

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

HENRY CHRISTOPHER

Plaintiff)

CASE NO. ST-09-CV-0000444

^{Vs.}
THE VIRGIN ISLANDS TAXI
ASSOCIATION

)
)
)
)
ACTION FOR: BREACH OF
CONTRACT - CIVIL

Defendant)

**NOTICE OF ENTRY OF
MEMORANDUM OPINION**

TO: JUDGES AND MAGISTRATES OF THE SUPERIOR
COURT
ORDER BOOK
IT DIVISION ✓
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ANDREW L. CAPDEVILLE, ESQ.
JOSEPH B. ARELLANO, ESQ.

Please take notice that on December 02, 2009 a(n) MEMORANDUM
OPINION dated December 01, 2009 was entered by the Clerk in the
above-entitled matter.

Dated: December 02, 2009

Venetia H. Velazquez, Esq.
Clerk of the Court



KHALILA FRETT
COURT CLERK II

IN THE SUPERIOR COURT THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

HENRY CHRISTOPHER, LISTON BRADSHAW and))	
GODFREY RENAL,))	
)	
Plaintiffs,))	CASE NO. ST-09-CV-444
)	
vs.))	
)	
THE VIRGIN ISLANDS TAXI ASSOCIATION and))	
EUSTACE GRANT, its President,))	
)	
Defendants.))	
)	

MEMORANDUM OPINION

This matter is before the Court on Plaintiffs' Motion for Voluntary Dismissal and Incorporated Memorandum of Law ("the Motion") filed on November 3, 2009. Defendants filed a Response to Plaintiffs' Motion ("Response") on November 17, 2009. The Court has not received a reply.

Plaintiffs, taxi drivers expelled from the Defendant Virgin Islands Taxi Association ("VITA"), initiated this action on September 29, 2009, by filing a Verified Complaint and an application for a temporary restraining order and preliminary injunction. By Order dated October 1, 2009, the Court denied the request for a restraining order and set a hearing on the application for injunction on October 22, 2009. Defendants answered the Complaint on October 9, 2009, and on October 13, 2009, Plaintiffs moved to continue the injunction hearing. That request was followed by a spate of pleadings from Defendants over the course of the next several days, as follows:

October 15, 2009	opposition to motion to continue, motion to dismiss Count III with prejudice or join party, with accompanying memorandum of law
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October 16, 2009	motion to dismiss Count IV with prejudice, with accompanying memorandum of law
October 19, 2009	motion to accelerate briefing
October 20, 2009	first amended answer, affirmative defenses, and counterclaims, cross-motion for preliminary and permanent injunction, with accompanying memorandum of law

DISCUSSION

Defendants' Motion to Accelerate Briefing requested that Plaintiffs voluntarily dismiss Counts III and VI of the Complaint. Plaintiffs agreed to stipulate to a voluntary dismissal of Counts III and VI and filed an Informative Motion and Request for Voluntary Dismissal ("the Informative Motion") on October 21, 2009. However, on October 22, 2009, Defendants requested that the Court condition Plaintiffs' voluntary dismissal of those counts upon the payment of reasonable costs and attorney's fees to Defendants.

Subsequently, on November 3, 2009, Plaintiffs filed the Motion requesting dismissal of the entire action with prejudice pursuant to FED. R. CIV. P. 41(a)(2).¹ Plaintiffs also withdrew their application for a preliminary and permanent injunction. Still dissatisfied, Defendant filed an Informative Motion indicating the intended to respond, and on November 17, 2009, Defendants indicated that a dismissal with prejudice could be entered by the Court as a consent judgment, but requested that the Court require Plaintiffs to return their taxi domes and impose sanctions in the form of attorneys fees. Defendants' Motion for Attorneys Fees under 5 V.I.C. 541 and Motion for an Order to Show Cause Why Sanctions Should Not Be Imposed followed on November 19, 2009.

¹ Made applicable to the Superior Court through SUPER CT. R. 7.

The determination of Rule 41(a)(2) motions is within the Court's discretion.

