

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-21651-CV-KING

MERIDIAN CAPITAL VENUTRES LLC,

Plaintiff/Counter-Defendant,

v.

CAPITAL CITY ENERGY GROUP, INC.,

Defendant/Counter-Plaintiff.

**ORDER GRANTING MOTION FOR VOLUNTARY DISMISSAL OF DEFENDANT'S
COUNTERCLAIMS**

THIS MATTER comes before the Court upon the Defendant's Motion for Voluntary Dismissal of Counterclaim (DE #46), filed July 21, 2011. Therein, Defendant notes that there appears to have been a misunderstanding as to the action ordered by the Court in the July 1, 2011 Pre-Trial Conference.¹ As a result of that misunderstanding, Plaintiff filed a Motion for Summary Judgment (DE #45) directed at Defendant's Counterclaims (DE #13), rather than on its own claims (DE #1) which are the subject of the above-styled matter. Defendant now seeks leave to voluntarily dismiss its Counterclaims, and to require Plaintiff to file a motion for summary judgment as to Plaintiff's claims only.

At the Pre-Trial Conference, the Court noted that the parties had failed to file dispositive motions before the motion deadline of May 2, 2011. (DE #15). Therefore, the Court ordered Plaintiff to file a motion for summary judgment within ten days of the Pre-Trial Conference, directed at Plaintiff's own claims. Instead, Plaintiff filed a Motion for Summary Judgment

¹ The Minute Entry for the Pre-Trial Conference mistakenly requires both parties to file motions for summary judgment, and could also be read to imply that the Court ordered Plaintiff to seek summary judgment as to Defendant's Counterclaim. (DE #44). This is inaccurate, as a transcript of the hearing would show.

seeking disposition of Defendant's Counterclaims. Defendant has now filed its Opposition (DE #47), although it seeks voluntary dismissal of the underlying Counterclaims.

The Court finds voluntary dismissal of Defendant's Counterclaims is appropriate. Defendant had identified another party who may be liable to Defendant, although the Court disallowed Defendant's Motion for Leave to File Amended Counterclaim and Third-Party Complaint (DE #43), filed on June 30, 2011, because it failed to comply with the Court's motion deadline. Nonetheless, that failure should not prevent Defendant from seeking appropriate recovery.

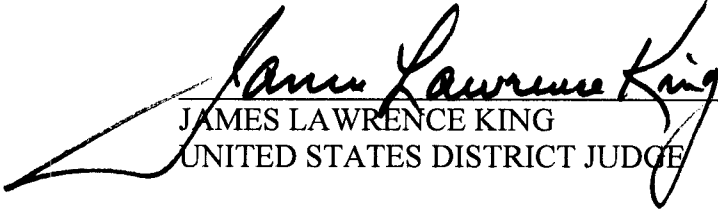
The above-styled matter shall now proceed to trial on Plaintiff's Complaint on the two-week trial period of August 22, 2011, as scheduled by this Court's Order (DE #15). Accordingly, after careful consideration and the Court being otherwise fully advised, it is hereby **ORDERED, ADJUDGED, and DECREED** that:

1. Defendant's Motion for Voluntary Dismissal (DE #46) be, and the same is hereby, **GRANTED**.
2. Defendant's Counterclaims (DE #13) are **DISMISSED without prejudice** to seek relief by separate suit at a later time.
3. Plaintiff's Motion for Summary Judgment (DE #45) is **DENIED as moot**.
4. The above-styled matter shall **PROCEED** as a non-jury trial before this Court on Plaintiff's Complaint (DE #1).²

² Neither Plaintiff nor Defendant Capital City requested a jury trial as to Plaintiff's Complaint. Instead, in its capacity as Counter-Plaintiff, Capital City requested a jury trial only as to its Counterclaims. (DE #13 at 7) ("Counter-Plaintiff demands a trial by jury on all issues so triable."). Those Counterclaims now having been dismissed, trial will be before the bench as to Plaintiff's Complaint.

DONE AND ORDERED in Chambers at the James Lawrence King Federal Justice

Building and United States Courthouse in Miami, Florida, this 22d day of July, 2011.


JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

Cc:

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