

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Steve Merrill	:	
and Ray Hamel,	:	
Plaintiffs,	:	
	:	
v.	:	File No. 1:08-CV-99
	:	
Village of North Troy,	:	
North Troy Village Board	:	
of Trustees, Bob Bishop,	:	
Jim Starr and Chris	:	
Choquette,	:	
Defendants.	:	

OPINION AND ORDER

(Paper 48)

Plaintiffs Steve Merrill and Ray Hamel, each proceeding *pro se*, bring this action against the Village of North Troy and its Board of Trustees. The case originated in state court, but was removed by the defendants when the plaintiffs amended their complaint to add an equal protection claim. The plaintiffs have since withdrawn their equal protection claim and moved the Court to remand to state court. (Papers 47 and 48).

The defendants concede that without an equal protection allegation, this Court lacks subject matter jurisdiction. Nonetheless, they oppose a remand “[u]nless and until Plaintiffs expressly withdraw all federal claims or those claims are dismissed with prejudice.” (Paper 49 at 2).

Withdrawal of a claim is governed by Fed. R. Civ. P. 15. See Singh v. Prudential Ins. Co. of America, Inc., 200 F. Supp. 2d 193, 199-200 (E.D.N.Y. 2002) (citing Wakefield v. N. Telecom,

Inc., 769 F.2d 109, 114 n.4 (2d Cir. 1985)). Under this rule, "the trial court has considerable discretion in deciding whether to allow a withdrawal of a claim without prejudice. In general, the court may allow such a dismissal if the defendant will not be prejudiced thereby" Wakefield, 769 F.2d at 114.

In their motion for remand, the plaintiffs explain that the equal protection claim "was inadvertently mentioned" in their state court complaint, and that equal protection is not "the factual core of Plaintiff's [sic] complaint." (Paper 48 at 1). They submit that there are, in fact, "no questions of a Federal Jurisdiction," and that the case should be remanded. Id.

Given the plaintiffs' characterization of their equal protection claim as "inadvertent" and unnecessary, the Court considers that claim expressly withdrawn. Accordingly, there is no basis for this Court to exercise subject matter jurisdiction, and the case is hereby REMANDED to Orleans County Superior Court.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 14th day of December, 2009.

/s/ J. Garvan Murtha
Honorable J. Garvan Murtha
Senior United States District Judge