

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Patricia Surbella, et al. :
 :
 Plaintiffs : Case No. 2:05cv758
 :
 v. : Judge Watson
 :
 Mark Foley, et al. : Magistrate Kemp
 :
 Defendants : **PLAINTIFFS' MOTION FOR
DISMISSAL PURSUANT TO
FRCP 41(a).**

Now come Plaintiffs, by and through counsel, and hereby move this Honorable Court for an Order dismissing this case pursuant to FRCP 41(a). This is the first and only Motion for Dismissal filed by the Plaintiffs in this case, and no counterclaims or cross-claims are currently pending in this matter. A memorandum in support of this Motion is attached hereto.

Respectfully submitted,

/s/ Kenneth R. Donchatz
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Attorney for Plaintiffs

MEMORANDUM IN SUPPORT

Plaintiffs now move this Court for an Order dismissing this case pursuant to FRCP 41(a). For nearly a year, the parties have been attempting to settle the issues presented in this case, but have been unable to do so. Nonetheless, the parties are close to settlement, and it is the belief of the Plaintiffs that settlement is possible, given additional time to negotiate. Further, identical claims to the claims raised in the Plaintiffs' Complaint are currently pending in the Knox County Court of Common Pleas. Thus, if litigation is necessary, the essential claims presented here can be litigated in Knox County or in a re-filed case in this Court. In fact, all of the discovery gathered in this case can be used in Knox County, and the parties will not have to incur expenses in conducting additional discovery or time for preparation. As both parties are fully prepared for trial, there will be minimal or no additional cost in preparing for trial in Knox County. No party will suffer harm or prejudice if the dismissal is granted pursuant to FRCP 41(a).

Granting a voluntary dismissal without prejudice is appropriate where no counter-claims or cross-claims are pending. *Barnes v. First American Title Ins., Co.*, 473 F. Supp 2d. 798 (N.D. Ohio 2007). In this case, the Defendants have not filed counter-claims or raised any other substantive claims against the Plaintiffs. Instead, the Defendants chose to assert their claims in Knox County County, where they remain intact. The Defendants will not lose any claims once this Motion is granted.

For the aforementioned reasons, the Plaintiffs respectfully request that this case be dismissed pursuant to FRCP 41(a).

Respectfully submitted,

/s/ Kenneth R. Donchatz

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Plaintiff's Motion to Dismiss Pursuant to FRCP 41(a) was filed electronically with the Clerk of Court's ECF docketing system, thereby serving it upon each of the parties to this action this 18th day of July, 2007.

/s/ Kenneth R. Donchatz

Kenneth R. Donchatz