

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

SEAN WILLIAMS and JANICE  
WILLIAMS,

Plaintiffs,

v.

GEORGIA POWER and COMTRAN  
GROUP INC.,

Defendants.

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CV 124-051

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O R D E R

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Before the Court is Plaintiffs' motion to dismiss. (Doc. 11.) When a plaintiff moves to voluntarily dismiss an action, the motion is governed by Federal Rule of Civil Procedure 41(a). See FED. R. Civ. P. 41(a)(1)-(2). Because Plaintiffs do not specify which part of Rule 41(a) they move under, the Court analyzes Plaintiffs' motion under Rule 41(a)(1)(A)(i), 41(a)(1)(A)(ii), and 41(a)(2).

Neither Rule 41(a)(1)(A)(i) nor 41(a)(1)(A)(ii) apply. Rule 41(a)(1)(A)(i) allows a plaintiff to dismiss an action without a court order by filing a notice of dismissal anytime before the opposing party files an answer or motion for summary judgment. Here, both Defendants Georgia Power and ComTran Group Inc. filed answers, so Plaintiffs may not use Rule 41(a)(1)(A)(i). (See Doc. 1-1, at 23-27; Doc. 10, at 1.) Under Rule 41(a)(1)(A)(ii), a plaintiff may voluntarily dismiss a lawsuit by filing "a

stipulation of dismissal signed by all parties who have appeared." But here, only Plaintiffs signed the motion, so Rule 41(a)(1)(A)(ii) is equally inapplicable.

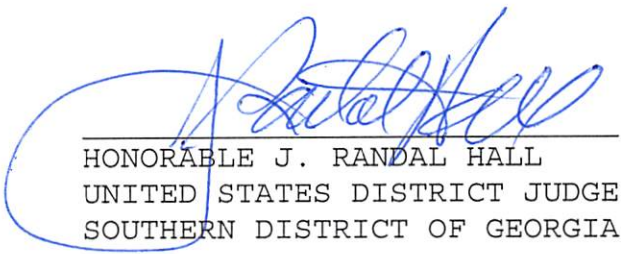
That leaves Rule 41(a)(2). Rule 41(a)(2) provides, in relevant part, "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." FED. R. CIV. P. 41(a)(2). The Rule exists "primarily to prevent voluntary dismissals which unfairly affect the other side, and to permit the imposition of curative conditions." McCants v. Ford Motor Co., 781 F.2d 855, 856 (11th Cir. 1986) (quoting Alamance Indus., Inc. v. Filene's, 291 F.2d 142, 146 (1st Cir. 1961)). For this reason, when addressing a motion for voluntary dismissal without prejudice, district courts are instructed to "bear in mind principally the interests of the defendant, for it is the defendant's position that the court should protect." Id.

"[I]n most cases a dismissal should be granted unless the defendant will suffer clear legal prejudice, *other than the mere prospect of a subsequent lawsuit*, as a result." Id. at 856-57 (emphasis in original). To determine whether dismissal is proper, "the court should . . . 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." Arias v. Cameron, 776 F.3d 1262, 1269 (11th Cir. 2015) (citation omitted). In making a voluntary dismissal determination, "[a] district court enjoys broad discretion." Id. at 1268.

The Court finds the relevant equities weigh in favor of granting Plaintiffs' motion for voluntary dismissal. See Arias, 776 F.3d at 1269. Plaintiffs brought suit against Defendants because they "were never informed of [Defendant] Georgia Power's construction easement when [they] purchased the property" at issue. (Doc. 11, at 1.) However, Plaintiffs represent their "safety concerns were properly answered by [Defendant] Georgia Power." (Id.) Defendants did not respond to Plaintiffs' motion, and the deadline to do so has passed. Thus, Plaintiffs' motion is deemed unopposed. See L.R. 7.5, SDGa. For these reasons, the Court finds dismissal under Rule 41(a)(2) appropriate.

For the foregoing reasons, Plaintiffs' motion to dismiss (Doc. 11) is **GRANTED**. The Clerk is **DIRECTED** to **TERMINATE** all motions and deadlines, if any, and **CLOSE** this case. Given that the Magistrate Judge's Report and Recommendation recommended this case be dismissed as frivolous and that it be remanded to the Superior Court of Taliaferro County, out of an abundance of caution the Clerk is **FURTHER DIRECTED** to serve a courtesy copy of this Order on the Clerk of the Superior Court of Taliaferro County.

ORDER ENTERED at Augusta, Georgia, this 4<sup>th</sup> day of June, 2024.

  
HONORABLE J. RANDAL HALL  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF GEORGIA