

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Windy Cove, Inc. v. Circle K Stores, Inc.

Windy Cove · No. 3:21-cv-01416-MMA (DEB) · Decided March 2, 2023

SUMMARY

The United States District Court for the Southern District of California denied without prejudice a joint motion to dismiss several counterclaims under Federal Rule of Civil Procedure 41(a)(1)(A)(ii). The court held that Rule 41 does not permit dismissal of fewer than all claims against certain defendants and that Rule 15 is the appropriate procedural mechanism.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Michael M. Anello
JURISDICTION	United States District Court for the Southern District of California
DECIDED	March 2, 2023
DOCKET	3:21-cv-01416-MMA (DEB)
DISPOSITION	dismissed
PROCEDURAL POSTURE	The plaintiffs and counterclaim-defendants jointly moved under Federal Rule of Civil Procedure 41(a)(1)(A)(ii) to dismiss four of Circle K's counterclaims.
PRECEDENTIAL VALUE	Unknown

TOPICS

- civil procedure
- motion to amend
- pleadings
- commercial litigation

PRACTICE AREAS

- Civil procedure
- Commercial litigation

QUESTIONS PRESENTED

- Whether Federal Rule of Civil Procedure 41(a)(1)(A)(ii) permits the parties to dismiss fewer than all of Circle K's counterclaims while leaving another counterclaim pending against some of the same defendants.

2. Whether Federal Rule of Civil Procedure 15, rather than Rule 41, is the proper procedural mechanism for eliminating individual claims without dismissing the action as to the defendants.

HOLDINGS

1. Rule 41(a) applies to voluntary dismissal of an action, not to dismissal of fewer than all claims when other claims remain pending against the same defendants.
2. Federal Rule of Civil Procedure 15, rather than Rule 41, is the appropriate mechanism when a party seeks to eliminate an issue or fewer than all claims without dismissing the action as to the defendants.

KEY QUOTATIONS

“Rule 41(a) applies only to voluntary dismissal of “an action,” not to certain claims within an action.”
(Opinion at 1)

“Accordingly, the Court DENIES the parties’ joint motion in its entirety without prejudice.” (Opinion at 2)

FACTUAL BACKGROUND

Circle K asserted six counterclaims arising from covenants and related obligations involving the parties' fuel-station businesses and properties. The parties sought to dismiss Circle K's first, third, fourth, and fifth counterclaims while leaving the sixth counterclaim pending against several of the same counterclaim-defendants. Because the proposed dismissal would not release all claims against all of the relevant defendants, the court concluded that Rule 41(a) was unavailable.

PROCEDURAL HISTORY

Circle K asserted six counterclaims against the plaintiffs and other counterclaim-defendants. The parties jointly sought dismissal of Circle K's first, third, fourth, and fifth counterclaims, but Circle K's sixth counterclaim would remain against several of the same parties. The district court denied the joint motion in its entirety without prejudice because Rule 41(a) did not provide the proper mechanism for dismissing fewer than all claims against the relevant defendants.

DISPOSITION

dismissed

CASES CITED

- *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1392 (9th Cir. 1988)
- *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 687 (9th Cir. 2005)
- *Gen. Signal Corp. v. MCI Telecommunications Corp.*, 66 F.3d 1500, 1513 (9th Cir. 1995)

OPINION

Windy Cove, Inc. v. Circle K Stores, Inc.
PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 W coI rpN oD raY ti onC ;O V AE A, AI N AC B., LEa , C Ia Nli Cfo .,r nia a Case No.
3:21-cv-01416-MMA (DEB) California corporation, dba

12 UNIVERSITY CITY MOBIL AND

SOUTH BAY; S & G ZAVARO, INC., ORDER DENYING JOINT MOTION

13 a California corporation, dba TO DISMISS COUNTERCLAIM

MIRAMAR MOBIL; NEWKIRK'S NOS. 1, 3, 4, AND 5 PURSUANT TO

14 SANTA FE SERVICE, INC., a FEDERAL RULE OF CIVIL

California corporation; OCEANSIDE PROCEDURE 41(a)(1)(A)(ii) 15 AKAM OIL, INC., a
California 16 c Mo Arp Nor Aat Gio En M; ENTS T GA RFF OI UN PG , INCA .,N D a [Doc.
No. 110] California corporation, dba KAZMO, 17 LLC.; and HB FUEL, INC., a California
corporation, 18 19 Plaintiffs, vs. 20 21 CIRCLE K STORES, INC., a Texas corporation; and
DOES 1 through 20, 22 inclusive, Defendants.

