

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

CLAY G. BASHAM,)	
)	
Plaintiff,)	
)	
v.)	Case No. 10-cv-161-JPG
)	
ASTRAZENECA PHARMACEUTICALS LP,)	
<i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff Clay Basham’s Notice of Voluntary Dismissal (Doc. 13) without prejudice. Basham does not cite a legal basis for the relief requested.

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), a plaintiff has an absolute right to dismiss an action without a court order at any time before an adverse party serves either an answer or a motion for summary judgment, whichever first occurs. Here, only Defendants AstraZeneca Pharmaceuticals LP and AstraZeneca LP have filed an Answer (Doc. 6); as such, Rule 41(a)(1)(A)(I) is unavailable to Basham as a means of relief insofar as he seeks voluntary dismissal of said Defendants. However, pursuant to Basham’s notice and Rule 41(a)(1)(A)(I), the Court acknowledges that the case against Defendants Astra USA, Inc., KBI Sub Inc., AstraZeneca AB, AstraZeneca PLC, and AstraZeneca, UK Limited is at an end. *See Merit Ins. Co. v. Leatherby Ins. Co.*, 581 F.2d 137, 139 (7th Cir. 1978); 8 James Wm. Moore *et al.*, Moore’s Federal Practice § 41.21[3][a] (3d ed. 2009) (“A voluntary dismissal may be taken against fewer than all defendants, as long as all claims are dismissed as against each one affected”) (footnote omitted).

Meanwhile, with respect to AstraZeneca Pharmaceuticals LP and AstraZeneca LP, Federal Rule of Civil Procedure 41(a)(2) provides that only the Court may dismiss an action after an adverse

party has filed an answer or motion for summary judgment and in the absence of a stipulation of dismissal of an entire case from all the parties. Accordingly, the Court **CONSTRUES** Basham's notice as it relates to AstraZeneca Pharmaceuticals LP and AstraZeneca LP as a motion for voluntary dismissal. Being fully advised of the premises, the Court **GRANTS** said motion and **DISMISSES** this case **without prejudice**.

IT IS SO ORDERED.

Dated: August 26, 2010

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