

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

**MICHAEL LAMENSDORF
and KATHY LAMENSDORF,
Individually As Parents of
JOHN HUNT
LAMENSDORF, Deceased,
and As Personal
Representative(s) of the
Estate of JOHN HUNT
LAMENSDORF, Deceased,**

Plaintiffs,

v.

**STEPHEN MICHAEL SIMON,
et al.,**

Defendants.

Civil Action No. 5:09-cv-424 (HL)

ORDER

Before the Court is Plaintiffs' and Defendant Stephen Michael Simon's ("SMS") Renewed Joint Motion to Dismiss Claims Against Only Defendant SMS With Prejudice. (Doc. 45). For the following reasons, the Joint Motion is denied.

On February 4, 2010, Plaintiffs and SMS filed their original motion to dismiss SMS as a result of a settlement agreement that was reached between them. (Doc. 13). On February 9, 2010, the Court denied the original motion to dismiss without prejudice because all of the Defendants

had not yet been served. (Doc. 15). After all Defendants were served and filed responsive pleadings, Plaintiffs and SMS filed the joint motion that is now before the Court. (Doc. 45).

Defendants White, Cardona, Fung, Pen Pal Productions, Welin, and Stephen Robert Simon filed their responses to the joint motion to dismiss on June 11, 2010, in which they raised no objections to the dismissal of SMS. (Docs. 52, 54, 55). Defendant NES Rentals, however, opposes the motion, and has filed a cross-claim (Doc. 57) against SMS alleging that as a direct and proximate result of the breaches of duty owed by SMS, NES Rentals is entitled to full indemnity or contribution from SMS if it is determined that NES Rentals is found liable. In light of the cross-claim against SMS, the Court finds that he should remain a party to the case at this time. Accordingly, the Renewed Joint Motion to Dismiss (Doc. 45) is denied.

SO ORDERED, this the 23rd day of June, 2010.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

SPO