

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

BETTY HEARN, *pro se*,

Plaintiff,

v.

Case No: 8:13-cv-827-T-30EAJ

INTERNATIONAL BUSINESS  
MACHINES, MARGARET (PEGGY)  
BUIS, DAVID ALLCOCK and RUSSELL  
MANDEL,

Defendants.

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**ORDER**

THIS CAUSE comes before the Court upon the Plaintiff's Motion for Permission to Appeal (Dkt. #43) and Defendants' Response in Opposition to the Motion (Dkt. #46). The *pro se* Motion requests permission to appeal the following orders: Order Granting Defendant's Motion to Dismiss the Second Amended Complaint with Prejudice, (Dkt. #32), Order Denying Plaintiff's Motion for Entry of Clerk's Default and Motion for Default Judgment (Dkt. #36), Order Denying Plaintiff's Motion for New Trial, Altering or Amending Judgment (Dkt. #38), and Order Denying Plaintiff's Motion for Reconsideration and Demand for Jury Trial and Substitution (Dkt. #40). Plaintiff cites to the provisions for interlocutory appeal under 28 U.S.C. §1292(b) or other petition under Rule 5 of the Federal Rules of Appellate Procedure. Plaintiff has also filed a Notice of Appeal (Dkt. #44) which the Clerk has transmitted to the Eleventh Circuit.

“Generally, an order dismissing a complaint is not final and appealable unless the order holds that it dismisses the entire action or that the complaint cannot be saved by amendment.” *Van Poyck v. Singletary*, 11 F.3d 146, 148 (11th Cir. 1994). In this case, the Court dismissed the Plaintiff’s entire complaint with prejudice after she had three opportunities to properly state a cause of action and failed to do so. Therefore, the appeal is not interlocutory. *See OFS Fitel, LLC v. Epstein, Becker & Green, P.C.*, 549 F.3d 1344, 1356 (11th Cir. 2008) (holding that plaintiff’s appeal of an order dismissing its claims with prejudice is an appeal of a final judgment and authorized by 28 U.S.C. § 1291). Therefore, the Motion is denied as unnecessary. *See Standard Asbestos Mfg. & Insulating Co. v. United States*, 676 F.2d 119 (5th Cir. 1982). Additionally, since Plaintiff filed her Notice of Appeal, the motion is moot.

It is therefore ORDERED AND ADJUDGED that Plaintiff’s Motion for Permission to Appeal (Dkt. #43) is DENIED as moot.

**DONE** and **ORDERED** in Tampa, Florida, this 18th day of February, 2014.

  
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JAMES S. MOODY, JR.  
UNITED STATES DISTRICT JUDGE

Copies furnished to:  
Counsel/Parties of Record

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