

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

COLONY INSURANCE COMPANY, :

Plaintiff, :

v. :

No. 5:11-CV-334 (CAR)

MONEY'S, INC., GEORGE WILLIS, :

JR., NU MONEY RECORDS AND :

ENTERTAINMENT, INC., DEXTER :

MAXWELL, JR., DEMETRIA BROWN, :

Defendants. :

_____ :

ORDER ON PLAINTIFF'S MOTION TO DISMISS

Before the Court is Plaintiff Colony Insurance Company's Motion to Voluntarily Dismiss Without Prejudice [Doc. 22], pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. Plaintiff moves to dismiss this declaratory judgment action involving insurance coverage without prejudice because a settlement has been reached with the Defendants in the underlying litigation. Defendants have not filed a response, and the time to do so has expired.

Rule 41(a)(2) gives district courts the authority to dismiss an action at the plaintiff's request. See Fed. R. Civ. P. 41(a)(2) ("Except as provided in Rule 41(a)(1), an

action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper."). "The district court enjoys broad discretion in determining whether to allow a voluntary dismissal under Rule 41(a)(2), [and] in most cases, a voluntary dismissal should be granted unless the defendant will suffer clear legal prejudice, other than the mere prospect of a subsequent lawsuit, as a result." Pontenberg v. Boston Sci. Corp., 252 F.3d 1253, 1255 (11th Cir. 2001) (internal quotation omitted). "In exercising its broad equitable discretion under Rule 41(a)(2), the district court must weigh the relevant equities and do justice between the parties in each case, imposing such costs and attaching such conditions to the dismissal as are deemed appropriate." Id. at 1256 (internal quotation omitted). Unless otherwise specified, a dismissal under Rule 41(a)(2) is without prejudice. See Fed. R. Civ. P. 41(a)(2).

Here, Plaintiff represents that a settlement has been reached in the underlying litigation. In light of this representation, the instant declaratory judgment action is no longer ripe for judicial resolution. Any prejudice against Defendants by granting this Motion would be minimal. Accordingly, Plaintiff's Motion [Doc. 22] is **GRANTED**, and the instant action is **DISMISSED** without prejudice.

SO ORDERED, this 21st day of August, 2012.

S/ C. Ashley Royal
C. ASHLEY ROYAL
UNITED STATES DISTRICT JUDGE

LMH