

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

DANIELLE K. WALLS

CIVIL ACTION

VERSUS

NO: 11-0838

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY**

**UNITED STATES MAGISTRATE
JUDGE KAREN WELLS ROBY**

ORDER

Before the Court is Plaintiff, Danielle K. Walls', ("Walls") **Motion and Order for Voluntary Dismissal (R. Doc. 15)**, seeking an order dismissing any and all claims she has or may have against Defendant, State Farm Mutual Automobile Insurance Company, ("State Farm"), with prejudice. This matter has come before the Undersigned U.S. Magistrate Judge on consent of the parties pursuant to 28 U.S.C. § 636(c).

In this automobile insurance policy dispute, Walls alleges that on or about November 8, 2010, her car was stolen and subsequently damaged beyond repair, but that her car insurance company, State Farm, failed to pay in accordance with the policy. (R. Doc. 1-2, pp. 3-4.¹ Walls brought suit to recover (1) the value of her automobile,² (2) the penalties provided under the law, (3) reasonable attorney's fees, (4) legal interest thereon, and (5) all costs of these proceedings. *Id.*

¹Walls filed the instant suit on November 8, 2011 in the 19th Judicial District Court of Louisiana. (R. Doc. 1-2). State Farm duly removed it to the U.S. District Court for the Middle District of Louisiana on November 20, 2011. (R. Doc. 1-1). The case was reassigned to two judges in the U.S. District Court for the Eastern District of Louisiana on February 6, 2012. (R. Doc. 5). On April 12, 2012, the parties consented to proceeding before the Undersigned U.S. Magistrate Judge. (R. Doc. 8).

²Walls' automobile insured by State Farm was a 2008 GMC Envoy. *Id.* at 3.

at 4. State Farm answered Walls' Complaint on December 28, 2011, (R. Doc. 3), and then filed a Motion for Partial Summary Judgment on October 2, 2012. (R. Doc. 13).

Federal Rule of Civil Procedure ("Rule") 41 states that a party may seek to dismiss a claim without court order, *inter alia*, before the opposing party serves either an answer or a motion for summary judgment. *Id.* at 41(a)(1)(i). However, where either an answer or a motion for summary judgment has been filed, "[a]n action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." *Id.* at 41(a)(2). However, where defendants have answered and included a counterclaim, "the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication." *Id.* "Unless the order states otherwise, a dismissal [by Court Order] is without prejudice." *Id.*

Here, State Farm has neither objected nor stipulated to Walls' voluntary dismissal. However, although State Farm has filed both an Answer (R. Doc. 3) and a Motion for Partial Summary Judgment, (R. Doc. 13), the Answer did not contain any counterclaims, and the Motion for Partial Summary Judgment, which is still pending, merely sought dismissal of two of Walls' claims. Therefore, there is nothing for the Court to preserve.

Walls has specifically requested dismissal of her claims with prejudice. However, Walls' request is unduly broad. Walls seeks an order dismissing "any and all claims she has or may have against [State Farm] with prejudice." (R. Doc. 15, p. 1). The Court obviously lacks the authority to dismiss *all* claims Walls "may have" against State Farm. However, the Court finds it appropriate to dismiss with prejudice any and all claims Walls has or may have which arise out of her Complaint, specifically the automobile insurance policy claim she filed with State Farm in connection with the theft and subsequent damage to her automobile on or about November 8, 2010.

Accordingly,

IT IS ORDERED that Plaintiff, Danielle Walls', ("Walls") **Motion and Order for Voluntary Dismissal (R. Doc. 15)** is hereby **GRANTED**.

IT IS FURTHER ORDERED that any and all claims Walls has or may have against State Farm arising out of the transaction alleged in Walls' Complaint are **DISMISSED WITH PREJUDICE**.

New Orleans, Louisiana, this 19th day of October 2012.

A handwritten signature in black ink, appearing to read "Karen Wells Roby", written in a cursive style. The signature is positioned above a horizontal line.

KAREN WELLS ROBY
UNITED STATES MAGISTRATE JUDGE