23 AND RELATED COUNTER CLAIM

24 25 26 27 28 1 Plaintiffs and Counterclaim-Defendants Windy Cove, Inc. ("Windy Cove"), 2
Staffing & Management Group, Inc. ("Staffing") and HB Fuel, Inc. ("HB Fuel"); 3 and
Counterclaim-Defendants KAZMO, LLC ("KAZMO"), Sun Rise Property, 4 LLC, ("Sun Rise"),
Mohammad Bahour, and Hamid Kalhor (collectively, the 5 "Remaining Dealers"), and Defendant
and Counter-Complainant Circle K Stores 6 Inc. ("Circle K"), jointly move to dismiss Circle K's
first, third, fourth, and fifth 7 counterclaims for (1) Declaratory Relief – Brand Covenant Within
Circle K Grant 8 Deeds; (3) Declaratory Relief – Brand Covenant Within ExxonMobil Grant Deed
9 (Windy Cove); (4) Declaratory Relief – Use Covenant Agreements; and 10 (5) Injunctive Relief
against Windy Cove, Staffing, HB Fuel, KAZMO, Sun Rise, 11 Mohammad Bahour, and Hamid
Kalhor. Doc. No. 110. The parties cite Federal 12 Rule of Civil Procedure 41(a)(1)(A)(ii) as the
basis for dismissal. See id.

13 Rule 41(a) applies only to voluntary dismissal of "an action," not to certain

14 claims within an action. See Fed. R. Civ. P. 41(a). "Federal Rule of Civil

15 Procedure 15(a) is the appropriate mechanism where a plaintiff desires to eliminate

16 an issue, or one or more but less than all of several claims, but without dismissing 17 as to any
of the defendants." *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1392 18 (9th Cir. 1988)
(citations and internal quotation marks omitted); see also *Hells 19 Canyon Pres. Council v. U.S.*
Forest Serv., 403 F.3d 683, 687 (9th Cir. 2005) 20 ("[W]ithdrawals of individual claims against a
given defendant are governed by 21 Fed. R. Civ. P. 15, which addresses amendments to
pleadings.") (citation omitted); 22 *Gen. Signal Corp. v. MCI Telecommunications Corp.*, 66 F.3d
1500, 1513 (9th Cir. 23 1995) ("[W]e have held that Rule 15, not Rule 41, governs the situation
when a 24 party dismisses some, but not all, of its claims.") (citations omitted). Here, 25 dismissal

of Circle K's first, third, fourth, and fifth counterclaims would not 26 dismiss all of Circle K's claims against all Remaining Dealers: Circle K's sixth 27 counterclaim for declaratory relief would remain against Windy Cove, Staffing, 28 Mohammad Bahour, Hamid Kalhour, and HB Fuel. See Doc. No. 28 4] 109-15; 2!) Doc. No. 110 at 3; see also Doc. Nos. 72, 84. Thus, dismissal pursuant to Federal Rule 41(a) is improper as to Windy Cove, Staffing, Mohammad Bahour, Hamid 4] Kalhour, and HB Fuel. See Gen. Signal Corp., 66 F.3d at 1513 ("Rule 41 is reserved for circumstances in which the result of the alleged dismissal is that one or all of the defendants are released from the action."). Accordingly, the Court 7 DENIES the parties' joint motion in its entirety without prejudice. 8 IT IS SO ORDERED. ?|| Dated: March 2, 2023 10 a LN, hk Le □□ tol HON. MICHAEL M. ANELLO

United States District Judge 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28