Cornell v. Pirates' Pension Board of Dirs., Civ. No. 2006-100, 2008 WL 4748169, at *1 (D.V.I. Oct. 27, 2008). A court should grant a Rule 41(a)(2) motion unless a defendant can show that it will suffer some plain legal prejudice as a result. *Browne v. Baeke*, 413 F.3d 1121, 1124 (10th Cir. 2005) (listing factors for evaluating prejudice). When a plaintiff voluntarily dismisses an action with prejudice, defendants are only awarded attorney's fees under "exceptional circumstances." *Cornell, supra.* at 2. "The rationale for this rule is that 'when a plaintiff dismisses an action with prejudice, attorneys' fees are usually not a proper condition of dismissal because the defendant cannot be made to defend again.'" *Id.* (citing *Cauley v. Wilson*, 754 F.2d 769, 771-72 (7th Cir. 1985)).

Although Defendants have asserted a counterclaim, they have also expressed their willingness to have this action dismissed pursuant to a consent judgment. Thus, in the absence of an objection from Defendants, dismissal by the Court under Rule 41(a)(2) need not leave Defendants' counterclaim pending. Defendants also request that the Court direct Plaintiffs to return their taxi domes to VITA, but Plaintiffs agreed to do so in their Motion, so the Court will direct Plaintiffs to return their taxi domes to VITA as part of the dismissal. As a result, other than the question of attorney's fees and costs, none of the issues raised by the parties is now in contention.

Defendants' Informative Motion relies on *O'Neale's Trucking & Trailer, Inc., v. Tropical Shipping & Constr. Co., LTD.*, Civil No. 1989-55 (D.V.I. STX Aug. 18, 1989) for the proposition that the voluntary dismissal of Plaintiffs' Complaint should be conditioned upon Plaintiffs' reimbursement of Defendants' reasonable fees and expenses. Although both *O'Neal's Trucking* and this matter have similar procedural histories, the

complaint in *O'Neale's Trucking* was dismissed *without* prejudice. Here, the parties agreed to a dismissal with prejudice. In *Cornell, supra*, at *2, the Court found that the defendant was not prejudiced by a voluntary dismissal with prejudice because the action could not be refiled and the defendant did not oppose the dismissal. Likewise, Defendants do not oppose Plaintiffs' request for a voluntary dismissal; they merely seek to condition it on reimbursement.

In *Browne, supra*, the court considered (1) the opposing party's effort and expense in preparing for trial, (2) excessive delay and lack of diligence on the part of the movant, (3) insufficient explanation of the need for a dismissal, and (4) the present stage of the litigation. The Tenth Circuit indicated that this list is neither exhaustive nor conclusive and cautioned that the court should be sensitive to other considerations unique to the circumstances of each case and endeavor to ensure substantial justice is accorded to both parties.

While Defendants necessarily incurred attorneys fees and costs in defending this case, the Court must conclude that Defendants have failed to demonstrate exceptional circumstances entitling them to an award of reasonable attorney's fees and costs under Rule 41(a)(2). This case is in a comparatively early stage, with no discovery having been conducted and no substantive hearings having been held. The Court does not find fault with Defendants' aggressive defense of this action, but it must also conclude that the bulk of their attorneys fees and costs have been generated in a very short period of time as a result of that approach. The Court finds that Plaintiffs promptly requested voluntary dismissal of, first, Counts III and IV, and, later, the entire action, when Defendants submitted their pleadings. While Plaintiffs' explanation for their dismissal is arguably


weakly expressed, and while Defendants view Plaintiffs' filing of this action as harassment, on balance, the bulk of these factors weigh in favor of dismissal without an award of attorney's fees and costs. Under the circumstances presented here, considering the factors set forth in *Browne*, the Court does not find that Defendants will be prejudiced by dismissal with prejudice in the absence of an award of attorneys fees and costs.

A separate Order shall follow.

Dated: December 1, 2009


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

Attest: Venetia H. Velasquez, Esq.
Clerk of the Court 1/1/1

by: 
Rosalie Griffith
Court Clerk Supervisor 12/1/09

CERTIFIED A TRUE COPY
Date: 12/1/09
Venetia H. Velasquez, Esq.
Clerk of the Court
By: 
Court Clerk