

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RAYMOND MILLER, et al.,)
)
 Plaintiffs,)
)
 v.) 2:10-cv-00307-JAW
)
THAYER CORPORATION, et al.,)
)
 Defendants.)

ORDER ON MOTION TO DISMISS

On July 29, 2011, with the consent of the Plaintiffs and Defendant Thayer Corporation, Defendant Pit Stop Fuels, Inc. moved the Court to dismiss with prejudice all claims against it. *Def. Pit Stop Fuels, Inc.’s Unopposed Mot. to Dismiss Pit Stop Fuels, Inc.* (Docket # 27). There is some controversy whether a motion to eliminate a party should be filed under Rule 21 or Rule 41. *Compare Harvey Aluminum, Inc. v. Am. Cyanamid Co.*, 203 F.2d 105, 108 (1953) (“Rule 21 provides that ‘Parties may be dropped or added by order of the court on motion . . . and we think that this rule is the one under which any action to eliminate Reynolds as a party should be taken”), *with Leroux v. Lomas & Nettleton Co.*, 626 F. Supp. 962, 965-67 (D. Mass. 1986). The better view is that either rule is appropriate since under either Rule, the motion is subject to the discretion of the court. 7 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 1684 (3d ed. 2001).

Accordingly, the Court GRANTS the Defendant's Unopposed Motion to Dismiss Pit Stop Fuels, Inc. (Docket # 27) and dismisses all claims against Pit Stop Fuels, Inc. with prejudice.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 29th day of July, 2011