

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ANDREW ROSS and SUSAN GERARD,

Plaintiffs,

vs.

No. 1:16-cv-01121 PJK/SMV

HECTOR BALDERAS, Jr., ROBERT GARCIA, SARAH MICHAEL SINGLETON, FRANCIS J. MATHEW, RAYMOND Z. ORTIZ, DAVID K. THOMPSON, JENNIFER ATTREP, T. GLENN ELLINGTON, SYLVIA LAMAR, DONITA OLYMPIA SENA, DONNA BEVACQUA-YOUNG, PAT CASADOS, FRANK SEDILLO, WILLIAM PACHECO, ANTONIO GUTIERREZ, ANNA MONTOYA, JUDAH BEN MONTANO, A. ARROYO, E. MONTIJO, MICHELLE PORTILLO, STEPHEN T. PACHECO, JANE GAGNE, JOYCE BUSTOS, LYNN PICKARD, PAMELA REYNOLDS, ROBIN MARTINEZ, ROBERT RICHARDS, BRENDA WALL, AUDREY MONTOYA, and ALLSTATE INSURANCE, INC.,

Defendants.

ORDER ON VARIOUS PENDING MOTIONS

THIS MATTER comes on for consideration of various pending motions.

- A. The following motions to dismiss are terminated because Plaintiffs voluntarily

dismissed these parties pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), which allows for voluntary dismissal before an opposing party serves an answer or summary judgment motion. Janssen v. Harris, 321 F.3d 998, 1000 (10th Cir. 2003). A motion to dismiss does not preclude Plaintiffs' unilateral dismissal of a party. See De Leon v. Marcos, 659 F.3d 1276, 1283 (10th Cir. 2011).

1. Defendants' [Joyce Bustos and Jane Gagne] Motion to Dismiss Plaintiffs' First Amended Complaint filed November 9, 2016. Doc. 30. See Doc. 76.

2. Defendants the Honorable Donita Sena, the Honorable Donna Bevacqua-Young, the Honorable Pat Casados and Michelle Portillo's Motion to Dismiss Amended Complaint filed November 15, 2016. Doc. 47. See Doc. 81.

3. Defendant the Honorable Sylvia LaMar's Motion to Dismiss Amended Complaint filed November 21, 2016. Doc. 54. See Doc. 76.

4. Defendant Audrey Montoya's Motion to Dismiss Amended Complaint filed November 22, 2016. Doc. 59. See Doc. 81.

5. Defendant Allstate Insurance Company's Motion to Dismiss Plaintiffs' First Amended Complaint filed November 28, 2016. Doc. 65. See Doc. 81.

6. Defendant Lynn Pickard's Motion to Dismiss filed November 30, 2016. Doc. 72. See Doc. 81.

B. The following motion to dismiss is terminated because this Defendant, who had answered and counterclaimed, see Doc. 44, was voluntarily dismissed pursuant to a stipulation signed by all remaining parties who appeared. Fed. R. Civ. P. 41(a)(1)(A)(ii).

In that stipulation, the Defendant also agreed to dismiss her counterclaims, each party to bear its fees and costs.

7. Defendant Pamela Reynolds' Motion to Dismiss First Amended Complaint filed December 2, 2016. Doc. 78. See Doc. 91.

C. Various Remaining Motions

8. Plaintiffs' Motion for Voluntary Dismissal Pursuant to Rule 41(a)(2) filed December 5, 2016 (Doc. 82), seeking to dismiss Defendant Robert Richards without prejudice is denied. Mr. Richards has answered and counterclaimed (Doc. 45), was required to defend (Doc. 46) a motion for preliminary injunctive relief, and now seeks sanctions (Docs. 80, 86). Mr. Richards understandably seeks a dismissal with prejudice to protect against similar future claims and the court concludes that he would suffer legal prejudice if not allowed to pursue that objective. See Baca v. Berry, 806 F.3d 1262, 1269–70 (10th Cir. 2015).

9. Defendants' (Robert Garcia, William Pacheco, Antonio Gutierrez, and Anna Montoya) Unopposed Motion to Stay Discovery Based Upon Qualified Immunity filed December 21, 2016 (Doc. 96) is granted.

10. Given the above, the court will grant the City Defendants' (Judah Ben Montano, A. Arroyo, and E. Montijo) Motion for Protective Order Staying Discovery Pending the Court's Disposition of the City Defendants' Motion for Summary Judgment filed December 19, 2016. Doc. 94. Although the motion is opposed, Doc. 94 at 1 n.1, the Court will grant the motion without a response or reply given its action on the unopposed

motion above, and because the Supreme Court's clarity that an important part of the protection offered by the defense of qualified immunity is relief from the burdens of any discovery pending a prompt determination of the issue. See Ashcroft v. Iqbal, 556 U.S. 662, 685–86 (2009).

NOW, THEREFORE, IT IS ORDERED that:

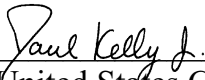
1. Various motions to dismiss are terminated as moot given voluntary dismissal of various Defendants or a dismissal by stipulation agreed to by all remaining parties who have appeared. Doc. 30, 47, 54, 59, 65, 72, 78.

2. Plaintiffs' Motion for Voluntary Dismissal Pursuant to Rule 41(a)(2) filed December 5, 2016 (Doc. 82), seeking to dismiss Defendant Robert Richards without prejudice is denied.

3. Defendants' (Robert Garcia, William Pacheco, Antonio Gutierrez, and Anna Montoya) Unopposed Motion to Stay Discovery Based Upon Qualified Immunity filed December 21, 2016 (Doc. 96) is granted.

4. The City Defendants' (Judah Ben Montano, A. Arroyo, and E. Montijo) Motion for Protective Order Staying Discovery Pending the Court's Disposition of the City Defendants' Motion for Summary Judgment filed December 19, 2016 (Doc. 94) is granted.

DATED this 21st day of December 2016, at Santa Fe, New Mexico.



United States Circuit Judge
Sitting by Designation

Counsel:

Arash “Asher” Kashanian, Albuquerque, New Mexico, for Plaintiffs.

Sean Olivas, Keleher & McCleod, P.A., Albuquerque, New Mexico, for Defendants Joyce Bustos and Jane Gagne.

Ari Biernoff, Assistant Attorney General (and Hector H. Balderas, New Mexico Attorney General), Santa Fe, New Mexico, for Defendants Hon. Donita Sena, Hon. Donna Bevacqua-Young, Hon. Pat Casados, Michelle Portillo, and Hon. Sylvia LaMar.

Joseph P. Walsh, Sommer, Udall, Sutin, Hardwick & Hyatt, P.A., Santa Fe, New Mexico, for Defendant Audrey Montoya.

Nathan Winger, Winger & Associates, PC, Albuquerque, New Mexico, for Defendant Allstate Insurance Company.

Scott Fuqua, Fuqua Law & Policy, P.C., Santa Fe, New Mexico, for Defendant Lynn Pickard.

Robert Richards, Santa Fe, New Mexico, for Defendant Pamela Reynolds.

Robert Richards, pro se.

Luis Robles and Jordon George, Robles, Rael & Anaya, Albuquerque, New Mexico for Defendants Judah Ben Montano, A. Arroyo, and E. Montijo.

Michael Dickman, Santa Fe, New Mexico, for Defendants Robert Garcia, William Pacheco, Antonio Gutierrez, and Anna Montoya.