

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

BRIAN FLYNN,)
GEORGE BROWN,)
KELLY BROWN, and)
MICHAEL KEITH,)
on behalf of themselves and all)
others similarly situated,)
)
Plaintiffs,)

vs.)

Case No. 15-cv-0855-MJR-DGW

FCA US LLC, *doing business as*)
Chrysler Group LLC, and)
HARMON INTERNATIONAL)
INDUSTRIES, INC.)
)
Defendants.)

MEMORANDUM AND ORDER

REAGAN, Chief District Judge:

On October 25 and November 7, 2016, Plaintiffs George and Kelly Brown filed notices of voluntary dismissal of Counts I, II, VII, VIII, XIV, XV, XXI, and XXII of the amended complaint (Docs. 136, 139).¹ In an order dated November 22, 2016, the Court found the voluntary dismissals ineffective based on *Taylor v. Brown*, 787 F.3d 851, 857-58 (7th Cir. 2015), which notes that Federal Rule of Civil Procedure 41 permits voluntary dismissals of “actions” but not individual “parties” or “claims.” The parties were directed either to continue with arbitration or the Court granted Plaintiffs leave to

¹ The amended complaint (Doc. 49) contains multiple counts labeled XIV and XV. Count XIV is found on pages 69-72 (a Magnuson-Moss Warranty Act claim) and also on pages 102-05 (a claim brought under Michigan law). Count XV is found on pages 73-74 (a claim brought under Missouri law) and pages 105-09 (a claim brought Michigan law). Based on the history of this case and the Court’s order directing arbitration (Doc. 114), the Court interprets the notices of voluntary dismissal to refer to the counts brought under the Magnuson-Moss Warranty Act and Missouri law found on pages 69-74 of the amended complaint.

file a second amended complaint. Plaintiffs declined the Court's invitation to amend and also have indicated that they will not pursue arbitration (*See* Doc. 146). As a result, the Court **DISMISSES without prejudice** Counts I, II, VII, VIII, XIV, XV, XXI, and XXII for failure to prosecute. The Court **FINDS** that without the arbitrable claims pending, there is no longer reason for the Browns' claims to be stayed and hereby **LIFTS the STAY** ordered on September 23, 2016 (Doc. 114).

Having review the most recent status report filed by the parties (Doc. 147), it is clear that the parties disagree on how to proceed with regards to the non-arbitrable Missouri law claims. Additional briefing from the parties on these claims would be beneficial. Accordingly, the Court **SETS a new briefing schedule** for the parties. Defendants' motions to dismiss are due on or before February 6, 2017. Plaintiffs' response shall be filed on or before March 6, 2017. Defendants' replies, if necessary, shall be due on or before March 20, 2017. The Court takes Defendant FCA US at its word that any motions the defendants file will be directed at claims brought under Missouri law and will not include new or different arguments than those previously considered by the Court. Not much time, if any, should be spent arguing that the plaintiffs have waived their right to pursue non-arbitrable claims because the Browns did not pursue arbitration.

IT IS SO ORDERED.

DATED: January 10, 2017.

s/ Michael J. Reagan
Michael J. Reagan
United States District Judge