

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

TONY PERRIGO,

Plaintiff,

v.

ANTHONY TUMMINELLO and
PROGRESSIVE BUILDERS, INC.,

Defendants.

Case No. 08-cv-605-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on the Notice of Voluntary Dismissal filed by Plaintiff Tony Perrigo (Doc. 20). Federal Rule of Civil Procedure 41(a)(1)(A)(i) allows dismissal of an action by a plaintiff without a court order at any time before service by an adverse party of an answer or of a motion for summary judgment, whichever first occurs. Here, Defendants filed their Answer along with their Notice of Removal (Doc. 3). Accordingly, Plaintiff is no longer entitled to voluntarily dismiss this action by notice. The Court, therefore, **CONSTRUES the Notice as a Motion for Voluntary Dismissal** pursuant to Federal Rule of Civil Procedure 41(a)(2).

Defendants have responded in opposition to the Motion (Doc. 22). Defendants contend that they will be unduly prejudiced if Plaintiff is allowed to dismiss this action without prejudice. As Plaintiff has given the Court no explanation as to why such dismissal would be proper, the Court **DENIES** Plaintiff's Motion for Voluntary Dismissal (Doc. 20).

IT IS SO ORDERED.

DATED: December 2, 2008

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE