> and April 23<sup>rd</sup>.

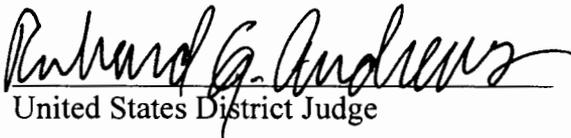
Second, whatever the \$23,470 was spent on, in all likelihood, substantially all of it would have been spent even had Plaintiff voluntarily dismissed her lawsuit on November 26, 2013.<sup>1</sup> A

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<sup>1</sup> Nothing in this Memorandum should be read as approving Plaintiff's conduct in not dismissing the lawsuit once she surrendered standing to bring it, and in not putting in writing to the Defendants the true status of this lawsuit.

new lawsuit, with a Plaintiff who has standing, has been filed. Had the new lawsuit been filed on or around November 26, 2013, there is no reason to doubt that substantially the same expenses would have been incurred by the Defendants. I do not expect that they will have to be redundantly incurred in connection with the new lawsuit.

SO ENTERED this 28<sup>th</sup> day of May 2014.

  
United States District Judge